

FIRS – TAX LAW COMPENDIUM

Foreword

The FIRS Compendium of Tax and Related Laws is one of several documentation projects initiated by the former Executive Chairman, Mrs. Ifueko Omoigui Okauru, which I have the pleasure of bringing to conclusion. Most of the laws in the compendium are contained in the various volumes of the Laws of the Federation of Nigeria. However, given that the Laws of the Federation of Nigeria are compiled in several volumes, the latest comprising of 14 volumes, it follows that a person whose interest traverses more than one tax type at any given time must necessarily consult several volumes simultaneously. For law officers, it also means an extra burden of having to carry several law volumes when appearing before the courts or tribunal. This compendium chronicles all key tax and related legislations in one single volume thereby allowing for ease of reference (for research purposes) as well as ease of mobility.

While similar efforts have been made in the past towards attaining the objectives above, the FIRS Compendium represents the latest, most up to date compilation of its kind. Our compendium includes new legislations (*the Tertiary Education Trust Fund (Establishment) Act*); latest amendments to existing legislations (*the Personal Income Tax (Amendment) Act 2011* and *the Amendment of the Fifth Schedule to the Companies' Income Tax Act, Order No. 1 of 2011*). Finally, our compendium is wider in scope because it chronicles not just tax, but related laws as well. In order not to defeat the mobility objective of the project, only principal enactments and the schedules thereto are included. Subsidiary legislations are not included.

The compilation was done entirely by staff of the Federal Inland Revenue Service. It was driven by Ben Pever and Ifeanyichukwu Aniyie, with inputs from Michael Ango, all of the Office of the Executive Chairman, Federal Inland Revenue Service. To ensure content integrity, the initial draft was reviewed by Bimbo Atilola, Managing Partner of Hybrid Solicitors and Consults. Mr. Atilola is also the Editor-in-Chief, Nigerian Tax Law Reports (1960–2010); Publisher and Managing Editor, Nigerian Tax Notes (A monthly Journal of Tax Law) and Editor-in-Chief, Business Law Review (A Quarterly Journal of Business Law and Taxation).

This book is primarily conceived for the convenience of tax officials. My hope however, is that other professionals, Judicial Officers and persons interested in the study or practice of taxation will also find it useful. I therefore recommend it to all persons interested in the subject of Nigerian taxation.

Kabir M. Mashi

Acting Executive Chairman, Federal Inland Revenue Service,
Abuja, July 2012

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CAPITAL GAINS TAX ACT

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CHAPTER C1

CAPITAL GAINS TAX ACT

An Act to provide for the taxation of capital gains accruing on disposal of assets.

[1967 No. 44.]

[Commencement.] [1st April, 1967]

CAPITAL GAINS TAX

General

1. Taxation of capital gains

- (1) Subject to the provisions of this Act there shall be charged a tax to be called capital gains tax for the year of assessment 1967-68 and for subsequent years of assessment in respect of any capital gains, that is to say, gains accruing to any person on or after 1 April, 1967, on a disposal of assets.
- (2) Every such gain shall, except so far as otherwise expressly provided, be a chargeable gain.
- (3) In this Act, unless the context otherwise requires, any reference to a person shall include a reference to any person to whom section 2 of the Personal Income Tax Act applies.
[Cap. P8.]

2. Capital gains tax

- (1) The rate of capital gains tax shall be ten per cent.
- (2) Capital gains tax shall be chargeable at the rate mentioned in subsection (1) of this section on the total amount of chargeable gains accruing to any person in a year of assessment after making such deductions as may be allowed under this Act in the computation of such gains.
- (3) Capital gains tax to be assessed on any person under this Act shall be computed and charged in accordance with the provisions of this Act.
.[1999 No. 45.]

3. Chargeable assets

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Subject to any exceptions provided by this Act, all forms of property shall be assets for the purposes of this Act, whether situated in Nigeria or not, including-

- (a) options, debts and incorporeal property generally;
- (b) any currency other than Nigerian currency; and
- (c) any form of property created by the person disposing of it, or otherwise coming to be owned without being acquired,

and without prejudice to the foregoing provisions, this section shall have effect, notwithstanding that the property is an asset in respect of which qualifying expenditure had been incurred under the Schedule to the Personal Income Tax Act, the Third Schedule to the Companies Income Tax Act or the Petroleum Profits Tax Act.

[Cap. P8. Cap. C21. Cap. P13.]

4. Assets situated outside Nigeria

Without prejudice to the foregoing provisions of this Act, as respects any chargeable gains accruing in the year 1967-68 or a later year of assessment from a disposal of assets situated outside Nigeria-

- (a) where the disposal of assets is by an individual-
 - (i) who is in Nigeria for some temporary purpose only and not with any view or intent to establish his residence in Nigeria; and
 - (ii) if the period or sum of the periods for which he is present in Nigeria in that year of assessment exceeds 182 days; or
- (b) where the disposal is by any trustee of any trust or settlement and the seat of administration of the trust or settlement is situated outside Nigeria during the whole of that year of assessment; or
- (c) where the disposal is by a company, which is not a Nigerian company within the meaning of section 105 of the Companies Income Tax Act, that is to say, a company whose activities are managed and controlled outside Nigeria during the whole of that year of assessment,

[Cap. C21.]

capital gains tax shall be charged on the amounts (if any) received or brought into Nigeria in respect of any chargeable gains, such amounts being treated as gains accruing when they are received or brought into Nigeria.

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5. Exclusion of losses

In the computation of chargeable gains under this Act the amount of any loss which accrues to a person on a disposal of any asset shall not be deductible from gains accruing to any persons on a disposal of such asset.

Gains chargeable to tax

6. Disposal of assets

- (1) Subject to any exceptions provided by this Act there is, for the purposes of this Act, a disposal of assets by a person where any capital sum is derived from a sale, lease, transfer, an assignment, a compulsory acquisition or any other disposition of assets, notwithstanding that no asset is acquired by the person paying the capital sum, and in particular-
 - (a) where any capital sum is derived by way of compensation for any loss of office or employment;
 - (b) where any capital sum is received under a policy of insurance and the risk of any kind of damage or injury to, or the loss or depreciation of, assets;
 - (c) where any capital sum is received in return for forfeiture or surrender of rights, or for refraining from exercising rights;
 - (d) where any capital sum is received as consideration for use of exploitation of any asset; and
 - (e) without prejudice to paragraph (a) of this section, where any capital sum is received in connection with or arises by virtue of any trade, business, profession or vocation.
- (2) In this section and elsewhere in this Act-
 - (a) “**capital sum**” means any money or money’s worth which is not excluded from the consideration taken into account in the computation under section 11 of this Act; and
 - (b) references to a disposal of assets include, except where the context otherwise requires, references to a part disposal of assets, and there is a part disposal of assets-
 - (i) where an interest or right in or over the assets is created by the disposal, as well as where it subsists before the disposal; and

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- (ii) where, on a person making a disposal, any description of property derived from the assets remains undisposed of.

7. Disposal of assets; provisions as to considerations

(1) Subject to the provisions of this Act, a person's acquisition of an asset and the disposal of it to him shall, for the purposes of this Act, be deemed to be for a consideration equal to the market value of the asset-

(a) where he acquires the asset otherwise than by way of a bargain made at arm's length;
or

(b) where he acquires the asset wholly or partly for a consideration that cannot be valued, or in connection with his own or another's loss of office or employment or diminution of emolument, or otherwise in consideration for or recognition of his or another's services or past services in any office or employment or of any other service rendered or to be rendered by him or another; or

(c) where he acquires the asset as trustee for creditors of the person making the disposal.

(2) Where a person disposes by way of a gift of an asset acquired by him by way of a gift or otherwise (not being an acquisition on a devolution on death) the person acquiring the asset on that disposal shall, for all purposes of this Act, so far as relates to the interest taken by him, be deemed to have acquired the asset-

(a) in a case where the amount of the consideration for which the asset was last disposed of by way of a bargain made at arm's length is ascertainable, for a consideration equal to that amount; and

(b) in any other case, for a consideration equal to the market value of the asset on the date of that disposal,

and in this subsection —gift does not include a *donatio mortis causa*.

(3) In relation to any asset held by a person as nominee for another person, or as trustee for another person absolutely entitled as against the trustee, or for any person who would be so entitled but for being an infant or other person under disability (or for two or more persons who are or would be jointly so entitled), this Act shall apply as if the property were vested in, and the acts of the nominee or trustee in relation to the asset were the acts of, the person or persons for whom he is the nominee or trustee (acquisitions from or disposals to him by that person or persons being disregarded accordingly).

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- (4) The conveyance or transfer by way of security of an asset or of an interest or right in or over it, or transfer of a subsisting interest or right by way of security in or over an asset (including a re-transfer on redemption of the security), shall not be treated for the purposes of this Act as involving any acquisition or disposal of the asset.
- (5) Where a person entitled to an asset by way of security or to the benefit of a charge or incumbrance on an asset deals with the asset for the purpose of enforcing or giving effect to the security, charge or incumbrance his dealings with it shall be treated for the purpose of this Act as if they were done through him as nominee by the person entitled to it subject to the security, charge or incumbrance; and this subsection shall apply to the dealings of any person appointed to enforce or give effect to the security, charge or incumbrance as receiver and manager or judicial factor as it applies to the dealings of the person entitled as aforesaid.
- (6) An asset shall be treated as having been acquired free of any interest or right by way of security subsisting at the time of any acquisition of it, and as being disposed of free of any such interest or right subsisting at the time of the disposal; and where an asset is acquired subject to any such interest or right the full amount of the liability thereby assumed by the person acquiring the asset shall form part of the consideration for the acquisition and disposal in addition to any other consideration.
- (7) Where an asset is acquired by a creditor in satisfaction of his debt or part thereof, the asset shall not be treated as disposed of by the debtor or acquired by the creditor for a consideration greater than its market value at the time of the creditor's acquisition of it, and if a chargeable gain accrues to the creditor on a disposal by him of the asset the amount of the chargeable gain (where necessary) shall be reduced so as not to exceed the chargeable gain which would have accrued if he had acquired the property for a consideration equal to the amount of the debt or that part thereof.

8. Death

- (1) 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 other person on whom the assets devolve for a consideration equal to-
 - (a) in a case where the amount of the consideration for which the asset was last disposed of by way of a bargain made at arm's length is ascertainable, that amount; and
 - (b) in any other case, the market value of the asset at that date.

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- (2) The gains which accrue in consequence of subsection (1) of this section shall not be chargeable to capital gains tax under this Act.
- (3) In relation to property forming part of the estate of a deceased person, the personal representatives shall for the purposes of this Act be treated as being a single and, continuous body of persons (distinct from the persons who may from time to time be the personal representatives), and that body shall be treated as having the deceased's residence and domicile at the date of death.
- (4) On a person acquiring any asset as legatee-
- (a) no chargeable gain shall accrue to the personal representatives; and
 - (b) the legatee shall be treated as if the personal representatives' acquisition of the asset had been his acquisition of it.
- (5) In this section, references to assets of which a deceased person was competent to dispose of, are references to assets of the deceased which (otherwise than in right of a power of appointment) he could, if of full age and capacity, have disposed of by his will assuming that all the assets were situated in Nigeria and, if he was not domiciled in Nigeria, that he was domiciled in Nigeria.
- (6) If not more than two years after a death any of the dispositions of the property of which the deceased was competent to dispose of whether by will, or under the law relating to intestacies, or otherwise, are varied by deed of family arrangement or similar instrument, this section shall apply as if the variations made by the deed or other instrument were effected by the deceased, and no disposition made by the deed or other instrument shall constitute a disposition for the purposes of this Act.
- (7) In this section-
- “legatee”** includes any person taking under a testamentary disposition or on an intestacy or partial intestacy, whether he takes beneficially or as trustee, and a *donatio mortis causa* shall be treated as a testamentary disposition and not as a gift;
- “personal representatives”** means-
- (a) the executor, original or by representation or administrator for the time being of a deceased person under any law in force in Nigeria;
 - (b) persons having in relation to the deceased under the law of another country any functions corresponding to the functions for administration purposes under any law in

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force in Nigeria or personal representatives as defined under paragraph (a) of this subsection,

and references to personal representatives as such shall be construed as references to the personal representatives in their capacity as having such functions as aforesaid.

9. Compulsory acquisition of land

- (1) A person shall not be chargeable to tax under this Act in respect of any acquisition and the disposal of land by reference to a disposal to an authority exercising or having compulsory powers, if that person had not-
- (a) acquired the land at a time when he knew or might reasonably have known that it was likely to be acquired by the authority; or
 - (b) taken any steps by advertisement or otherwise to dispose of the land or to make his willingness to dispose of it known to the authority or others.
- (2) In this section “**authority exercising or having compulsory powers**” means, in relation to any disposal of land, an authority, a person or body of persons acquiring the land compulsorily under the Land Use Act, or any other enactment or law of a country other than Nigeria, or who has or have been, or could be, authorised to acquire it compulsorily for the purposes for which it is acquired, or for whom another authority, person or body of persons has or have been, or could be, authorised so to acquire it.
- [Cap. L5.]

10. Date of acquisition or disposal, etc.

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

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

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CAPITAL GAINS

Computation

11. Computation of capital gains

In the computation of any chargeable gains under this Act, such gains as may be chargeable to tax shall, subject to the provisions of this Act, be the difference between the consideration accruing to any person on a disposal of assets and any sum to be excluded from that consideration, and there shall be added to that sum the amount of the value of any expenditure allowable to such person on such disposal by virtue of this Act.

12. Exclusion from consideration for disposals of sums chargeable to income tax

- (1) There shall be excluded from the consideration for a disposal of assets taken into account in the computation of the gain accruing on that disposal any money or money's worth charged to income tax as income of, or taken into account as a receipt in computing income or profits or gains or losses of the person making the disposal for the purposes of the Personal Income Tax Act, the Companies Income Tax Act or the Petroleum Profits Tax Act, which Acts are hereafter jointly referred to as —the Income Tax Acts.

[Cap. P8. Cap. C21. Cap. P13.]

- (2) Subsection (1) above shall not be taken as excluding from the consideration for the disposal of an asset any money or money's worth which is taken into account in the making of a balancing charge under the Income Tax Acts.

13. General provision as to allowable expenditure

- (1) In the computation of capital gains the sums allowable as a deduction from the consideration accruing to a person on the disposal of an asset shall be restricted to-
- (a) the amount or value of the consideration, in money or money's worth given by him or on his behalf wholly, exclusively and necessarily for the acquisition of the asset, together with the incidental costs to him of the acquisition or, if the asset was not acquired by him, any expenditure wholly, exclusively and necessarily incurred by him in providing the asset;
 - (b) any amount of an expenditure wholly, exclusively and necessarily incurred on the asset by him or on his behalf for the purposes of enhancing the value of the asset being expenditure reflected in the state or nature of the asset at the time of the disposal;

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- (c) the amount of any expenditure wholly, exclusively and necessarily incurred on the asset by him or on his behalf in establishing, preserving or defending his title to, or a right over, the asset; and
 - (d) the incidental costs to him of making the disposal.
- (2) For the purposes of this section and any other provision of this Act, the incidental costs to the person making the disposal of the acquisition of the asset or of its disposal shall consist of expenditure wholly, exclusively and necessarily incurred by him for the purposes of the acquisition or, as the case may be, the disposal, being fees, commission or remuneration paid for the professional services of any surveyor or valuer, or auctioneer, or accountant, or agent, or legal adviser and costs of transfer or conveyance (including stamp duties) together-
- (a) in the case of the acquisition of an asset, with costs of advertising to find a seller; and
 - (b) in the case of a disposal, with costs of advertising to find a buyer and costs reasonably incurred in making any valuation or apportionment required for the purposes of the computation of the capital gains, including in particular, expenses reasonably incurred in ascertaining market value where required under this Act.

14. Exclusion of expenditure deductible for income tax purposes

- (1) There shall be excluded from the sum allowable under section 13 of this Act as a deduction in the computation under this Act any expenditure allowable as a deduction in computing the profits or gains or losses of a trade, business, profession or vocation for the purposes of income tax or allowable as a deduction in computing any other income or profits or gains or losses for the purposes of the income or profits or gains or losses for the purposes of the Income Tax Acts and any expenditure which, although not so allowable as a deduction in computing any losses, would be so allowable but for an insufficiency of income or profits or gains: and this section applies irrespective of whether effect is or would be given to the deduction in computing the amount of tax chargeable or by discharge of payment of tax or in any other way.
- (2) Without prejudice to the provisions of subsection (1) of this section, there shall be excluded from the sums allowable under section 13 of this Act as a deduction in the computation under this Act any expenditure which, if the assets, or all the assets to which the computation relates, were, and had at all times been, held or used as part of the fixed capital of a trade or business the profits or gains of which were (irrespective of whether the person making the disposal is a company or not) chargeable to income tax would be allowable as a deduction in computing the profits or gains or losses of the trade for the purposes of income tax.

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- (3) The foregoing provisions of this section shall not require the exclusion from the sums allowable as a deduction in the computation under this Act of any expenditure as being expenditure in respect of which capital allowances are granted under the Income Tax Acts.

15. Special provisions as to deductions allowable: insurance premiums

Without prejudice to section 13 of this Act, there shall be excluded from the sums allowable as a deduction in the computation under this Act of the gain accruing to a person, on the disposal of an asset, any premiums or other payments made under a policy of insurance against the risks of any kind of damage or injury to, loss or depreciation of, any asset.

COMPUTATION

Miscellaneous

16. Part disposal

- (1) Where there is a part disposal of asset within the meaning of section 6 (2) of this Act and generally wherever on the disposal of an asset any description of property derived from that asset remains undisposed of, the sums representing the amount or value of the consideration for the acquisition of the asset (in this Act referred to as the cost of acquisition of the asset) together with any amount of expenditure wholly, exclusively and necessarily incurred on the asset for the purposes of enhancing the value of the asset as are attributable to the asset shall, both for the purposes of the computation under this Act and in relation to the property which remains indisposed of, be apportioned.

- (2) Apportionment shall be made by reference-

(a) to the amount or value of the consideration for the disposal on the one hand (call that amount or value A), and

(b) to the market value of the property which remains undisposed of on the other hand (call that market value B),

and accordingly the fraction of the said cost or sums allowable as a deduction in computing under this Act the amount of the gain accruing on the disposal shall be A

$A+B$

and the remainder shall be attributed to the property which remains undisposed of.

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- (3) Where there is a disposal of an interest or right in or over a chargeable asset created by the disposal or where it subsists before the disposal, and on the making of the disposal any description of property derived from the asset remains undisposed of, there shall be apportioned the amount or value of the consideration in money or money's worth given by him or on his behalf wholly and exclusively for the acquisition of the asset together with the incidental cost to him of the acquisition or any expenditure wholly or exclusively incurred by him in providing the asset as against the market value of the property.

17. Consideration due after time of disposal

- (1) If the consideration or part of a consideration, taken into account in the computation of capital gains under this Act, is payable by instalments over a period beginning not earlier than the time when the disposal is made, being a period exceeding 18 months, the chargeable gain accruing on the disposal shall be regarded for all the purposes of this Act as accruing in proportionate parts in the year of assessment in which the disposal is made and in each of the subsequent years of assessment down to and including the year of assessment in which the last instalment is payable.
- (2) The proportionate parts to be recorded as accruing in the respective years of assessment shall correspond to the proportions of the amounts of the instalments of consideration payable in those respective years of assessment.
- (3) The time in the year or accounting period when any such part of a chargeable gain is deemed to accrue under this section shall be the last day in that year of assessment.
- (4) Subsection (1) of this section shall not apply to any part of the consideration which has effectively passed to the person making the disposal by way of a loan made to that person by the other party to the transaction.
- (5) In the computation of chargeable gains under this Act consideration for the disposal shall be brought into account without any discount for postponement of the right to receive any part of it and, in the first instance, without regard to a risk of any part of the consideration being irrecoverable, or to the right to receive any part of the consideration being contingent; and if any part of the consideration so brought into account is subsequently shown to the satisfaction of the Board to be irrecoverable, such adjustment, whether by way of discharge, or repayment of tax or otherwise, shall be made as is required in consequence.

18. Assets lost or destroyed

- (1) If an asset, whether under a policy of insurance or otherwise, is lost or destroyed, and a capital sum received by way of compensation for the loss or destruction is applied within

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three years of receipt in acquiring another asset in replacement of the asset lost or destroyed, the owner shall if he so claims be treated for the purposes of this Act-

- (a) as if the consideration for the disposal of the old asset were (if otherwise of a greater amount) of such amount as would secure that on the disposal neither a loss nor a gain accrues to him; and
- (b) as if the amount of the consideration for the acquisition of the new asset were reduced by the excess of the amount of the capital sum received by way of compensation or under the policy of insurance, together with any residual or scrap value, over the amount of the consideration which he is treated as receiving under paragraph (a) of this subsection.

(2) A claim shall not be made under subsection (1) of this section if part only of the capital sum is applied in acquiring the new asset but if all of that capital sum except for a part which is less than the amount of the gain (whether all chargeable gain or not) accruing on the disposal of the old asset is so applied, then the owner shall if he so claims be treated for the purposes of this Act-

- (a) as if the amount of the gain so accruing were reduced to the amount of the said part (and, if not all chargeable gain, with a proportionate reduction in the amount of the chargeable gain); and
- (b) as if the amount of the consideration for the acquisition of the new asset were reduced by the amount by which the gain is reduced under paragraph (a) of this subsection.

19. Bargains comprising two or more transactions

- (1) Where a single bargain comprises two or more transactions whereby assets are disposed of, those transactions shall be treated for the purposes of computing capital gains as a single disposal.
- (2) Where separate considerations are agreed or purported to be agreed for any two or more transactions comprised in one bargain (whether transactions whereby assets are disposed of or not) those considerations shall be treated as altogether constituting an entire consideration for the transactions and shall be apportionable between them accordingly.
- (3) Where any apportionment under this section shall result in lesser consideration than that agreed (or purported to be agreed) in the bargain being attributable to the disposal of the assets, the separate considerations agreed (or purported to be agreed) in respect of those assets shall be deemed to be the consideration for which those assets are disposed of.

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20. Artificial or fictitious transactions

- (1) Subject to the provisions of this Act, where the Board is of the opinion that any disposition is an artificial or fictitious transaction or where any transaction which reduces or would reduce the amount of any capital gains tax is artificial or fictitious the Board shall disregard such disposition and may direct that such adjustments shall be made with respect to the liability of any person for the payment of capital gains tax as it considers appropriate so as to counteract the reduction of liability to capital gains tax effected or reduction which would otherwise be effected, by the transaction and any person concerned with such transaction shall be assessable accordingly.

- (2) Any person in respect of whom any direction is made under this section shall have a right of appeal in like manner as though for the purposes of this Act such direction were an assessment to capital gains tax.

- (3) For the purposes of this section-
 - (a) **“disposition”** includes any trust, grant, covenant, agreement or arrangement;

 - (b) transactions between connected persons (within the meaning of section 23 of this section) shall be deemed to be artificial or fictitious if in the opinion of the Board those transactions have not been made on terms which might fairly have been expected to have been made by persons engaged in the same or similar activities dealing with one another at arm’s length; and

 - (c) in relation to any direction made under this section the provision of this Act as to appeals against an assessment shall have effect as if such direction were an assessment.

21. Valuation: market value

- (1) For the purposes of computing capital gains, unless the context otherwise requires, **“market value”** in relation to any assets (whether chargeable assets or not) means the prices which those assets might reasonably be expected to fetch on a sale in the open market.

- (2) In estimating the market value of any asset, no reduction shall be made in the estimate on account of the estimate being made on the assumption that the whole of the assets is to be placed on the market at one and the same time.

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- (3) In re-estimating the market value of any assets acquired, if the market value exceeds the consideration actually paid by the acquirer, the assets shall be deemed to have been acquired for the amount actually paid by the acquirer.

22. Transactions between connected persons

- (1) This section shall apply where a person acquires an asset and the person making the disposal is connected with him.
- (2) Without prejudice to the generality of section 7 of this Act the person acquiring the asset and the person making the disposal shall be treated as parties to a transaction otherwise than by way of a bargain made at arm's length.
- (3) In a case where any asset mentioned in subsection (1) of this section is subject to any right or restriction enforceable by the person making the disposal, or by a person connected with him, then (the amount of the consideration for the acquisition being, in accordance with subsection (2) of this section, deemed to be equal to the market value of the asset) that market value shall be-
- (a) what its market value would be if not subject to the right or restriction, minus-
 - (b) the market value of the right or restriction or the amount by which its extinction would enhance the value of the asset to its owner, whichever is the less:

Provided that if the right or restriction is of such a nature that its enforcement would or might effectively destroy or substantially impair the value of the asset without bringing any countervailing advantage either to the person making the disposal or a person connected with him or other right to acquire the asset or, in the case of immovable property, is a right to extinguish the asset in the hands of the person giving the consideration by forfeiture or merger or otherwise, that market value of the asset shall be determined, and the amount of the gain accruing on the disposal shall be computed, as if the right or restriction did not exist.

This subsection shall not apply to a right of forfeiture or other right exercisable on breach of a covenant contained in a lease of land or other property, and shall not apply to any right or restriction under a mortgage or other charge.

23. Meaning of “connected persons”

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- (1) Any question whether a person is connected with another shall for the purposes of this Act be determined in accordance with this section (any provision that one person is connected with another being taken to mean that they are connected with one another).
- (2) A person is connected with an individual if that person is the individual's husband or wife, or is a relative, or the husband or wife of a relative, of the individual or of the individual's husband or wife.
- (3) A person, in his capacity as trustee of a settlement, is connected with any individual who in relation to the settlement is a settlor, and with any person who is connected with such an individual.
- (4) A person is connected with any person with whom he is in partnership, and with the husband or wife or a relative of any individual with whom he is in partnership.
- (5) A company is connected with another company-
 - (a) if the same person has control of both, or a person has control of one and persons connected with him, or he and persons connected with him, have control of the other;
or
 - (b) if a group of two or more persons has control of each company, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person with whom he is connected.
- (6) A company is connected with another person, if that person has control of it or if that person and persons connected with him together have control of it.
- (7) Any two or more persons acting together to secure or exercise control of a company shall be treated in relation to that company as connected with one another and with any person acting on the directions of any of them to secure or exercise control of the company.
- (8) In this section, “**relative**” means brother, sister, ancestor or lineal descendant.

24. Location of assets

For the purposes of this Act-

- (a) the situation of rights or interests (otherwise than by way of security) in or over immovable property is that of the immovable property;

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- (b) subject to the following provisions of this subsection, the situation of rights or interests (otherwise than by way of security) in or over tangible movable property is that of the tangible movable property;
- (c) subject to the following provisions of this section, a debt, secured or unsecured, is situated in Nigeria if and only if the creditor is resident in Nigeria;
- (d) shares or securities issued by any governmental, municipal, local or native authority, or by any body created by such an authority, are situated in the country of that authority or place where the authority is situated;
- (e) subject to paragraph (d) of this section, registered shares or securities are situated where they are registered and, if registered in more than one register, where the principal register is situated;
- (f) a ship or aircraft is situated in Nigeria if and only if the owner is then resident in Nigeria, and an interest or right in or over a ship or aircraft is situated in Nigeria if and only if the person entitled to the interest or right is resident in Nigeria;
- (g) the situation of good-will of a trade, business or professional asset is at the place where the trade, business or profession is carried on;
- (h) patents, trade-marks and designs are situated where they are registered, and if registered in more than one register, where each register is situated, and copyright, franchises, rights and licences to use any copyright material, patent, , trade-mark or design are situated in Nigeria if they, or any rights derived from them, are exercisable in Nigeria; and
- (i) a judgment debt is situated where the judgment is recorded.

25. Supplemental

- (1) No deduction shall be allowable in a computation under this Act more than once from any sum or from more than one sum.
- (2) Reference in this Act to sums taken into account as receipts or as expenditure in computing profits or gains or losses for the purposes of income tax shall include references to sums which would be so taken into account but for the fact that any profits or gains of a trade, profession, employment or vocation are not chargeable to income tax or that losses are not allowable for those purposes.
- (3) In this Act references to income or profits charged or chargeable to tax include references to income or profits taxed or as the case may be taxable by deduction at source.

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- (4) For the purposes of any computation under this Act, any necessary apportionments, shall be made of any consideration or of any expenditure and the method of apportionment adopted shall, subject to the express provisions of this Act, be such method as appears to the Board or on appeal to the Appeal Commissioners or the High Court of a State or of the Federal Capital Territory, Abuja to be just and reasonable.

Exemptions and reliefs

26. Exemption for charities, etc.

- (1) Subject to subsection 2 of this section, a gain shall not be chargeable if it accrues to-

- (a) an ecclesiastical, charitable or educational institution of a public character; (b) any statutory or registered friendly society;
- (b) any co-operative society registered under the Co-operative Societies Law of any State; or
- (c) any trade union registered under the Trade Unions Act,
[Cap. T14.]

in so far as the gain is not derived from any disposal of any assets acquired in connection with any trade or business carried on by the institution or society and the gain is applied purely for the purpose of the institution or society, as the case may be.

- (2) If any property to which subsection (1) of this section relates which is held on trust ceases to be subject to such trust-

- (a) the trustees shall be 'treated as if they had disposed of, and immediately re-acquired, the property for a consideration equal to its market value, any gain on the disposal being treated as not accruing to the institution or society; and
- (b) if and so far as any of that property represents, directly or indirectly, the consideration for the disposal of assets by the trustees, any gain accruing on that disposal shall be treated as not having accrued to such institution or society,

and, notwithstanding anything in this Act limiting the time for making assessments, any assessment to capital gains tax chargeable by virtue of paragraph (b) of this subsection may be made at any time not more than three years after the end of the year of assessment in which the property ceases to be subject to such trusts.

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27. Statutory bodies, etc.

- (1) There shall be exempt from capital gains tax any gains accruing to any local government council.
- (2) Gains accruing to any of the bodies mentioned in this subsection shall be exempt from capital gains tax, that is to say-
 - (a) gains accruing to any company, being a purchasing authority established by or under any law in Nigeria, empowered to acquire any commodity in Nigeria for export from Nigeria; or
 - (b) gains accruing to any corporation established by or under any law for the purpose of fostering the economic development of any part of Nigeria in so far as the gains are not derived from the disposal of any assets acquired by the corporation in connection with any trade or business carried on by it or from the disposal of any share or other interest possessed by the corporation in a trade or business carried on by some other person or authority.

28. Retirement benefits schemes

- (1) A gain shall not be a chargeable gain-
 - (a) if accruing to a person from any disposal of investment held by him as part of any superannuation fund but so that where part only of that fund is approved under section 20 of the Personal Income Tax Act the gain shall be exempt from being a chargeable gain to the same extent only as income derived from the assets would be exempt under that section;

[Cap. P8]
 - (b) if accruing to a person from his disposal of investment held by him as part of any national provident fund or other retirement benefits schemes established under the provisions of any Act or enactment for employees throughout Nigeria,

and such gain shall be exempt from tax under this Act in the same manner, as an investment income of any of those funds is exempt under paragraph (w) of the Third Schedule to the Personal Income Tax Act.

[Cap. P8.]

- (2) No chargeable gain shall accrue to any person on the disposal of a right to, or to any part of any sum payable out of any superannuation fund.

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- (3) In this section, “**superannuation fund**” means a pension, provident or other retirement benefits fund, society or scheme approved by the Joint Tax Board under section 20 (1) (f) of the Personal Income Tax Act.

29. Decorations

A gain shall not be a chargeable gain if it accrues on the disposal by any person of a decoration, awarded for valour or gallant conduct which he acquires otherwise than for consideration in money or money's worth.

30. Stocks and shares, etc.

- (1) Gains accruing to a person from a disposal by him of Nigerian government securities, stocks and shares shall not be chargeable gains under this Act.
[1998 No. 19.]
- (2) In this section, “**Nigerian government securities**” include Nigerian treasury bonds, savings certificates and premium bonds issued under the Savings Bonds and Certificates Act.
[Cap. S1.]

31. Replacement of business assets

- (1) If the consideration which a person carrying on a trade obtains for the disposal of, or of his interest in, assets (in this section referred to as —the old assets¹) used, and used only, for the purposes of the trade throughout the period of ownership is applied by him in acquiring other assets, or an interest in other assets (in this section referred to as —the new assets¹) which on the acquisition are taken into use, and used only, for the purposes of the trade and the old assets and new assets are within one, and the same one, of the classes of assets listed in this section, then the person carrying on the trade shall, on making a claim as respects the consideration which has been so applied be treated for the purposes of this Act-
- (a) as if the consideration for the disposal of, or of the interest in, the old assets were (if otherwise of a greater amount or value) of such amount as would secure that on the disposal neither a loss nor a gain accrues to him; and
- (b) as if the amount or value of the consideration for the acquisition of, or of the interest in, the new assets were reduced by the excess of the amount or value of the actual consideration for the disposal of, or of the interest in, the old assets over the amount of the consideration which he is treated as receiving under paragraph (a) of this subsection,

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but neither paragraph (a) nor paragraph (b) of this subsection shall affect the treatment for the purposes of this Act of the other party to the transaction involving the old assets or of the other party to the transaction involving the new assets.

- (2) Subsection (1) of this section shall not apply if part only of the amount or value of the consideration for the disposal of, or of the interest in, the old assets is applied as described in that subsection but if all of the amount or value of the consideration except for a part which is less than the amount of the gain (whether all chargeable gain or not) accruing on the disposal of, or of the interest in, the old assets is so applied, then the person carrying on the trade, on making a claim as respects the consideration which has been so applied, shall be treated for the purposes of this Act-

(a) as if the amount of the gain so accruing were reduced to the amount of the said part (and, if not all chargeable gain, with a proportionate reduction in the amount of the chargeable gain); and

(b) as if the amount or value of the consideration for the acquisition of, or of the interest in, the new assets were reduced by the amount by which the gain is reduced under paragraph (a) of this subsection,

but neither paragraph (a) nor paragraph (b) of this subsection shall affect the treatment for the purposes of this Act of the other party to the transaction involving the old assets or of the other party to the transaction involving the new assets.

- (3) This section shall only apply if the acquisition of, or of the interest in, the new assets takes place, or an unconditional contract for the acquisition is entered into, in the period beginning twelve months before and ending twelve months after the disposal of, or of the interest in, the old assets, or at such earlier or later time as the Board may by notice in writing allow:

Provided that, where an unconditional contract for the acquisition is so entered into, this section may be applied on a provisional basis without waiting to ascertain whether the new assets or the interest in the new assets, is acquired in pursuance of the contract, and when that fact is ascertained, all necessary adjustments shall be made by making assessments or by repayment or discharge of tax, and shall be so made notwithstanding any limitation in this Act on the time within which assessments may be made.

- (4) If two or more persons are carrying on a trade in partnership, this section shall not apply in relation to anyone of them unless he is, under this Act, to be treated both as making disposal of a share in, or in the interest in, the old assets, and as acquiring a share in, or in

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the interest in, the new assets; and if those shares are different, that partner's share shall be taken for the purposes of this section to be the smaller share.

- (5) This section shall not apply unless the acquisition of, or of the interest in, the new assets was made for the purpose of their use in the trade, and not wholly or partly for the purpose of realising a gain from the disposal or, of the interest in, the new assets.
- (6) The classes of assets for the purpose of this section are as follows-

Class 1. Assets within the heads A and B below.

A. Except where the trade is a trade of dealing in or developing land, or of providing services for the occupier of land in which the person carrying on the trade has an estate or interest-

(a) any building or part of a building and any permanent or semi-permanent structure in the nature of a building occupied (as well as used) only for the purposes of the trade; and

(b) any land occupied (as well as used) only for the purposes of the trade.

B. Fixed plant or machinery which does not form part of a building or of a permanent or semi-permanent structure in the nature of a building.

Ships Class 2

Aircraft Class 3

Goodwill Class 4

- (7) If, over the period of ownership or any substantial part of the period of ownership, part of a building or structure is, and any part is not, used for the purposes of a trade, this section shall apply as if the part so used, with any land occupied for purposes ancillary to the occupation and use of that part of the building or structure, were a separate asset, and subject to any necessary apportionments of consideration for an acquisition or disposal of, or of an interest in, the building or structure and other land.
- (8) If the old assets were not used for the purposes of the trade throughout the period of ownership, this section shall apply as if a part of the asset representing its use for the purposes of the trade having regard to the time and extent to which it was, and was not, used for those purposes, were a separate asset which had been wholly used for the pur-

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poses of the trade and this subsection shall apply in relation to that part subject to any necessary apportionment of consideration for an acquisition or disposal of, or of the interest in, the asset.

- (9) This section shall apply in relation to a person who, either successively or at the same time, carries on two trades which are in different localities, but which are concerned with goods or services of the same kind, as if, in relation to old assets used for the purposes of the one trade and new assets used for the purposes of the other trade, the two trades were the same.
- (10) This section shall apply with the necessary modifications in relation to a business, profession, vocation or employment as it applied in relation to a trade, and in this section the expressions —trade, —business, —profession, —vocation, and —employment have the same meanings as in the Income Tax Acts, but not so as to apply the provisions of the Income Tax Acts as to the circumstances in which, on a change in the persons carrying on a trade, a trade is to be regarded as discontinued, or as set up and commenced.
- (11) The provisions of this Act fixing the amount of the consideration deemed to be given for the acquisition or disposal of assets shall be applied to this section.
- (12) Without prejudice to the provisions of this Act providing generally for apportionments, where consideration is given for the acquisition or disposal of assets some or part of which are assets in relation to which a claim under subsection (1) or subsection (2) of this section applies, and some or part of which are not, the consideration shall be apportioned in such manner as is just and reasonable.

32. Exemption of tax on gain arising from take-overs, etc.

A person shall not be chargeable to tax under this Act, in respect of any gains arising from the acquisition of the shares of a company either taken over, or absorbed or merged by another company as a result of which the acquired company loses its identity as a limited company, provided that no cash payment is made in respect of the shares acquired.

[1993 No.3.]

33. Tax not chargeable on proceeds re-invested

Gains accruing to unit holders of a Unit Trust in respect of disposal of securities shall not be chargeable to tax provided the proceeds are re-invested.

[1993 No.3.]

34. Life assurance policies

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- (1) This section has effect as respects any policy of assurance or contract for a deferred annuity on the life of any person.
- (2) No chargeable gain shall accrue on the disposal of, or of an interest in, the rights under any such policy of assurance or contract except where the person making the disposal is not the original beneficial owner and acquired the rights or interests for a consideration in money or money's worth.
- (3) Subject to subsection (2) of this section, the occasion of the payment of the sum or sums assured by a policy of assurance or of the first instalment of a deferred annuity, and the occasion of the surrender of a policy of assurance or of the rights under a contract for deferred annuity, shall be the occasion of a disposal of the rights under the policy of assurance or contract for a deferred annuity, and the amount of the consideration for the disposal of a contract for a deferred annuity shall be the market value at that time of the right to that and further instalments of the annuity.

35. Rights under policies of insurance, other than life assurance policies

- (1) The rights of the insured under any insurance effected in the course of a capital redemption business shall constitute an asset on the disposal of which a gain may accrue to the person making the disposal but subject to that, neither the rights of the insurer nor the rights of the insured under any policy of insurance, whether the risks insured relate to property or not, shall constitute an asset on the disposal of which a gain may accrue.
- (2) Notwithstanding subsection (1) of this section, sums received under a policy of insurance of the risk of any kind of damage to, or the loss or depreciation of assets are for the purposes of this Act, and in particular for the purposes of section 6 of this Act, sums derived from the assets.
- (3) In this section-
 - (a) **“capital redemption business”** means the business (not being life assurance business or industrial assurance business), of effecting; and carrying out contracts of insurance, whether effected by the issue of policies, bonds, or endowment certificates or otherwise, whereby, in return for one or more premiums paid to the insurer a sum or a series of sums is to become payable to the insured in the future;
 - (b) **“industrial assurance business”** means, the business of effecting and carrying out contracts of insurance in connection with an industrial assurance whereby in return for one or more premiums paid to the insurer a sum or a series of sums is to become payable to the insured in the future; and

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(c) “policy of insurance” does not include a policy of assurance on human life.

36. Personal injury

- (1) Subject to subsection (2) of this section, sums obtained by way of compensation or damages for any wrong or injury suffered by an individual in his person in his profession or vocation shall not be chargeable gains within the meaning of this Act; and the foregoing provision of this subsection shall extend to compensation or damages for personal or professional wrong or injury including wrong or injury for libel, slander or enticement.
- (2) Sums obtained by way of compensation for loss of office shall not, however, be chargeable gains, except where the amount of such compensation or damages exceeds N10,000 in any year, of assessment.

37. Principal private residences

- (1) This section applies to a gain accruing to an individual so far as attributable to the disposal of, or of an interest in-
 - (a) a dwelling-house or part of a dwelling-house which is, or has at any time in his period of ownership been, his only or main residence; or
 - (b) land which he has for his own occupation and enjoyment with that residence as its garden or grounds up to an area (inclusive of the site of the dwelling-house) of one acre or such larger area as the Board may in any particular case determine, on being satisfied that, regard being had to the size and character of the dwelling-house, the larger area is required for the reasonable enjoyment of it (or of the part in question) as a residence,

and in the case where part of the land occupied with a residence is and part is not within this subsection, then (up to the permitted area) that part shall be taken to be within this subsection which, if the remainder were separately occupied, would be the most suitable for occupation and enjoyment with the residence.

- (2) The gain shall not be a chargeable gain if the dwelling-house or part of a dwelling-house has been the individual's only or main residence throughout the period of ownership, or throughout the period of ownership except for all or any part of the last twelve months of that period.
- (3) So far as it is necessary for the purposes of this section, to determine which of two or more residences is an individual's main residence for any period-

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(a) the individual may conclude that question by notice in writing to the Board given within two years from the beginning of that period, or given by the end of the year 1967-68, if that is later, but subject to a right to vary that notice by a further notice in writing to the Board as respects any period beginning not earlier than two years before the giving of the further notice;

(b) subject to paragraph (a) of this subsection, the question shall be concluded by the determination of the Board, which may be as respects either the whole or specified parts or the period of ownership in question,

and notice of any determination of the Board under paragraph (b) of this subsection shall be given to the individual who may appeal to the Appeal Commissioners against that determination within thirty days of service of the notice.

- (4) This section shall not apply in relation to a gain unless the acquisition of, or of the interest in, the dwelling-house or the part of a dwelling-house, was made for the purpose of residing in it and not wholly or partly for the purpose of realising a gain from the disposal of it, and shall not apply in relation to a gain so far as attributable to any expenditure which was incurred after the beginning of the period of ownership and was incurred wholly or partly for the purpose of realising a gain from the disposal.
- (5) Apportionments of consideration shall be made wherever required by this section and, in particular, where a person disposes of a dwelling-house only part of which is his only or main residence.

38. Chattels sold for N,1000 or less in a year

- (1) Subject to this section, a gain accruing on a disposal of an asset which is tangible movable property shall not be a chargeable gain if the total amount or value of the consideration for the disposal does not in a year of assessment exceed N1,000.
- (2) The amount of capital gains tax chargeable in respect of a gain accruing on a disposal of an asset which is tangible movable property for a consideration the total amount or value of which exceeds N1,000 shall not exceed half the difference between the amount of that consideration and N1,000.

For the purposes of this subsection the capital gains tax chargeable in respect of the gain shall be the amount of tax which would not have been chargeable but for that gain.

- (3) If two or more assets which have formed part of a set of articles of any description all owned at one time by one person are disposed of by that person, and-

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(a) to the same person; or

(b) to persons who are acting in concert or who are, in terms of section 23 of this Act, connected persons,

whether on the same or different occasions, the two or more transactions shall be treated as a single transaction disposing of a single asset, but with any necessary apportionments of the reductions in tax under subsection (2) of this section, and this subsection shall also apply where the assets, or some of the assets, are disposed of on different occasions on the 1st of April, 1966, but not so as to make any gain accruing on that date a chargeable gain.

(4) If the disposal is of a right or interest in or over tangible movable property-

(a) in the first instance subsections (1) and (2) of this section shall be applied in relation to the asset as a whole, taking the consideration as including the market value of what remains undisposed of, in addition to the actual consideration;

(b) where the sum of the actual consideration and that market value exceeds N1,000, the limitation and the amount of tax in subsection (2) of this section shall be of half the difference between that sum and N1,000 multiplied by the fraction equal to the actual consideration divided by the said sum.

(5) The foregoing provisions of this section shall apply in relation to a gain accruing on a disposal of two or more assets (not necessarily forming part of a set of articles of any description) which are tangible movable properties in the same manner as they apply in relation to a gain accruing on a disposal of an asset, or two or more assets which formed part of a set of articles, if in a year of assessment the total amount or value of the consideration is N1,000 or more.

(6) This section shall not apply in relation to a disposal of currency of any description.

39. Motor cars

A mechanically propelled road vehicle constructed or adapted for the carriage of passengers shall not be an asset for the purposes of this Act unless it is a vehicle of a type not commonly used as private vehicle and is unsuitable to be so used.

40. Gifts

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Subject to the provisions of this Act, where a person disposes, by way of a gift, of an asset acquired by him by way of a gift or otherwise (not being an acquisition on a devolution on death), the person making the disposal shall not be chargeable to capital gains tax under this Act by reference to that disposal.

In this section, “**gift**” has the same meaning as in section 7 (2) of this Act.

41. Double taxation relief

- (1) For the purposes of giving relief on double taxation, in relation to capital gains tax and tax on chargeable gains charged under the law of any country outside Nigeria, in section 38 of the Personal Income Tax Act and sections 44 and 45 of the Companies Income Tax Act (double taxation relief and unilateral relief) for references to income and profits there shall be substituted references to capital gains, and for references to income tax there shall be substituted references to capital gains tax, meaning (as the context may require) tax charged under the law of a country outside Nigeria; and the enactments mentioned as aforesaid in this subsection shall apply accordingly.

[Cap. P8. Cap. C21.]

- (2) Any arrangement set out in an order made under the said section 38 of the Personal Income Tax Act and section 45 of the Companies Income Tax Act, after the commencement of this Act shall, so far as they provide (in whatever terms) for relief from tax chargeable in Nigeria on capital gains by virtue of this section have effect in relation to capital gains tax.
- (3) So far as by virtue of this section capital gains tax charged under the law of a country outside Nigeria may be brought into account under the said provisions of the Personal Income Tax Act and the Companies Income Tax Act as applied by this section, that' tax, whether relief is given by virtue of this section in respect of it or not, shall not be taken into account for the purposes of those provisions of the Personal Income Tax Act and the Companies Income Tax Act as they apply apart from this section.
- (4) Section 38 (2) of the Personal Income Tax Act and section 45 (3) of the Companies Income Tax Act (which relate to disclosure of information for purposes of double taxation) shall without prejudice to the foregoing provisions of this section apply in relation to capital gains tax as they apply in relation to income tax.

42. Relief in respect of delayed remittances of gains

- (1) A person charged or chargeable for any year of assessment in respect of chargeable gains accruing to him from the disposal of assets situated outside Nigeria, may claim that the following provisions of this section shall apply on showing that-

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- (a) he was unable to transfer those gains to Nigeria; and
 - (b) that inability was due to the laws of the country where the income arose, or to the executive action of its government, or to the impossibility of obtaining foreign currency in that territory; and
 - (c) the inability was not due to any want of reasonable endeavours on his part.
- (2) If he so claims, then for the purposes of capital gains tax-
- (a) there shall be deducted from the amounts on which he is assessed to capital gains tax; for the year in which the chargeable gain accrued to the claimant the amount as respects which the conditions in paragraphs (a), (b) and (c) of subsection (1) of this section are satisfied, so far as applicable; but
 - (b) the amount so deducted shall be assessed to capital gains tax on the claimant (or his personal representatives) as if it were an amount of chargeable gains accruing in the year of assessment in which the said conditions cease to be satisfied.
- (3) No claim under this section shall be made in respect of any chargeable gain more than six years after the end of the year of assessment in which that gain accrues.
- (4) The personal representatives of a deceased person may make any claim which he might have made under this section if he had not died.

Administration provision, etc.

43. Application of income tax administration provisions

- (1) Capital gains tax shall be under the care and management of the Board and the provisions of the Income Tax Acts in the Schedule of this Act shall apply in relation to capital gains tax as they apply in relation to income tax chargeable under those Acts subject to any necessary modifications.
- (2) An appeal shall lie against any assessment to capital gains tax made in accordance with section 65 of the Companies Income Tax Act, as the case may be (as applied under this section) to the body of Appeal Commissioners established under section 71 of the Companies Income Tax Act.

[Cap. C21.]

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44. Information as to assets required

- (1) Without prejudice to section 55 of this Act, a notice under section 40 of the Companies Income Tax Act which relates to returns of profits and income respectively for purpose of a claim, the Board may require particulars of any assets acquired by any person on whom the notice is served (or if the notice relates to income, profits or chargeable gains of some other persons, of any assets acquired by that other person) in the period specified in the notice, being a period beginning not earlier than 1 April 1967 but excluding any asset acquired as a trading stock.

- (2) The particulars required under this section may include particulars of the person from whom the assets were acquired and of the consideration for the acquisition.

- (3) Without prejudice to the provisions of the Stamp Duties Act, the Minister with responsibility for matters relating to stamp duties shall demand tax clearance certificates when checking documents on sale by any company of landed properties and other assets before accepting such documents for stamping.
[Cap. S8.]

45. Change of ownership of property

The production of evidence of tax payments shall be a condition for effecting change of ownership of property including shares and stocks.
[1993 No.3.]

46. Interpretation and other supplemental provisions

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

“**Board**” means the Federal Board of Inland Revenue;

“**chargeable gains**” has the meaning given in section 1 above;

“**company**” includes any body corporate but does not include a partnership or a corporation sole;

“**connected person**” had the meaning given in section 23 of this Act;

“**disposal of assets**” has the same meaning as in section 6 (1) of this Act;

“**gift**” has the meaning given in section 7 (2) of this Act;

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“**Income Tax Acts**” has the same meaning as in section 12 of this Act;

“**part disposal**” has the meaning given by section 6 (2) (b) of this Act;

“**personal representatives**” means the legal personal representatives of a deceased person;

“**market value**” has the meaning given in section 21 (1) of this Act; and

“**year of assessment**” means, in relation to capital gains tax, a year beginning with 1 January and ending with 31 December in the same calendar year but —1967-68| indicates year of assessment beginning on 1 April 1967 and ending 31 March, 1968.

(2) References in this Act to any person to whom any chargeable gains accrue include-

- (a) references to any company or other body corporate established by or under any law in force in Nigeria or elsewhere to whom such gains accrue; or
- (b) reference to a person to whom the Personal Income Tax Act applies to whom the gains accrue.

[Cap. P8.]

- (3) A hire-purchase or other transaction under which the use and enjoyment of an asset is obtained by a person for a period at the end of which the property in the asset will or may pass to that person shall be treated for the purposes of this Act, both in relation to that person and in relation to the person from whom he obtains the use and enjoyment of the asset, as if it amounted to an entire disposal of the asset to that person at the beginning of the period for which he obtains the use and enjoyment of the asset, but subject to such adjustments of tax, whether by way of repayment or discharge of tax or otherwise, as may be required where the period for which that person has the use and enjoyment of the asset terminates without the property in the asset passing to him.
- (4) In the case of a disposal within section 4 of this 'Act, the time of the disposal shall be the time when the capital sum is received as described in that section.
- (5) For the purposes of section 4 of this Act, there shall be treated as received in Nigeria in respect of any gain all amounts paid, used or enjoyed in or in any manner or form transmitted or brought to Nigeria.
- (6) Where two or more persons carry on a trade or business in partnership-
 - (a) tax in respect of chargeable gains accruing to them on the disposal of any partnership assets shall, in Nigeria be assessed and charged on them separately; and

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(b) any partnership dealings shall be treated as dealings by the partners and not by the firm as such.

(7) Subject to the provisions of this Act, the provisions of the Personal Income Tax Act and the Companies Income Tax Act relating to residence of partnership shall, in so far as the provisions are not inconsistent with the provisions of this Act, apply in relation to tax chargeable in pursuance of this Act as they apply in relation to income tax; so however that any reference to the income of a partner from a partnership shall be construed as a reference to such proportion of gains of the partnership as is attributable to the partner in the computation of capital gains accruing to that partner on the disposal of any partnership assets.

[Cap. P8. Cap. C21.]

(8) Any provisions of this Act introducing the assumption that assets are sold and immediately re-acquired shall not imply that any expenditure is incurred as incidental to the sale or re-acquisition.

(9) The reference in this Act to any enactment apart from this Act is a reference to that enactment as amended, altered, substituted or replaced by any other enactment or law relating to the subject matter and applicable.

47. Short title

This Act may be cited as the Capital Gains Tax Act.

SCHEDULE

Provisions of the Income Tax Acts applied to capital gains tax

Companies Income Tax Act

[Cap. C21.]

PART II.....(administration) except sections 4 (1), 5, 45 and 67

PART VIII.....(persons chargeable, agents, liquidators, etc.)

PART IX.....(returns)

PART X.....(assessments)

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PART XI.....(appeals)

PART XII.....(collection, recovery and repayment) except section 77

PART XIII.....(offences and penalties)

Section 102.....(conduct of proceedings in magistrate's court)

Personal Income Tax Act
[Cap. P8.]

Sections 46, 48 and 50...(disclosure and procurement of information, power to appoint agent and returns)

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CHAPTER C3

CASINO TAXATION ACT

ARRANGEMENT OF SECTIONS

SECTION

1. Tax on net gaming revenue of companies licensed to operate casinos.
2. Power to enter and inspect, etc., returns.
3. Returns and payment of tax. Indemnity.
4. Chargeability to tax.
5. Books of account.
6. Assessments, appeals, etc.
7. Time within which payment is to be made.
8. Errors and defects in assessment and notice.
9. Relief in respect of error or mistake.
10. Service of documents, and failure to comply with terms of any notice.
11. False statements and returns.
12. Action for tax by board.
13. Incorrect returns by licensee, etc.
14. Offences relating to collection, etc., of tax.
15. Priority of claim for tax.
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18. Delegation of certain powers by board.
19. Signification and execution of powers, duties, etc.
20. Returns, etc., to be furnished.
21. Official secrecy.
22. Refund of tax.
23. Prosecutions and liability to tax.
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25. Regulations.
26. Short title and interpretation.

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CHAPTER C3

CASINO TAXATION ACT

An Act to impose a tax on the net gaming revenue of casinos in the Lagos territory, and for related purposes,

[1965 No. 26.]

[Commencement.]
1965]

[1st April,

1. Tax on net gaming revenue of companies licensed to operate casinos

- (1) There shall be imposed in respect of every casino licensed under the Casino Licensing Act 1964 (hereafter referred to as a "casino") a tax on the net gaming revenue thereof to be known as casino revenue tax and payable by the licensee as hereafter provided.
- (2) Subject to the provisions of this section, the tax shall be twelve-and-one-half per cent of such revenue, and a licence to operate a casino shall be granted only to a company having such purpose as its main object, and duly incorporated in Nigeria under the Companies and Allied Matters Act.

[Cap. C20.]

- (3) Tax under this Act shall rank in priority to tax under the Companies Income Tax Act and be a debt recoverable by the Federal Board of Inland Revenue (hereafter referred to as "the Board"); but for the purposes of this Act, the Companies Income Tax Act shall have effect and the provisions thereof, subject to this Act, shall apply so however that, as the case may require-

[Cap. C21.]

- (a) reference to any person in the Casino Licensing Act 1964 shall be construed as references to a company so incorporated;
- (b) references in this Act to a licensee shall be construed as references to any such company; and
- (c) references in the Companies Income Tax Act to any company shall be construed as references to a licensee under this Act.

[Cap. C21.]

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- (4) Tax under this Act shall be a first charge on the assets of the licensee; and anything in any other Act to the contrary notwithstanding the tax shall accordingly rank in priority to all costs, taxes and charges whatsoever.
- (5) In the application of this section, "net gaming revenue" means the daily takings in every period, continuous or intermittent, of up to fifteen hours in anyone of twenty four hours computed from the time when play at tables or elsewhere in the casino is first open for gaming during any such period and thereafter is closed, allowances being made by way of set-off only for winnings paid to patrons or their nominees by the licensee in the course of play or within fifteen hours after play is closed; and daily takings shall be construed accordingly.
- (6) The House of Representatives may from time to time by resolution reduce or increase the rate of tax imposed by subsection (1) of this section, and the resolution may specify the date on which it is to take effect. A copy of the resolution certified by the clerk to the House shall be published in the Federal Gazette, and the resolution shall have effect on the date specified in the resolution, or the date of such publication, as the case may be.

2. Power to enter and inspect, etc., returns

- (1) Any person may, on production of a warrant signed by the chairman of the Board authorising him in that behalf, enter on any part of the premises where the casino is. at any time during the hours of play or at reasonable times outside those hours and inspect statements or returns required for the purposes of this Act and where necessary certify as correct any such statement or return, whether or not it is intended to be delivered or sent to the Board.
- (2) The warrant of authority under this section shall in addition to authorising the holder to do such things as the Board may require for the purposes of this Act, give information as to the name and status of the person authorised sufficient to identify him, and the warrant shall also be signed by such person.

3. Returns and payment of tax. Indemnity

- (1) The licensee shall in the afternoon of the day when play closes in the casino, or so soon thereafter as may be practicable, deliver a return to the Board showing the net gaming revenue received during the course of play in that period; and the return shall, before such delivery, be certified as correct by a person authorised for the purpose by the Board under this Act.
- (2) The licensee shall, in addition, as directed by the Board, prepare and forward returns at intervals of not more than one week and one month respectively, calculated from such

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date as the Board may in writing prescribe; and the returns shall be a consolidation of the net gaming revenue for the interval in respect of which the return is required.

- (3) Where the prescribed interval does not exceed one week, the licensee shall, not later than the third day after delivery of the return to the Board is required to be made, calculate and pay to the Board an amount as tax under this Act, based on the net gaming revenue for that period.

- (4) Where the prescribed interval does not exceed one month, and whether or not returns at lesser intervals are being delivered to the Board, the return under this subsection shall be certified by a chartered accountant; and any amount as tax under this Act due and unpaid at the date of delivery of the return shall forthwith be paid by the licensee to the Board without any assessment being raised.

- (5) Every person answerable for payment of tax under this section may retain out of moneys coming into his hands on behalf of a licensee so much thereof as shall be sufficient to pay the tax, and shall be indemnified accordingly by virtue of this Act for all payments of tax made by him for the purposes of this Act.

4. Chargeability to tax

A licensee shall, for the purposes of this Act, be chargeable to tax-

- (a) in its own name; or

- (b) in the name of the managing director, or director as the case may be of the licensee in Nigeria in like manner and to like amount as such company would be chargeable; or

- (c) in the name of a receiver or liquidator, or of any attorney, agent or representative thereof in Nigeria, in like manner and to like amount as the licensee would have been chargeable if no receiver or liquidator had been appointed.

5. Books of account

- (1) If the licensee chargeable with tax under this Act fails or refuses to keep books of account which, in the opinion of the board, are adequate for the purpose of such tax, the Board may by notice in writing direct it to keep them in the English language and in such form as may be specified; and subject to the provisions of the next succeeding subsection, the licensee shall comply with any such direction.

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- (2) An appeal shall lie to the Appeal Commissioners from any direction by the Board under this section in the same manner as if the direction were a requirement under the Companies Income Tax Act; the Appeal Commissioners may confirm or modify any such direction and their decision shall be final.

[Cap. C21.]

- (3) The failure to comply with any direction of the Board, or requirement of the Appeal Commissioners as the case may be, under this section, shall be an offence against this Act.

6. Assessments, appeals, etc.

- (1) Anything to the contrary in this Act notwithstanding, the Board of its own motion, or a licensee, may require an assessment to be raised for any year of assessment to which payment of tax under this Act relates, and the Board shall raise an assessment accordingly.
- (2) Any such assessment may include any earlier period or periods if the Board is satisfied for any reason that a previous assessment is incorrect or has not been raised; but nothing in this subsection shall be construed so as to authorise an assessment for a period more than six years before the date of any assessment under subsection (1) of this section, or as the case may be, six years before the date when the assessment not raised ought, in the ordinary course, to have been raised.
- (3) No objection or appeal by a licensee shall lie against the Board in respect of any assessment under subsection (1) or (2) of this section raised on figures returned by the licensee; but in any other case the provisions of the Companies Income Tax Act as to objections, revisions and appeals shall have effect, so however-

[Cap. C21.]

(a) that references to tax shall be construed as references to tax under this Act; and

(b) references to income in relation to assessable, total or chargeable income, shall be construed as references to income in relation to net gaming revenue.

- (4) For the purposes of this section-

(a) —year of assessment means the period of twelve months commencing on 1 January; and

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- (b) notwithstanding the fact that under the Companies Income Tax Act an assessment is final and conclusive, the Board may take into account the amount which ought to have been charged, and shall consider all other facts which in its opinion are relevant.
[Cap. C21.]

7. Time within which payment is to be made

- (1) Subject to the provisions of this section, where an assessment to tax is raised under this Act and objections and appeals as the case may be have been disposed of, any tax then outstanding and unpaid shall be payable by the licensee at the place stated in the notice of assessment within two months after service of such notice upon the licensee or the disposal of any appeal or objection, whichever is the earlier, but the Board in its discretion may extend the time within which payment is to be made.
- (2) Collection of tax in any case where notice of an objection or an appeal has been given by a licensee under this Act, shall remain in abeyance until such objection or appeal is determined, but the Board may enforce payment of that portion, if any, of the tax which is not in dispute; and upon the determination of an objection or appeal the Board shall serve upon the licensee a notice of the tax payable as so determined, and that tax shall be payable in accordance with the foregoing provisions of this section.
- (3) If any tax is not paid as prescribed in this section, the licensee shall be guilty of an offence against this Act, and in addition the provisions of this Act as to distraint shall have effect.

8. Errors and defects in assessment and notice

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

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(b) by reason of any variance between the assessment and the notice thereof:

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

9. Relief in respect of error or mistake

- (1) If the licensee having paid tax for any year of assessment thereafter alleges that any assessment made upon it for that year was excessive by reason of some error or mistake in the return, statement or account made by or on behalf of the licensee for the purposes of the assessment, the licensee may, at any time not later than one year after the end of the year of assessment within which the assessment was made, make an application in writing to the Board for relief.
- (2) The Board shall, on receipt of the application, make such enquiries as are necessary and, subject to the provisions of this section, give by way of refund of tax, such relief in respect of the error or mistake as appears to be reasonable and just; but no such relief shall be given in respect of an error or mistake as to the basis on which the liability of the applicant ought to have been computed where the return, statement or account was in fact made on the basis or in accordance with the practice of the Board generally prevailing at the time when the return, statement or account was made.
- (3) The Board shall in respect of applications under this section have regard to all the relevant circumstances of the case, and shall take into account the liability of the licensee and assessments made upon the licensee in respect of other years, and consider whether the granting of relief would result in the exclusion from charge to tax of any part of the net gaming revenue of the licensee.
- (4) Any determination by the Board under this section shall be final and conclusive.

10. Service of documents, and failure to comply with terms of any notice

- (1) Except in the case of personal service under the Companies Income Tax Act as affected by this Act, it shall be sufficient compliance therewith if a duly stamped envelope containing the documents to be served by post is addressed to the registered office of the licensee, or to the last known address of the licensee, as the case may be.
- (2) Where the document served is a notice touching or concerning tax under this Act the failure to comply with its requirements shall be an offence against this Act.

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11. False statements and returns

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

12. Incorrect returns by licensee, etc.

- (1) If the licensee or any person in the employ of the licensee without reasonable excuse-
- (a) makes or certifies a return which by reason of any omission or under-statement of the net gaming revenue liable to tax under this Act is incorrect; or
 - (b) gives any incorrect information in relation to any matter or thing affecting the liability of the licensee to tax,
- the licensee and any such person shall be guilty of an offence against this Act, and in addition shall be liable to double the amount of tax which has been undercharged in consequence of such incorrect return or information, or would have been so undercharged if the return or information had been accepted as correct.
- (2) Nothing in the foregoing subsection shall apply unless the complaint concerning the offence was made in the year of assessment in respect of or during which the offence was committed, or within six years after the expiration thereof.
- (3) The Board may compound any offence under this section, and with the leave of the court may, before judgment, stay or compound any proceedings thereunder.

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- (4) For the purposes of this section, a return shall be deemed to be made both by the licensee and any other person signing the return on behalf of the licensee.

13. Action for tax by board

Tax under this Act may be recovered in any court of competent jurisdiction in the same manner as if it were tax for the purposes of the Companies Income Tax Act, and the provisions of that Act as to suits by the Board shall, with all necessary modifications, have effect accordingly.

[Cap. C21.]

14. Offences relating to collection, etc., of tax

Any person who-

- (a) being a person appointed for the due administration of this Act or employed in connection with the assessment and collection of the tax who-
- (i) without proper regard thereto willfully or negligently certifies figures in the daily return of net gaming revenue of a casino; or
 - (ii) demands from the licensee an amount in excess of the authorised assessment of the tax; or
 - (iii) withholds for his own use or otherwise any portion of the amount of tax collected; or
 - (iv) renders a false return, whether orally or in writing, of the amount of tax collected or received by him; or
 - (v) defrauds any person, embezzles any money, or otherwise uses his position so as to deal wrongfully with the Board; or
- (b) not being authorised under this Act to do so, collects or attempts to collect the tax under this Act, is guilty of an offence under this Act.

15. Priority of claim for tax

- (1) No goods or chattels belonging to the licensee at the time any tax under this Act becomes in arrear shall be liable to be taken by virtue of any execution or other process, warrant or authority whatever, or by virtue of any assignment on any account or pretence whatever, unless the person at whose suit the execution or seizure is made or to whom the assignment was made, pays or causes to be paid to the board, before the sale or removal of the goods or chattels, all arrears of tax which are due at the time of the seizure, or which are payable for the year in which the seizure is made.

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- (2) In case of neglect or refusal to pay the tax so claimed, the Board may distrain the goods and chattels notwithstanding the seizure or assignment, and may proceed to the sale thereof, as prescribed by section 16 of this Act, for the purpose of obtaining payment of the whole of the tax charged and claimed, and reasonable costs and charges attending such distress and sale, and the Board and every person acting under the authority of the Board so doing shall be indemnified by virtue of this Act.

16. Power to distrain

- (1) If the licensee neglects or refuses to pay the sum charged upon demand made, a principal inspector of taxes shall for non-payment thereof distrain upon the premises in respect of which the tax is charged, without any further authority for the purpose than a warrant under this section issued for the purpose by the Board.
- (2) The sum included in the demand shall be deemed to be a debt by the licensee as judgment debtor owing to the Board as judgment creditor and payable under a judgment of a High Court in the Federation, and for the purpose of levying distraint under the foregoing subsection, the chairman of the Board or, in his absence, his deputy, shall have the powers of registrar and sheriff of such a court; but any seizure and sale by way of distress may be enforced under the following provisions of this section by a principal inspector of taxes acting under a warrant signed by the chairman of the Board or his deputy.
- (3) For the purpose of levying any such distraint, any inspector duly authorised by a warrant for that purpose, may break open in the daytime any premises, calling to his assistance any constable, and any such constable shall, when so required, aid and assist the inspector in the execution of the warrant and in levying the distress.
- (4) The warrant to break open shall be executed by or under the direction of and in the presence of the inspector, and any distress so levied shall be kept for five days at the costs and charges of the licensee.
- (5) If the licensee does not pay the sum due, together with the costs and charges within the said five days, the distress shall be appraised by a competent valuer and shall be sold by public auction for payment of the sum due and all costs and charges. Any overplus coming by the distress, after the deduction of the costs and charges and of the sum due, shall be restored to the licensee.
- (6) If the premises are unoccupied and no distress can be found thereon at the time the tax is payable, the inspector may at any future time when there is any distress to be found on the premises enter, seize and sell under the same powers as if a distraint had been made on the premises at the time the tax became due and as if the licensee had been in occupation at that time.

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17. Place of an offence

Any offence under this Act shall be deemed to occur at the place where the offence was committed, or in Lagos.

18. Delegation of certain powers by Board

- (1) Subject to the provisions of this section, the Board may by notice in the Federal Gazette or in writing delegate to any person any special power or duty of the Board under this Act or the Companies Income Tax Act, and may authorise any person to receive notices or other documents on its behalf. The delegation or authority, as the case may require, may be given upon such terms and conditions as the Board thinks fit; but nothing in this section shall be construed-

[Cap. C21.]

- (a) so as to authorise delegation of any power-
- (i) to administer this Act or the Companies Income Tax Act; or
 - (ii) to commence prosecution for offences under this Act; or
 - (iii) to decide to appeal against any decision of a judge, magistrate or the Appeal Commissioners under the Companies Income Tax Act; or

- (b) so as to prohibit the Board from its exercising any power so delegated, if the chairman thinks fit.

- (2) The power conferred by this section to delegate authority shall not be exercised in favour of any officer below the rank of principal inspector of taxes without the approval in writing of the Minister, given on such terms as he thinks fit.

19. Signification and execution of powers, duties, etc.

- (1) Subject to the provisions of this section, anything required to be done by the Board for the purposes of this Act, shall be signified under the hand of the chairman or any person duly authorised by him; and notice thereof shall be published in the Federal or any State Gazette as the case may be, unless the chairman otherwise directs.

- (2) Anything so done shall, until the contrary is shown, be valid if-

- (a) the notice or document, as the case may be, is printed and the name of the Board appears in any manner thereon; and

- (b) it purports to be signed by the chairman or by any person authorised by the

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chairman.

20. Returns, etc., to be furnished

- (1) The Board may from time to time prescribe forms for use under this Act, and include therein a declaration as to the truth of the contents and if any such form purports to be completed and signed by or on behalf of a licensee, it shall for all purposes be deemed to have been furnished accordingly, unless the contrary is proved; any person signing a prescribed form shall be deemed to be cognisant of all matters therein.
- (2) Any return, claim objection or appeal under this Act shall, if a form is prescribed, be prepared on that form with such modifications as are necessary, unless the Board for any reason dispenses with its use.

21. Official secrecy

- (1) All returns and other documents whatsoever relating to the operation of a casino and tax payable under this Act shall be classified as confidential and be so dealt with by all persons engaged in administering this Act.
- (2) Any matter so classified may in any particular case, if the Minister thinks fit, be treated as classified matter under the Official Secrets Act, the disclosure of which would be prejudicial to the security of Nigeria, and that Act shall have effect accordingly.
[Cap.03.]
- (3) In any other case the disclosure without the authority of the board of matter classified as confidential under this section shall be an offence against this Act; but, without the authority in writing of the Minister, matter so classified shall not be divulged or communicated to any court in any prosecution under this section.

22. Refund of tax

- (1) Unless otherwise provided by this Act, a claim for refund of tax shall not be allowed unless it is made in writing within one year after the end of the year of assessment to which it relates.
- (2) If the Board certifies the amount of tax to be refunded under this Act or pursuant to any order of a court of competent jurisdiction, the Accountant-General of the Federation shall upon delivery to him of the certificate pay that amount to the person entitled.

23. Prosecutions and liability to tax

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- (1) Without prejudice to the institution of proceedings by the Attorney-General of the Federation, a prosecution in respect of any offence touching or concerning assessment to tax shall not be commenced except with the approval of the Board.
- (2) The institution of proceedings for, or the imposition of a penalty, fine or term of imprisonment shall not relieve a licensee from liability to payment of any tax for which the licensee is or may become liable under this Act.

24. Penalties

Any person guilty of an offence against this Act, or against the Companies Income Tax Act as applied by this Act, and notwithstanding penalties for offences as therein prescribed, shall on conviction-

[Cap. C2I.]

- (a) for a first offence involving the licensee or a director of the casino, or its manager or secretary (not being the failure to furnish returns, statements or information where required or to keep prescribed records) be liable to a fine of one thousand naira or to imprisonment for a term of two years or to both, and on any subsequent conviction, whether for the same type of offence or not, be liable to a fine of two thousand naira or to imprisonment for a term of three years, or to both, and in addition on such subsequent conviction to forfeiture of the casino licence;
- (b) if the offence involves failure to furnish returns, statements or information where required or to keep prescribed records, the offender shall be liable to a further sum of one hundred naira for each and every day during which such failure continues, and in default of payment, in the case of a natural person, to an additional term of imprisonment for a term of six months, and the liability therefor shall commence as directed by the court so convicting, or in default of such direction, on the day following the conviction;
- (c) for a first offence not involving the licensee or a director of the casino, or its manager or secretary, in any case be liable to a fine of four hundred naira or to imprisonment for a term of one year or to both, and on any subsequent conviction, whether for the same type of offence or not, to a fine of one thousand naira or to imprisonment for a term of two years, or to both.

25. Regulations

The Minister may make Regulations generally for the purpose of this Act.

26. Short title and interpretation

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(1) This Act may be cited as the Casino Taxation Act, and shall apply to the Lagos territory, so however that in respect of any company liable to tax under this Act, it shall apply to the Federation.

(2) In this Act-

“**Board**” means the Federal Board of Inland Revenue established under the Companies Income Tax Act;

“**casino**” has the meaning assigned by the Casino Licensing Act 1964;

“**licensee**” means any company within the meaning of section 1 of this Act operating a casino in the Lagos territory, and liable to tax under this Act;

“**Minister**” means the Minister of the Government of the Federation charged with responsibility for finance;

“**net gaming revenue**” has the meaning assigned by section 1 (3) of this Act.

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CHAPTER C10

CHARTERED INSTITUTE OF TAXATION OF NIGERIA

ARRANGEMENT OF SECTIONS

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Establishment, etc., of the Chartered Institute of Taxation of Nigeria

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1. Establishment of Chartered Institute of Taxation of Nigeria
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3. Election of the President and Vice-President
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Financial provisions

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7. Accounts, etc

PART III

The Registrar and the register

8. Appointment of Registrar, etc., and preparation of the register

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10. Registration of members

11. Approval of recognised qualifications, etc

12. Supervision of instruction and examination

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Professional discipline

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14. Penalties for unprofessional conduct

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SECOND SCHEDULE

Supplementary provisions relating to the Disciplinary Tribunal and the Investigating Panel of the Tribunal

THIRD SCHEDULE

Transitional provisions as to assets and liabilities

CHAPTER C10

CHARTERED INSTITUTE OF TAXATION OF NIGERIA ACT

An Act to establish the Chartered Institute of Taxation of Nigeria, to regulate members of the profession and provide for matters connected therewith.

[1992 No.76]

[Commencement.]

[30th November, 1992]

PART I

Establishment, etc., of the Chartered Institute of Taxation of Nigeria

1. Establishment, etc., of the Chartered Institute of Taxation of Nigeria

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- (1) There is hereby established a body to be known as the Chartered Institute of Taxation of Nigeria (in this Act referred to as —the Institutel) which shall be a body corporate under that name and be charged with the general duty of-
 - (a) determining what standards of knowledge and skill are to be attained by persons seeking to become registered members of the taxation profession (in this Act referred to as —the professionl) and reviewing those standards, from to time as circumstances may require;
 - (b) securing, in accordance with the provisions of the Act, the establishment and maintenance of a register of fellows, graduates and student members of the Institute and the publication from time to time, of lists of those persons; and
 - (c) regulating and controlling the practice of the profession in all its ramifications;
 - (d) maintaining, in accordance with this Act, of discipline within the profession;
 - (e) performing, through the Council established under section 4 of this Act, the functions conferred on it by this Act.
- (2) The Institute shall have perpetual succession and a common seal which shall be kept in such custody as the Council may, from time to time authorise.

2. Membership of the Institute

- (1) Subject to the provisions of this Act, persons admitted to membership of the Institute shall be registered as members in the category of-
 - (i) fellows;
 - (ii) associate member; and
 - (iii)graduate members.
- (2) Persons registered under this Act as members shall be entitled to be enrolled-
 - (a) as fellows, if they satisfy the Council that for the period of five years immediately preceding the date of application in that behalf, they have been fit persons and have,

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- in addition to being the holders of approved academic qualifications, been in continuous active practice as professional tax practitioners or administrators;
- (b) as associate members, if for the period of not less than three years immediately preceding the date of application in that behalf (the period of membership of the Institute of Taxation in the discretion of the Council, counting in that behalf), have been enrolled as graduate members and are otherwise fit persons; and
- (c) as graduate members, if they satisfy the Council that they have passed the Institute's examinations and are otherwise fit and proper persons to be enrolled.

3. Election of President and Vice-President

- (1) The President and Vice-President shall be elected by the members of the Council.
- (2) The president and Vice-President shall each hold office for a term of two years from the date of their election, and the President shall be the chairman at the meetings of the Institute, so however that in the event of the death, incapacity or inability for any reason of the President, the Vice-President shall act as President for the unexpired portion of the term of office and as chairman, as the case may be, and references in this Act to the President shall be construed accordingly.
- (3) The President and Vice-President shall respectively be chairman and vice-chairman of the Council of the Institute under this Act.
- (4) If the President or the Vice-President ceases to be a member of the Institute, he shall cease to hold any of the offices designated under this section.

4. Council of the Institute

- (1) There shall be, as the governing body of the Institute, a Council which shall be charged with the administration and general management of the Institute.
- (2) The Council shall consist of-
- (a) a chairman who is President of the Institute;
- (b) a vice-chairman;
- (c) the chairman of the Federal Board of Inland Revenue or his representative, not below the rank of a Director;

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- (d) two representatives of the Joint Tax Board;
 - (e) fifteen persons elected by the Institute;
 - (f) the three immediate past Presidents of the Institutes, including the former Institute for a maximum of a three years term after which a past President automatically retires;
 - (g) a representative each of the following Ministries, that is:
 - (i) Finance and Economic Development; and
 - (ii) Education; and
 - (h) two persons to represent institutions of higher learning in Nigeria offering courses leading to an approved qualification, to be appointed by the Minister in rotation, so however that the two shall not come from the same institution.
- (3) The provisions of the First Schedule to this Act shall have effect with respect to the qualifications and tenure of office of members of the Council and other matters therein mentioned.

[First Schedule]

5. Power of the Council

The Council shall have power to do anything which in its opinion is calculated to facilitate the carrying on of the activities of the Institute.

PART II

Financial provisions

6. Fund of the Institute

- (1) There shall be established and maintained for the purpose of this Act a fund.
- (2) There shall be paid into the fund established pursuant to subsection (1) of this section-
 - (a) all fees and other moneys payable to the Institute in pursuance of this Act; and
 - (b) such moneys as may be payable to the Institute whether in the course of the discharge of its functions or not.

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- (3) There shall be paid out of the fund of the Institute established pursuant to subsection (1) of this section-
- (a) the remuneration and allowances of the Registrar and other employees of the Institute;
 - (b) such reasonable travelling and subsistence allowance of members of the Council in respect of the time spent on the business of the Council as the Council may determine; and
 - (c) any other expenses incurred by the Council in the discharge of its functions under this Act.
- (4) The Council may invest moneys in the fund in any security created or issued by or on behalf of the Federal Government or in any other securities in Nigeria approved by the Council.
- (5) The Council may, from to time, borrow money for the purposes of the Institute and any interest payable on moneys so borrowed shall be paid out of the fund.

7. Accounts, etc

The Council shall keep proper accounts on behalf of the Institute in respect of each financial year and proper records in relation to those accounts and the Council shall cause the accounts to be audited by a firm of chartered accountants and when audited, the accounts shall be submitted to the members of the Institute for approval by them at the next annual general meeting.

PART III

The Registrar and the register

8. Appointment of the Registrar, etc., and preparation of the register

- (1) The Council shall appoint a fit and proper person to be Registrar for the purposes of this Act, and such other persons as the Council may, from to time, think necessary to assist the Registrar in the performance of his function under this Act.

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- (2) It shall be the duty of the Registrar to prepare and maintain, in accordance with rules made by the Council, a register of the names, addresses, approved qualifications, and of such other qualifications and particulars as may be specified in the rules, of all persons who are entitled in accordance with the provisions of this Act to be enrolled as fellows, associate members, graduate members and student members or who, in the manner prescribed by such rules, apply to be so registered.
- (3) The register shall consist of four parts of which-
- (a) the first shall be in respect of fellows;
 - (b) the second part shall be in respect of associate members;
 - (c) the third part shall be in respect of graduate members;
 - (d) the fourth part shall be in respect of student members.
- (4) Subject to the foregoing provisions of this section, the Council shall make rules with respect to the form and keeping of the register and the making of entries therein, and in particular-
- (a) regulating the making of application for enrolment or registration, as the case may be, and providing for the evidence to be produced in support of such applications;
 - (b) providing for the notification of the Registrar, by the person to whom any registered particulars relates, of any change in those particulars;
 - (c) authorising a registered person to have any qualification which is in relation to the relevant division of the profession, either an approved qualification for the purposes of this Act, entered in relation to his name in addition to or, as he may elect, in substitution for any other qualification as registered;
 - (d) specifying the fees, including any annual subscription, to be paid to the Institute in respect of the entry of names on the register, and authorising the Registrar to refuse to enter a name on the register until any fee specified for the entry has been paid,
- but rules made for the purposes of paragraph (d) of this subsection shall not come into force until they are confirmed at a meeting of the Institute.

- (5) It shall be the duty of the Registrar-

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- (a) to correct, in accordance with the Council's directions, any entry in the register which the Council directs him to correct as being in the Council's opinion an entry which was incorrectly made;
- (b) to make, from time to time, any necessary alteration to the registered particulars of registered persons;
- (c) to remove from the register the name of any registered person who had died; and
- (d) to record the names of members of the Institute who are in default for more than six months in the payment of annual subscriptions, and to take such action in relation thereto (including removal of the names of defaulters from the register) as the Council may direct or require.

(6) If the Registrar-

- (a) sends by post to any person a letter addressed to him at his address on the register enquiring whether the registered or enrolled particulars relating to him are correct, and receives no reply to the letter within a period of six months from the date of posting; and
- (b) upon the expiration of that period, send in the like manner to the person in question a second similar letter, and receives no reply to that letter within three months from the date of posting it,

the Registrar may remove the particulars relating to the person in question from the register:

Provided that the Council may direct the Registrar to restore to the appropriate part of the register any particulars removed therefrom under this subsection.

9. Publication of register and list of correction

(1) It shall be the duty of the Registrar-

- (a) to cause the register to be printed, published and put on sale to members of the public not later than two years from the commencement of this Act; and
- (b) thereafter to cause to be printed, published and put on sale as aforesaid, either a corrected edition of the register or a list of corrections made to the register, since it was last printed; and

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- (c) to cause a print of each edition of the register and of each list of corrections to be deposited at the principal offices of the Institute; and
 - (d) to keep the register and lists so deposited to be made available to members of the public at all reasonable times for inspection.
- (2) A document purporting to be a print of an edition of a register published under this section by authority of the Registrar, or documents purporting to be prints of an edition of a register so published and of list of corrections to that edition so published shall (without prejudice to any other mode of proof) be admissible in proceedings as evidence that any person specified in the document, or the documents read together, as being registered or enrolled was so registered at the date of the edition or of the list of corrections, as the case may be, and that any person not so registered.
- (3) Where in accordance with subsection (2) of this section, a person is, in any proceeding shown to have been or not to have been registered or enrolled at a particular date, he shall, unless the contrary is proved, be taken for the purpose of those proceedings as having at all material times thereafter continued to be, or not to be so enrolled or registered.

PART IV

Registration

10. Registration of members

- (1) Subject to section 11 of the Act and to rules made under section 8 of this Act, a person shall be entitled to be registered as a member of the Institute if-
- (a) he passes the qualifying examination accepted by the Council under this Act and completes the practical training prescribed; or
 - (b) he is by law entitled to practice for all purposes as a tax administrator or practitioner in the country in which the qualification was granted and, if the Council so requires, he satisfies the Council that he has sufficient experience as a tax administrators or practitioner; or

he satisfies the Council that immediately before the commencement of this Act he had not less than-

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- (i) One year's practical experience in accounting in the case of a registered member of the Institute of Chartered Accountants in Nigeria;
 - (ii) two years' practical experience in tax administration or practice in the case of a person who has passed the final of the Federal Board of Inland Revenue Training School examination or its equivalent;
 - (iii) three years' practical experience in taxation in the case of any other person possessing a degree certificate from Nigeria or overseas recognised institution majoring in taxation.
- (2) An applicant for registration shall, in addition to evidence of qualification, satisfy the Council that-----
- (a) he is of good character;
 - (b) he has attained the age of 21 years;
 - (c) he has not been convicted in Nigeria or elsewhere of any offence involving fraud or dishonesty; and
 - (d) he fulfils his financial obligations to the Institute.
- (3) The Council may, in its sole discretion, provisionally accept a qualification produced in respect of an application for registration under this section, or direct that the application be renewed within such period as may be specified in the direction.
- (4) Any entry directed to be made in the register under subsection (3) of this section, shall show that such registration is provisional and no entry so made shall be converted to full registration without the consent of the Council signified in writing in that behalf.
- (5) The Council shall, from time to time, publish in the *Gazette* particulars of qualifications for the time being accepted as aforesaid.

11. Approval of recognised qualifications, etc

- (1) The Council may approve any institution for the purposes of this Act and may for those purposes approve-
 - (a) any course of training at any approved institution which is intended for persons seeking to become or are already tax administrators or practitioners and which in the

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- opinion of the Council is designed to confer on persons completing it sufficient knowledge and skill for admission to the Institute.
- (b) any qualification which, as a result of an examination taken in conjunction with a course of training approved by the Council under this section, is granted to candidates reaching a standard at the examination indicating, in the opinion of the Council, that the candidates have sufficient knowledge and skill to practice as tax administrators or practitioners.
- (2) The Council may, if it thinks fit, withdraw any approval given under this section in respect of any course, qualification or institution; but before withdrawing such an approval, the Council shall-
- (a) give notice that it proposes to do so to persons in Nigeria appearing to the Council to be persons by whom the course is conducted or the qualification is granted or the institution is controlled, as the case may be;
- (b) afford each such person an opportunity of making to the Council representations with regard to the proposal; and
- (c) take into consideration and representations made as respect the proposal in pursuance of paragraph (b) of this subsection.
- (3) A course, qualification or institution shall not be treated as approved during any period the approval is withdrawn under subsection (2) of this section.
- (4) Notwithstanding the provision of subsection (3) of this section, the withdrawal of an approval under subsection (2) of this section shall not prejudice the registration or eligibility for registration of any person who by virtue of the approval was registered or was eligible for registration (either unconditionally or subject to his obtaining a certificate of experience) immediately before the approval was withdrawn.
- (5) The giving or withdrawal of an approval under this section shall have effect from such date, whether before or after the execution of the instrument signifying the giving or withdrawal of the approval, as the Council may specify in the instrument and the Council shall-
- (a) as soon as may be, publish a copy of every such instrument in the Gazette; and

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- (b) not later than seven days before its publication as aforesaid, send a copy of the instrument to the Minister.

12. Supervision of instruction and examinations leading to approved qualifications

- (1) It shall be the duty of the Council to keep itself informed of the nature of-

- (a) the instruction given at approved institutions to persons attending approved courses of training; and

- (b) the examination as a result of which approved qualifications are granted,

and for the purpose of performing that duty, the Council may appoint, either from among its own members or any member of the Institute a person to visit approved institutions or evaluate such examinations.

- (2) it shall be the duty of a person appointed under subsection (1) of this section to report to the Council on-

- (a) the adequacy of the instruction given to persons attending approved courses of training at institutions visited by him;

- (b) the adequacy of the examinations attended by him; and

- (c) any other matter relating to the institutions or examinations on which the Council may, either generally or in a particular case, request him to report,

but no such person shall interfere or be otherwise involved with the giving of any instruction or the holding of any examination.

- (3) On receiving a report made in pursuance of this section, the Council may, if it thinks fit, and shall, if so required by the institution, send a copy of the report to the person appearing to the Council to be in charge of the institution or responsible for the examinations to which the report relates, requesting that person to make observations on the report to the Council within such period as may be specified in the request, not being less than one month beginning with the date of the request.

PART V

Professional discipline

13. Establishment of Disciplinary Tribunal and Investigating Panel

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- (1) There shall be a Tribunal to be known as the Chartered Institute of Taxation of Nigeria Disciplinary Tribunal (in this Act referred to as —the Tribunal) which shall be charged with the duty of considering and determining any case referred to it by the Investigation Panel established by the following provisions of this section and any other case of which the Tribunal has cognisance under the following provisions of this Act.

- (2) The Tribunal shall consist of the chairman of the Council and six other members of the Council appointed by the Council.

- (3) There shall be a body to be known as the Chartered Institute of Taxation of Nigeria Investigation Panel (in this Act referred to as —the Panel) which shall be charged with the duty of-
 - (a) conducting a preliminary investigating into any case where it is alleged that a member of the Institute has misbehaved in his capacity as a member or should for any other reason be the subject of proceedings before the Tribunal; and

 - (b) deciding whether the case should be referred to the Tribunal.

- (4) The Panel shall be appointed by the Council and shall consist of four members of the Council and one member who is not a member of the Council.

- (5) The provisions of the Second Schedule to this Act shall, so far as applicable to the Tribunal and Panel respectively, have effect with respect to those bodies.

[Second Schedule]

- (6) The Council may make rules not inconsistent with this Act as to acts which constitute professional misconduct.

14. Penalties for unprofessional conduct

- (1) Where-
 - (a) a person registered under this Act is adjudged by the Tribunal to be guilty of infamous conduct in any professional respect; or

 - (b) a person is convicted, by any court or tribunal in Nigeria or elsewhere having power to award imprisonment, of an offence (whether or not punishable with imprisonment) which in the opinion of the Disciplinary Tribunal is incompatible with the status of a member of the Institute; or

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(c) the Tribunal is satisfied that the name of any person has been fraudulently enrolled or registered,

the Tribunal may, if it thinks fit, give a direction reprimanding that person or ordering the Registrar to strike his name off the relevant part of the register.

- (2) The Tribunal may, if it thinks fit, defer or further defer its decisions as to the giving of a direction under subsection (1) of this section until a subsequent meeting of the Tribunal; but
- (a) no decision shall be deferred under this subsection for periods exceeding two years in the aggregate; and
- (b) no person shall be a member of the Tribunal for the purposes of reaching a decision which has been deferred, unless he was present as a member of the Tribunal when the decision was deferred.
- (3) For the purposes of subsection (1) (b) of this section, a person shall not be treated as convicted as therein mentioned, unless the conviction stands at a time when no appeal or further appeal is pending or may (without extension of time) be brought in connection with the conviction.
- (4) When the Tribunal gives a direction under subsection (1) of this section, the Tribunal shall cause notice of the direction to be served on the person to whom it relates.
- (5) The person to whom a direction relates may, at any time within twenty-eight days from the date of service on him of notice of the direction, appeal against the direction to the Federal High Court and the Tribunal may appear as respondent to the appeal and, for the purpose of enabling directions to be given as to the costs of the appeal and of proceeding before the Court of Appeal, the Tribunal shall be deemed to be a party thereto whether or not it appears on the hearing of the appeal.
- (6) A direction of the Tribunal under subsection (1) of this section shall take effect-
- (a) where no appeal under this section is brought against the direction within the time limited for the appeal, on the expiration of that time;
- (b) where such an appeal is brought and is withdrawn or struck out for want of prosecution, on the withdrawal or striking out of the appeal;

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(c) where any such an appeal is brought and is not withdrawn or struck out as aforesaid, if and when the appeal is dismissed,

and shall not take effect in accordance with the foregoing provisions of this subsection.

(7) A person whose name is struck off the register in pursuance of a direction of the Tribunal under this section, shall not be entitled to be enrolled or registered again except in pursuance of a direction in that behalf; and a direction under this section for the striking off a person's name from the register, may prohibit an application under this subsection by that person until the expiration of such period from the date of the direction (and where he has duly made such an application, from the date of his last application) as may be specified in the direction.

PART VI

Miscellaneous

15. Application of this Act to unregistered persons

Any person who is not a member of the Nigerian Institute of Taxation (in this Act referred to as —the former Institutel) who, but for this Act, would have been qualified to apply for and obtain membership of the former Institute may, within the period of three months beginning from the commencement of this Act, apply for the membership of the Institute in such a manner as may be prescribed by the Council; and if approved, he shall be enrolled or, as the case may be, registered, according to his qualification

16. When a person is deemed to practice as a member

- (1) Subject to subsection (2) of this section, a person shall be deemed to practice as a member of the Institute if, in consideration of remuneration received or to be received and whether by himself or in partnership with any other person:
- (a) he engages himself in the practice of taxation or holds himself out to the public as a member of the Institute; or
 - (b) he renders professional service or assistance in or about matters of principle or detail relating to taxation procedure; or
 - (c) he renders any other service which may by regulations made by the Council, with the approval of the Minister, be designed as service constituting tax practice.

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- (2) Nothing in this section shall be construed so as to apply to persons who, while in the employment of any Government, are required under the terms or in the course of such employment, to perform the duties or any of the duties of a tax administrator or practitioner.

17. Rules as to practice, etc

- (1) The Council may make rules-

- (a) for the training of suitable persons in taxation administration, methods and practice; and
- (b) for the supervision and regulation of the engagement, training and transfer of such persons.

- (2) The Council may also make rules-

- (a) prescribing the amount and due date for the payment of the annual subscription, and for such purposes different amounts may be prescribed by the rules according to whether the person is registered as a fellow, associate member, graduate member or student member;
- (b) prescribing the form of licence to practice to be issued annually or, if the Council thinks fit, by endorsement on an existing licence; and
- (c) restricting the right to practice in default of payment of the amount of the annual subscription where the default continues for longer than such period as may be prescribed by the rules.

- (3) Rules when made under this section shall, if the chairman of the Council so directs, be published in the Gazette.

18. Provision of library facilities, etc

- (1) The Institute shall-

- (a) Provide and maintain a library comprising books and publications for the advancement of knowledge of tax practice and such other books and publications as the Council may think necessary for the purpose;

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- (b) Encourage research into taxation procedure and allied taxation, subject to the extent that the Council may, from time to time, consider necessary.

19. Offences

- (1) If any person, for the purpose of procuring the registration of any name, qualification or other matter-
 - (a) makes a statement which he believes to be false in a material particular; or
 - (b) recklessly makes a statement which is false in a material particular,
 - (c) he shall be guilty of an offence.
- (2) If, on or after the relevant date, any person who is not a member of the Institute practices or holds himself out to practice as a tax administrator or practitioner for or in expectation of reward or takes or uses any name, title, addition or description implying that he is in tax practice, he shall be guilty of an offence; provided that, in the case of a person falling within section 15 of this Act-
 - (a) this subsection shall not apply in respect of anything done by him during the period of three months mentioned in that section; and
 - (b) if within that period he duly applies for membership of the Institute then, unless within that period he is notified that his application has not been approved, this subsection shall not apply in respect of anything done by him between the end of that period and the date on which he is registered or is notified as aforesaid.
- (3) If the Registrar or any other person employed by or on behalf of the Institute wilfully makes any falsification in any matter relating to the register, he shall be guilty of an offence.
- (4) A person guilty of an offence under this section shall be liable-
 - (a) on summary conviction, to a fine of an amount not exceeding N100;

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- (b) on conviction on indictment, to a fine of an amount not exceeding N1,000 or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

- (5) Where an offence under this section which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to, any neglect on the part of any director, manager, secretary or other similar officer of the body corporate or any person purporting to act in such capacity, he as well as the body corporate, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

- (6) In this section, “**the relevant date**” means the third anniversary of coming into force of this Act or such earlier date as may be prescribed for the purposes of this section by order of the Minister published in the *Gazette*.

20. Regulations and rules

- (1) Any regulation made under this Act, shall be published in the Gazette as soon as may be after they are made and a copy of such regulation shall be sent to the Minister not later than 7 days before they are so published.

- (2) Rules made for the purposes of this Act shall be subject to confirmation in the Institute at its next general meeting or at any special meeting of the Institute convened for that purpose, and if then annulled, shall cease to have effect on the day after the date of annulment, but without prejudice to anything done in pursuance or intended pursuance of any such rules.

21. Dissolution of the Nigerian Institute of Taxation and transfer of certain property, etc

- (1) The body known as the Nigerian Institute of Taxation (in this Act referred to as —the former Institutel) is hereby dissolved.

- (2) Accordingly, all the property held by or on behalf of the former Institute shall by virtue of this section and without further assurance, vest in the Institute and be held by it for the purposes of the Institute.

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- (3) The provisions of the Third Schedule to this Act shall have effect with respect to matters arising from the transfer by this section to the Institute of the property of the former Institute and with respect to other matters mentioned in that Schedule.

[Third Schedule]

22. Interpretation

In this Act, unless the context otherwise requires-

“**Council**” means the Council established as the governing body of the Institute under section 4 of this Act;

“**fees**” means annual subscription;

“**former Institute**” means the Nigerian Institute of Taxation dissolved by section 2 (1) of this Act;

“**Institute**” means the Chartered Institute of Taxation of Nigeria established under section 1 of this Act;

“**member of the Institute**” means a registered fellow member, associate member, graduate member, or student member of the Institute and membership of the Institute shall be construed accordingly;

“**Minister**” means the Minister charged with the responsibility of matters relating to taxation;

“**Panel**” means the Chartered Institute of Taxation of Nigeria Investigating Panel established under section 13 of this Act;

“**President and Vice-President**” means respectively the office-holders under those names in the Institute;

“**profession**” means the profession of taxation

“**register**” means the register maintained in pursuance of section 8 of this Act;

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“registered” in relation to a fellow, an associate member or a graduate member means registered in the part of the register relating to fellow, associate member or graduate member as the case may be;

“tax administrator” means any person employed as a tax administrator;

“tax practitioner” means any person who is registered or entitled to be registered under this Act in any of the categories of membership;

“Tribunal” means the Chartered Institute of Taxation Disciplinary Tribunal established under section 13 of this Act;

23. Short title

This Act may be cited as the Chartered Institute of Taxation of Nigeria Act

SCHEDULES

FIRST SCHEDULE

[Section 4 (3)]

Supplementary provisions relating to the Council

Qualifications and tenure of office members of the Council

1.

- (1) Subject to the provisions of this paragraph, a member of the Council shall hold office for a period of three years beginning with the date of his appointment or election.

- (2) Any member of the Institute who ceases to be a member thereof shall, if he is also a member of the Council, cease to hold office on the Council.

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- (3) Any member of the Council may, by notice in writing under his hand addressed to the President, resign his office.

- (4) A person who retires from or otherwise ceases to be an elected member of the Council, shall be eligible again to become a member of the Council, and any appointed member may be re-appointed except if such member has been convicted of any criminal offence.

- (5) Members of the Council shall its next meeting before the general meeting of the Institute arranges for five elected members of the Council who are longest in office to retire at that general meeting, with the exception of existing members of the Council as at the Commencement of this Act.

- (6) Elections to the Council shall be held in such manner as may be prescribed by rules made by the Council and, until so prescribed, they shall be decided by secret ballot.

- (7) If for any reason a member of Council vacates office and-
 - (a) such member was appointed by the Minister or any other body, the Minister or that body may appoint another fit person to fill that vacancy; or

 - (b) such member was elected, the Council may, if the time between the unexpired portion of the term of office and the next general meeting of the Institute appears to warrant the filling of the vacancy, co-opt a fit person for such time as aforesaid.

Proceedings of the Council

2.

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- (1) Subject to the provisions of this Act, the Council may in the name of the Institute make standing orders regulating its proceedings or proceedings of its committees or any committee thereof.
 - (2) Standing orders shall provide for decisions to be taken by a majority of the members and in the event of equality of votes, the President or the chairman shall have a second or casting vote.
 - (3) Standing orders made for a committee shall provide for the committee to report back to the Council on any matter referred to it by the Council.
3. The quorum of the Council shall be five and the quorum of a committee of the Council shall be fixed by the Council.

Meeting of the Institute

- 4.
- (1) The Council may convene the meeting of the Institute on 30 April in every year or on such other day as the Council may from time to time, appoint, so however, that if the meeting is not held within one year after the previous meeting, not more than fifteen months shall elapse between the respective dates of the two meetings.
 - (2) A special meeting of the Institute may be convened by the council at any time and if not less than twenty members of the Institute so require, by notice in writing addressed to the chairman of the council setting out the object of the proposed meeting, the chairman of the council shall convene a special meeting of the institute.
 - (3) The quorum of any meeting of the Institute shall be twenty members and that of any special meeting of the institute shall be fifteen members.

Meeting of the Council

- 5.
- (1) Subject to the provisions of any standing orders of the Council, the Council shall meet whenever it is summoned by the chairman and, if the chairman is required to do so by notice in writing given to him by not less than five other members, he shall summon a

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meeting of the Council to be held within fourteen days from the date on which the notice is given.

- (2) At any meeting of the Council the chairman shall preside and in his absence the vice-chairman shall preside; but if both are absent, the members present at the meeting shall appoint one of their members to preside at the meeting.
- (3) Where the Council desires to obtain the advice of any person on a particular matter, the Council may co-opt him as a member for such period as the Council thinks fit, but a person who is a member by virtue of this sub-paragraph shall not be entitled to vote at any meeting of the council and shall not count towards a quorum.
- (4) Notwithstanding anything in the foregoing provisions of this paragraph, the first meeting of the Council shall be summoned by President of the institute.

Committees

6.

- (1) The Council may appoint one or more committees to carry out on behalf of the Institute or the Council such functions as the Council may determine.
- (2) A committee appointed under this paragraph shall consist of the number of persons determined by the Council and not more than two thirds of the persons may be persons who are not members of the Council.
- (3) A person other than a member of the Council shall hold on the committee in accordance with the terms of the letter by which he is appointed.
- (4) A decision of a committee of the Council shall be of no effect until is confirmed by the Council.

Miscellaneous

7.

- (1) The fixing of the seal of the Institute shall be authenticated by the signature of the chairman or of some other member of the Council authorised generally or specially by the Council to act for that purpose.

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- (2) Any contract or instrument which, if made or executed by a person under the seal, may be made or executed on behalf of the Institute or of the Council, as the case may require, by any person generally or specially authorised to act for that purpose by the council.
- (3) Any document purporting to be a document duly executed under the seal of the institute shall be received in evidence and shall, unless the contrary is proved, be deemed to be executed.
8. The validity of any proceedings of the Institute or the Council or of a committee of the Council shall not be adversely affected by any vacancy in membership or by any defect in the appointment of a member of the Institute or of the Council or of a person to serve on the committee or by reason that a person not entitled to do so took part in the proceedings.
9. Any member of the Institute or the Council and any person holding office on a committee of the Council, who has a personal interest in any contract or arrangement entered into or proposed to be considered by the Council on behalf of the Institute or on behalf of the Council thereof, shall forthwith disclose his interest to the President or to the Council, as the case may be, and shall not vote on any question relating to the contract or arrangement.
10. A person shall not by reason only of his membership of the Institute or the Council be treated as holding an office in the public service of the federation.

SECOND SCHEDULE

*Supplementary provisions relating to the Disciplinary Tribunal and Investigative Panel
of the Tribunal* _____

[Section13.]

The Disciplinary Tribunal

1. The quorum of the Disciplinary Tribunal shall be four members.
- 2.
- (1) The Attorney-General of the Federation shall make rules as to the selection of members of the Disciplinary Tribunal for the purpose of any proceeding, the procedure to be

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followed and the rules of evidence to be observed in proceedings before the Disciplinary Tribunal.

(2) The rules shall in particular provide-

- (a) for securing that notice of the proceedings shall be given at such time in such manner as may be specified by the rules, to the person who is the subject of the proceedings;
- (b) For determining who, in addition to the person aforesaid, shall be a party to the proceedings;
- (c) for securing that any party to the proceedings shall, if he so requires, be entitled to be heard by the Disciplinary tribunal;
- (d) for securing that any party to the proceedings may be represented by a legal practitioner;
- (e) subject to the provisions of section 14 (5) of this Act, as to the costs of proceedings before the Disciplinary tribunal;
- (f) for requiring, in a case where it is alleged that the person who is subject of proceedings is guilty of infamous conduct in any professional respect, that where the disciplinary Tribunal adjudges that the allegation has not been proved it shall record a finding that the person is not guilty of such conduct in respect of the matters to which the allegation relates; and
- (g) for publishing in the *Gazette* notice of any direction of the Disciplinary tribunal which has taken effect providing that a person's name shall be struck off a register.

3. For the purposes of any proceedings before the Disciplinary Tribunal, any member of the Disciplinary Tribunal may administer oaths and any party to the proceedings may sue out of the registry of the Federal High Court writs of *subpoena ad testificandum* and *duces tecum*; but no person appearing before the Disciplinary Tribunal shall be compelled-

- (a) to make any statement before the Disciplinary Tribunal tending to incriminate himself; or
- (b) to produce any documents under such a writ which he could not be compelled to produce at the trial of an action.

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4.

- (1) For the purpose of advising the Disciplinary Tribunal on question of law arising in proceedings before it, there shall be assessor to the Disciplinary Tribunal who shall be appointed by the Council on the recommendation of the Attorney- General of the Federation and shall be a legal practitioner of not less than seven years' standing.
- (2) The Attorney-General of the Federation shall make rules as to the functions of assessors appointed under this paragraph and in particular such rules shall contain provisions for securing-
 - (a) that where an assessor advises the Disciplinary Tribunal on any question of law as to evidence, procedure or any other matter specified by the rules, he shall do so in the presence of every party or person representing a party to the proceeding who appear thereat or, if the advice is tendered while the Disciplinary Tribunal is deliberating in private, that every such party or person as aforesaid shall be informed what advice the assessor has tendered; and
 - (b) that every such party or person as aforesaid shall be informed in case the Disciplinary Tribunal does not accept the advice of the assessor on such a question as aforesaid.
- (3) An assessor may be appointed under this paragraph either generally or for any particular proceedings or class of proceedings ad shall hold and vacate office in accordance with the terms of the letter by which he is appointed.

The Investigating Panel

5. The quorum of the Investigating panel shall be three.

6.

- (1) The Investigating Panel may, at any of its meetings attended by all the members of the Investigating Panel, make standing orders with respect to the Investigating Panel.
- (2) Subject to the provision for any such standing orders, the Investigating panel may regulate its own procedure.

Miscellaneous

7.

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- (1) A person ceasing to be a member of the Disciplinary Tribunal or the Investigating Panel shall be eligible for appointment as a member of the Disciplinary Tribunal or Investigating Panel, as the case may be.
- (2) A person may, if otherwise eligible, be a member of both the Disciplinary Tribunal and the Investigating Panel; but no person who acted as a member of the Investigating Panel with respect to that case.
8. The Disciplinary Tribunal or the Investigating Panel may act notwithstanding any vacancy in its membership, and the proceedings of either body shall not be invalidated by any irregularity in the appointment of a member of that body or, subject to paragraph 7(2) of this schedule, by reason of that fact that any person who was not entitled to do so took part in the proceedings of that body.
9. Any document authorised or required by virtue of this Act to be served on the Disciplinary Tribunal or the Investigating Panel shall be served on the Registrar.
10. Any expense of the Disciplinary Tribunal or the Investigation Panel shall be defrayed by the Institute.

THIRD SCHEDULE

Transitional provisions as to assets and liabilities

[Section 21 (3).] _____

Transfer of property

1. Without prejudice to the generality of section 21 of this Act, all the assets and liabilities of the former Institute shall become assets and liabilities of the Institute
2.
 - (1) All agreements, contracts, deeds or other instruments to which the former Institute was a party shall, so far as possible and subject to any necessary modifications, have effect as if the Institute has been a party thereto in place of the former Institute.
 - (2) Documents not falling within sub-paragraph (1) of this paragraph, including enactments which refer, whether specially or generally to the former Institute, shall be construed in accordance with that sub-paragraph as far as possible.

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- (3) Any legal proceedings to any authority pending on the day this Act comes into force by or against former Institute and relating to property transferred to the Institute by this Act, may be continued on or after that day by or against the Institute.

Registration on transfer

3. If law in force at the place where any property transferred by this Act is situate provides for the registration of transfer of property of the kind in question (whether by reference to any instrument of transfer or otherwise), the law shall so far as it provides for alteration of a register (but not for avoidance), the law shall so far as it provides for alteration of a register (but not for avoidance of transfer, the payment of fees or any other matter) apply with the necessary modification to the property aforesaid and it shall be the duty of the council to furnish the necessary particulars of the transfer to proper the proper office of the registration authority and of that officer to register the transfer accordingly.

Transfer of functions, etc

4.

- (1) As soon as may be after the commencement of this Act, the President shall summon a general meeting to elect the Institute's representatives on the Council of the Institute.
- (2) The persons who were members of the Council of the former Institute immediately before the commencement of this Act shall be deemed to be members of the Council of the Institute until the date when the Council established by this Act is duly constituted.
- (3) Any person who, immediately before the commencement of this Act, held office as the President or Vice-President of the Council of the former Institute by virtue of the articles of association of the former Institute shall on the day this Act comes into force become the President or Vice-President, as the case may be, of the Institute, and shall be deemed-
- (a) to have been appointed to that office in pursuance of the relevant provisions of this Act corresponding to the relevant provisions in the said articles of association; and
- (b) to have been so appointed on the date on which he took or last took office, in pursuance of the relevant provisions of those articles.
- (4) The persons who were members of the former Institute shall, as from the commencement of this Act, be registered as members of the Institute, and, without prejudice to the generality of the provisions of this Schedule relating to the transfer of property.

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- (5) Any person who was an employee of the Council of the former Institute or was otherwise employed by the former Institute shall become the holder of an appointment in the Council or Institute, as the case may be, with the status, designation and functions which correspond as nearly as may be those which appertained to him as such employee.
- (6) All regulations, rules and similar instruments made for the purposes of the former Institute and in force immediately before the coming into force of this Act shall, except in so far as they are subsequently revoked or amended by any authority having power in that behalf, have effect with any necessary modifications, as if duly made for the corresponding purposes of the Institute.

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CHAPTER C21

COMPANIES INCOME TAX ACT

ARRANGEMENT OF SECTIONS

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[Repealed]

PART II

Imposition of tax and profits chargeable

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10. Identification of a Company.
11. Charge of tax on interest relating to foreign and agricultural loans and certain reliefs.
12. Full disclosure of agreement to be made.
13. Nigerian companies.
14. Companies engaged in shipping or air transport.
15. Cable undertakings.
16. Insurance companies.
17. Authorised unit trust scheme.
18. Profits of a company from certain dividends.
19. Payment of dividend by a Nigerian company.
20. Nigerian dividends received by companies other than Nigerian companies.
21. Certain undistributed profits may be treated as distributed.

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22. Artificial transactions, etc.

23. Profits exempted.

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CHAPTER C21

COMPANIES INCOME TAX ACT

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

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[1979 No. 28, 2007 No. 56.]

[Commencement.]

[1st April, 1979]

PART I

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

PART II

Imposition of tax and profits chargeable

9. Charge of tax

- (1) Subject to the provisions of this Act, the tax shall, for each year of assessment, be payable at the rate specified in subsection (1) of section 40 of this Act upon the profits of any company accruing in, derived from, brought into, or received in, Nigeria in respect of-
- (a) any trade or business for whatever period of time such trade or business may have been carried on;
 - (b) rent or any premium arising from a right granted to any other person for the use or occupation of any property; and where any payment on account of such a rent as is mentioned in this paragraph is made before the expiration of the period to which it relates and is included for the purposes of this paragraph in the profits of a company, then, so much of the payment as relates to any period beginning with the date on which the payment is made shall be treated for these purposes as accruing to the company proportionately from day to day over the last-mentioned period or over the five years beginning with that date, whichever is the shorter;
 - (c) dividends, interests, royalties, discounts, charges or annuities;

[1993 No. 3.]

- (d) any source of annual profits or gains not falling within the preceding categories;
- (e) any amount deemed to be income or profit under a provision of this Act or, with respect to any benefit arising from a pension or provident fund, of the Personal Income Tax Act;

[Cap. P8.]

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- (f) fees, dues and allowances (wherever paid) for services rendered;
- (g) any amount of profits or gains arising from acquisition and disposal of short term money instruments like Federal Government securities, treasury bills, treasury or savings certificates, debenture certificates or treasury bills, treasury or savings certificates, debenture certificates or treasury bonds.

[1991 No. 63.]

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

10. Identification of a company

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

[1991 No. 21.]

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

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- (1) Interest payable on any foreign loan granted on or after 1 April, 1978 shall be exempted from tax as prescribed in Table I in the Third Schedule to this Act.

[Subsection (1), previously subsection (6), renumbered by 2007 No. 56, s. 3 (a).]

- (2) Interest on any loan granted by a bank on or after 1 January 1977 to a company engaged in-

- (a) agricultural trade or business; or
- (b) the fabrication of any local plant and machinery; or
- (c) providing working capital for any cottage industry established by the company,
[2007 No. 56, s. 3 (b).]

shall be exempted from tax, provided the moratorium is not less than eighteen months and the rate of interest on the loan is not more than the base lending rate at the time the loan was granted.

[1998 No. 18. Subsection (2), previously subsection (7), renumbered by 2007 No. 56, s. 3 (a).]

- (3) For the purpose of subsection (7) of this section, where a bank grants a loan to a company, it shall disclose to the Board the following information -

- (a) the amount of the loan;
- (b) the moratorium;
- (c) the date repayment is due to commence;
- (d) the amount of repayment, showing capital and interest; and
- (e) the full particulars of the recipient of the loan and its permanent address.

[1991 No. 63. Subsection (3), previously subsection (8), renumbered by 2007 No. 56,

s. 3 (a).]

- (4) In this section-

“agricultural trade or business” means any trade or business connected with-

- (a) the establishment or management of plantations for the production of rubber, oil palm, cocoa, coffee, tea and similar crops;

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- (b) the cultivation or production of cereal crops, tubers, fruits of all kinds, cotton, beans, groundnuts, sheanuts, beniseed, vegetables, pineapples, bananas and plantains;
- (c) animal husbandry, that is to say, poultry, piggery, cattle rearing, fish farming and deep sea fish-trawling;

[1993 No. 3.]

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

[1991 No. 63.1]

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

[2007 No. 56, s. 3 (c)]

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

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

[Subsection (4), previously subsection (9), renumbered by 2007 No. 56, s. 3 (a).]

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

[Subsection (5), previously subsection (10), renumbered by 2007 No. 56, s. 3 (a).]

12. Full disclosure or agreement to be made

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

13. Nigerian companies

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

[1993 No. 3.]

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

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[1993 No. 3.]

14. Companies engaged in shipping or air transport

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

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

- (2) For the purposes of the preceding subsection, where the Board is satisfied that the taxation authority of any other country computes and assesses on a basis not materially different from that prescribed by this Act the profits of a company which operates ships or aircraft, and that authority certifies-

(a) the ratio of profits or loss, before any allowance by way of depreciation, of an accounting period to the total sums receivable in respect of the carriage of passengers, mails, livestock or goods; and

(b) the ratio of allowances by way of depreciation for that period to that same total,

then the full profits or loss of that period shall be taken to be that proportion of the total sums receivable in respect of the carriage of passengers, mails, livestock or goods shipped or loaded in Nigeria which is produced by applying the first - mentioned ratio to that total, and in place of any allowances to be given under the provisions of the Second Schedule there shall be allowed the amount produced by applying the second-mentioned ratio to that same total.

[Second Schedule.]

- (3) Where at the time of assessment, the provisions of subsection (2) of this section cannot for any reason be satisfactorily applied, the profits to be deemed to be derived from Nigeria may be computed on a fair percentage on the full sum receivable in respect of the carriage of passengers, mails, livestock and goods shipped or loaded in Nigeria:

Provided that where any company has been assessed for any year by reference to such percentage, it shall be entitled to claim at any time within six years after the end of such year that its liability for that year be re-computed on the basis provided

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by sub section (2) of this section; and where such claim has been made and a certificate has been produced to the satisfaction of the Board as provided in that subsection, such repayment of tax shall be made as may be necessary to give effect to this proviso, save that, if the company fails to agree with the Board as to the amount of the tax to be so re-computed and re-paid, the Board shall give notice to the company of refusal to admit the claim and the provisions of this Act with respect to objections and appeals shall apply accordingly with any necessary modifications.

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

15. Cable undertakings

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

16. Insurance companies

- (1) Notwithstanding anything to the contrary contained in this Act, insurance business shall be taxed as-

(a) an insurance company, whether proprietary or mutual, other than a life insurance company; or

(b) a Nigerian company whose profit accrued in part outside Nigeria,

the profit on which tax may be imposed, shall be ascertained by taking the gross premium interest and other income receivable in Nigeria less reinsurance and deducting from the balance so arrived at, a reserve fund for unexpired risks at the percentage consistently adopted by the company in relation to its operation as a whole for such risks at the end of the period for which the profits are being ascertained, subject to the limitation imposed in subsection (8) (a) of this section.

- (2) The profits on which tax may be imposed in an insurance company is a life insurance company, whether proprietary or mutual, other than a Nigerian company which carries on business through a permanent establishment in Nigeria shall-

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

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

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date their services were employed and terminated, as applicable, and payments made to each such agent, loss adjuster and insurance broker for the period covered by the tax returns.

[2007 No. 56, s. 4.]

17. Authorised unit trust scheme

- (1) Where under any of the provisions of the Investments and Securities Act, a unit trust scheme is established for the purpose of providing facilities for the participation of the public, as beneficiaries under a trust, in profits or income arising from acquisition, holding, management or disposal of securities or any other property whatsoever, this Act shall, in respect of the income arising to the trustees of an authorised unit trust, have effect-

[Cap. 124.1

- (a) as if the trustees were a company whose business consists mainly in the making of investments and the principal part of whose income is derived therefrom;
- (b) as if the rights of the unit holders were shares in the company; and
- (c) as if so much of the income accruing to the trustees as is available for payment to the unit holders were dividends on such shares

and reference in this Act to a company shall be construed in accordance with this subsection.

[1991 No. 63.]

- (2) For the purpose of section 32 of this Act, the profits of an authorised unit scheme, on which tax, may be imposed, shall be ascertained by taking the income accruing to the trustees from all sources of the investment of the unit trust and deducting there from sums disbursed as management expenses, including remuneration for the managers.

[1991 No. 63.]

- (3) Where the trustees of a unit trust receive a payment on which the unit trust suffers tax by deduction (not being franked investment income), the tax thereon shall be set off against any income on the trustees by an assessment made for the year of assessment in which the receipt, on which the tax deduction was made, falls to be taken into account in ascertaining the tax payable by the unit trust for the year of assessment.

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[1991 No. 63.]

- (4) The provisions of section 53 of this Act shall apply to a dividend accruing to the trustees of a unit trust.

[1991 No. 63.]

- (5) So much of the profit accruing to the trustees of a unit trust as is available for payment to unit holders or for investment shall be deemed to be dividends paid or payable by the trustees to the unit holders in proportion to their rights, and the provisions of section 21 of the Personal Income Tax Act shall apply to a dividend paid or payable to any member of an authorised unit trust.

[1991 No. 63. Cap. P8.]

- (6) In this section-

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

[Cap. 124.]

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

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

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

18. Profits of a company from certain dividends

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

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- (a) if that other company is resident in a country to which section 44 of this Act applies, the amount of that dividend increased by the amount of any tax imposed in that country relative to that dividend; and
- (b) if that other company is resident in a country to which section 45 of this Act applies, the amount of that dividend as computed under the provisions of subsection (5) of section 46 of this Act-
- (c) Provided that a dividend distributed:
 - (i) by a Nigerian company and satisfied by the issue of shares of the company paying the dividend; or
 - (ii) if the company is a Nigerian company, out of any profits exempted from tax by any provision of this Act, or of the Industrial Development (Income Tax Relief) Act; or
 - (iii) if the company is chargeable to tax under the provisions of the Petroleum Profits Tax Act, out of any profits to which section 60 of that Act applies,

[Cap. 17.]

[Cap. P13.]

shall be excluded from the profits of any other company which is a shareholder in such company.

[1993 No. 3.]

19. Payment of dividend by a Nigerian company

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

[1996 No. 30.]

- (a) no total profits; or
- (b) total profits which are less than the amount of dividend which is paid, whether or not the recipient of the dividend is a Nigerian company,

is paid by a Nigerian company, the company paying the dividend shall be charged to tax at the rate prescribed in subsection (1) of section 40 of this Act as if the

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dividend is the total profits of the company for the year of assessment to which the accounts, out of which the dividend is declared, relates.

20. Nigerian dividends received by companies other than Nigerian companies

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

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

21. Certain undistributed profits may be treated as distributed

- (1) Where it appears to the Board that a Nigerian company controlled by not more than five persons, with a view to reducing the aggregate of the tax chargeable in Nigeria on the profits or income of the company and those persons, has not distributed to its shareholders as dividend, profits made in any period for which accounts have been made up by such company, which profits could have been distributed without detriment to the company's business as it existed at the end of that period, it may direct that any such undistributed profits of such period be treated as distributed.
- (2) Any amount of profits treated as distributed under the provisions of the foregoing subsection shall, for the purposes of this Act and any enactment in Nigeria imposing tax on the incomes of persons other than companies, be deemed to be profits or income from a dividend accruing to those persons who are shareholders in the company in proportion to their shares in the ordinary capital thereof on such day, and the amount of such profits or income to be taken for assessment in the hands of each such person shall be his proportion thereof increased by such amount in respect of tax deemed to be deducted source, as the Board may determine.

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- (3) Any direction by the Board under this section shall be made in writing and be served upon the company, and shall specify-
- (a) the day to be taken for the purposes of the preceding subsection;
 - (b) the net amount of those profits so deemed to be distributed;
 - (c) the rate of tax deemed to be deducted, being the rate prescribed in subsection (2) of section 80 of this Act;
 - (d) the gross amount which, after deduction of tax at the said rate, leaves such net amount of those profits; and
 - (e) the net Nigerian rate of tax applicable to those profits, being such rate as would have been computed or agreed by the Board under the provisions of sub section (2) of section 43 of this Act if those profits had been distributed by the company as a dividend.
- (4) For the purposes of this section, the Board may give notice to any company which it has reason to believe is controlled by not more than five persons requiring it to supply, within such reasonable time limited in such notice, full particulars of its shareholders on any day.
- (5) Any direction by the Board under this section with respect to the profits of any accounting period of a company, shall be made not later than two years after the receipt by the Board of the duly audited accounts of the company for that period.
- (6) A company in respect of which any direction is made under this section, shall have a right of appeal in like manner as though for the purposes of Part X of this Act, such direction were an assessment.

22. Artificial transactions, etc.

- (1) Where the Board is of opinion that any disposition is not in fact given effect to or that any transaction which reduces or would reduce the amount of any tax payable is artificial or fictitious, it may disregard any such disposition or direct that such adjustments shall be made as respects liability to tax as it considers appropriate so as to counteract the reduction of liability to tax affected, or reduction which would otherwise be affected, by the transaction and any company concerned shall be assessable accordingly.
- (2) For the purpose of this section-

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- (a) **“disposition”** includes any trust, grant, covenant, agreement or arrangement;
 - (b) transactions between persons one of whom either has control over the other or, in the case of individuals, who are related to each other or between persons both of whom are controlled by some other person, shall be deemed to be artificial or fictitious if in the opinion of the Board those transactions have not been made on terms which might fairly have been expected to have been made by persons engaged in the same or similar activities dealing with one another at arm’s length.
- (3) A company in respect of which any direction is made under this section, shall have a right of appeal in like manner as though for the purposes of Part X of this Act such direction were an assessment.

23. Profits exempted

- (1) There shall be exempt from the tax-
- (a) the profits of any company being a statutory or registered friendly society, in so far as such profits are not derived from a trade or business carried on by such society;
 - (b) the profits of any company being a co-operative society registered under any enactment or law relating to co-operative societies, not being profits from any trade or business carried on by that company other than co-operative activities solely carried out with its members or from any share or other interest possessed by that company in a trade or business in Nigeria carried on by some other persons or authority;
 - (c) the profits of any company engaged in ecclesiastical, charitable or educational activities of a public character in so far as such profits are not derived from a trade or business carried on by such company;
 - (d) the profits of any company formed for the purpose of promoting sporting activities where such profits are wholly expendable for such purpose, subject to such conditions as the Board may prescribe;
 - (e) the profits of any company being a trade union registered under the Trade Unions Act in so far as such profits are not derived from a trade or business carried on by such trade union;

[Cap. T14.]

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(f) dividend distributed by Unit Trust;

[1996 No. 32.]

(g) the profits of any company being a body corporate established by or under any Local Government Law or Edict in force in any State in Nigeria;

(h) the profits of any body corporate being a purchasing authority established by an enactment and empowered to acquire any commodity for export from Nigeria from the purchase and sale (whether for the purposes of export or otherwise) of that commodity;

(i) the profits of any company or any corporation established by the law of a State for the purpose of fostering the economic development of that State, not being profits derived from any trade or business carried on by that corporation or from any share or other interest possessed by that corporation in a trade or business in Nigeria carried on by some other person or authority;

(j) any profits of a company other than a Nigerian company which, but for this paragraph, would be chargeable to tax by reason solely of their being brought into or received in Nigeria;

(k) dividend, interest, rent, or royalty derived by a company from a country outside Nigeria and brought into Nigeria through Government approved channels. For the purpose of this subsection, “**Government approved channels**”, means the Central Bank of Nigeria, any bank or other corporate body appointed by the Minister as authorised dealer under the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act or any enactment replacing that Act;

[Cap. F34]

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

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

[1991 No. 21.]

(m) the interest on foreign currency domiciliary account in Nigeria accruing on or after 1 January 1990;

[1991 No. 21.]

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(n) nothing in this section shall be construed to exempt from deduction at source, the tax which a company making payments is to deduct under sections 78, 79 or 80 of this Act, such that the provisions of sections 78, 79 and 80 of this Act, shall apply to a dividend, interest, rent or royalty which is a part of the profits or income referred to in subsection (1) (a) to (f) and (h) to (l) of this section;

(o) dividend received from small companies in the manufacturing sector in the first five years of their operation;

[1996 No. 31.]

(p) dividend received from investments in wholly export-oriented businesses;

[1996 No. 31.]

(q) the profits of any Nigerian company in respect of goods exported from Nigeria, provided that the proceeds from such export are repatriated to Nigeria and are used exclusively for the purchase of raw materials, plant, equipment and spare parts;

[1996 No. 32.]

(r) the profits of a company whose supplies are exclusively inputs to the manufacturing of products for export, provided that the exporter shall give a certificate of purchase of the inputs of the exportable goods to the seller of the supplies;

[1996 No. 32.]

(s) the profit of a company established within an export processing zone or free trade zone:

Provided that 100 percent production of such company is for export otherwise tax shall accrue proportionately on the profits of the company.

[2007 No. 56, s. 5.]

Power to exempt

(2) The President may exempt by order-

(a) any company or class of companies from all or any of the provisions of this Act;
or

(b) from tax all or any profits of any company or class of companies from any source,

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on any ground which appears to it sufficient.

- (3) The President may by order amend, add to or repeal any exemption made by notice or order under the provisions of subsection (2) or (4) of section 9 of the Personal Income Tax Act in so far as it affects a company, and, subject to the foregoing, the following notices and order shall continue in force for all purposes of this Act-

[Cap. P8.]

- (a) the Income Tax Exemption (Interest on Nigerian Public Loans) Notice;

[L.N. 220 of 1943.]

- (b) the Income Tax (Exemption) (Nigerian Broadcasting Corporation) Order;

[L.N. 85 of 1957.]

- (c) the Railway Loan (International Bank) (Exemption of Interest) Notice.

[L.N. 111 of 1958.]

PART III

Ascertainment of profits

24. Deductions allowed

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

- (a) any sum payable by way of interest on any money borrowed and employed as capital in acquiring the profits;
- (b) rent for that period, and premiums, the liability for which was incurred during that period, in respect of land or building occupied for the purposes of acquiring the profits, subject, in the case of residential accommodation occupied by employees of the company, to a maximum of 100% of the basic salary of employees;

[1996 No. 30. 1996 No. 32.]

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(c) *(deleted by 2007 No. 56, s. 6 (a));*

(d) any outlay or expenses incurred during the year in respect of-

- (i) salary, wages or other remuneration paid to the senior staff and executives;
- (ii) cost to the company of any benefit or allowance provided for the senior staff and executives, which shall not exceed the limit of the amount prescribed by the collective agreement between the company and the employees and approved by the Federal Ministry responsible for labour matters, as the case may be;

[1991 No. 21, 2007 No. 56, s. 6 (b) .]

- (e) any expenses incurred for repair of premises, plant, machinery or fixtures employed in acquiring the profits, or for the renewals, repair or alteration of any implement, utensil or articles so employed;
- (f) bad debts incurred in the course of a trade or business proved to have become bad during the period for which the profits are being ascertained, and doubtful debts to the extent that they are respectively estimated to the satisfaction of the Board to have become bad during the said period notwithstanding that such bad or doubtful debts were due and payable before the commencement of the said period:

Provided that:

- (i) where in any period a deduction under this paragraph is to be made as respects any particular debt, and a deduction has in any previous period been allowed either under the Companies Income Tax Act 1961 or this Act in respect of the same debt, the appropriate reduction shall be made in the deduction to be made for the period in question;

[1961 No. 22.]

- (ii) all sums recovered during the said period on account of amounts previously written off or allowed either under the Companies Income Tax Act 1961 or this Act in respect of bad or doubtful debts shall for the purposes of this Act be deemed to be profits of the trade or business of that period;
- (iii) it is proved to the satisfaction of the Board that the debts in respect of which a deduction is claimed either were included as a receipt of the trade or business in the profits of the year within which they were incurred, or were advances not falling within the provisions of the trade or business in the profits of the year within which they were incurred, or were advances not falling within the

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provisions of paragraph (e) of section 23 (1) of this Act made in the course of normal trading or business operations;

- (g) any contribution to a pension, provident or other retirement benefits fund, society or scheme approved by the Joint Tax Board under the powers conferred upon it by paragraph (g) of section 85 of the Personal Income Tax Act, subject to the provisions of the Fourth Schedule to the Act and to any conditions imposed by that Board; and any contribution other than a penalty made under the provisions of any enactment establishing a national provident fund or other retirement benefits scheme for employees throughout Nigeria;

[Cap. P8.]

- (h) in the case of the Nigerian Railway Corporation such deductions as are allowed under the provisions of the Authorised Deductions (Nigerian Railway Corporation) Rules, which Rules shall continue in force for all purposes of this Act;

[L. N. 195 of 1959.]

- (i) in the case of profits from a trade or business, any expenses or part thereof -

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

[1993 No. 3.]

- (j) such other deduction as may be prescribed by the Minister by any rule.

25. Deductible donations

- (1) Subject to the provisions of this section and notwithstanding anything contained in section 24 of this Act, for the purpose of ascertaining the profits or loss of any

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company for any period from any source chargeable with tax under this Act, there shall be deducted the amount of any donation made for that period by that company to any fund, body or institution in Nigeria to which this section applies.

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

[Fifth Schedule.]

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

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

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

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25A.

- (1) Notwithstanding the provisions of section 24 of this Act, for the purpose of ascertaining the profit or loss of any company for the period from any source chargeable with tax under this Act, there shall be deducted the amount of donation to a university and other tertiary or research institutions for research or any developmental purpose or as an endowment out of the profits of the period by the company.
- (2) Without prejudice to section 21 (2) and (3) of this Act, any donation made by a company pursuant to subsection (I) of this section shall be allowed as deductible by the company out of the profits of that period notwithstanding that the donation is of a revenue or capital nature.
- (3) Except as the Minister with the approval of the Federal Executive Council may, by order in the Federal Gazette otherwise direct, any deduction to be allowed to any company under subsection (1) of this section shall not exceed an amount which is equal to 15 percent of the total profits or 25 percent of the tax payable in the year of the donation whichever is higher.

[2007 No. 56, s. 7.]

26. Deduction for research and development

- (1) Notwithstanding anything contained in section 24 of this Act, for the purpose of ascertaining the profit or loss of any company for any period from any source chargeable with tax under this Act, there shall be deducted the amount of reserve made out of the profits of that period by that company for research and development.
- (2) The deduction to be allowed to any company under subsection (I) of this section for any year of assessment shall not exceed an amount which is equal to ten percent of the total profits of that company for that year as ascertained before any deduction is made under this section and section 25 of this Act.
- (3) Companies and other organisations engaged in research and development activities for commercialization shall be allowed 20% investment tax credit on their qualifying expenditure for that purpose.

[1996 No. 32.]

27. Deductions not allowed

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

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

28. Waivers or refund of liability or expenses

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

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waived, released or refunded, as the case may be, shall be deemed to be profits of the company on the day on which such waiver, release or refund was made or given.

PART IV

Ascertainment of assessable profits

29. Basis for computing assessable profits

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

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

(a) in 1980 year of assessment, shall be the profits of the period from the beginning of the accounting year to 31 December, 1979; and

(b) in 1981 year of assessment, shall be the profits for 1 January to the end of the company's accounting year in 1980.

- (2) When the Board is satisfied that a company has made or intends to make up accounts of its trade or business to someday other than the 31st day of December, it may direct that the assembled profits of that company shall be computed on the amount of the profits of the year ending on that day in the year preceding the year of assessment:

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

New trade or business

- (3) The assessable profits of any company from any trade or business for the year of assessment in which it commenced to carry on such trade or business (or in the case of a company other than a Nigerian company, for the year of assessment in which it commenced to carry on such trade or business in Nigeria) and for the two following

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years of assessment (which years are in this subsection respectively referred to as —the first year, the second year, and —the third year) shall be ascertained in accordance with the following provisions-

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

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

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

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

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

Cessation of trade or business

- (4) Where a company permanently ceases to carry on a trade or business (or in the case of a company other than a Nigerian company, permanently ceases to carry on a trade or business in Nigeria) its assessable profits there from shall be-

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- (a) as regard the year of assessment in which the cessation occurs, the amount of the profits of that year;
 - (b) as regards the year of assessment preceding that in which the cessation occurs, the amount of the profits as computed in accordance with the foregoing subsections, or the amount of the profits of such year, whichever is the greater;
 - (c) Provided that where the profits of such year is for a period of nine months from 1st April to 31st December, 1980, the profits shall be grossed up as if they were the profits of twelve months; and
 - (d) the company shall not be deemed to derive assessable profits from such trade or business for the year of assessment following that in which the cessation occurs.
- (5) Where the provisions of subsection (1) of this section apply, such additional as - assessment or, on a claim being made by the company for this purpose in writing, such reductions of assessments or repayments of tax shall be made as may be necessary to give effect to these provisions:

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

Apportionment of profits

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

Receipts and payments after cessation of a trade or business

- (7) Where, after the date on which a company has permanently ceased to carry on a trade or business (as determined for the purposes of subsection (4) of this section), the company, its receivers or liquidators, receive or pay any sum which would have been included in or deducted from the profits of that trade or business if it had been

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received or paid prior to that date, such sum shall be deemed for all purposes of this Act to have been received or paid by the company on the last day before such cessation occurred.

Certain partnership

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

[Cap. P8.]

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

[Fifth Schedule. Second Schedule.]

Trades or businesses sold or transferred

- (9) Where a trade or business carried on by a company is sold or transferred to a Nigerian company for the purposes of better organisation of that trade or business or the transfer of its management to Nigeria and any asset employed in such trade or business is sold or transferred, if the Board is satisfied that one company has control over the other or that both are controlled by some other person or are members of a recognised group of companies, the Board may in its discretion direct that -

- (a) the provisions of subsections (3) and (4) of this section shall not apply to such trade or business; and
- (b) for the purposes of the Second Schedule to this Act, each such asset shall be deemed to have been sold for, an amount equal to the residue of the qualifying expenditure thereon on the day following such sale or transfer; and

[Second Schedule.]

- (c) the company acquiring each such asset shall not be entitled to any initial allowance with respect to that asset under the said Schedule and any allowances

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deemed to have been received by the vendor company under the provisions of this paragraph:

Provided that the Board in its discretion-

- (i) may require either company directly affected by any such direction which is under consideration by the Board to guarantee or give security, to the satisfaction of the Board, for payment in full of all tax due or to become due by the company selling or transferring such trade or business; and
- (ii) may impose such conditions as it sees fit on either or both the companies directly affected,

and in the event of failure by either company to carry out or fulfill such guarantee or conditions, the Board may revoke the direction and make all such additional assessments or repayments of tax as may be necessary so as to give effect to such revocation; and for the purposes of this subsection, reference to a trade or business shall include references to any part thereof.

Trade or business transferred under Part 11 of the Companies and Allied Matters Act

(10) Where, in pursuance of Chapter 3 of Part 11 of the Companies and Allied Matters Act, a company (in this subsection referred to as —the re-constituted company) is incorporated under that Act to carry on any trade or business previously carried on in Nigeria by a foreign company and the assets employed in Nigeria by the foreign company in that trade or business vest in the re-constituted company, then, if the Board is satisfied that the trade or business carried on by the re-constituted company immediately after the incorporation of that company under the Act is not substantially different in nature from the trade or business previously carried on in Nigeria by the foreign company, the following provisions of this subsection shall have effect, that is-

[Cap. C20.]

- (a) the provisions of subsections (3) and (4) of this section shall not apply to the trade or business carried on by the re-constituted company;
- (b) for the purposes of the Second Schedule to this Act, the assets so vested in the re-constituted company shall be deemed to have been sold to it, on the day of the incorporation of that company, for an amount equal to the residue of the qualifying expenditure thereon on the day following the day on which the trade or business previously carried on in Nigeria by the foreign company ceased; and

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[Second Schedule.]

- (c) the re-constituted company shall not be entitled to any initial allowances as respects those assets and shall be deemed to have received all allowances given to the foreign company in respect of those assets under the Second Schedule to this Act and any allowances deemed to have been received by the foreign company under the provisions of this paragraph or subsection (9) of this section; and

[Second Schedule.]

- (d) subject to subsection (11) of this section, the amount of any loss incurred during any year of assessment by the foreign company in the said trade or business previously carried on by it in Nigeria, being a loss which has not been allowed against any assessable profits or income of that company for any such year, under the provisions of this Act or the corresponding provisions of the Companies Income Tax Act 1961 or the Income Tax Act, shall be deemed to be a loss incurred by the re-constituted company in its trade or business during the year of assessment in which its trade or business commenced; and the amount of that loss shall, in accordance with section 31 of this Act, be deducted from the assessable profits of the re-constituted company;

[1961 No. 22. Cap. 85 1958 Edition.]

- (e) no deduction shall be made under paragraph (d) of this subsection in respect of any loss to which that paragraph relates-
- (i) except to the extent, (if any) to which it is proved by the re-constituted company to the satisfaction of the most senior officer in the Industrial Inspectorate Division of the Federal Ministry of Industry (hereinafter in this subsection referred to as —the director) that the loss was not the result of any damage or destruction caused by any military or other operations connected with the civil war in which Nigeria was engaged and which ended on 15 January, 1970:

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

- (ii) unless within three years after the incorporation of the re-constituted company a claim for the deduction is lodged by that company with the

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director and a copy of the claim is forwarded by that company to the Board;
and

- (f) any deduction to which paragraph (d) of this subsection applies, shall be made as far as possible from the amount, if any, of the assessable profits of the re-constituted company for the year of assessment in which its trade or business commenced and, so far as it cannot be so made, then from the amount of the assessable profits of the next year of assessment, and so on, but such deductions shall not be made against the profits of the company after the fourth year from the commencement of such business,

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

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

- (11) For the purposes of subsections (9) and (10) of this section, the Board may by notice require any person (including a company to which any assets have vested in pursuance of Chapter 3 of Part II of the Companies and Allied Matters Act) to prepare and deliver to the Board any returns specified in the notice or any such information as the Board may require about the assets; and it shall be the duty of that person to comply with the requirements of any such notice within the period specified in the notice, not being a period of less than 21 days from the service thereof.

[Cap. C20.]

- (12) No merger, take-over, transfer or restructuring of the trade or business carried on by a company shall take place without having obtained the Board's direction under subsection (9) of this section and clearance with respect to any tax that may be due and payable under the Capital Gains Tax Act.

[Cap. CI.]

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

- (1) Notwithstanding section 40 of this Act, where in respect of any trade or business carried on in Nigeria by any company (whether or not part of the operations of the business are carried on outside Nigeria) it appears to the Board that for any year of assessment, the trade or business produces either no assessable profits or assessable profits which in the opinion of the Board are less than might be expected to arise from that trade or business or, as the case may be, the true amount of the

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assessable profits of the company cannot be ascertained, the Board may, in respect of that trade or business, and notwithstanding any other provisions of this Act if the company is a-

- (a) Nigerian company, assess and charge that company for that year of assessment on such fair and reasonable percentage of the turn-over of the trade or business as the Board may determine;
- (b) if that company is a company other than a Nigerian company and-
 - (i) that company has a fixed base of business in Nigeria, assess and charge that company for that year of assessment on such fair and reasonable percentage of that part of the turnover attributable to the fixed base;
 - (ii) that company operates a trade or business through a person in Nigeria authorised to conduct on its behalf or on behalf of some other companies controlled by it or which have a controlling interest in it; or habitually maintains a stock of goods or merchandise in Nigeria from which deliveries are regularly made by a person on behalf of the company, assess and charge to the extent that the profit is attributable to the business or trade carried on through that person,
 - (iii) that company executes one single contract involving surveys, deliveries, installations or construction, assess and charge the company for that year of assessment on such a fair and reasonable percentage of the turnover of the contract; and
 - (iv) the trade or business is between the company and another person controlled by it or which has a controlling interest in it and conditions are made or imposed between the company and such person in their commercial or financial relations which in the opinion of the Board is deemed to be artificial or fictitious, assess and charge on a fair and reasonable percentage of that part of the turnover as may be determined by the Board.

[1993 No. 3.]

- (2) The provisions of this Act as to notice of assessment, additional assessment, appeal and other proceedings, shall apply to an assessment or additional assessment made under this section as they apply to an assessment or additional assessment made under any other section of this Act.

PART V

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Ascertainment of total profits

31. Total profits from all sources

- (1) The total profits of any company for any year of assessment, shall be the amount of its total assessable profits from all sources for that year together with any additions thereto to be made in accordance with the provisions of the Second Schedule to this Act, less any deductions to be made or allowed in accordance with the provisions of this section, section 32 and of the said Schedule.

[Second Schedule.]

- (2) Subject to the provisions of subsection (4) of this section, there shall be deducted-

- (a) the amount of a loss which the Board is satisfied has been incurred by the company in any trade or business during any preceding year of assessment:

Provided that-

- (i) in no circumstances shall the aggregate deduction from assessable profits or income in respect of any such loss exceed the amount of such loss; and

- (ii) a deduction under this section for any particular year of assessment shall not exceed the amount, if any, of the assessable profits, included in the total profits for that year of assessment, from the trade or business in which the loss was incurred and shall be made as far as possible from the amount of such assessable profits of the first year of assessment after that in which the loss was incurred and, so far as it cannot be so made, then from such amount of such assessable profits of the next year of assessment, and so on; but such deductions shall not be made against the profit of the company after the fourth year from the year of commencement of such business;

- (iii) (deleted by 2007 No. 56, s. 8);

- (b) the amount of any loss which, under paragraph (d) of subsection (10) of section 29 is deemed to be a loss incurred by the company during the year of assessment in which its trade or business commenced, so however that any deduction in respect of that loss shall be made as provided under paragraph (f) of that subsection.

- (3) The amount of any loss incurred by a company engaged in an agricultural trade or business for the year of assessment in which it commenced to carry on such trade or business, shall be deducted as far as possible from the assessable profits of the first

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year of assessment after that in which the loss was incurred and so far as it cannot be so made, then from such amount of such assessable profits of the next year of assessment, and so on (without limit as to time) until the loss has been completely set off against the company's subsequent assessable profits.

- (4) For the purposes of subsection (2) of this section, the loss incurred during any year of assessment shall be computed, where the Board so decides, by reference to the year ending on a day in such year of assessment which would have been adopted under subsection (2) of section 29 of this Act for the computation of assessable profits for the following year of assessment if such profits had arisen.
- (5) Where under the provisions of subsection (6) of section 29 of this Act for the purpose of computing the profits of a period from a source chargeable with tax under this Act, being a period the profits of which are assessable profits from that source for any year, it has been necessary to allocate or apportion to specific periods which fall within that whole period both profits and losses, then no deduction shall be made under the provisions of subsection (2) of this section in respect of the loss or apportioned part thereof referable to any such specific period, except to the extent that such loss or part thereof exceeds the aggregate profits apportioned to the remaining specific period or periods within that whole period.

32. Reconstruction investment allowance

- (1) Where a company has incurred an expenditure on plant and equipment, there shall be allowed to that company an investment allowance as provided in subsection (2) of this section and shall be in addition to an initial allowance under the Second Schedule of this Act.

[1993 No. 3. Second Schedule.]

- (2) The rate at which investment allowance is to be allowed for the purpose of subsection (1) of this section shall be 10 percent of the actual expenditure incurred on such plant and equipment.

[1993 No. 3.]

- (3) Any provisions of the Second Schedule applicable to an initial allowance shall also apply to an investment allowance under this section, except that an investment allowance shall not be taken into account in ascertaining the residue of qualifying expenditure in respect of an asset, for the purpose of the said Schedule.

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- (4) If in the case of any qualifying expenditure incurred on the new asset, any such event as is mentioned in the next following subsection occurs within a period of five years beginning with the date on which the expenditure was incurred, no investment allowance shall be made in respect of the expenditure, or if such allowance has been made before the occurrence of the event, it shall be withdrawn.
- (5) The events referred to in subsection (4) of this section are-
- (a) any sale or transfer of the asset representing the expenditure made by the company incurring the expenditure otherwise than to a person acquiring the asset for a chargeable purpose or for scrap;
 - (b) any appropriation of the asset representing the expenditure made by the company incurring the expenditure to a purpose other than a chargeable purpose;
 - (c) any sale, or transfer or other dealing with the asset representing the expenditure by the company incurring the expenditure, being a case where it appears that the expenditure was incurred in contemplation of the asset being so dealt with, and being a case where it is shown either-
 - (i) that the purpose of obtaining tax allowances was the sole or main purpose of the company for incurring the expenditure or for so dealing with the asset; or
 - (ii) that the incurring of the expenditure and the asset being so dealt with were not *bona fide* business transactions or were artificial or fictitious transactions, and were designed for the purpose of obtaining tax allowances.
- (6) A company incurring any expenditure in respect of which an investment allowance has been made and has not been withdrawn, shall give notice to the Board if, to the knowledge of the company, any of the events as is mentioned in subsection (5) of this section occurs at any time before the expiration of five years beginning with the date when the expenditure was incurred.
- (7) Any notice of a sale or transfer given under subsection (6) of this section shall state the name and address of the person to whom the sale or transfer is made.
- (8) Where an asset in respect of which an investment allowance has been made is sold or transferred, it shall be the duty of the purchaser or transferee, and of the personal representatives of any such person, on being required to do so by any officer duly authorised by the board to give that officer all such information as he may require, and as they have or can reasonably obtain, about any sale or transfer of the asset representing the expenditure or about any other dealing with the asset.

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(9) Any person who, without reasonable excuse, fails to comply with this section, shall be guilty of an offence and liable on conviction to a penalty not exceeding N100 plus the amount of tax lost by the granting of the investment allowance made in respect of the expenditure in question.

(10) All such additional assessments and adjustments of assessments shall be made as may be necessary in consequence of the withdrawal of any investment allowance, and may be so made at any time.

(11) For the purposes of this section-

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

“**chargeable purpose**” means the purpose of putting the assets to a use such that profits accrue or are intended to accrue there from and will be chargeable tax;

“**initial allowance**” has the same meaning as in the Second Schedule to this Act;

[Second Schedule.]

“**qualifying expenditure**” has the same meaning as in the Second Schedule to this Act.

[Second Schedule.]

33. Payment of minimum tax

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

[1991 No. 21.]

(2) For the purposes of subsection (1) of this section the minimum tax to be levied and paid shall-

(a) if the turnover of the company is N500,000 or below and the company has been in business for at least four calendar years be-

(i) 0.5 per cent of gross profit; or

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- (ii) 0.5 per cent of net assets; or
 - (iii) 0.25 per cent of paid-up capital; or
 - (iv) 0.25 per cent of turnover of the company for the year, whichever is higher; or
- (b) if the turnover is higher than N500,000, be whatever is payable in paragraph (a) of this subsection plus such additional tax on the amount by which the turnover is in excess of N500,000 at a rate which shall be 50 per cent of the rate used in paragraph (a) (iv) of this subsection.

[1991 No. 21.]

- (3) The provisions of this section shall not apply to-
- (a) a company carrying on agricultural trade or business as defined in subsection (9) of section 11 of this Act.
 - (b) a company with at least 25 per cent imported equity capital; and
 - (c) any company for the first four calendar years of its commencement of business.

[1991 No. 21.]

- (4)
- (a) Nothing in this section shall exempt any company from payment of any levy or tax imposed on the total profits of the company under section 40 of this Act so however that the tax payable under subsection (1) of this section, shall be the amount by which the amount computed under subsection (2) thereof exceeds the amount that is levied and payable under section 40 of this Act.
 - (b) For the purposes of this section and the Second Schedule to this Act, the capital allowance for any assessment year in which a minimum tax is payable, shall be computed and the amount so computed, together with any unabsorbed allowances brought forward from previous years, shall be deducted as far as possible from the assessable profits of the assessment year and, so far as it cannot be completely deducted, the amount by which the total amount of the capital allowance exceeds the amount of the assessable profit of the assessment year, shall be carried forward to the next assessment year.

[Second Schedule. 1993 No. 3.]

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34. Rural investment allowance

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

[2007 No. 56, s. 9 (a). Second Schedule.]

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

[1993 No. 3.]

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

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

[1993 No. 3, 2007 No. 56, s. 9 (b).]

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

[1993 No. 3.]

35. Export processing zone allowance

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- (1) A company which has incurred expenditure in its qualifying building and plant equipment an approved manufacturing activity in an export processing zone shall be granted 100 percent capital allowance in any year of assessment.

[1996 No. 31.]

- (2) A company granted capital allowance under subsection (1) of this section shall not be entitled to an investment allowance under this Act.

[1996 No. 31.]

- (3) The profit or gains of a 100 percent export oriented undertaking established within and outside an export free zone shall be exempt from tax for the first three consecutive assessment years provided that-

- (i) the undertaking is 100 percent export oriented;
- (ii) the undertaking is not formed by splitting or breaking up or reconstructing a business already in existence;
- (iii) it manufactures, produces and exports articles during the relevant year and the export proceeds form 75 percent of its turnover;
- (iv) the undertaking is not formed by transfer of machinery or plants previously used for any purpose to the new undertaking or where machinery or plant previously used for any purpose is transferred does not exceed 25 percent of the total value of the machinery or the undertaking;
- (v) the undertaking repatriates at least 75 percent of the export earnings to Nigeria and places it in a domiciliary account in any registered and licensed bank in Nigeria.

[1996 No. 32.]

- (4) For the purpose of subsection (3) of this section only the tax written down value of the assets shall be carried forward at the end of the tax holidays.

[1996 No. 32.]

- (5) In this section “**export processing zone**” and “**approved activity**” have the meanings assigned to them in the Nigerian Export Processing Zone Act.

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[1996 No. 31. Cap. N 107.]

36. Mining of solid minerals

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

[1996 No. 32.]

37. Incomes in convertible currencies to be exempt

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

[1996 No. 32.]

38. (Deleted by 2007 No. 56, s. 10.)

PART VI

Incentives to the gas industry

39. Gas utilisation (downstream operations)

(1) A company engaged in gas utilisation (downstream operations) shall be granted the following incentives, that is-

(a) an initial tax-free period of three years which may, subject to the satisfactory performance of the business, be renewed for an additional period of two years;

[1998 No. 18.]

(b) as an alternative to the initial tax free period granted under paragraph (a) of this subsection, an additional investment allowance of 35 percent which shall not reduce the value of the asset, so however that a company which claims the incentive provided under this paragraph shall not also claim the incentive provided under paragraph (c) (ii) of this subsection;

[1999 No. 30.]

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(c) accelerated capital allowances after the tax-free period, as follows, that is-

- (i) an annual allowance of 90 percent with 10 percent retention, for investment in plant and machinery;
- (ii) an additional investment allowance of 15 percent which shall not reduce the value of the asset;

[1998 No. 18.]

(d) tax free dividends during the tax free period, where-

- (i) the investment for the business was in foreign currency; or

[1998 No. 18.]

- (ii) the introduction of imported plant and machinery during the period was not less than 30 percent of the equity share capital of the company;

[1999 No. 30.]

(e) interest payable on any loan obtained with the prior approval of the Minister for a gas project, shall be tax deductible.

[1998 No. 19.]

(2) The tax-free period of a company shall start on the day the company commences production as certified by the Ministry of Petroleum Resources.

[1998 No. 18.]

(3) In this section-

“gas utilisation” means the marketing and distribution of natural gas for commercial purposes and includes power plant, liquefied natural gas, gas to liquid plant, fertilizer plant, gas transmission and distribution pipelines;

[1998 No. 19.]

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

PART VII

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

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40. Rates of tax

- (1) There shall be levied and paid for each year of assessment in respect of the total profits of every company, tax at the rate of thirty kobo for every naira.

[1996 No. 32.]

- (2) In addition to any levy made pursuant to subsection (1) of this section, there shall, as from the assessment year commencing on 1 January, 1989 be levied and paid a special levy of fifteen percent on excess profits of every company including banks and for the purpose of this subsection, “**excess profits**” means the difference between total profits as computed in accordance with section 31 of this Act and standard profits as calculated in accordance with the provisions of subsection (3) of this section.

- (3) For the purposes of subsection (2) of this section, “**standard profits**” means-

(a) in the case of every Nigerian company-

- (i) the addition of the amounts arrived at after applying the percentages specified in this subparagraph to the amount of capital employed at the end of the accounting period, that is to say-

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

- (ii) the amount of six million naira, whichever is greater.

(b) in the case of every company other than a Nigerian company and as respects any year of assessment commencing on 1 January, 1989-

- (i) the amount of fifteen percent of the turnover of the company for that year being turnover attributable to any part of the operations of the company carried out in Nigeria; or

- (ii) the amount of six million naira, whichever is greater.

- (4) A company which is yet to commence business after at least six months of incorporation shall for each year it obtains a tax clearance certificate pay a levy of -

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(a) N20,000 for the first year; and

[2007 No. 56, s. 11(a).]

(b) N25,000 for every subsequent year,

— [2007 No. 56, s. 11(b).]

before a tax clearance certificate is issued.

— [1991 No. 21.]

- (5) For the purposes of paragraph (a) of subsection (4) of this section, any unab sorbed capital allowance brought forward shall be suspended until normal assessment is made; but a notional allowance shall be deemed to have been granted for the assessment year in which a turnover tax is payable.

[Subsection (5), previously subsection (6), renumbered by 2007 No. 56, s. 11 (c).]

- (6) Where in any of the basis period for the year of assessment in which a company commenced business and the next following four years of assessment as determined under the provisions of section 29 of this Act, a Nigerian company engaged in manufacturing or agricultural production, mining of solid minerals or wholly export trade, earns a total gross sales (turnover) of below one million naira, there shall be levied and paid by the company, tax at the rate of twenty kobo on every naira of the total profits.

[1996 No. 31. Subsection (6), previously subsection (7), renumbered by 2007 No. 56, s.11 (c).]

- (7) Notwithstanding the provisions of subsection (7) of this section, where a Nigerian company engaged in the trade and business specified in that subsection commenced business before 1 January, 1988 and makes a gross sales (turnover) of below five hundred thousand naira, there shall be levied and paid by such company for each of the assessment years 1988, 1989 and 1990 tax at the rate of twenty kobo on every naira of the total profits.

[Subsection (7), previously subsection (8), renumbered by 2007 No. 56, s. 11 (c).]

- (8) The provisions of subsections (7) and (8) of this section shall not apply to a company formed to acquire the whole or any part of the trade or business previously carried on by another company.

[Subsection (8), previously subsection (9), renumbered by 2007 No. 56, s. 11 (c).]

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- (9) The provisions of subsection (7) of this section may be extended for additional two years where the company shows evidence of good records and management and remained in the preferred sector of the economy as specified in that subsection.

[1993 No. 3. Subsection (9), previously subsection (10), renumbered by 2007 No. 56, s. 11 (c)]

- (10) Where a company has incurred an expenditure on electricity, water, tarred road or telephone for the purpose of a trade or business carried on by the company which is located at least 20 kilometers away from electricity, water, tarred road or telephone facilities which are provided by the Government, the company shall be allowed a relief called —investment tax relief for each year expenditure is incurred on each such facility at the following rate of the expenditure-

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

[1993 No. 3. Subsection (10), previously subsection (11), renumbered by 2007 No. 56, s. 11 (c).]

- (11) For the purposes of subsection (11) of this section, a company shall not be allowed to claim the investment tax relief for more than three years and the relief shall not be available to a company already granted the pioneer status.

[1993 No. 3. Subsection (11), previously subsection (12), renumbered by 2007 No. 56, s.11 (c).]

41. Replacement of obsolete plant and machinery

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

[1996 No. 32.]

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

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

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- (1) In respect of every dividend paid by a Nigerian company, being a dividend to which the proviso to section 18 applies, the company shall issue to each of its shareholders a certificate setting out the amount thereof to which such shareholder is entitled and describing the profits out of which the dividend is paid, and the company shall not be entitled to deduct tax from any such dividend on payment thereof.

- (2) For the purposes of this section, the net Nigerian rate of tax applicable to a dividend shall be the rate computed or agreed by the Board in the following manner-
 - (a) where the accounting period of a company out of the profits of which a dividend is declared to be wholly payable coincides with any single basis period of that company for a year of assessment (as determined under the provisions of Part IV of this Act) the net Nigerian rate of tax applicable to that dividend shall be computed by dividing the tax payable by the company for that year of assessment after deduction of any relief given under the provisions of section 44 or 46 by the distributable profits, as shown by the accounts of the company, arising during that period, before deduction of any tax but after deduction of any profits specified in subsection (1) of this section;

 - (b) in any other case, the net Nigerian rate of tax applicable to the dividend shall be determined by the Board as may appear to it to be just and equitable:

Provided that in no case shall the net Nigerian rate of tax applicable to a dividend exceed the rate specified by section 40 of this Act for the year of assessment in which payment of the dividend becomes due.

- (3) Within fourteen days thereof every Nigerian company shall supply full particulars to the Board of each dividend declared, and on request of the Board shall supply a list of the shareholders to whom the dividend is payable showing their respective shares therein.

- (4) In the event that the net Nigerian rate of tax applicable to a dividend has not agreed or computed by the Board before the date on which payment of that dividend becomes due, the certificate to be given for the purposes of subsection (2) of this section shall so specify, and no repayment out of tax deducted from that dividend shall be made to any shareholder until that rate has been finally determined.

- (5) Nothing in this section shall be construed as requiring a company to deduct tax from a dividend that is not paid in money.

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- (6) Notwithstanding the foregoing provisions of this section, every company paying dividend to its shareholders shall pay tax at the prescribed rate in subsection (1) of section 40 of this Act to the Board prior to the payment of the dividend. The tax so paid shall be a deposit against the tax due from the company on the profits out of which the dividend is paid:

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

44. Relief in respect of Commonwealth income tax

- (1) If any Nigerian company which has paid, by deduction or otherwise, or is liable to pay, tax under this Act for any year of assessment on any part of its profits, proves to the satisfaction of the Board that it has paid, by deduction or otherwise, or is liable to pay, Commonwealth income tax for that year in respect of the same part of its profits, it shall be entitled to relief from tax paid or payable by it under this Act on that part of its profits at a rate thereon to be determined as follows:-

(a) if the Commonwealth rate does not exceed one shall' of the rate of tax under this Act, the rate at which relief is to be given shall be the Commonwealth rate tax;

(b) in any other case the rate at which relief is to be given shall be half the rate of tax under this Act.

- (2) If any company, other than a Nigerian company which has paid, by deduction or otherwise, or is liable to pay, tax under this Act for any year of assessment on any part of its profits, proves to the satisfaction of the Board that it has paid, by deduction or otherwise, or is liable to pay, Commonwealth income tax for that year of assessment in respect of the same part of its profits, it shall be entitled to relief from tax paid or payable by it under this Act on that part of its profits at a rate thereon to be determined as follows-

(a) if the Commonwealth rate of tax does not exceed the rate of tax under this Act, the rate at which relief is to be given shall be one half of the Commonwealth rate of tax;

(b) if the Commonwealth rate of tax exceeds the rate of tax under this Act, the rate at which relief is to be given shall be equal to the amount by which the rate of tax under this Act exceeds one half of the Commonwealth rate of tax.

- (3) For the purposes of this section-

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

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

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

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

45. Double taxation arrangements

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

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- (4) The Minister may make rules for carrying out the provisions of any arrangements having effect under this section.
- (5) An order made under the provisions of subsection (1) of this section may include provisions for relief from tax for periods commencing or terminating before the making of the order and provisions as to profits which are not themselves liable to double taxation.

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

- (1) The provisions of this section shall have effect where, under arrangements having effect under section 45 of this Act, foreign tax payable in respect of any profits in the country with the government of which the arrangements are made is to be allowed as a credit against tax payable in respect of those profits under this Act, and in this section, “**foreign tax**” means any tax payable in that country which under the arrangements is to be so allowed.
- (2) The amount of the tax chargeable in respect of the profits which are liable to both tax and foreign tax shall be reduced by the amount of the credit admissible under the terms of the arrangement:

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

- (3) The credit shall not exceed the amount which would be produced by computing, in accordance with the provisions of this Act, the amount of the profits which are liable to both tax and foreign tax, and then charging that amount to tax at a rate ascertained by dividing the tax chargeable (before the deduction of any double taxation relief granted by this Part of this Act) on the total profits of the company entitled to the profits by the amount of the total profits.
- (4) Without prejudice to the provisions of subsection (3) of this section, the total credit to be allowed to a company for a year of assessment for foreign tax under all arrangements having effect under section 45 of this Act shall not exceed the total tax payable by it for that year of assessment.
- (5) In computing the amount of the profits-
 - (a) no deduction shall be allowed in respect of foreign tax (whether in respect of the same or any other profits;
 - (b) where tax chargeable depends on the amount received in Nigeria, the said amount shall be increased by the appropriate amount of the foreign tax in respect of the profits; and

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- (c) where the profits include a dividend and under the arrangements foreign tax not chargeable directly or by deduction in respect of the dividend is to be taken into account in considering whether any, and if so what, credit is to be given against tax in respect of the dividend, the amount of the profits shall be increased by the amount of the foreign tax not so chargeable which falls to be taken into account in computing the amount of the credit, but notwithstanding anything in the preceding provisions of this subsection a deduction shall be allowed of any amount by which the foreign tax in respect of the profits exceeds the credit thereof.
- (6) Paragraphs (a) and (b) of subsection (5) of this section, but not the remainder thereof shall, apply to the computation of total profits for the purpose of determining the rate mentioned in subsection (3) of this section, and shall apply thereto in relation to all profits in respect of which credit falls to be given for foreign tax under arrangements for the time being in force under section 45 of this Act.
- (7) Where-
- (a) the arrangements provide, in relation to dividends of some classes but not in relation to dividends of other classes, that foreign tax not chargeable directly or by deduction in respect of dividends is to be taken into account in considering whether any, and if so what, credit is to be given against tax in respect of the dividends; and
- (b) a dividend is paid which is not of a class in relation to which the arrangements so provide,
- then, if the dividend is paid to a company which controls, directly or indirectly, not less than one half of the voting power in the company paying the dividend, credit shall be allowed as if the dividend were a dividend of a class in relation to which the arrangements so provide.
- (8) Credit shall not be allowed under the arrangements against tax chargeable in respect of the profits of a company for any year of assessment if the company elects that credit shall not be allowed in the case of those profits for that year.
- (9) Any claim for an allowance by way of credit shall be made not later than two years after the end of assessment, and in the event of any dispute as to the amount allowable the claim shall be subject to objection and appeal in like manner as an assessment.

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- (10) Where the amount of any credit given under the arrangements is rendered excessive or insufficient by reason of any adjustment of the amount of any tax payable in Nigeria or elsewhere, nothing in this Act limiting the time for the making of assessments or claims for relief shall apply to any assessment or claim to which the adjustment gives rise, being an assessment or claim made not later than two years from the time when all such assessments, adjustments and other determinations have been made, whether in Nigeria or elsewhere, as are material in determining whether any, and if so what, credit falls to be given.

PART VIII

Persons chargeable, agents, liquidators, etc.

47. Chargeability to tax

A company shall be chargeable to tax-

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

48. Manager, etc., to be answerable

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

49. Power to appoint agent

- (1) The Board may by notice in writing appoint any person to be the agent of any company and the person so declared the agent shall be agent of such company for the purposes of this Act, and may be required to pay any tax which is or will be payable by the company from any moneys which may be held by him for, or due by or to become due by him to, the company whose agent he has been declared to be, and in default of such payment the tax shall be recoverable from him.

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- (2) For the purposes of this section, the Board may require any person to give information as to any moneys, funds or other assets which may be held by him for, or of any moneys due by him to, any company.
- (3) The provisions of this Act with respect to objections and appeals shall apply to any notice given under this section as though such notice were an assessment.

50. Indemnification of manager, etc., or agent

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

51. Company wound up

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

52. Liability to file return

- (1) Whether or not a company is liable to pay tax under this Act for a year of assessment and whether or not a return has been filed under section 55 of this Act, a company shall, upon a notice from the Board, file with the Board in the prescribed form, within such reasonable time as may be stipulated in such notice, a return of income for the year of assessment designated therein together with the audited accounts and information stipulated in subsection (1) (a) and (b) of section 55 of this Act.

[1991 No. 63.]

- (2) Every company whose turnover is one million naira and above shall file self assessment return within six months of its accounting period provided that a company whose turnover is below one million naira shall file a self-assessment return as from 1998 year of assessment.

[1996 No. 32.]

53. Self-assessment of tax payable

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

(a) in the return, compute the tax payable by the company for the year of assessment; and

[1996 No. 30.]

(b) forward with the tax return, evidence of direct payment of the whole or part of tax due into a bank designated for the payment of tax.

[1996 No. 32.]

54. Currency of assessment

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

[1996 No. 30.]

PART IX

Returns

55. Returns and provisional accounts

(1) Every company, including a company granted exemption from incorporation shall, whether or not a company is liable to pay tax under this Act for a year of assessment, with or without notice from the Service, file a self-assessment return with the Service in the prescribed form at least once a year and such return shall contain-

(a) the audited accounts, tax and capital allowances computation for the year of assessment and a true and correct statement in writing containing the amount of profit from each and every source computed;

(b) a duly completed self-assessment form as may be prescribed by the Service, from time to time, attested to by a director or secretary of the company and such attestation shall contain a declaration that it contains a true and correct statement of the amount of its profits computed in respect of all sources in accordance with this Act and any rule made and that the particulars given in such return are true and complete; and

(c) evidence of payment of the whole or part of the tax due into a bank designated for the collection of the tax.

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- (2) Subject to this Act or any regulation made, the time of tiling returns shall be -
- (a) in the case of a company that has been in business for more than eighteen months, not more than six months after the end of its accounting year; and
 - (b) in the case of a newly incorporated company, within eighteen months from the date of its incorporation or not later than six months after the end of its first accounting period, whichever is earlier; in addition, the form of returns shall be signed by a director who must be the chairman or the managing director of the company and the secretary respectively.
- (3) Any company which fails to comply with the provisions of subsection (2) shall be liable to pay as penalty for late filing-
- (a) N25,000 in the first month in which the failure occurs; and
 - (b) N5,000 for each subsequent month in which the failure continues.
- (4) Notwithstanding anything to the contrary in any law, an income tax assessment shall be made in the currency in which the transaction took place.
- (5) Where an offence under this section by a company is proved to have been committed with the consent or connivance of, or to be attributable to, any neglect on the part of any director, manager, secretary or other similar officer, servant or agent of the company (or the person purporting to act in any such capacity) he as well as the company shall be deemed to have committed the offence and shall on conviction be liable to a fine not exceeding N100,000 or imprisonment for a term not exceeding two years or to both such fine and imprisonment.
- (6) For the purposes of this section:
- (a) every company shall designate a representative who shall answer every query relating to the tax matters of the company; and
 - (b) a person designated by a company pursuant to paragraph (a) of this subsection shall be a person knowledgeable in the field of taxation as may be approved, from time to time, by the Service.

[2007 No. 56, s. 13.]

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

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

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- (1) Every company operating in a Nigerian stock exchange as a capital market operator shall, not later than seven days after the end of each calendar month, file with the Board or any other relevant tax authority, a return in the prescribed form of its transactions during the preceding calendar month.

[1999 No. 30, 2007 No. 56, s. 15.]

- (2) A company filing a return shall, where its transactions involve-

- (a) an offer in the primary market, state in the return-

- (i) the type of offer;
- (ii) the services rendered;
- (iii) the amount of tax deducted at source; and
- (iv) the amount of value added tax payable;

- (b) operations in the secondary market, state in the return:

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

[1999 No. 30.]

58. Board may call for further returns

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

[2007 No. 56, s. 16.]

59. Extension of period of making returns

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(1) A company may apply in writing to the Board for an extension of the time within which to comply with the provisions of sections 52, 55 (3) and 60 of this Act, provided the company-

(a) makes the application before the expiration of the time stipulated in those sections for making the returns; and

(b) shows good cause for its inability to comply with those provisions.

[1996 No. 30.]

(2) If the Board is satisfied with the cause shown in an application under subsection (1) of this section, it may in writing grant the extension of time for making the application to such time as it may consider appropriate.

[1996 No. 30.]

60. Call for returns, books, documents and information

(1) For the purpose of obtaining full information in respect of the profits within the time specified by the notice to any person the Service shall give notice to that person requiring him to-

(a) complete and deliver to the Service any return specified in such notice;

(b) appear personally before an officer of the Service for examination with respect to any matter relating to such profits;

(c) produce or cause to be produced for examination books, documents, and any other information at the place and time stated in the notice, which time may be from day to day, for such period as the Service may deem necessary; or

(d) give orally or in writing any other information including a name and address specified in such notice.

(2) For the purposes of paragraphs (a) to (a) of subsection (1) of this section, the time specified by such notice shall not be less than seven days from the date of service of such notice, except that an officer of the Service not below the rank of a chief inspector of taxes or its equivalent may act in any of the cases stipulated in paragraphs (a) to (a) of subsection (1) of this section, without giving any of the required notices set out in this section.

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- (3) A person who contravenes the provisions of this section commits an offence and shall, in respect of each offence, be liable on conviction to a fine equivalent to the amount of the tax liability in addition to paying the tax due.
- (4) Nothing in this section or in any other provision of this Act shall be construed as precluding the Service from verifying by tax audit or investigation into any matter relating to any return or entry in any book, document, accounts, including those stored in a computer, digital, magnetic, optical or electronic media as may, from time to time, be specified in any guideline by the Service.
- (5) Any person may apply in writing to the Service for an extension of time within which to comply with the provisions of this section and section 10 of this Act, in so far as the person-
 - (a) makes the application before the expiration of the time stipulated in this section for making the returns; and
 - (b) shows good cause for his inability to comply with this provision.
- (6) If the Service is satisfied with the cause shown in the application of subsection (5) (b) of this section, it may in writing grant the extension of the time or limit the time as it may consider appropriate.

[1993 No. 3, 2007 No. 56, s. 17.]

61. Information to be delivered by bankers

- (1) Without prejudice to section 60 of this Act, every person engaged in banking including any person charged with the administration of the Federal Savings Bank Act, shall prepare a return at the end of each month specifying the names and addresses of new customers of the bank and shall not later than the seventh day of the next following month deliver the return to a tax authority of the area where the bank operates, or where such customer is a company to the Federal Board of Inland Revenue.

[Cap. F20.]

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

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stipulated in the notice, information including the name and address of any person specified in the notice:

[Cap. F20.]

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

[Cap. F20.]

62. Return deemed to be furnished by due authority

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

63. Books of account

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

64. Power to enter and search premises

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

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- (a) is satisfied that there is reasonable ground for suspecting that an offence involving any form of total or partial non-disclosure of information or any irregularity or offence in connection with, or in relation to tax, has been committed; and

- (b) is of the opinion that evidence of the offence or irregularity is to be found in the premises, registered office, any other office, or place of management of the company or in the residence of the principal officer, factor, agent or representative of the company,

the Board may authorise an officer of the Board to enter if necessary by force the premises, registered office, any other office or place of management or the residence of the principal officer, factor or agent or representative of the company, at any time from the date of such authorisation by the Board and conduct a search.

[1991 No. 21.]

- (2) An authority to enter the premises, registered office, any other office or place of management or residence of the principal officer, agent or factor of a company, to conduct a search, shall be in the form contained in the Sixth Schedule to this Act, and such authority shall be sufficient warrant to search, seize and remove any records and documents found on such premises, office or, residence of the principal officer, agent or factor of the company, whether or not belonging to the company.

[Sixth Schedule. 1991 No. 21.]

- (3) On entering the premises with a warrant under this section, the officer may seize and remove anything whatsoever found therein which he has reasonable cause to believe may be required for the purpose of arriving at a fair and correct tax chargeable on the company or as evidence for the purposes of proceedings in respect of such an offence as is mentioned in subsection (1) of this section.

[1991 No. 21.]

- (4) For the purpose of this section, an officer authorised by the Board to execute any warrant of search under this section may call to his assistance a police officer and it shall be the duty of the police officer when so required to aid and assist in the execution of any warrant, to obtain documents for the purposes of the tax chargeable or to be charged on the company or of the proceedings in respect of the offence referred to in section (1) of this section.

[1991 No. 21.]

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- (5) Where an entry to a premises has been made with a warrant under this section and the officer making the entry has seized anything under the authority of the warrant, he shall immediately before the seizure if required by either-
- (a) the principal officer of the company; or
 - (b) any other person who has had the possession or custody of those things, provide that principal officer or person with the list of items seized or surrendered.

[1991 No. 21.]

- (6) It shall be the responsibility of any person on whom such warrant as mentioned in subsection (2) of this section is served to:
- (a) co-operate fully with the person or persons authorised to conduct a search by allowing easy access to the premises to be searched and to the items or documents that may be required for the investigation;
 - (b) answer all questions and queries put to him in the cause of the search;
 - (c) put in accessible position and facilitate the removal of all items that may be required to assist the investigation.

[1991 No. 21.]

- (7) Any principal officer, agent, factor or representative of the company on whom a warrant of search is served who refuses to co-operate with the person or persons authorised to search or does anything tantamount to failure to co-operate or engages in an act or acts resulting in abuse, physical assault or similar misbehavior, shall be guilty of an offence and liable on conviction to a fine of N10,000 or to imprisonment of not less than 6 months or to both such fine and imprisonment.

[1991 No. 21.]

- (8) Either prior to or during or after a warrant of search is being or has been served or executed on a principal officer, agent, factor or representative of the company, such principal officer, factor or agent may also be called upon to an interview before an officer of the Board to answer any query or question in connection with the activities of the company as would enable the Board to arrive at a fair and correct tax liability of the company.

[1991 No. 21.]

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PART X

65. Board to make assessments

- (1) The Board shall proceed to assess every company chargeable with tax as soon as may be after the expiration of the time allowed to such company for the delivery of the audited accounts and return provided for in section 55 of this Act or otherwise as it appears to the Board practicable so to do.
- (2) Where a company has delivered audited accounts and return, the Board may-
 - (a) accept the audited accounts and return and make an assessment accordingly; or
 - (b) refuse to accept the return and, to the best of its judgement, determine the amount of the total profits of the company and make an assessment accordingly.
- (3) Where a company has not delivered a return and the Board is of the opinion that such company is liable to pay tax, the Board may, according to the best of its judgement, determine the amount of the total profits of such company and make an assessment accordingly, but such assessment shall not affect any liability otherwise incurred by such company by reason of its failure or neglect to deliver a return.
- (4) Nothing in this section shall prevent the Board from making an assessment upon a company for any year before the expiration of the time within which such company is required to deliver a return or to give notice under the provisions of section 55 of this Act, if the Board or any officer of the Federal Inland Revenue Service duly authorised by the Board considers such assessment to be necessary for any reason of urgency.
- (5) In this section, the reference to a return shall be construed as a reference to the accounts and return submitted pursuant to section 55 of this Act.

66. Additional assessments

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

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

[1961 No. 22.]

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

67. Lists of companies assessed

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

68. Service of notice of assessment

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

69. Revision of assessment in case of objection

- (1) If any company disputes the assessment it may apply to the Board, by notice of objection in writing, to review and to revise the assessment made upon it.

[1996 No. 30.]

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- (2) An application under subsection (1) of this section shall-
- (a) be made within thirty days from the date of service of the notice of assessment;
and
 - (b) contain the ground of objection to the assessment, that is-
 - (i) the amount of assessable and total profits of the company for the relevant year of assessment; and
 - (ii) the amount of tax payable for the year,which the company claims should be stated on the notice of assessment.

[1996 No. 30.]

- (3) If the Board is satisfied that owing to absence from Nigeria, the person in whose name an assessment is made is unable to make an application within the thirty days specified in subsection (2) of this section, it shall extend the time for making the application to such time as may be reasonable in the circumstances.

[1996 No. 30.]

- (4) On receipt of the notice of objection referred to in subsection (1) of this section, the Board may require the company giving the notice of objection to furnish such particulars as the Board may deem necessary and to produce all books or other documents relating to the profits of the company, and may summon any person who may be able to give evidence respecting the assessment to attend for examination by an officer of the Federal Inland Revenue Service on oath or otherwise.
- (5) In the event of any company assessed, which has objected to an assessment made upon it, agreeing with the Board as to the amount at which it is liable to be assessed, the assessment shall be amended accordingly, and notice of the tax payable shall be served upon such company:
- (6) Provided that if an applicant for revision under the provisions of subsection (1) of this section fails to agree with the Board the amount at which the company is liable to be assessed, the Board shall give notice of refusal to amend the assessment as desired by such company and may revise the assessment to such amount as the Board may, according to the best of its judgement, determine and give notice of the revised assessment and of the tax payable together with notice of refusal to amend the revised assessment and, wherever requisite, any reference in this Act to an assessment or to an additional assessment shall be treated as a reference to an

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assessment or to an additional assessment as revised under the provisions of this proviso.

70. Errors and defects in assessment and notice

(1) No assessment, warrant or other proceeding purporting to be made in accordance with the provisions of this Act shall be quashed or deemed to be void or voidable, for want of form, or be affected by reason of a mistake, defect or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of this Act or any enactment amending the same, and if the company assessed or intended to be assessed or affected thereby is designated therein according to common intent and understanding.

(2) An assessment shall not be impeached or affected-

(a) by reason of a mistake therein as to-

(i) the name of a company liable or of a person in whose name a company is chargeable; or

(ii) the description of any profits; or

(iii) amount of tax charged;

(b) by reason of any variance between the assessment and the notice thereof:

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

PART XI

Appeals

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

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

76. Assessments to be final and conclusive

Where no valid objection or appeal has been lodged within the time limited by section 69, 72 or 75 of this Act as the case may be, against an assessment as regards

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the amount of the total profits assessed thereby, or where the amount of the total profits has been agreed to under subsection (5) of section 69 of this Act, or where the amount of such total profits has been determined on objection, revision under the proviso to subsection (5) of section 69 of this Act, or on appeal, the assessment as made, agreed to, revised or determined on appeal, as the case may be, shall be final and conclusive for all purposes of the Act as regards the amount of such total profits; and if the full amount of the tax in respect of any such final and conclusive assessment is not paid within the appropriate period or periods prescribed in this Act, the provisions thereof relating to the recovery of tax, and to any penalty under section 85 of this Act, shall apply to the collection and recovery thereof subject only to the set-off of the amount of any tax repayable under, any claim, made under any provision of this Act, which has been agreed to by the Board or determined on any appeal against a refusal to admit any such claim:

Provided that-

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

PART XII

Collection, recovery and repayment of tax

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

- (1) Notwithstanding any other provision of this section, every company shall, not later than three months from the commencement of each year of assessment, pay provisional tax of an amount equal to the tax paid by such company in the immediately preceding year of assessment in one lump sum.

[1996 No. 30.]

- (2) Tax charged by any assessment which is not or has not been the subject of an objection or appeal by the company shall be payable (after the deduction of any amount to be set-off for the purposes of collection under any provision of this Act) at the place stated in the notice of assessment within two months after service of such notice upon the company:

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[1996 No. 30.]

Provided that-

- (a) if such period of two months expires after the 14th day of December within the year of assessment for which the tax has been charged and the aggregate tax to be set-off, and of any tax paid for that year within such period, then payment of any balance of such tax may be made not later than that day;

[1993 No. 3. 1996 No. 30.]

- (b) where the assessment notice is served on the company within the approved period of payment of provisional tax, the tax shall be paid within two months after the end of the approved period, but if such period of two months expires after the 14th day of December within the year of assessment for which the tax has been charged, then the payment of any balance of such tax may be made not later than that day;

[1993 No. 3. 1996 No. 30.]

- (c) the Board in its discretion may extend the time within which payment is to be made.
- (3) Subject to the provisions of subsection (3) of section 74 of this Act, collection of tax in any case where notice of an objection or appeal has been given by the company shall remain in abeyance until such objection or appeal is determined, save that the company shall have paid the provisional tax as provided in subsection (1) of this section or the tax not in dispute, whichever is higher.
 - (4) Upon the determination of an objection or appeal, the Board shall serve upon the company a notice of the tax payable as so determined, and that tax shall be payable within one month of the date of service of such notice upon the company:

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

[1993 No. 3. 1996 No. 30.]

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

Provided that where-

- (a) such period of monthly instalments expires after the 30th day of November within the year of assessment for which the tax has been charged, the payment of any balance of the tax may be made not later than that day.
- (b) a request for instalmental payment has been made, the request shall be accompanied with proof of payment of the first instalment to the designated bank.

[1993 No. 3.]

- (6) The provisions of subsection (1) of this section shall not apply to a company that files self assessment for the year of assessment.

[1993 No. 3.]

- (7) Where a company is required to file a return within the time allowed under section 52 or specified under section 55 of this Act the tax as computed or shown in the return when filed shall be payable within two months from the date of filing the return, and the provisions of section 85 of this Act shall apply to the collection of the tax.

[1996 No. 30.]

- (8) Notwithstanding anything to the contrary in any law, income tax payable under sections 52, 53 and 55 of this Act shall be paid to the Board in the currency in which the income giving rise to the tax was derived and paid to the company making the return.

[1996 No. 30.]

78. Deduction of tax from interest, etc.

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

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(Cap.P8)

(2) The rate at which tax is to be deducted in this section shall be 10 per cent.

[1996 No. 30.]

(3) For the purposes of this section, person authorised to deduct tax includes govern - ment departments, parastatals, statutory bodies, institutions and other establishments approved for the operation of Pay As You Earn system.

(4) The tax, when paid over to the Board, shall be the final tax due from a non resident recipient of the payment.

(5) In accounting for the tax so deducted to the Board, the company shall state in writing the following particulars, that is to say-

- (a) the gross amount of the interest or royalty;
- (b) the name and address of the recipient;
- (c) and the amount of tax being accounted for.

79. Deduction of tax on rent

(1) Where any rent becomes due from or payable by one company to another company or to any person to whom the provisions of the Personal Income Tax Act apply, the company paying such rent shall, at the date when the rent is paid or credited, whichever first occurs, deduct there from tax at the rate prescribed under subsection (2) of this section and shall forthwith pay over to the Board the amount so deducted.

[Cap. P8.]

(2) The rate at which tax is to be deducted under this section shall be 10 percent.

[1996 No.30.]

(3) For the purposes of this section, person authorised to deduct tax includes Government departments, parastatals, statutory bodies, institutions and other establishments approved for the operation of Pay As You Earn system.

(4) The tax, when paid over to the Board, shall be the final tax due from a non resident recipient of the payment.

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- (5) In accounting for the tax so deducted to the Board, the company shall state in writing the following particulars, that is to say-
- (a) the gross amount of the rent payable per annum;
 - (b) the name and address of the recipient and the period in respect of which such rent has been paid or credited;
 - (c) the address and accurate description of the property concerned; and
 - (d) the amount of tax being accounted for.
- (6) Any reference to rent in this section shall be construed whenever necessary as including payments for the use or hire of any equipment, payments for charter vessels, ship or aircraft and all such other payments for the use of or hire of movable and immovable property.

80. Deduction of tax from dividend

- (1) Where any dividend or such other distribution becomes due from or payable by a Nigerian company to any other company or to any person to whom the provisions of the Personal Income Tax Act apply, the company paying such dividend or making such distribution shall, at the date when the amount is paid or credited, whichever first occurs; deduct therefrom tax at the rate prescribed under subsection (2) of this section and shall forthwith pay over to the Board the amount so deducted.

[Cap. P8.]

- (2) The rate at which tax is to be deducted under this section shall be 10 percent.

[1996 No. 30.]

- (3) Dividend received after deduction of tax prescribed in this section shall be regarded as franked investment income of the company receiving the dividend and shall not be charged to further tax as part of the profits of the recipient company. However, where such income is re-distributed and tax is to be accounted for on the gross amount of the distribution in accordance with subsection (1) of this section, the company may set off the withholding tax which it has itself suffered on the same income.

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- (4) The tax, when paid over to the Board, shall be the final tax due from a nonresident recipient of the payment.
- (5) In accounting for the tax so deducted to the Board, the company shall state in writing the following particulars, that is to say-
 - (a) the gross amount of the dividend or such other distribution;
 - (b) the name and address of the recipient;
 - (c) the accounting period or periods of the company in respect of the profits out of which the dividend or distribution is declared to be payable and the date on which payment is due; and
 - (d) the amount of tax so deducted.

81. Deduction of tax at source

- (1) Income tax assessable on any company, whether or not an assessment has been made, shall, if the Board so directs, be recoverable from any payments made by any person to such company.
- (2) Any such direction may apply to any person or class of persons specified in such direction, either with respect to all companies or a company or class of companies, liable to payment of income tax.
- (3) Any direction under subsection (1) of this section shall be in writing addressed to the person or be published in the Federal Gazette and shall specify the nature of payments and the rate at which tax is to be deducted.
- (4) In determining the rate of tax to be applied to any payments made to a company, the Board may take into account-
 - (a) any assessable profits of that company for the year arising from any other source chargeable to income tax under this Act; and
 - (b) any income tax or arrears of tax payable by that company for any of the six preceding years of assessment.
- (5) Income tax recovered under the provisions of this section by deduction from payments made to a company shall be set off for the purpose of collection against tax charged on such company by an assessment.

[1993 No. 3, 2007 No. 56, s. 19 (a).]

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- (6) Every person required under any provisions of this Act to make any deduction from payments made to any company shall account to the Board in such manner as the Board may prescribe for the deduction so made.
- (7) Any excess payment arising from compliance with sections 60, 61, 62 and 63 of this Act over the assessment under section 25 of this Act shall be refunded by the Service within 90 days of the assessment if duly thed with the option to set off against future taxes.

[2007 No. 56, s. 19 (b).]

- (8) The Minister of Finance on the advice of the Board may make regulations for the carrying out of the provisions of this section.

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

82. Penalty for failure to deduct tax

Any person who being obliged to deduct any tax under section 78, 79, 80 or 81 of this Act fails to deduct or having deducted fails to pay to the Board within twenty-one days from the date the amount was deducted or the time the duty to deduct arose, shall be guilty of an offence and shall be liable to a penalty of 100 per cent per annum of the tax withheld or not remitted, as the case may be.

[1996 No. 31, 2007 No. 56, s. 20.]

83. Accountant-General of the Federation to deduct tax

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

[1993 No. 3.]

84. Payment of tax deducted

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

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[1993 No. 3.]

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

- (1) Subject to the provisions of subsection (3) of this section, if any tax is not paid within the periods prescribed in section 77 of this Act-
 - (a) a sum equal to ten *per centum* per annum of the amount of the tax payable shall be added thereto, and the provisions of this Act relating to the collection and recovery of tax shall apply to the collection and recovery of such sum;
 - (b) the tax due shall carry interest at bank lending rate from the date when the tax becomes payable until it is paid, and the provisions of this Act relating to collection and recovery of tax shall apply to the collection and recovery of the interest;

[1991 No. 63.]

- (c) the Board shall serve a demand note upon the company or person in whose name the company is chargeable and if payment is not made within one month from the date of the service of such demand note, the Board may proceed to enforce payment as hereinafter provided;
 - (d) an addition imposed under this subsection shall not be deemed to be part of the tax paid for the purpose of claiming relief under any of the provisions of this Act.
- (2) Any company which without lawful justification or excuse, the proof whereof shall lie on the company, fails to pay the tax within the period of one month prescribed in paragraph (b) of subsection (1) of this section, shall be guilty of an offence against this Act.
- (3) The Board may, for any good cause shown, remit the whole or any part of the addition due under subsection (1) of this section.

86. Power to distrain for non-payment of tax

- (1) Without prejudice to any other power conferred on the Board for the enforcement of payment of tax due from a company, where an assessment has become final and conclusive and a demand note has, in accordance with the provisions of this Part of this Act, been served upon the company or upon the person in whose name the company is chargeable, then, if payment of the tax is not made within the time

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limited by the demand note, the Board may in the prescribed form, for the purpose of enforcing payment of the tax due-

- (a) distrain the taxpayer by his goods or other chattels, bonds or other securities;
 - (b) distrain upon any land, premises, or place in respect of which the taxpayer is the owner and, subject to the following provisions of this section, recover the amount of tax due by sale of anything so distrained.
- (2) The authority to distrain under this section shall be in the form contained in the Fourth Schedule to this Act, and such authority shall be sufficient warrant and authority to levy by distress the amount of tax due.

[Fourth Schedule.]

- (3) For the purposes of levying any distress under this section, any officer authorised in writing by the Board may execute any warrant of distress and if necessary break open any building or place in the day time for the purpose of levying such distress, and he may call to his assistance any police officer and it shall be the duty of that police officer when so required to aid and assist in the execution of any warrant of distress and in levying the distress.
- (4) Things distrained under this section may, at the cost of the taxpayer, be kept for fourteen days and at the end of that time if the amount due in respect of the tax and the cost and charges of and incidental to the distress are not paid, they may, subject to subsection (6) of this section, be sold at any time thereafter.
- (5) Out of the proceeds of any such sale there shall, in the first place, be paid the cost or charges of and incidental to the (sale and keeping of the) distress, and disposal there under and in the next place the amount due in respect of the tax; and the balance (if any) shall be payable to the taxpayer upon demand being made by him or on his behalf within one year of the date of the sale.
- (6) Nothing in this section shall be construed so as to authorise the sale of any immovable property without an order of a High Court, made on application in such form as may be prescribed by rules of court.

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

- (1) Tax may be sued for and recovered in a court of competent jurisdiction at the place, stated in the notice of assessment as being the place at which payment should be made, by the Board in its official name with full cost of action from

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the company charged therewith as a debt due to the Government of the Federation.

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

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

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

[1996 No. 30.]

- (2) Where the Board has obtained judgment against a company for non-payment of tax and the judgment debt remains unpaid six months after the judgment, the

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court may, on the application of the Board, issue a bench warrant on a director or other officer of the company to compel the director or officer to appear in court and show cause why the judgment debt has not been paid.

[1996 No. 30.]

89. Remission of tax

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

90. Relief in respect of error or mistake

- (1) If any company which has paid tax for any year of assessment alleges that any assessment made upon it for that year was excessive by reason of some error or mistake in the return, statement or account made by or on behalf of the company for the purposes of the assessment, it may, at any time not later than six years after the end of the year of assessment within which the assessment was made, make an application in writing to the Board for relief.
- (2) On receiving any such application, the Board shall inquire into the matter and shall, subject to the provisions of this section, give by way of repayment of tax such relief in respect of the error or mistake as appears to be reasonable and just:
Provided that no relief shall be given under this section in respect of an error or mistake as to the basis on which the liability of the applicant ought to have been computed where the return, statement or account was in fact made on the basis or in accordance with the practice of the Board generally prevailing at the time when the return, statement or account was made.
- (3) In determining any application under this section, the Board shall have regard to all the relevant circumstances of the case, and in particular shall consider whether the granting of relief would result in the exclusion from charge to tax of any part of the profits of the company, and for this purpose the Board may take into consideration the liability of the company and assessments made upon it in respect of other years.
- (4) A determination by the Board under this section shall be final and conclusive.

91. Repayment of tax

- (1) Save as is otherwise in this Act expressly provided, no claim for repayment of tax shall be allowed unless it is made in writing within six years after the end of the year of assessment to which it relates.

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- (2) The Board shall give a certificate of the amount of any tax to be repaid under any of the provisions of this Act or under any order of a court of competent jurisdiction and upon the receipt of the certificate, the Accountant-General of the Federation shall cause repayment to be made in conformity therewith.

PART XIII

92. Penalty for offences

- (1) Any person guilty of an offence against this Act or any person who contravenes or fails to comply with any of the provisions of this Act or of any rule made there under for which no other penalty is specifically provided, shall be liable on conviction to a fine of N420,000.00, and without prejudice to section 55 (4) or (5), where such offence is the failure to furnish a statement or information or to keep records required, a further sum of N2,000.00 for each and every day during which such failure continues, and in default of payment to imprisonment for six months, the liability for such further sum to commence from the day following t he conviction, or from such day thereafter as the court may order.

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[2007 No. 56, s. 21 (a) (i) and (ii).] —

- (2) Any person who-

- (a) fails to comply with the requirements of a notice served on him under this Act;
or
- (b) without sufficient cause fails to attend in answer to a notice or summons served on him under this Act or having attended fails to answer any question lawfully put to him,

shall be guilty of an offence against this Act.

- (3) Notwithstanding any of the provisions of the Criminal Procedure Act or any other applicable law, a magistrate may dispense with personal attendance of the defendant if he pleads guilty in writing or so pleads by a legal practitioner.

[Cap. C41.]

- (4) In the case of failure by a company to comply with the requirements of any notice given by the Board under the provisions of section 55 or 58 of this Act for the purpose of the tax to be charged upon the company for any year of assessment, the Board may, in lieu of the institution of proceedings under subsection (2) of this

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section, impose a penalty upon the company of an amount equal to the tax chargeable upon the company for the preceding year of assessment:

Provided that-

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

[2007 No. 56, s. 21 (b).]

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

94. False statements and returns

- (1) Any person other than a company who-
 - (a) for the purpose of obtaining any deduction, set-off, relief or repayment in respect of tax for any company, or who in any return, account or particulars made or furnished with reference to tax, knowingly makes any false statement or false representation; or
 - (b) aids, abets, assists, counsels, incites or induces any other person -
 - (i) to make or deliver any false return or statement under this Act; or
 - (ii) to keep or prepare any false accounts or particulars concerning an d profits on which tax is payable under this Act; or
 - (iii) unlawfully to refuse or neglect to pay tax,

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shall be guilty of an offence and shall be liable on conviction to a fine of N1,000 or to imprisonment for five years, or to both such fine and imprisonment.

- (2) The Board may compound any offence under this section and with the leave of the court may before judgment stay or compound any proceedings thereunder.

95. Penalties for offences by authorised and unauthorised persons

Any person who-

- (a) being a person appointed for the due administration of this Act or employed in connection with the assessment and collection of the tax who-

- (i) demands from any company an amount in excess of the authorised assessment of the tax; or
- (ii) withholds for his own use or otherwise any portion of the amount the tax collected; or
- (iii) renders a false returns, whether orally or in writing, of the amount of tax collected or received by him; or
- (iv) defrauds any person, embezzles any money, or otherwise uses his position as to deal wrongfully with the Board; or

- (b) not being authorised under this Act to do so, collects or attempts to collect the tax under this Act,

shall be guilty of an offence and be liable on conviction to a fine of N600 or to imprisonment for three years or to both such fine and imprisonment.

96. Tax to be payable notwithstanding proceedings for penalties

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

97. Prosecution to be with the sanction of the Board

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

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98. Savings for criminal proceedings

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

99. Place of an offence

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

[1996 No. 30.]

PART XIV

Miscellaneous

100. Power to alter rate of tax, etc.

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

[2007 No. 56, s. 23.]

101. Tax clearance certificate

- (1) Whenever the Board is of the opinion that tax assessed on profits or income of a person has been fully paid or that no tax is due on such profits or income, it shall issue a tax clearance certificate to the person within two weeks of the demand for such certificate by that person or, if not, give reasons for the denial.

[1993 No. 3.]

- (2) Any Ministry, department or agency of Government or any commercial bank with whom any person has any dealing with respect to any of the transactions mentioned in subsection (4) of this section, shall demand from such person a tax clearance certificate of three years immediately preceding the current year of assessment.

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- (3) A tax clearance certificate shall disclose in respect of the last three years of assessment-
- (a) total profits or chargeable income;
 - (b) tax payable;
 - (c) tax paid;
 - (d) tax outstanding or alternatively a statement to the effect that no tax is due.
- (4) The provisions of subsection (1) of this section shall apply in relation to the following, that is-
- (a) application for government loan for industry or business;
 - (b) registration of motor vehicles;
 - (c) application for firearms licence;
 - (d) application for foreign exchange or exchange control permission to remit funds outside Nigeria;
 - (e) application for certificate of occupancy;
 - (f) application for award of contracts by Government and its agencies and, registered companies;
 - (g) application for trade or business licence;

[2007 No. 56, s. 24 (a).]

- (h) application for approval of building plans;
- (i) application for transfer of real property;
- (j) application for import or export licence;
- (k) application for plot of land;
- (l) application for agent licence;

[2007 No. 56, s. 24 (b).]

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- (m) application for pools or gaming licence;
- (n) application for registration as a contractor;
- (o) application for distributorship;
- (p) stamping of guarantor's form for Nigerian passport;
- (q) application for registration of a limited liability company or of a business name;
- (r) application for allocation of market stalls;
- (s) stamping of statement of the nominal share capital of a company to be registered and any increase in the registered share capital of any company; and

[1991 No. 21.]

- (t) stamping of statement of the amount of loan capital.

[1991 No. 21.]

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

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

[1993 No. 3.]

102. Conduct of proceedings

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

103. Power to pay reward

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

104. Repeals, transitional provisions, etc.

- (1) Subject to this section and without prejudice to the provisions of section 6 of the Interpretation Act, the Companies Income Tax Act 1961 shall, except where other provisions are made in that behalf in this Act, cease to have effect with respect to tax on the income or profits of companies for all years of assessment beginning after the 31st day of March 1977.

[Cap. 123. 1961 No. 22.]

- (2) Anything made or done, or having effect as if made or done, before the date of commencement of this Act under or pursuant to any provision of the Companies Income Tax Act 1961 by the Board and having any continuing or resulting effect with respect to the taxation of the profits of a company or any matter connected therewith, shall be treated and for all purposes shall have effect as if it were made or done by the Board under the corresponding provision of this Act.
- (3) All rules, orders, notices or other subsidiary legislation made under the Companies Income Tax Act 1961 shall continue to have effect as if made under the corresponding provisions of this Act.

[1961 No. 22.]

- (4) All references in the Personal Income Tax Act and in any other enactment to provisions of the Companies Income Tax Act 1961 shall be construed as references to the corresponding provisions of this Act.

[Cap. P8. 1961 No. 22.]

105. Interpretation

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

“Board” means the Federal Board of Inland Revenue referred to in section 1 of this Act;

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

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

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

“Minister” means the Minister charged with responsibility for finance;

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

[Cap. C20]

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

[1993 No.3.]

“persons” includes a company or body of persons;

“tax” means the tax imposed by this Act;

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

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

106. Short title and application

(1) This Act may be cited as the Companies Income Tax Act.

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

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SCHEDULES

FIRST SCHEDULE

[Section 3 (4).]

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

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

[Cap. 17.]

- (c) the powers of the Board to decide to take proceedings under subsection (3) of section 6 or to take or sanction proceedings under section 97 of this Act;
- (d) the power of the Board to consider anything necessary under subsection (2) of section 3 of this Act;
- (e) the power of the Board to authorise under subsections (3) and (4) of section 3 of this Act, shall be delegated to any other person.

SECOND SCHEDULE

Capital allowances

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

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TABLE I

Initial allowances

TABLE II

Annual allowances

1. Interpretation

(1) For the purposes of this Schedule-

“**basis period**” has the meaning assigned to it by the following provisions of this definition-

(a) in the case of company to or on which any allowance of charge falls to be made in accordance with the provisions of this Schedule, its basis period for the year of assessment is the period by reference to the profits of which any assessable profits for that year fall to be computed under the provisions of section 29 of this Act;

(b) such profits mean profits in respect of the trade or business in which there was used an asset in connection with which such allowance or charge falls to be made:

Provided that, in the case of any such trade or business-

(i) where two basis periods overlap, the period common to both shall be deemed, except for the purpose of making an annual allowance, to fall in the basis period ending at the earlier date and in no other basis period;

(ii) where two basis periods coincide, they shall be treated as overlapping, and the basis period for the earlier year of assessment shall be treated as ending before the end of the basis period for the later year of assessment;

(iii) where there is an interval between the end of the basis period for one year of assessment and the basis period for the next year of assessment, then unless the second-mentioned year of assessment is the year in which, for the purposes of subsection (4) of section 29, such company permanently ceases to carry on the trade or business, the interval shall be deemed to be part of the second basis period; and

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(iv) where there is an interval between the end of the basis period for the year of assessment preceding that in which the trade or business permanently ceases, for the purposes of subsection (4) of section 29, to be carried on by such company and the basis period for the year in which it so ceases, the interval shall be deemed to form part of the first basis period,

“**concession**” includes a mining right and a mining lease;

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

(a) where, with the consent of the lessor, a lease of any asset remains in possession thereof after the termination of the lease without a new lease being granted to him, that lease shall be deemed for the purposes of this Schedule to continue so long as he remains in possession as aforesaid; and

(b) where, on the termination of a lease of any asset, a new lease of that asset is granted to the lessee, the provisions of this Schedule shall have effect as if the second lease were a continuation of this first lease;

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

(a) capital expenditure (hereinafter called —qualifying plant expenditure) incurred on plant, machinery or fixtures;

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

(c) capital expenditure (hereinafter called —qualifying mining expenditure) incurred in connection with, or in preparation for, the working of a mine, oil well or other source of mineral deposits of a wasting nature (other than expenditure which is included in sub-paragraph (a) of this definition);

(d) capital expenditure (hereinafter called —qualifying plantation expenditure) incurred in connection with a plantation-

(i) on the clearing of land for planting;

(ii) on planting (other than replanting);

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- (iii) on the construction of any works {or buildings which are likely to be of little or no value when the source is no longer worked or, where the source is worked under a concession, which are likely to become valueless when the concession comes to an end to the company working the source immediately before the concession comes to an end;
 - (iv) on the acquisition of, or of rights in or over, the deposits or on the purchase of information relating to the existing and extent of the deposits;
 - (v) on searching for or on discovering and testing deposits, or winning access thereto;
- (e) and for the purposes of this definition, where-
- (i) expenditure is incurred for the purposes of a trade or business by a company about to carry on such trade or business; and
 - (ii) that expenditure is incurred in respect of an asset owned by that company if that expenditure would have fallen to be treated as qualifying expenditure if it had been incurred by that company on the first day on which it carries on that trade or business,
- that expenditure shall be deemed to be qualifying expenditure incurred by it on that day;
- (f) capital expenditure, that is, qualifying research and development expenditure, incurred on equipment and facilities, patents, licences, secret formula or process or for information concerning industrial, commercial or scientific process; technical feasibility of products or processes and purchases, searching for and discovering and testing products or process for future market or use; and such other similar cost which has not brought into existence any asset;
 - (g) capital expenditure, that is, qualifying agricultural expenditure incurred on plant in use in agricultural trades and businesses within the meaning of section 11 of this Act;
 - (h) capital expenditure, that is, qualifying public transportation, motor vehicle expenditure, incurred on a fleet of buses of not less than three used for public transportation;
 - (i) capital expenditure (hereinafter called qualifying public transportation (intercity) new mass transit coach expenditure) incurred on new mass transit coach of 25 seats and above operated by a recognised corporate private establishment.

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[1993 No. 3.]

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

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

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

2. Provisions relating to mining expenditure

- (1) For the purposes of this Schedule, where-
- (a) qualifying mining expenditure has been incurred on the purchase of information relating to the existence and extent of the deposits or on searching for or on discovering and testing deposits or winning access thereto and such expenditure has been incurred for the purposes of a trade or business carried on by the company incurring the expenditure, or expenditure has been incurred for the purpose of trade or business about to be carried on by the company incurring the expenditure and such expenditure would have fallen to be treated as such qualifying mining expenditure if it had been incurred in a basis period; and
 - (b) such expenditure has not brought into existence any asset; and
 - (c) such trade or business consists of the working of a mine, oil well or other source of mineral deposits of a wasting nature,

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then such expenditure shall be deemed to have brought into existence an asset owned by the company incurring the expenditure and in use for the purpose of such trade or business.

- (2) For the purpose of this Schedule, an asset in respect of which qualifying mining expenditure has been incurred by any company for the purposes of a trade or business carried on by it, and which has not been disposed of, shall be deemed not to cease to be used for the purpose of that trade or business so long as such company continues to carry on that trade or business.
- (3) So much of any qualifying mining expenditure incurred on the acquisition of rights in or over mineral deposits and on the purchase of information relating to the existence and extent of the deposits as exceeds the total of the original cost of acquisition of such rights and of the cost of searching for, discovering and testing such deposits prior to the purchase of such information, shall be left out of account for the purposes of this Schedule:
- (4) Provided that where such costs were originally incurred by a company which carried on a trade or business consisting, as to the whole or part thereof, in the acquisition of such rights or information with a view to the assignment or sale thereof, the price paid on such assignment or sale shall be substituted for the aforementioned costs.

3. Owner and meaning of “relevant interest”

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

4. Sale of buildings

Where capital expenditure has been incurred on the construction of a building, structure or works and thereafter the relevant interest therein is sold, any company which buys

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that interest shall be deemed, for all the purposes of this Schedule except the granting of initial allowances, to have incurred, on the date when the purchase price became payable, capital expenditure on the construction thereof equal to the price paid by it for such interest or to the original cost of construction whichever is the less:

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

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

5. Qualifying industrial building expenditure

For the purpose of this Schedule-

(a) where but for this paragraph a company is entitled to an annual allowance in respect of qualifying building expenditure in respect of an asset in use, for the purposes of a trade or business carried on by it at the end of its basis period for any year of assessment, if that asset is an industrial building or structure in use as such at the end of its basis period for any such year then, in lieu of such allowance and qualifying building expenditure, the qualifying expenditure in respect of that asset shall be taken to mean —qualifying industrial building expenditure for any allowances to be made to such company, in respect of that qualifying expenditure, for that year; and

(b) “**industrial building or structure**” means any building or structure in regular use-

(i) as a mill, factory, mechanical workshop, or other similar building, or as a structure used in connection with any such buildings;

(ii) as a dock, port, wharf, pier, jetty or other similar building structure;

(iii) for the operation of a railway for public use or for a water or electricity undertaking for the supply of water or electricity for public consumption; and

(iv) for the running of a plantation or for the working of a mine or other source of mineral deposits of a wasting nature.

6. Initial allowances

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- (1) Subject to the provisions of this Schedule, where in its basis period for a year of assessment a company owning any asset has incurred in respect thereof qualifying expenditure wholly, exclusively, necessarily and reasonably for the purposes of a trade or business carried on by it, there shall be made to that company for the year of assessment in its basis period for which that asset was first used for the purposes of that trade or business an allowance (in this Schedule called —art initial allowance) at the appropriate rate *per centum*, set forth in Table I to this Schedule, of such expenditure.

- (2) Where capital expenditure is incurred on the purchase of an asset and either purchaser is a person over whom the seller has control, or the seller is a person over whom the purchaser has control, or some other person has control over both the purchaser and the seller, then, the amount of any initial allowance to be made in respect of such expenditure shall be such an amount as the Board may determine to be just and reasonable having regard to all the circumstances relating to such asset and control:

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

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

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

[1996 No. 32.]

7. Annual allowances

- (1) Subject to the provisions of this Schedule, where in its basis period for a year of assessment, a company owning any asset has incurred in respect thereof qualifying expenditure wholly, exclusively, necessarily and reasonably for the purpose of a trade or business carried on by it, whether or not an initial allowance was made in respect of that qualifying expenditure, there shall be made to that company for each year of assessment, in its basis period for which that asset was used for the purpose of that trade or business, an allowance (hereinafter called —an annual allowance) at the rate specified in respect thereof in Table 11 of this Schedule of such expenditure after the deduction of initial allowance where applicable:

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

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

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

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

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

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

9. Balancing allowances

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

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

10. Balancing charges

Subject to the provisions of this Schedule, where in its basis period for a year of assessment a company owning an asset, which has incurred in respect thereof qualifying expenditure wholly, exclusively, necessarily and reasonably for the purposes of a trade or business carried on by it, disposes of that asset, a charge (hereinafter called —a balancing

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chargel) shall be made on that company for that year of the excess of the value of that asset, at the date of its disposal, over the residue of that expenditure at that date:

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

[Fourth Schedule. Cap. P8.]

11. Residue

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

12. Meaning of “disposed of”

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

- (a) a building, structure or works of a permanent nature is disposed of if any of the following events occur-
 - (i) the relevant interest therein is sold; or
 - (ii) that interest, being an interest depending on the duration of a concession, comes to an end on the coming to an end of that concession; or
 - (iii) that interest, being a leasehold interest, comes to an end otherwise than on the person entitled thereto acquiring the interest which is reversionary thereon; or
 - (iv) the building, structure or works of a permanent nature are demolished or destroyed or, without being demolished or destroyed, cease altogether to be used for the purposes of a trade or business carried on by the owner thereof;

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- (b) plant, machinery or fixtures are disposed of if they are sold, discarded or cease altogether to be used for the purposes of a trade or business carried on by the owner thereof;

- (c) assets in respect of which qualifying mining expenditure is incurred are disposed of if they are sold or if they cease to be used for the purposes of the trade or business of the company incurring the expenditure either on such company ceasing to carry on such trade or business or on such company receiving insurance or compensation monies therefore.

13. Value of an asset

- (1) The value of an asset at the date of its disposal shall be the net proceeds of the sale thereof or of the relevant interest therein, or if it was disposed of without being sold, the amount which, in the opinion of the Board, such asset or the relevant interest therein, as the case may be, would have fetched if sold in the open market at that date, less the amount of any expenses which the owner might reasonably be expected to incur if the asset were so sold.

- (2) For the purposes of this paragraph, if an asset is disposed of in such circumstances that insurance or compensation monies are received by the owner thereof, the asset or the relevant interests therein, as the case may be, shall be treated as having been sold and as though the net proceeds of the insurance or compensation monies were the net proceeds of the sale thereof.

- (3) So much of sub-paragraph (1) of this paragraph as relates to the circumstances for determining the value of an asset by reference to the disposal of such asset, other than by way of sale, shall have effect-
 - (a) in relation to any asset or the relevant interest therein disposed of not being by way of bargain made at arm's length; or

 - (b) where the sale is between persons who are related to each other or between persons both of whom are controlled by some other person or one of whom has control over the other.

14. Apportionment

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

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properly attributable to the first mentioned asset shall, for the purposes of this Schedule, be deemed to be the value of or the price paid for that asset, as the case may be.

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

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

15. Part of an asset

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

16. Extension of meaning of “in use”

- (1) For the purposes of this Schedule, an asset shall be deemed to be in use during a period of temporary disuse.
- (2) For the purposes of paragraphs 6, 7 and 8 of this Schedule-
 - (a) an asset in respect of which qualifying expenditure has been incurred by the company owning such asset for the purposes of a trade or business carried on by it shall be deemed to be in use, for the purposes of that trade or business, between the dates hereinafter mentioned, where the Board is of the opinion that the first use to which the asset will be put by the company incurring such expenditure will be for the purposes of that trade or business;
 - (b) the said dates shall be taken to be the date on which such expenditure was incurred and the date on which the asset is in fact first put to use:
- (3) Provided that where any allowances have been given in consequence of this sub-paragraph and the first use to which such asset is put is not for the purposes of such trade or business, all such additional assessments shall be made as may be necessary to counteract the benefit obtained from the giving of any such allowances.

17. Exclusion of certain expenditure

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

18. Application of lessor

(1) Where a company owning an asset-

- (a) has incurred capital expenditure in respect thereof; or
- (b) leases that asset to any person under an operating lease contract for use wholly, exclusively, necessarily and reasonably for the purpose of a trade or business carried on by such person,

the provisions of this Schedule shall apply, as though such expenditure were incurred for the purpose of a trade or business carried on by the owner or lessor and as though the owner or lessor were using the asset for the purpose of such last-mentioned trade or business in the way in which and for the period or periods during which the asset is in fact in the first-mentioned trade or business.

[1993 No. 3.]

(2) Where however an asset is acquired by any hirer or lessee under a finance lease contract the terms of which provide for the transfer of ownership, risks and reward to the hirer or lessee, the provisions of this Schedule shall apply in the same way as it applies to an asset acquired by any owner or lessor of an asset for the purpose of his trade or business, but shall so apply subject to the following modifications that is to say-

- (a) the qualifying expenditure within the provisions of this Schedule shall in relation to any asset so acquired under that contract, be limited to the amount of the total lease payments due from hirer or lessee, during his basis period excluding in the computation of such qualifying expenditure any interest or charges payable under the contract;
- (b) any reference in this subparagraph to any owner or lessor of any asset shall be construed as including a reference to a hirer or lessee under the finance lease contract and as excluding a reference to the person leasing the asset to the hirer or lessee under the contract.

[1993 No. 3.]

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- (3) Subject to the provisions of this Schedule, where a company has incurred capital expenditure on plant and machinery or acquires same by virtue of sub-paragraph (2) of this paragraph, wholly, exclusively, necessarily and reasonably for the purpose of a trade or business carried on by it, there shall be due an investment allowance of ten per cent of such expenditure.

[1993 No. 3.]

- (4) For the purposes of this Schedule the terms “**operating lease**” and “**finance lease**” shall have the meanings ascribed to them by the Statement of Accounting Standard on Leases.

[1993 No. 3.]

- (5) For the purposes of this paragraph in relation to the trade or business which an owner is to be treated as carrying on, his basis period for any year of assessment shall be taken to be the year immediately preceding that year of assessment.
- (6) When a company owning an equipment has incurred capital expenditure in respect thereof for the purposes of leasing that equipment for the use wholly, exclusively, necessarily and reasonably for the purposes of a trade or business carried on or about to be carried on by a person, the provisions of this Schedule shall apply to all such leases.
- (7) Subject to the provisions of this Schedule where a company has incurred expenditure wholly, exclusively, necessarily and reasonably for the purposes of agricultural plant and equipment, there shall be due to that company an investment allowance of ten per cent of such expenditure.

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

- (1) The following provisions of this paragraph shall apply where either or both of the following conditions apply with respect to any asset-
- (a) the owner of the asset has incurred in respect thereof qualifying expenditure partly for the purposes of a trade or business carried on by him and partly for other purposes;
 - (b) the asset in respect of which qualifying expenditure has been incurred by the owner thereof is used partly for the purposes of a trade or business carried on by such owner and partly for other purposes.
- (2) Any allowances and any charges which would be made if both such expenditure were incurred wholly, exclusively, necessarily and reasonably for the purposes of such trade

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or business and such asset were used wholly and exclusively for the purposes of such trade or business shall be computed in accordance with the provisions of this Schedule.

- (3) So much of the allowances and charges computed in accordance with the provisions of sub-paragraph (2) of this paragraph shall be made as in the opinion of the Board is just and reasonable having regard to all the circumstances and to the provisions of this Schedule.

20. Disposal without change of ownership

- (1) Where an asset in respect of which qualifying expenditure has been incurred by the owner thereof has been disposed of in such circumstances that such owner remains the owner thereof, then, for the purposes of determining whether and, if so, in what amount, any annual or balancing allowance or balancing charge shall be made to or on such owner in respect of his use of the asset after the date of such disposal-
- (a) qualifying expenditure incurred by such owner in respect of such asset prior to the date of such disposal shall be let out of account; but
- (b) such owner shall be deemed to have bought such asset immediately after such disposal for a price equal to the residue of such qualifying expenditure at the date of such disposal, increased by the amount of any balancing charge or decreased by the amount of any balancing allowance made as a result of such disposal.

21. Meaning of “allowances made”

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

22. Claims for allowances

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

23. Election in double taxation cases

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

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as the Board may allow, that that allowance shall be calculated at a lesser rate than that provided for in paragraph 6 or 7 of this Schedule and in making such election it shall specify the amount of such lesser rate.

- (2) Where an election has been made under this paragraph, the amount of such lesser rate shall be taken to be the appropriate rate in relation to that allowance for all the purposes of this Schedule.

24. Manner of making allowances and charges

- (1) The amount of any charge to be made on a company under the provisions of this Schedule shall be made by making an addition to its assessable profits for the year of assessment for which such charge falls to be made under the provisions of this Schedule:

Provided that where any such charge falls to be made on any company for any year of assessment, whenever necessary by reason of the assessment on that company having become final and conclusive for that year or for other sufficient reason, the Board may make an additional assessment upon such company in respect of the amount of such charge.

- (2) Subject to the provisions of this paragraph, the amount of any allowance to be made to a company under the provisions of this Schedule shall be made by making a deduction from the remainder of its assessable profits for the year of assessment for which such allowance falls to be made under the provisions of this Schedule.
- (3) For the purposes of this paragraph, any such remainder for a year of assessment shall be ascertained by first giving full effect to the provisions of sub-paragraph (1) of this paragraph and to the provisions of section 31 relating to the deduction of the amount of any loss.
- (4) Where full effect cannot be given to any deduction to be made under subparagraph (2) of this paragraph for any year of assessment owing to there being no such remainder for that year, or owing to the remainder for that year being less than such deduction, the deduction or part of the deduction to which effect has not been given, as the case may be, shall, for the purpose of ascertaining total profits (of the company entitled to such deduction) under section 31 for the following year, be deemed to be a deduction for that year, in accordance with the provisions of sub-paragraph (2) of this paragraph, and so on for succeeding years.
- (5) Where a company is entitled to a deduction under the preceding sub-paragraph, or to a deduction in respect of a balancing allowance, in respect of an asset used in a trade or business carried on by it, for a year of assessment in which that trade or business

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permanently ceases to be carried on by it and full effect cannot be given to any such deduction for that year owing to there being no such remainder of assessable profits for that year, or owing to the remainder of its assessable profits for that year being less than such deduction, that deduction or the part to which effect has not been given, as the case may be, may, on a claim being made by such company, be given by way of deduction from any remainder of its assessable profits for the preceding year of assessment, and so on for other preceding years, so, however, that no such deduction shall be given by virtue of this sub-paragraph for any year earlier than the fifth year before the first-mentioned year of assessment:

Provided that where any relief is given under this sub-paragraph in respect of any such deduction, the provisions of the preceding sub-paragraph shall cease to have effect in respect of that deduction for any year of assessment subsequent to the year of assessment in which such trade or business ceases.

- (6) Where any deduction falls to be given under the provisions of the preceding sub-paragraph for any preceding years of assessment, whenever necessary, by reason of any assessments for those years having become final and conclusive, or for other sufficient reason, the Board, with respect to each such year, may make such repayment or set-off of the tax, or of any part of such tax, paid or charged for any such year as may be appropriate, in lieu of making any such deduction.
- (7) In giving effect to the provisions of sub-paragraph (2) of this paragraph, the amount of capital allowances to be deducted from assessable profits in any year of assessment shall not exceed $\frac{66\frac{2}{3}}{100}$ per cent of such assessable profits of a company, but any company in the agro-allied industry or which is engaged in the trade or business of manufacturing, shall not be affected by the restriction under this sub-paragraph.

[1991 No. 21.]

- (8) In this paragraph-

“**company in the agro-allied industry**” is a company to which subsection (9) of section 11 of this Act applies.

TABLE I

Initial allowances
[1996 No. 32.]

Qualifying Expenditure in respect of:	Rate per cent
Building Expenditure	15

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Industrial Building Expenditure	15
Mining Expenditure	95
Plant Expenditure (excluding Furniture and Fittings)	50
Manufacturing Industrial Plant Expenditure	50
Construction Plant Expenditure (excluding Furniture and Fittings)	50
Public Transportation Motor Vehicle	95
Ranching and Plantation Expenditure	30
Plantation Equipment Expenditure	95
Research and Development Expenditure	95
Motor Vehicle Expenditure	50
Agricultural Plant Expenditure	95
Housing Estate Expenditure	50
Furniture and Fitting Expenditure	25

TABLE II

Annual allowances
[1996 No.32.]

Qualifying Expenditure in respect of:	Rate per cent
Qualifying Agricultural Production	nil
Qualifying Building Expenditure.....	10
Qualifying Furniture and Fittings	20

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Qualifying Industrial Building Expenditure	10	
Qualifying Mining Expenditure	nil	
Qualifying Plant Expenditure	25	
Qualifying Plantation Equipment Expenditure	nil	
Qualifying Ranching and Plantation Expenditure	50	
Qualifying Housing Estate Expenditure	25	
Qualifying Public Transportation (inter-City) new Mass Expenditure.....	Transit nil	Coach nil
Qualifying Motor Vehicles-Others	25	
Qualifying Research and Development	nil	

THIRD SCHEDULE [Section 11(6)]

Tax exemption on certain interests

TABLE I

Table of tax exemption on interest on foreign loan

<i>Repayment period including Moratorium</i>	<i>Grace period</i>	<i>Tax exemption allowed</i>
Above 7 years	Not less than 2 years	100%
5-7 years	Not less than 18 months	70%
2-4 years	Not less than 12 months	40%
Below 2 years.....	Nil	Nil

FOURTH SCHEDULE [Section 86]

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Warrant and authority to levy by distress under the Companies Income Tax Act

To (a)

Name of Company (b).....

Amount of tax to be levied by distress (c).....

The Federal Board of Inland Revenue, in exercise of powers vested in it by section 86 of the Companies Income Tax Act (Cap. C21) hereby authorises you to collect and recover the sum of (c) being arrears of tax due for the years of assessment hereinafter mentioned from the above named company whose place of business is at (d) ; and for the recovery thereof the said Board further authorises that you, with the aid (if necessary) of your assistants and calling to your assistance any police officer (if necessary) which assistance he is by law required to give, do forthwith levy by distress the said sum together with the costs and charges of and incidental to the taking and keeping of such distress, on the goods, chattels, land, premises or other distrainable things of the said company wherever the same may be found and on all goods which you may find in any premises or on any lands in the use or possession of the said company or of any other person on its behalf or in trust for the company.

And for the purpose of levying such distress you are hereby authorised if necessary, with such assistance as aforesaid, to break open any building or place in the daytime.

2. The particulars of the said arrears of tax are as follows:

	<i>Year of assessment</i>	<i>No. of Notice of assessment</i>	<i>Amount of tax due N :K</i>	
(i)	(e)
(ii)	
(iii)	

Signed for and on behalf of the Federal Board of Inland Revenue at this }
 day of 20

Signature (f)

Chairman
Federal Board of Inland Revenue

NOTES

(a) *Insert the name of the officer who is authorised by the Board to execute the warrant of distress.*

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- (b) Insert the name of the company on whose goods, chattels, land, premises or other distrainable things the warrant of distress is to be executed.*
- (c) Insert the amount of tax outstanding against the company and which amount is to be levied by distress.*
- (d) Insert the address of the place of business of the company.*
- (e) Insert the particulars of the arrears of tax to be levied by distress, stating the years of assessment, the numbers of notices of assessment and the amount of tax due in respect of each such year of assessment.*
- (f) To be signed by the Chairman, Federal Board of Inland Revenue.*

FIFTH SCHEDULE [Section 25 (5)]

Funds, bodies and institutions in Nigeria to which donations may be made under section 25 of this Act

1. The Boys Brigade of Nigeria.
2. The Boys Scouts of Nigeria.
3. The Christian Council of Nigeria.
4. The Cocoa Research Institute of Nigeria.
5. Any educational institution affiliated under any law with any university in Nigeria, or established under any law in Nigeria and any other educational institution recognised by any Government in Nigeria.
6. The Girl Guides of Nigeria.
7. Any hospital owned by the Government of the Federation or of a State or any University Teaching Hospital or any hospital which is carried on by a society or association otherwise than for the purpose of profits or gains to the individual members of that society or association.
8. The Institute of Medical Laboratory Technology.
9. The National Commission for Rehabilitation.

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10. The National Library.
11. The Nigerian Council for Medical Research.
12. The National Science and Technology Development Agency.
13. The Nigerian Institute for International Affairs.
14. The Nigerian Institute for Oil Palm Research.
15. The Nigerian Institute for Trypanosomiasis Research.
16. The Nigerian Museum.
17. The Nigerian Red Cross.
18. A public fund established and maintained for providing money for the construction or maintenance of a public memorial relating to the civil war in Nigeria which ended on 15 January, 1970.
19. A public institution or public fund (including the Armed Forces Comfort Fund) established or maintained for the comfort, recreation or welfare of members of the Nigerian Army, Navy or Air Force.
20. A public fund established and maintained exclusively for providing money for the acquisition, construction, maintenance or equipment of a building used or to be used as a school or college by the Government of the Federation or a State or by a public authority or by a society or association which is carried on otherwise than for the purpose of profit or gain to [lie individual members of that society or association.
21. The National Youth Council of Nigeria.
22. National Sports Commission and its State Associations.
23. The Nigerian Society for the Deaf and Dumb.
24. The Society for the Blind.
25. The Nigerian National Advisory Council for the Blind.
26. Associations or Societies for the Blind in Nigeria.

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27. Training Centres and Residential Schools for the Blind in Nigeria.
28. The National Braille Library of Nigeria.
29. The Nigerian Youth Trust.
30. Van Leer Nigerian Educational Trust.
31. Southern Africa Relief Fund.
32. Islamic Education Trust.
33. The Institute of Chartered Accountants of Nigeria Building Fund.
34. Murli T. Chellaram Foundation
35. Any public fund established or approved by the Government of the Federation or established by any of the State Governments in aid of or for the relief of drought or any other national disaster in any part of the Federation.
36. A public institution established and maintained by a society or association for the promotion or defence of human rights, women empowerment and development or for re-orientation/rehabilitation/welfare support service for orphans, widows, physically challenged, refugees and all categories of persons that may require social or economic rehabilitation and transformation or for youth empowerment and development which is carried on other than for the purpose of profits or gains to the individual members of the society or association or person.

[2011 No. 1]

37. A public institution established and maintained by a society or association for Leadership and Resource Development or for the Promotion of National Unity and Patriotism or for the Promotion of Social and Economic Development which is carried on other than for the purpose of profits or gains to the individual members of the institution, society, association or person.

[2011 No. 1]

38. A public institution or public fund established and maintained by a society or association for accident prevention and control activities or for information system development and awareness which is carried on other than for the purpose of profits or gains to the individual members of the institution, society, association or person.

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[2011 No. 1]

39. A public institution established and maintained by a society or association for creation of awareness for transparency in governance and electoral processes or for the promotion of national unity and patriotism which is carried on other than for the purpose of profits or gains to the individual members of the society, association or person.

[2011 No. 1]

40. Any public institution or public fund established and maintained by a society or association for museum development and promotion of sports, arts and culture which is carried on otherwise than for the purpose of profits or gains to the individual members of the society, association or person.

[2011 No. 1]

41. Any public institution or public fund established and maintained by a society or association for rendering assistance in the provision of safe water, electricity, infrastructure and agricultural development which is carried on other than for the purpose of profits or gains to the individual members of the society, association or person; and

[2011 No. 1]

42. Any professional body established under an Act of the National Assembly for the regulation and practice of the profession.

[2011 No. 1]

SIXTH SCHEDULE [Section 64 (2). 1991 No. 21.]

Warrant and authority to enter premises, offices, etc., under the Companies Income Tax Act 1979

To (a)
Name of Company (b)
Incorporation or Identification No. (c)
Place of Business (d)

The Federal Board of Inland Revenue, in exercise of powers vested in it by section 64 of the Companies Income Tax Act (Cap. C21) hereby authorises you to enter the premises, office, place of management or residence of the principal officer, office of

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the agent, factor or representative of the company which company has been suspected by the Board of fraud, willful default, etc., in connection with the tax imposed under the aforesaid Act; and whose premises, office, place of management or residence of the principal officer, office of the agent, factor or representative is at (d) ; and for the carrying out of your assignment, the said Board further authorises that you, with the aid (if necessary) of your assistants and calling to your assistance a police officer, which assistance the police officer is by law required to give, search and remove (if necessary) such records, books and documents of the company wherever they may be found either in possession of any officer of the company or any other person on its behalf.

For the purpose of your entry into the aforementioned premises, you are hereby authorised if necessary, with such assistance as aforesaid, to break open any building in the daytime.

Signed for and on behalf of the Federal Board of Inland Revenue at
..... this..... day of 20

Signature (e)

Chairman,
Federal Board of Inland Revenue

NOTE

- (a) *Insert the name of the officer who is authorised by the Board to execute the warrant of entry.*
- (b) *Insert the name of the company in whose premises the warrant of entry is to be executed.*
- (c) *Insert the identification number of the company in whose premises the warrant of entry is to be executed.*
- (d) *Insert the place of business of the company.*
- (e) *To be signed by the Chairman, Federal Board of Inland Revenue.*

[1991 No. 21.]

CHAPTER D3

DEEP OFFSHORE AND INLAND BASIN PRODUCTION SHARING CONTRACTS ACT

ARRANGEMENT OF SECTIONS

SECTION

1. Production sharing contracts.
2. Duration of oil prospecting licence.
3. Determination of petroleum profits tax.
4. Determination of investment tax credit and investment tax allowance.
5. Royalty payable in respect of deep offshore production sharing contracts.
6. Computation of petroleum profit tax.
7. Allocation of royalty oil.
8. Allocation of cost oil.
9. Allocation of tax oil.
10. Allocation of profit oil.
11. Payment of royalty.
12. Chargeable tax on petroleum operations.
13. Use of realisable price in determining royalty and petroleum profit tax in respect of crude oil, etc.
14. Submission of receipts.

- 15. Adaptation of laws.
- 16. Periodic review.
- 17. Interpretation.
- 18. Short title.

CHAPTER D3

DEEP OFFSHORE AND INLAND BASIN PRODUCTION SHARING CONTRACTS ACT

An Act to, among other things, give effect to certain fiscal incentives given to the oil and gas companies operating in the Deep Offshore and Inland Basin areas under production sharing contracts between the Nigerian National Petroleum Corporation or other companies holding oil prospecting licenses or oil mining leases and various petroleum exploration and production companies.

[1999 No. 9]

[Commencement]
1993]

[1st January,

1. Production sharing contracts

Notwithstanding anything to the contrary contained in any other enactment or law, the provisions of this Act shall apply to all production sharing contracts as defined in section 17 of this Act.

2. Duration of oil prospecting licences

The duration of an oil prospecting licence relating to production sharing contracts in the Deep Offshore and Inland Basin shall be determined by the Minister and shall be for a minimum period of five years and an aggregate period of ten years.

3. Determination of petroleum profit tax

- (1) The petroleum profits tax payable under a production sharing contract shall be determined in accordance with the Petroleum Profits Tax Act: Provided that the petroleum profits tax applicable to the contract area as defined in the production sharing con-

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tracts shall be 50 per cent flat rate of chargeable profits for the duration of the production sharing contracts.

[Cap. P13.]

- (2) Nothing contained in this Act shall be construed as having exempted the contractors from the payment of any other taxes, duties or levies imposed by any Federal, State or Local Government, or Area Council Authority.

4. Determination of investment tax credit and investment tax allowance

- (1) Where the Nigerian National Petroleum Corporation (in this Act referred to as —the Corporation) or the holder and the contractor have incurred any qualifying capital expenditure wholly, exclusively and necessarily for the purposes of petroleum operations carried out under the terms of a production sharing contract in the Deep Offshore or Inland Basin, there shall be due to the parties in respect of the production sharing contracts executed prior to 1 July 1998, a credit (in this Act referred to as —investment tax credit) at a flat rate of 50 per cent of the qualifying expenditure in accordance with the production sharing contract terms for the accounting period in which that asset was first used for the purposes of such operations.
- (2) In respect of parties who executed production sharing contracts after 1 July 1998, there shall be due to such parties an allowance (in this Act referred to as an —investment tax allowance) at a flat rate of 50 per cent of the qualifying expenditure in accordance with the provisions of existing applicable legislation for the accounting period in which that asset was first used for the purposes of such operations.

5. Royalty payable in respect of deep offshore production sharing contracts

- (1) The payment of royalty in respect of the Deep Offshore production sharing contracts shall be graduated as follows, that is-

AreaRate

- | | |
|--|-------------|
| (a) In areas from 201 to 500 metres water depth..... | 12 per cent |
| (b) From 501 to 800 metres water depth..... | 8 per cent |
| (c) From 801 to 1000 metres water depth..... | 4 per cent |
| (d) In areas in excess of 1000 metres depth..... | 0 per cent |

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- (2) The royalty rate payable under the production sharing contracts in the Inland Basin shall be 10 per cent.

6. Computation of petroleum profit tax

Computation and payment of estimated and final petroleum profit tax shall be made in US dollars on the basis of the US dollar returns filed.

7. Allocation of royalty oil

Royalty oil shall be allocated to the Corporation or the holder, as the case may be, in such quantum as shall generate an amount of proceeds equal to actual royalty payable during each month and the concession rental payable annually in accordance with the production sharing contracts terms.

8. Allocation of cost oil

- (1) Cost oil shall be allocated to the contractor in such quantum as shall generate an amount of proceeds sufficient for the recovery of operating costs in oil prospecting licences as defined in the production sharing contracts and any oil mining leases derived therefrom.
- (2) All operating costs shall be recovered in U.S. dollars through cost oil allocations in accordance with the terms of the production sharing contract.

9. Allocation of tax oil

Tax oil shall be allocated to the Corporation or the holder, as the case may be, in such quantum as shall generate an amount of proceeds equal to the actual petroleum profit tax liability payable during each month.

10. Allocation of profit oil

Profit oil, being the balance of available crude oil after deducting royalty oil, tax oil and cost oil, shall be allocated to each party in accordance with the terms of the production sharing contract.

11. Payment of royalty

- (1) The Corporation or the holder, as the case may be, shall pay all royalty, concession rentals and petroleum profit tax on behalf of itself and the contractor out of the allocated royalty oil and tax oil.

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- (2) Separate tax receipts in the names of the Corporation or the Holder and the contractor for the respective amounts of petroleum profit tax paid on behalf of the Corporation or the holder and contractor shall be issued by the Federal Inland Revenue Service (in this Act referred to as —the Service) in accordance with the terms of the Production Sharing Contract.

12. Chargeable tax on petroleum operations

The chargeable tax on petroleum operations in the contract area under the production sharing contracts shall be split between the Corporation or the holder and the contractor in the same ratio as the split of profit oil as defined in the production sharing contract between them.

13. Use of realisable price in determining royalty and petroleum profit tax in respect of crude oil, etc.

- (1) The realisable price as defined in the production sharing contract established by the Corporation or the holder in accordance with the provisions of the production sharing contract, shall be used to determine the amount payable on royalty and petroleum profit tax in respect of crude oil produced and lifted pursuant to the production sharing contract.
- (2) The parameters for new crude oil streams produced from the contract area shall also be determined in accordance with the provisions of the production sharing contract.

14. Submission of receipts

The Corporation or the holder, as the case may be, shall make available to the contractor copies of the receipts issued by the Service bearing the names of each party as defined in the production sharing contract in accordance with each party's tax oil allocation for the payment of petroleum profit tax under the provisions of the production sharing contract.

15. Adaptation of laws

- (1) The relevant provisions of all existing enactments or laws, including but not limited to the Petroleum Act, and the Petroleum Profit Tax Act, shall be read with such modifications as to bring them into conformity with the provisions of this Act.
[Cap. 10. Cap. P13.]
- (2) If the provisions of any other enactment or law including but not limited to the enactments specified in subsection (1) of this section, are inconsistent with the provisions of this Act, the provisions of this Act shall prevail and the provisions of that other enactment or law shall, to the extent of that inconsistency, be void.

16. Periodic review

- (1) The provisions of this Act shall be subject to review to ensure that if the price of crude oil at any time exceeds \$20 per barrel, real terms, the share of the government of the Federation in the additional revenue shall be adjusted under the production sharing contracts to such extent that the production sharing contracts shall be economically beneficial to the government of the Federation

[1999 No. 26.]

- (2) Notwithstanding the provisions of subsection (1) of this section, the provisions of this Act shall be liable to review after a period of fifteen years from the date of commencement and every five years thereafter.

[1999 No. 26.]

17. Interpretation

In this Act, unless the context otherwise requires-

“**Corporation**” means the Nigerian National Petroleum Corporation;

“**contractor**” means any petroleum exploration and production company which has entered into a production sharing contract agreement with the Corporation or entered into an agreement or arrangement with any Nigerian holder of an oil prospecting licence or an oil mining lease within the Deep Offshore and Inland Basin;

“**Deep Offshore**” means any water depth beyond 200 metres;

“**holder**” means any Nigerian company who holds an oil prospecting license or oil mining lease situated within the Deep Offshore and Inland Basin under the relevant provision of the Petroleum Act;

“**Inland Basin**” means any of the following Basins. namely, Anambra, Benin, Benue, Chad, Gongola, Sokoto and such other basins as may be determined, from time to time, by the Minister;

“**Minister**” means the Minister charged with responsibility for matters relating to petroleum and “**Ministry**” shall be construed accordingly;

“**parties**” includes the Corporation or any Nigerian company as the holder and the Contractor;

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“production sharing contracts” means any agreement or arrangements made between the Corporation or the holder and any other petroleum exploration and production company or companies for the purpose of exploration and production of oil in the Deep Offshore and Inland Basins;

“Service” means the Federal Inland Revenue Service.

18. Short Title

This Act may be cited as the Deep Offshore and Inland Basin Production Sharing Contracts Act

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CHAPTER F36

FEDERAL INLAND REVENUE SERVICE (ESTABLISHMENT) ACT, 2007

ARRANGEMENT OF SECTIONS

SECTION:

PART I- ESTABLISHMENT OF THE FEDERAL INLAND REVENUE SERVICE AND ITS MANAGEMENT BOARD, ETC.

1. Establishment of the Federal Inland Revenue Service.
2. Objects of the Service.
3. Establishment and composition of the Management Board.
4. Tenure of office.
5. Cessation of membership.
6. Emoluments, etc. of members.

PART II-POWERS AND FUNCTIONS OF THE BOARD AND THE SERVICE

7. Powers of the Board.
8. Functions of the Service.
9. Establishment of Technical Committee of the Board.
10. Functions of the Technical Committee.

PART III- MANAGEMENT AND STAFF OF THE SERVICE

11. Executive Chairman of the Service.

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12. Appointment of Secretary to the Board and other staff of the Service.

13. Pensions.

14. Staff regulations.

PART IV-FINANCIAL PROVISIONS

15. Funds of the Service.

16. Expenditure of the Service.

17. Estimates.

18. Accounts and audit.

19. Annual report, etc.

20. Power to accept gifts.

21. Power to borrow.

22. Accountability.

23. Refund to tax payers.

24. Power of Accountant-General to deduct from source.

PART V TAX ADMINISTRATION AND ENFORCEMENT

25. Administration of tax laws.

26. Call for returns, books, documents and information.

27. Call for further returns and payment of tax due.

28. Information to be delivered by bankers.

29. Power to access lands, buildings, books and documents.

30. Power to remove books and documents.

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31. Power of substitution.
32. Addition for non-payment of tax and enforcement of payment
33. Power to distrain.
34. Recovery of tax.
35. Tax investigations.
36. Enforcement of powers.
37. Power to pay reward.
38. Immunity from action, etc.
39. Information and documents to be confidential.

PART VI- OFFENCES AND PENALTIES

40. Failure to deduct or remit tax.
41. Obstruction, etc.
42. False declaration.
43. Counterfeiting documents, etc.
44. Penalties for offences by authorized and unauthorized person
45. Penalty where offenders are armed.
46. Unlawful assumption of character of an authorized officer.
47. Prosecution.
48. Power to compound offences.
49. General penalty.

PART VII-GENERAL PROVISIONS

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50. Official secrecy and confidentiality.
51. Board to be subject to general direction of the Minister.
52. Delegation of powers of the Board.
53. Signification.
54. Imposition of surcharge.
55. Limitation of suits against the Service, etc.
56. Service of documents.
57. Restriction on execution against property of the Service.
58. Indemnity.

PART VIII-MISCELLANEOUS PROVISIONS

59. Establishment of Tax Appeal Tribunal.
60. Directives by the Minister, etc.
61. Power to make regulations.
62. Repeal of Part I of Cap. 60 LFN, 1990.
63. Savings and transitional provisions relating to staff or employees
64. Other savings and transitional provisions.
65. Continuation of Board members.
66. Continuation and completion of disciplinary proceedings.
67. Rights and obligations transferred.
68. Relevance of other laws.
69. Interpretation.

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70. Short Title.

SCHEDULES

FIRST SCHEDULE- Legislation administered by the Service.

SECOND SCHEDULE- Supplementary provisions relating to the Board.

THIRD SCHEDULE- Form of authorization to access lands, buildings, books and documents.

FOURTH SCHEDULE- Form of Warrant of Dstraint.

FIFTH SCHEDULE- Establishment, jurisdiction, authority and procedure of the Tax Appeal Tribunal.

CHAPTER F36

FEDERAL INLAND REVENUE SERVICE (ESTABLISHMENT) ACT 2007

2007 ACT No. 13

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF THE FEDERAL INLAND REVENUE SERVICE CHARGED WITH POWERS OF ASSESSMENT, COLLECTION OF, AND ACCOUNTING FOR REVENUES ACCRUABLE TO THE GOVERNMENT OF THE FEDERATION; AND FOR RELATED MATTERS

[16th Day of April, 2007]

[Commencement]

ENACTED by the National Assembly of the Federal Republic of Nigeria-

PART I: ESTABLISHMENT OF THE FEDERAL INLAND REVENUE SERVICE AND ITS MANAGEMENT BOARD, ETC.

1.

(1) There is established a body to be known as the Federal Inland Revenue Service (in this Act referred to as "*the Service*").

(2) The Service-

(a) shall be a body corporate with perpetual succession and a common seal;

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- (b) may sue or be sued in its corporate name; and
 - (c) may acquire, hold or dispose of any property, movable or immovable for the purpose of carrying out any of its functions under this Act.
- (3) The Service shall have such powers and duties as are conferred on this Act or by any other enactment or law on such matters on which the National Assembly has power to make law.
2. The object of the Service shall be to control and administer the different taxes and laws specified in the First Schedule or other laws made or to be made from time to time, by the National Assembly or other regulations made thereunder by the Government of the Federation and to account for all taxes collected.
- 3.
- (1) There is established for the Service a board to be known as the Federal Inland Revenue Service Board (in this Act referred to as —the Board) which shall have overall supervision of the Service as specified under this Act.
- (2) The Board shall consist of-
- (a) the Executive Chairman of the Service who shall be experienced in taxation as Chairman of the Service to be appointed by the President and subject to confirmation of the Senate;
 - (b) six members with relevant qualifications and expertise who shall be appointed by the President to represent each of the six geo-political zones.
 - (c) a representative of the Attorney-General of the Federation;
 - (d) the Governor of the Central Bank of Nigeria or his representative;
 - (e) a representative of the Minister of Finance not below the rank of a Director;
 - (f) the Chairman of the Revenue Mobilization, Allocation and Fiscal Commission or his representative who shall be any of the Commissioners representing the 36 States of the Federation;

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- (g) the Group Managing Director of the Nigerian National Petroleum Corporation or his representative who shall not be below the rank of a Group Executive Director of the Corporation or its equivalent;
 - (h) the Comptroller-General of the Nigeria Custom Service or his representative not below the rank of Deputy Comptroller-General;
 - (i) the Registrar-General of the Corporate Affairs Commission or his representative not below the rank of a Director; and
 - (j) the Chief Executive Officer of the National Planning Commission or his representative not below the rank of a Director.
- (3) The members of the Board, other than the Executive Chairman, shall be part-time members.
- (4) The supplementary provisions set out in the Second Schedule to this Act shall have effect with respect to the proceedings of the Board and other matters mentioned therein.
4. The Chairman and other members of the Board, other than ex-officio members, shall each hold office-
- (a) for a term of four years renewable once only;
 - (b) on such terms and conditions as may be specified in the letter of appointment.
5. Notwithstanding the provisions of section 4 of this Act, a member of the Board shall cease to hold office as a member of the Board if-
- (a) he resigns his appointment as a member of the Board by notice, under his hand, addressed to the President;
 - (b) he becomes of unsound mind;
 - (c) he becomes bankrupt or makes a compromise with his creditors;
 - (d) he is convicted of a felony or any offence involving dishonesty or corruption;
 - (e) he becomes incapable of carrying on the functions of his office either arising from an infirmity of mind or body;

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- (f) the President is satisfied that it is not in the interest of the Service or in the interest of the public for the person to continue in office and the President removes him from office;
 - (g) he has been found guilty of contravening the Code of Conduct Bureau and Tribunal Act; or gross misconduct in relation to his duties;
[Cap. C15 LFN 2004.]
 - (h) in the case of a person possessing a professional qualification, he is disqualified by a competent authority; or
 - (i) in the case of a person who becomes a member by virtue of the office he occupies, he ceases to hold such office.
6. The Chairman and members of the Board shall be paid such emoluments, allowances and benefits as may be approved by the National Salaries, Incomes and Wages Commission.

PART II: POWERS AND FUNCTIONS OF THE BOARD AND THE SERVICE

- 7.
- (1) The Board shall-
 - (a) provide the general policy guidelines relating to the functions of the Service;
 - (b) manage and superintend the policies of the Service on matters relating to the administration of the revenue assessment, collection and accounting system under this Act or any enactment or law;
 - (c) review and approve the strategic plans of the Service;
 - (d) employ and determine the terms and conditions of service including disciplinary measures of the employees of the Service ;
 - (e) stipulate remuneration, allowances, benefits and pensions of staff and employees in consultation with the National Salaries, Incomes and Wages Commission; and
 - (f) do such other things which in its opinion are necessary to ensure efficient performance of the functions of the Service under this Act.
- 8.
- (1) The service shall-

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- (a) assess persons including companies, enterprises chargeable with tax
- (b) assess, collect, account and enforce payment of taxes as may be due to the Government or any of its agencies;
- (c) collect, recover and pay to the designated account any tax under provision of this Act or any other enactment or law;
- (d) in collaboration with the relevant ministries and agencies, review regimes and promote the application of tax revenues to stimulate economic and development;
- (e) in collaboration with the relevant law enforcement agencies, carry examination and investigation with a view to enforcing compliance with provisions of this Act;
- (f) make, from time to-time, a determination of the extent of financial such other losses by government arising from tax fraud or evasion and s losses (or revenue forgone) arising from tax waivers and other related matters;
- (g) adopt measures to identify, trace, freeze, confiscate or seize proceeds derived from tax fraud or evasion;
- (h) adopt measures which include compliance and regulatory actions, introduction and maintenance of investigative and control techniques on detection and prevention of non-compliance;
- (i) collaborate and facilitate rapid exchange of information with relevant national or international agencies or bodies on tax matters;
- (j) undertake exchange of personnel or other experts with complementary agencies for purposes of comparative experience and capacity building;
- (k) establish and maintain a system for monitoring international dynamics of taxation in order to identify suspicious transactions and the perpetrators and other persons involved;
- (l) provide and maintain access to up to date and adequate data and information on all taxable persons, individuals, corporate bodies or all agencies of government involved in the collection of revenue for the purpose of efficient, effective and correct tax administration and to prevent tax evasion or fraud;

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- (m) maintain database, statistics, records and reports on persons, organizations, proceeds, properties, documents or other items or assets relating to tax administration including matters relating to waivers, fraud or evasion;
 - (n) undertake and support research on similar measures with a view to stimulating economic development and determine the manifestation, extent, magnitude and effects of tax fraud, evasion and other matters that affect effective tax administration and make recommendations to the government on appropriate intervention and preventive measures;
 - (o) collate and continually review all policies of the Federal Government relating to taxation and revenue generation and undertake a systematic and progressive implementation of such policies;
 - (p) liaise with the office of the Attorney-General of the Federation, all government security and law enforcement agencies and such other financial supervisory institutions in the enforcement and eradication of tax related offences;
 - (q) issue taxpayer identification number to every taxable person in Nigeria in collaboration with States Boards of Internal Revenue and Local Government Councils;
 - (r) carry out and sustain rigorous public awareness and enlightenment campaign on the benefits of tax compliance within and outside Nigeria;
 - (s) carry out oversight functions over all taxes and levies accruable to the Government of the federation and as it may be required, query, subpoena, sanction and reward any activities pertaining to the assessment, collection of and accounting for revenues accruable to the Federation; and
 - (t) carry out such other activities as are necessary or expedient for the full discharge of all or any of the functions under this Act.
- (2) The Service may, from time to time, specify the form of returns, claims statements and notices necessary for the due administration of the powers conferred on it by this Act.
- 9.
- (1) There shall be a Technical Committee of the Board (in this Act referred to as —the Technical Committeel) which shall consist of-
- (a) the Executive Chairman of the Service as Chairman;

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- (b) all the Directors and heads of departments of the Service;
 - (c) the Legal Adviser of the Service; and
 - (d) the Secretary to the Board.
- (2) The Technical Committee may co-opt from the Service such staff as it may deem necessary for the effective performance of its functions under this Act.

10. The Technical Committee shall-

- (a) consider all tax matters that require professional and technical expertise and make recommendations to the Board;
- (b) advise the Board on any aspect of the functions and powers of the Service under this Act; and
- (c) attend to such other matters as may from time to time be referred to it by the Board.

PART III: MANAGEMENT AND STAFF OF THE SERVICE

11. The Executive Chairman shall-

- (a) be appointed by the President subject to the confirmation of the Senate;
- (b) be the chief executive and accounting officer of the Service;
- (c) be responsible for the execution of the policy and the day-to-day administration of the affairs of the Service; and
- (d) have cognate experience and skills in accountancy, economics, taxation, law and related fields.

12.

(1) There shall be a Secretary for the Board who shall-

- (a) be appointed by the Board from within the Service;
- (b) issue notices of meetings of the Board;
- (c) keep records of the proceedings of the Board; and

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- (d) carry out such duties as the Executive Chairman or the Board may, from to time, direct.
- (2) Subject to the provision of this section, the board may appoint such other persons to be employees of the Service and on such terms and conditions as may be prescribed by the Board.
- (3) If the Board thinks it expedient that any vacancy in the Service should be filled by a person holding office in the Civil Service of the Federation or of a State it shall notify the appropriate Civil Service to that effect and thereafter the Board may by arrangement with the Civil Service Commission concerned, cause such vacancy to be filled by way of secondment or transfer.
- (4) The Service may appoint and employ such consultants, including Tax consultants or accountants and agents to transact any business or to do any act required to be transacted or done in the execution of its functions under this Act:

Provided that such consultants shall not carry out duties of assessing and collecting tax or routine responsibilities of tax officials.

- 13. Employment in the Service shall be subject to the provisions of the Pension Reform Act and officers and employees of the Service shall be entitled to pension and other retirement benefits as prescribed under the Pension Reform Act.

[Cap. P4 LFN 2004]

14.

- (1) Subject to the provisions of this Act, the Board may make regulations relating generally to the conditions of service of the staff and, in particular, such conditions may provide for-
 - (a) the appointment, promotion, termination, dismissal and discipline of staff or employees of the Service; and
 - (b) appeals by staff or employees against dismissal or other disciplinary measures, and until such regulations are made, any instrument relating to conditions of service in the public service of the Federation shall be applicable, with such modifications as may be necessary, to the employees of the Service.

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- (2) The staff regulations made under subsection (1) of this section shall be published by the Board and issued to its staff in such manner as the Service may from time to time determine pending the publication in the Federal *Gazette*.

PART IV: FINANCIAL PROVISIONS

15. The Service shall establish and maintain a fund which shall consist of and to which shall be credited –
- (a) a percentage as determined by the National Assembly of all non-oil and gas revenue collected by the Service which may be appropriated by the National Assembly for the capital and recurrent expenditures of the Service;
 - (b) all sums of money accruing to the Service by way of grants-in-aid and gifts, testamentary dispositions, endowments and contributions from any source;
 - (c) such monies as may from time to time be granted to the Service by the Federal, State or Local Governments or other donor agencies provided such grants are not intended for purposes contrary to the objects and functions of the Service; and
 - (d) all other monies which may, from time to time, accrue to the Service for other services including the disposal, lease or hire of, or any other dealing with, any property vested in or acquired by the Service.
16. The Service shall defray from the Fund established pursuant to section 15 of this Act all the amounts payable under or in pursuance of this Act being sums representing-
- (a) emoluments and allowances payable to the Executive Chairman and other members of the Board;
 - (b) reimbursements to members of the Board or any committee set up by the Board for such expenses as may be expressly authorized by the Service;
 - (c) remunerations and other costs of employment of the staff of the Service;
 - (d) amounts payable as pensions and other retirement benefits under or pursuant to this Act or any other enactment;
 - (e) costs of acquisition and upkeep of premises belonging to the Service and any other capital expenditure of the Service;

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- (f) investments, maintenance of utilities, staff promotion, training, research and similar activities;
 - (g) costs necessary for the day-to-day operations of the Service;
 - (h) all sums of money accruing to the Service by way of grants-in-aids, gifts, testamentary dispositions, endowments and contributions from any other source; and
 - (i) any other payment for anything incidental to the foregoing provisions or in connection with or incidental to any other function of the Service under or pursuant to this Act.
17. The Service shall cause to be prepared, not later than the 30th day of September in each year, an estimate of its income and expenditure for the succeeding year for the purpose of appropriation by the National Assembly.
18. The Service shall keep proper accounts and records, and such account shall not later than six months after the end of each year, be audited by auditors appointed by the Board from the list and in accordance with the guidelines supplied by the Auditor General for the federation.
- 19.
- (1) The Service shall not later than 30th September in each year, submit to the Minister, a report of its activities during the immediately preceding year and shall include in such report the audited accounts of the Service.
 - (2) The Minister shall within 30 days of receipt of the report-
 - (a) present a copy of the report to the Federal Executive Council; and
 - (b) present a copy of the report to the National Assembly.
- 20.
- (1) The Service may accept gifts of land, money or other property on such terms and conditions, if any, as may be specified by the person or organization making the gift.
 - (2) The Service shall not accept any gift if the conditions attached thereto are inconsistent with any law for the time being in force.

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21. The Service may with the approval of the Minister, borrow by way of loan, overdraft or otherwise from any source such sums as it may require for the performance of its function and meeting of its obligations under this Act.
- 22.
- (1) The Executive Chairman of the Service, shall–
- (a) keep proper accounting records, in a manner as may be determined, from time to time, by the Board in respect of –
 - i. all revenues and expenditure of the Service;
 - ii. all its assets, liabilities and other financial transactions; and
 - iii. all other revenues collected by the Service, including income on investments.
 - (b) prepare an annual report, including financial statements, in accordance with generally accepted accounting principles and practices; and
 - (c) ensure that the available accounting resources of the Service are adequate and used economically in the most effective and efficient manner, and the
 - (d) accounting and other financial records are properly safeguarded.
- 23.
- (1) There shall be refunded to taxpayers, after proper auditing by the Service, such over-payment of tax as is due.
- (2) The service shall decide on who is eligible for the refund mentioned in subsection (1) of this section subject to such rules and conditions as may be approved by the Board.
- (3) Any tax refund shall be made within 90 days of the decision of the Service made pursuant to subsection (2) of this section, with the option of setting off against future tax by the tax payer.
- (4) For the purpose of tax refund, the Accountant-General of the Federation shall open a dedicated account into which shall be paid monies for settling such refunds.
- (5) The Service shall administer the dedicated account as created by virtue of section 23 (4).

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- (6) For the purpose of the dedicated account, the Service shall prepare an annual budget for tax refund to be funded from the Federation Account as may be approved by the National Assembly.
24. The Accountant-General of the Federation shall have power to deduct at source, from the budgetary allocation, un-remitted taxes due from any ministry or government agency and shall not later than 30 days thereafter transfer such deductions to the Service.

PART V: TAX ADMINISTRATION AND ENFORCEMENT

25.

- (1) The Service shall have power to administer all the enactments listed in the First Schedule to this Act and any other enactment or law on taxation in respect of which the National Assembly may confer power on the Service.
- (2) The Service may, with the approval of the Minister by Instrument published in the Federal *Gazette*, appoint any government agency to collect revenue pursuant to the power of the Service under subsection (1) of this section.

26.

- (1) For the purpose of obtaining full information in respect of the profits or income of any person, body corporate or organization, the Service may give notice to that person, body corporate or organization requiring him or it within the time specified by the notice to-
- (a) complete and deliver to the Service any return specified in such notice;
 - (b) appear personally before an officer of the Service for examination with respect to any matter relating to such profits or income;
 - (c) produce or cause to be produced for examination books, documents and any other information at the place and time stated in the notice, which time may be from day-to-day, for such period as the Service may deem necessary; or
 - (d) give orally or in writing any other information including a name and address specified in such notice.
- (2) for the purpose of paragraph (a) to (d) of subsection (1) of this section, the time specified by such notice shall not be less than 7 days from the date of service of such notice except that an officer of the Service, not below the rank of a Chief Inspector of Taxes or its equivalent, may act in any of the cases stipulated in paragraphs (a) to subsection (1), without giving any of the required notices set out in this section.

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- (3) A person who contravenes the provisions of this section is, in respect of each offence, liable on conviction to a fine equivalent to 100 per cent of the amount of the tax liability.
- (4) Nothing in the foregoing provision of this section or in any other provision of this Act shall be construed as precluding the Service from verifying by tax audit or investigation into any matter relating to any return or entry in any book, document accounts including those stored, on a computer, in digital, magnetic, optical or electronic media as may, from time to time, be specified in any guideline by the Service.
- (5) A person may apply in writing to the Board for an extension of time within which to comply with the provisions of this section and section 27 of this Act, provided that the person-
- (a) makes the application before the expiration of the time stipulated in this section for making the returns; and
 - (b) shows good cause for his inability to comply with this provision.
- (6) If the Board is satisfied with the cause shown in the application under Paragraph (b) of subsection (5), it may in writing grant the extension of the time as it may consider appropriate.

27.

- (1) The Service may give notice in writing to any person it considers necessary requiring such person to deliver within a reasonable time specified in such notice, fuller or further returns in respect of any matter relating to the functions of the Service under this Act.
- (2) Where a tax is not paid, when it falls due under any enactment, by any person from whom it is due, whether or not the payment of that tax has been secured by a bond or otherwise, it shall be paid on demand made by the Service either on that person personally or by delivering the demand in writing to his place of abode or business, and if it is not paid on demand, the person in default shall, in addition to the 100 percent tax due and payable, also be liable to a penalty equal to the amount of tax due and payable.

28.

- (1) Without prejudice to section 26 of this Act, every bank shall prepare upon demand by the Service, quarterly returns specifying-
- (a) in the case of an individual, all transactions involving the sum N5,000,000.00 and above; or

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- (b) in the case of a body corporate, all transactions involving the sum of N10,000,000.00 and above, the names and addresses of all customers of the bank connected with the transaction and deliver the returns to the Service;
 - (c) the names and addresses of new customers of the bank and shall not later than the seventh day of the succeeding month deliver the returns to the Service.
- (2) Subject to subsection (1) of this section, for the purpose of obtaining information relative to taxation, the Service may give notice to any person including a person engaged in banking business in Nigeria to provide within the time stipulated in the notice, information including the name and address of any person specified in the notice:

Provided that a person engaged in banking business in Nigeria, shall not be required to disclose any additional information about his customer or his bank under this section unless such additional disclosure is required by a notice signed by the Executive Chairman of the Service on the advice of the Technical Committee of the Board.

- (3) Any bank that contravenes the provisions of this section commits an offence and shall, on conviction be liable to a fine not exceeding N500,000.00 on corporate customers and not exceeding N50,000.00 in the case of individual customer.

29.

- (1) Notwithstanding anything to the contrary in any other enactment or law, an authorized officer of the Service shall at all reasonable times have free access to all lands, buildings, places, books and documents, in the custody or under the control of a public officer, institution or any other person, for the purpose of inspecting the books or documents including those stored or maintained in computers or on digital, magnetic, optical or electronic media, and any property, process or matter which the officer considers necessary or relevant for the purpose of collecting any tax under any of the relevant enactment or law or for the purpose of carrying out any other function lawfully conferred on the Service or considered likely to provide any information required for the purposes of any of those enactments or any of those functions and may, without fee or reward, make extract from, or copies of, such books or documents.
- (2) Where the hard copies of any of the books or documents mentioned in subsection (1) of this section are not immediately available because they are stored in a computer or on digital, magnetic, optical or electronic media, the Service shall take immediate possession of such removable media and the related removable equipment or computer used to access the store documents on the media in order to prevent the accidental or intentional destruction, removal or alteration of records and documents, especially where such could be needed as potential evidence in the investigation or criminal proceedings.

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- (3) Where the Service is able to obtain in place of taking physical possession of such equipment, computer or storage media under subsection of this section, and the Service possesses the ability, equipment and computer software to make exact duplicate copies of all information stored on the computer hard drive and preserve all the information exactly as it is on the original computer, the Service shall make such copy and use it as digital evidence during the investigation or criminal proceedings.
- (4) The occupier of a land, building or place that is entered or proposed to be entered by an authorized officer, shall-
- (a) provide the officer with all reasonable facilities and assistance for the effective exercise of powers under this section; and
 - (b) answer questions relating to the effective exercise of the powers under this section, orally, or if required by the officer, in writing or by statutory declaration.
- (5) Notwithstanding subsection (1) of this section, the authorized officer shall not enter any private dwelling except with the consent of an occupier or pursuant to an authorization issued under subsection (7) of this section.
- (6) A judicial officer upon an application by an officer of the Service may authorise the officer by warrant to enter into any premises.
- (7) Every authorization issued under subsection (7) of this section shall-
- (a) be in the form prescribed in the Third Schedule of this Act;
 - (b) be directed to a named officer of the Service;
 - (c) be valid for a period of 3 months from the date of its issue or such lesser period as the judicial officer considers appropriate;
 - (d) state its period of validity, or the date on which it expires; and
 - (e) notwithstanding paragraphs (c) and (d) of this subsection, be renewable by the judicial officer on application.
- (8) An officer exercising the power of entry conferred by an authorization issued under subsection (6) of this section shall produce the written authorization and evidence of identity-
- (a) on first entering the private dwelling; and

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(b) whenever subsequently reasonably required to do so.

30.

- (1) An officer of the Service authorized by the Executive Chairman, may remove books or documents accessed under section 29 of this Act to make copies
- (2) Any copy of the books or documents removed shall be made and the books or documents returned as soon as practicable.
- (3) A copy of a book or document or digital evidence certified by or on behalf of the Executive Chairman is admissible in evidence in court as if it were the original
- (4) The owner of a book or document that is removed under this section is entitled to inspect and obtain a copy of the book or document, at the owner's own expense, at the premises to which the book or document is moved to-

(a) at the time the book or document is moved to the premises; and

(b) at reasonable times subsequently.

31.

- (1) The Service may by notice in writing appoint any person to be the agent of a taxable person if the circumstances provided in sub-section (2) of this section makes it expedient to do so.
- (2) The agent appointed under subsection (1) of this section may be required to pay any tax payable by the taxable person from any money which may be held by the agent of the taxable person.
- (3) Where the agent referred to in subsection (2) of this section defaults, the tax shall be recoverable from him.
- (4) For the purposes of this section, the Service may require any person to give information as to any money, fund or other assets which may be held by him for, or of any money due from him to, any person.
- (5) The provisions of this Act with respect to objections and appeals shall apply to any notice given under this section as if such notice were an assessment.

32.

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- (1) Subject to subsection (3) of this section, if any tax is not paid within the periods prescribed—
- (a) a sum equal to 10 per cent of the amount of the tax payable shall be added thereto, and the provisions of the Act relating to the collection and recovery of tax shall apply to the collection and recovery of such sum;
 - (b) in the case of Naira remittances, the tax due shall carry interest at the prevailing minimum rediscount rate of the Central Bank of Nigeria plus spread to be determined by the Minister from the date when the tax becomes payable until it is paid, and the provisions of the Act relating to collection and recovery of tax shall apply to the collection and recovery of the interest;
 - (c) in the case of foreign currency remittance, the tax due shall incur interest at the prevailing London Inter Bank Offered Rate or the prevailing minimum rediscount rate of the Central Bank of Nigeria whichever is higher, plus spread to be determined by the Minister from the date when the tax becomes payable until it is paid, and the provisions of the Act relating to collection and recovery of tax shall apply to the collection and recovery of the interest;
 - (d) the Service shall serve a demand notice upon the company or person in whose name a tax is chargeable and if payment is not made within one month from the date of the service of such demand notice, the Service may proceed to enforce payment under this Act; and
 - (e) an addition imposed under this subsection shall not be deemed to be part of the tax paid for the purpose of claiming relief under any of the provisions of this Act.
- (2) Any person who without lawful justification or excuse fails to pay a tax within the period of one month prescribed in subsection (1) (d) of this section, commits an offence under this Act.
- (3) The Board may, for any good cause shown, remit the whole or any part of the addition due under subsection (1) of this section.

33.

- (1) Without prejudice to any other power conferred on the Board for the enforcement of payment of tax due from a company, where an assessment has become final and conclusive and a demand notice has, in accordance with the provisions of the relevant tax laws in the First Schedule to this Act, been served upon the taxable person or upon the person in whose name the taxable person is chargeable, then, if payment of the tax is not

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made within the time limited by the demand notice, the Board may in the prescribed form, for the purpose of enforcing payment of the tax due-

- (a) distrain the taxpayer by his goods or other chattels, bonds or other securities;
 - (b) distrain upon any land, premises, or place in respect of which the taxpayer is the owner and, subject to the following provisions of this section, recover the amount of tax due by sale of anything so distrained.
- (2) The authority to distrain under this section shall be in the form contained in the Fourth Schedule to this Act and such authority shall be sufficient warrant and authority to levy by distraint the amount of any tax due.
- (3) For the purpose of levying any distraint under this section, any officer duly authorized by the Board may execute any warrant of distraint and if necessary break open any building or place in the day time for the purpose of levying such distraint, and he may call to his assistance any police officer and the police officer shall, when required, aid and assist in the execution of any warrant of distraint and in levying distraint.
- (4) Things distrained under this section may, at the cost of the taxpayer, be kept for 14 days and at the end of that time if the amount due in respect of the tax, cost and charges of any incidental to the distraint are not paid, they may, subject to subsection of this section, be sold at any time thereafter.
- (5) Out of the proceeds of such sale, there shall, in the first place, be paid the cost or charges of any incidental to the (sale and keeping of the) distraint, and disposal thereunder and in the next place the amount due in respect of the tax, and the balance (if any) shall be payable to the taxpayer upon demand being made by him or on his behalf within one year of the date of sale.
- (6) Nothing in this section shall be construed so as to authorize the sale of an immovable property without an order of a High Court, made on application in such form as may be prescribed by the rules of court.
- (7) In exercise of the powers of distraint conferred by this section, the person whom the authority is granted under subsection (3) of this section may distrain goods, chattels and effects belonging to the debtor wherever the same may be found in Nigeria.
- 34.
- (1) Without prejudice to any other provision of this Act or any other law in the First Schedule to this Act, any amount due by way of tax shall constitute a debt to the Service and may be recovered by a civil action brought by the Service.

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- (2) Where any tax has been under-assessed or erroneously repaid, the person who should have paid the amount under-assessed or to whom the repayment has erroneously been made shall on demand by the proper officer, pay the amount under-assessed or erroneously repaid, as the case may be, and any such amount may be recovered as if it were tax to which a person to whom the amount was so under-assessed or erroneously repaid were liable:

Provide that the appropriate officer shall not make any such demand after 5 years from the date of such under-assessment or erroneous repayment unless such under-assessment or erroneous repayment was caused by the production of a document or the making of a statement which was untrue in any material particular.

35.

- (1) The Service shall employ Special Purpose Tax Officers to assist any relevant law enforcement agency in the investigation of any offence under this Act.
- (2) Notwithstanding anything to the contrary in any other enactment or law, the Service shall have the power to investigate or cause investigation to be conducted to ascertain any violation of any tax law whether or not such violation has been reported to the Service.
- (3) In conducting any investigation under subsection (2) of this section, the Service may cause investigation to be conducted into the properties of any taxable person if it appears to the Service that the lifestyle of the person and extent of the properties are not justified by his source of income.
- (4) Where any investigation under this section reveals the commission of any offence or an attempt to commit any offence, the Service shall, pursuant to section 48 of this Act, undertake the prosecution of the offences.

36.

- (1) The Service may co-opt the assistance and co-operation of any of the law enforcement agencies in the discharge of its duties under this Act.
- (2) The law enforcement officers shall aid and assist an authorized officer in the execution of any warrant of distraint and the levying of distraint.
- (3) Any tax officer armed with the warrant issued by a Judicial officer and accompanied by a number of law enforcement officers, as may be determined by the Executive Chairman shall-

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- (a) enter any premises covered by such warrant and search for, seize and take possession of any book, document or other article used or suspected to have been used in the commission of an offence;
 - (b) inspect, make copies of, or take extracts including digital copies from any book, record, document or computer, regardless of the medium used for their storage or maintenance;
 - (c) search any person who is in or on such premises;
 - (d) open, examine and search any article, container or receptacle;
 - (e) open any outer or inner door or window of any premises and enter or otherwise forcibly enter the premises and every part thereof; or
 - (f) remove by reasonable force any obstruction to such entry, search, seizure or removal as he is empowered to effect.
- (4) No person shall be bodily searched under this section except by a person who is of the same gender as the person to be bodily searched.

37.

- (1) The Service may, with the approval of the Board, pay any reward to any person, not being a person employed in the Service; in respect of any information that may be of assistance to the Service in the performance of its duties under this Act upon meeting such conditions as may be determined by the Board and the quantum of such reward shall also be at the discretion of the Board.
- (2) The identity of the person who gave information to the Service shall be confidential and any current or former member of the Service or Board that the identity of such person shall be dealt with in accordance with the provision of section 39 of this Act with regard to confidential information.

38. An officer of the Service shall be entitled to protection under the Public Officers Protection Act.

[Cap. P41 LFN 2004]

39.

- (1) Without prejudice to the provisions of any other Act concerning secrets, all information and documents supplied or produced in pursuance of any requirement of this Act or the laws listed in the First Schedule to this Act shall be confidential.

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- (2) Except as otherwise provided under this Act or as otherwise authorized by the Minister, any member or former member of the Board or any employee or former employee of the Service or Ministry who communicates or attempts to communicate any confidential information or the content of any such document to any person commits an offence and shall be liable on conviction to a fine not exceeding N200,000.00 or to imprisonment for a term not exceeding 3 years or to both such fine and imprisonment.

PART V: OFFENCES AND PENALTIES

40. Any person who being obliged to deduct any tax under this Act or the listed in the First Schedule to this Act, but fails to deduct, or having deducted fails to pay to the Service within 30 days from the date the amount was deducted or duty to deduct arose, commits an offence and shall, upon conviction, be liable to pay the tax withheld or not remitted in addition to a penalty of 10 per cent of the tax not remitted per annum and interest at the prevailing Central Bank of Nigeria re-discount rate and imprisonment for period of not more than three years.
41. Any person who—
- (a) obstructs, hinders, molests or assaults any person or authorized office the performance of any function or the exercise of any power under this Act;
 - (b) does anything which impedes or is intended to impede the carrying o any search, seizure, removal or distraint;
 - (c) rescues, damages or destroys anything so liable to seizure, removal distress or does anything intended to prevent the procuring or giving of evidence to whether or not anything is liable to seizure, removal or distraint;
 - (d) prevents the arrest of any person by a person duly engaged or acting or rescues any person so arrested, commits an offence and shall be liable on conviction to a fine not exceeding N200,000,00 or imprisonment for a term not exceeding 3 years or to both fine and imprisonment,
- 42.
- (1) If any person-
- (a) makes or signs, or causes to be made or signed, delivers or causes to be delivered to the Service or any officer of the Service, any declaration, notice, certificate or other document; or

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- (b) makes any statement in answer to any question or enquiry put to him by an officer which he is required to answer by or under this Act or any other enactment or law, being a document or statement produced or made for any purpose of tax, which is untrue in any material particular, commits an offence under this section.
- (2) Where by reason of any such document or statement required to be produced under subsection (1) of this section the full amount of any tax payable is not paid or any overpayment is made in respect of any repayment of tax, the amount of tax unpaid or the overpayment shall be recoverable as a debt due to the Service.
- (3) Person who commits an offence under this section shall be liable on conviction to a fine not exceeding N200,000.00 in addition to payment of the amount of tax unpaid or over payment made in respect of any repayment or to imprisonment for a term not exceeding 3 years or to both fine and imprisonment.

43. Any person who-

- (a) counterfeits or falsifies any document which is required by or for the transaction of any business under this Act;
- (b) knowingly accepts, receives or uses any document so counterfeited or falsified;
- (c) Alters any such document after it is officially issued;
- (d) counterfeits any seal, signature, initial or other mark of, or used by, any officer for the verification of such a purpose relating to tax; or
- (e) being an employee of the services conspires, connives or participates in the commission of any of the offences in paragraphs (a) to (d) of this section,

commits an offence and shall be liable on conviction to a fine not exceeding N200,000.00 or to imprisonment for a term not exceeding 3 years or to both such fine and imprisonment.

44. Any person who is appointed for the due administration of this Act or employed in connection with the assessment and collection of a tax who—

- (a) demands from any company an amount in excess of the authorized assessment of the tax;
- (b) withholds for his own use or otherwise any portion of the amount of tax collected;

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- (c) renders a false return, whether orally or in writing, of the amount of tax collected or received by him;
 - (d) defrauds any person, embezzles any money or otherwise uses his position to deal wrongfully with the Service;
 - (e) steals or misuses the documents of the Service; or
 - (f) compromises on the assessment or collection of any tax,
- commits an offence and shall be liable on conviction to a fine equivalent to 200 per cent of the sum in question or to imprisonment for a term not exceeding 3 years or to both such fine and imprisonment.
- 45.
- (1) Any person who, in the commission of an offence under this Act, is armed with any offensive weapon commits an offence and shall be liable on conviction to imprisonment for a term not exceeding 5 years.
 - (2) A person who, while armed with an offensive weapon, causes injury to any officer or authorized officer of the Service in the performance of any function or duty under this Act, commits an offence and shall be liable on conviction to imprisonment for a term not exceeding 10 years.
46. If, for the purpose of obtaining admission to any building or other place or of doing or procuring to be done any act which he would not be entitled to do or procure to be done of his own authority, or for any other unlawful purpose, any person, not being an authorized officer, assumes the name, designation or impersonates the character of an authorized officer, commits an offence and shall be liable on conviction to a fine not exceeding N200,000.00 or to imprisonment for a term not exceeding 3 years.
47. The Service shall have powers to employ its own legal officers who shall have powers to prosecute any of the offences under this Act subject to the powers of the Attorney-General of the Federation.
- 48.
- (1) The Service may compound any offence under this Act by accepting a sum of money not exceeding the maximum fine specified for the offence.
 - (2) The Service shall issue an official receipt for any money received under subsection (1) of this section.

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49.

- (1) Any person who contravenes any provisions of this Act for which no specific penalty was provided, commits an offence and shall be liable on conviction to a fine not exceeding N50,000.00 or imprisonment for a term of imprisonment not exceeding six months or to both fine and imprisonment.

- (2) Where an offence under this Act is committed by a body corporate or firm or other association of individuals-
 - (a) every director, manager, secretary or other similar officer of the body corporate;
 - (b) every partner or officer of the firm;
 - (c) every person concerned in the management of the affairs of the association; or
 - (d) every person who was purporting to act in any capacity, commits an offence and shall be liable to be proceeded against and punished for the offence in like manner as if he had himself committed the offence, unless he proves that the act or omission constituting the offence took place without his knowledge, consent or connivance.

50.

- (1) Every person in an official duty or being employed in the administration of this Act shall regard and deal with all documents, information, returns, assessment list and copies of such list relating to the profits or items of profits of any company, as secret and confidential.

- (2) A person in possession of, or control of any document, information, return of assessment list or copy of such list relating to the income or profits or losses of any person, who at any time communicates or attempts to communicate such information or anything contained in such document, return, list or copy to any person-
 - (a) other than a person to whom he is authorized by the Service to communicate it;
 - (b) otherwise than for the purpose of this Act or of any enactment in Nigeria imposing tax on the income of persons, commits an offence under this Act.

- (3) A person appointed or employed under this Act shall not be required to produce any return, document or assessment or to divulge or communicate any information that comes into his possession in the performance of his duties except as may be necessary in order to institute a prosecution, or in the course of a prosecution for any offence committed in relation to any tax in Nigeria.

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- (4) Where under any law in force in respect of any double taxation treaty with any country, provision is made for the allowance of relief from income tax in respect of the payment of income tax in Nigeria, the obligation as to secrecy imposed by this section shall not prevent the disclosure to the authorized officer of the Government in that country of such facts as may be necessary to enable the proper relief to be given in cases where relief is claimed from the tax in Nigeria or from income tax in that country.
- (5) Where any agreement or arrangement with any other country with respect to relief for double taxation of income or profits includes provisions for the exchange of information with that country for the purpose of implementing that relief or preventing avoidance of tax, the obligation as to secrecy imposed by this section shall not prevent the disclosure of such information to the authorized officers of the Government of such country.

51.

- (1) In the exercise of the powers and duties conferred upon the Board by this Act, the Board shall be subject to the general direction of the Minister and any written direction, order or instruction given by him after consultation with the Executive Chairman shall be carried out by the Board:

Provided that the Minister shall not give any directive, order or instruction in respect of any particular person which would have the effect of requiring the Board to increase or decrease any assessment of tax made or to be made or any relief given or to be given or to defer the collection of any tax or judgment debt due, or which would have the effect of initiating, forbidding the initiation of withdrawing or altering the normal course of any proceeding whether civil or criminal, relating either to the recovery of any tax or to any offence under any of the laws listed in the First Schedule.

- (2) In any proceeding whether civil or criminal under this Act or any of the laws listed in the First Schedule, any act, matter or thing done by the Service or the Board in pursuance of the said laws shall not be subject to challenge on the ground that such act, matter or thing was not or was not proved to be in accordance with any directive, order or instruction given by the Minister.

52.

- (1) Any power conferred and any duty imposed upon the Board may be exercised or performed by the Board or by an officer authorized generally or specifically in that behalf by the Board.
- (2) Notwithstanding the provisions of subsection (1) of this section, the Board may, at any time and at its discretion, reverse or otherwise modify any decision of any officer affecting any tax or taxable income, whether or not the discretion to make the decision

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was conferred on the officer by any law specified in the First Schedule or whether or not the officer was authorized by the Service to make the decision, and the reversal or modification of the decision by the Board shall have effect as if it were the original decision made in respect of the matter concerned.

- (3) An order, ruling or directive made or given by an approved committee of the Board pursuant to this section, shall not be treated as an order, ruling or directive of the Board, until the order ruling or directive has been ratified by the Board pursuant to the powers vested on the Board under this Act.
53. Anything done or required to be done by the Service in pursuance of any of its powers or duties under this Act or the laws listed the First Schedule may be signified under the hand of the Executive Chairman or of an officer who has been authorized by the Board for the purpose of this section.

54.

- (1) If the Service is satisfied that a person who is or was in its employment-
- (a) is or was responsible for any improper payment of moneys from the fund of the Service or for any payment of such money which is not duly documented;
 - (b) is or was responsible for any deficiency in, or for the destruction of, any money, security, store or other property of the Service;
 - (c) being or having been an officer, fails or has failed to keep proper accounts or record; or
 - (d) has failed to make any payment, or is responsible for any delay in the payment of moneys for the Service to any person to whom such payment is due under any contract, agreement or arrangement entered into between that person and the Service,

and if a satisfactory explanation is not furnished to the Service within a period specified by the Board with regard to the failure to collect, improper payment, payment not duly documented, deficiency or destruction, failure to keep proper accounts or records, failure to make payment or delay in making payment, the Service may surcharge the said person such sum as it may think fit.

- (2) Any action taken under subsection (1) of this section shall be subject to the approval of the Board and when such approval is obtained the Executive Chairman shall notify the person surcharged under this section.

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- (3) The Board may at any time withdraw any surcharge in respect of which a satisfactory explanation has been received from the person concerned or if it otherwise appears that no surcharge should have been made, the Board shall at once inform the Executive Chairman of such withdrawal.
- (4) The amount of any surcharge imposed under subsection (1) of this section and not withdrawn under subsection (3) of this section shall be a debt due to the Service from the person against whom the surcharge is imposed and may be sued for and recovered in any court in any suit initiated by the Service for its recovery and may also be recovered by deduction from the salary of the person surcharged if the Board so directs.

55.

- (1) Subject to the provisions of this Act, the provisions of the Public Officers Protection Act shall apply in relation to any suit instituted against any member, officer or employee of the Service.
- (2) Notwithstanding anything contained in any other law or enactment, no suit against the Executive Chairman, a member of the Board, or any other officer or employee of the Service for any act done in pursuance or execution of this Act or any other law or enactment, or of any public duty or authority or in respect of any alleged neglect or default in the execution of this Act or any other law or enactment, duty or authority, shall lie or be instituted in any court unless it is commenced-
- (a) within three months next after the act, neglect or default complained of; or
 - (b) in the case of a continuation of damage or injury, within six months next after the ceasing thereof.
- (3) No suit shall be commenced against the Executive Chairman, a member of the Board, or any other officer or employee of the Service before the expiration of a period of one month after written notice of the intention to commence the suit shall have been served on the Service by the intending plaintiff or his agent.
- (4) The notice referred to in subsection (3) of this section shall clearly and explicitly state the-
- (a) cause of action;
 - (b) particulars of claim;
 - (c) name and place of abode of the intending plaintiff; and

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(d) relief which he claims.

56. A notice, summons or other document required or authorized to be served on the Service under the provisions of this Act or any other law or enactment may be served by delivering it to the Executive Chairman or by sending it by registered post addressed to the Executive Chairman at the principal office of the Service.

57.

(1) In any action or suit against the Service no execution or attachment of process in the nature thereof shall be issued against the Service unless not less than three months notice of the intention to execute or attach has been given to the Service.

(2) Any sum of money which by the judgment of any court has been awarded against the Service shall, subject to any direction given by the court, where no notice of appeal against the judgment has been given, be paid from the fund of the Service.

58. The Executive Chairman, a member of the Board or any officer or employee of the Service shall be indemnified out of the assets of the Service against any liability incurred by him in defending any proceeding, whether civil or criminal, if the proceeding is brought against him in his capacity as Executive Chairman, a member of the Board, officer or other employee of the Service.

59.

(1) A Tax Appeal Tribunal is established, as provided for in the fifth Schedule to this Act.

(2) The Tribunal shall have power to settle disputes arising from the operations of this Act and under the First Schedule.

P A R T VIII-MISCELLANEOUS P R O V I S I O N S

60. The Minister may give to the Service or the Executive Chairman such directives of a general nature or relating generally to matters of policy with regards to the exercise of its or his functions as he may consider necessary and the Service or the Executive Chairman shall comply with the directives or cause them to be complied with.

61. The Board may with the approval of the Minister, make rules and regulations as in its opinion are necessary or expedient for giving full effect to the provisions of this Act and for the due administration of its provisions and may in particular, make regulations prescribing the-

(a) forms for returns and other information required under this Act or any other enactment or law; and

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(b) procedure for obtaining any information required under this Act or any other enactment or law.

62.

- (1) Part I of the Companies Income Tax Act (in this Act referred to as —the repealed enactment) is repealed.
- (2) The Federal Board of Inland Revenue established pursuant to the repealed enactment is dissolved.
- (3) The repeal of the enactment specified in subsection (1) of this section shall not affect anything done or purported to have been done under the repealed enactment.

63.

- (1) Notwithstanding anything to the contrary in this Act, a director, employee, staff or officer, who immediately before the commencement of this Act held office in the Federal Board of Inland Revenue (including the Federal Inland Revenue Service hereinafter referred to as —the former Board) existing immediately before the commencement of this Act and who has been made an offer of employment by the Service, is deemed to have been transferred to the Service established under this Act on terms and conditions not less favourable than those obtaining immediately before the commencement of this Act and service or employment in the former Board is deemed to be service or employment in the Service established under this Act for purposes of pension.
- (2) Every director, employee, staff or officer transferred into the Service by virtue of subsection (1) of this section shall notify the Service established under this Act in writing within 60 days after the commencement of this Act or after he receives an offer of appointment from the Board (whichever is later) of his acceptance and any director, employee, staff or officer who fails to notify the Service is deemed to have rejected the offer.
- (3) Any director, employee, staff or officer referred to in subsection (2) is deemed to be an employee of the Service established under this Act, beginning on the day that this Act comes into force and ending on the expiry of the period of grace under subsection (2) or on the day of his written refusal and the Service established under this Act is deemed to be his employer for all purposes during that period.
- (4) An employee who is not transferred or who refuses the transfer or a job offer made by the Board established under this Act, as specified in subsection (1) of this section, shall be transferred to the Office of the Head of the Civil Service of the Federation for redeployment in the Civil Service of the Federation within the time specified in subsection (2) of this section.

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64.

- (1) There shall be vested in the Service established under this Act and without further assurance, all assets, funds, resources and other immovable property which immediately before the commencement of this Act were vested in the former Board existing immediately before the commencement of this Act.
- (2) All rights, interest, obligations and liabilities of the former Board existing immediately before the commencement of this Act under any contract or instrument, or in law or in equity apart from any contract or instrument, shall by virtue of this Act be assigned to and vested in the Service established under this Act.
- (3) Any contract or instrument referred to in subsection (2) of this section shall be of the same force and effect against or in favour of the Service established under this Act and shall be enforceable as fully and effectively as if, instead of the former Board existing immediately before the commencement of this Act, the Service established under this Act had been named or had been a party.
- (4) The Service established under this Act shall be subject to all obligations and liabilities to which the former Board existing immediately before the commencement of this Act was subject immediately before the commencement of this Act, and all other persons shall as from the commencement of this Act have the same rights, powers and remedies against the Service as they had against the former Board existing immediately before the commencement of this Act.
- (5) Any proceeding or cause of action pending or existing immediately before the commencement of this Act by or against the former Board existing immediately before the commencement of this Act in respect of any right, interest, obligation or liability of the former Board may be continued, or as the case may require, be commenced and the determination of a court of law, tribunal or other authority or person may be enforced by or against the Service to the same extent that such cause of action or determination might have been continued, or enforced by or against the former Board as if this Act had not been made.
- (6) Any regulation, order, bye-law or notice made or issued or deemed to be made or issued by, or for the purposes of the former Board existing immediately before the commencement of this Act shall be deemed to have been made or issued by or for the purposes of the Service and shall continue in force until revoked or as amended, subject to such modifications as may be applicable to the Service established under this Act.

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65. Subject to the provisions of this Act, the Executive Chairman of the former Board is deemed to have been transferred to the Service established under this Act in the same capacity.
- 66.
- (1) As from the commencement of this Act, any disciplinary proceeding pending or existing against any employee of the government who has opted into the service of the former Board, shall be continued and completed by the Board established under this Act.
 - (2) An appeal or grievance already filed but which has not been finally disposed of on the coming into force of this Act shall be dealt with and disposed of in accordance with the Public Service Rules as if this Act had not come into force.
- 67.
- (1) The administration and control of all rights, obligations and liabilities that were under the administration and control of the former Board are hereby transferred to the Service established under this Act.
 - (2) The administration of any real property that were immediately before the coming into force of this section under the administration or administrative responsibility of the former Board or its agencies or bodies for the purposes of that former Board are transferred to the Service established under this Act.
 - (3) All orders, rules, regulations, decisions, directions, licences, authorizations, certificates, consents, approvals, declarations, designations, permits, registration, rates or other documents that are in force before the coming into force of this Act and that are made or issued by the Minister, Chairman of the former Board or any person under their control shall continue in force as if they were made, or issued by the Minister, the Board established under this Act, the Executive Chairman or an employee of the Service as the case may be, until they expire or are repealed, replaced, rescinded or altered.
 - (4) Every reference to the former Board, the Minister, Chairman or any person under their control or a document issued in the name of the former Board, Minister, Chairman or employee of the former Board to be read, unless the context otherwise requires, as a reference to the Service, the Minister, Board, Executive Chairman, or an employee of the Service established under this Act, as the case may be.
 - (5) Every affidavit sworn or document duly certified by an officer in the Service of the Federal Board of Inland Revenue before the coming into force of this Act has the same probative value as if it were sworn or certified by an employee of the Service on or after that day.

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68.

- (1) Notwithstanding the provisions of this Act, the relevant provisions of all existing enactments including, but not limited to, the laws in the First Schedule shall be read with such modifications as to bring them into conformity with the provisions of this Act.
- (2) If the provisions of any other law, including the enactments in the First Schedule are inconsistent with the provisions of this Act, the provisions of this Act shall prevail and the provisions of that other law shall to the extent of the inconsistency be void.

69. In this Act-

—authorized officer^l means any person employed in the Service or, for the time being, performing duties in relation to tax who has been specifically authorized by the Board or the Executive Chairman to perform or carry out specific functions under this Act;

—Board^l means the management Board of the Service established under section 3 (1) of this Act;

“*book*” includes any register, document or other record of information and any account or accounting record however compiled, recorded or stored, whether in written or printed form or micro-film, digital, magnetic or electronic form or otherwise;

“*Chairman*” means the Chairman of the Board appointed pursuant to section 3 (2) (a) of this Act;

“*consultants*” includes accountants, legal practitioners or any other recognized professionals that have been certified by their relevant professional bodies in Nigeria;

“*document*” includes any record of information supporting accounts and accounting records, including reports or correspondences or memoranda or minutes of meeting, however compiled, recorded or stored, whether in written or printed form or micro-film, digital, magnetic, electronic or optical form or otherwise and all types of information stored in computer and any other similar equipment;

“*Executive Chairman*” means the Executive Chairman of the Service appointed under section 11 of this Act;

“*Government*” means the Government of the Federation and shall include the Federal Capital Territory or, as the case may be, a Government of a State;

“*Gross misconduct*” referred to in section 5 (g) has the meaning ascribed to it in the Public Service Rules;

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“*member*” means a member of the Board appointed under section 3 of this Act and includes the Chairman;

“*Minister*” means the Minister charged with responsibility for matters relating to finance and “*Ministry*” shall be construed accordingly;

“*non-oil revenue collected*” shall be construed to refer to all revenues collected other than revenue derivable from petroleum profit tax;

“*person*” includes a company or body corporate and any unincorporated body of persons;

“*President*” means the President of the Federal Republic of Nigeria;

“*Private dwelling*” means any building or part of a building occupied as residential accommodation (including any garage, shed and other building used in connection therewith) “*Service*” means the Federal Inland Revenue Service established under section 1 of this Act;

“*Special Purpose Tax Officer*” for this purpose refers to specially designated Tax Officers for the purpose of tax investigation and tax enforcement who shall be appointed from time to time and shall have the powers of Police Officers;

“*tax*” includes any duty, levy or revenue accruable to the government in full or in part under this Act, the laws listed in the First Schedule to this act or any other enactment or law;

“*taxable person*” includes an individual or body of individuals, family, corporations sole, trustee or executor or a person who carries out an economic activity in a place, a person exploiting tangible or intangible property for the purpose of obtaining income by way of trade or business or person or agency of government acting in that capacity.

70. This Act may be cited as the Federal Inland Revenue Service (Establishment) Act, 2007.

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SCHEDULES

FIRST SCHEDULE

Sections 2, 25 and 68

LEGISLATION ADMINISTERED BY THE SERVICE

1. Companies Income Tax Act Cap. 60 LFN, 1990.
2. Petroleum Profits Tax Act Cap. 354 LFN, 1990.
3. Personal Income Tax Act No. 104, 1993.
4. Capital Gains Tax Act Cap. 42 LFN, 1990.
5. Value Added Tax Act 1993 No. 102, 1993.
6. Stamp Duty Act Cap. 411 LFN, 1990.
7. Taxes and Levies (Approved List for Collection) Act 1998 No.2, 1998.
8. All regulations, proclamation, government notices or rules issued in terms of these legislation.
9. 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 those laws, conferring any power, duty and obligation on the Service.

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10. Enactment or Laws imposing Taxes and Levies within the Federal Capital Territory.
11. 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 licences, fees for Oil Exploration Licence (OEL), Oil Mining Licence (OML), Oil Production Licence (OPL), royalties, rents (productive and non-productive), fees for licences to operate drilling rigs, fees for oil pipeline licences, haulage fees and all such fees prevalent in the oil industry but not limited to the above listed.

SECOND SCHEDULE *Sections 3 (4)*

SUPPLEMENTARY PROVISIONS RELATING TO THE BOARD

Proceedings of the Board

1. Subject to this Act and section 27 of the Interpretation Act, the Board shall have power to regulate its proceedings and may make standing orders with respect to the holding of its meetings, and those of its committees, notices to be given, the keeping of minutes of its proceedings, the custody and production for inspection of such minutes and such other matters as the Board may, from time to time determine.
2.
 - (1) There shall be at least four ordinary meetings of the Board in every calendar year and subject thereto, the Board shall meet whenever it is convened by the Chairman, and if the Chairman is requested to do so by notice given to him by not less than four other members, he shall convene a meeting of the Board to be held within 14 days from the date on which the notice was given.
 - (2) Every meeting of the Board shall be presided over by the Chairman and if the Chairman is unable to attend a particular meeting, the members present at the meeting shall elect one of them to preside at the meeting.
3. The quorum of any meeting of the Board shall consist of the Chairman (or in an appropriate case, the person presiding at the meeting pursuant to paragraph 2 of this Schedule) and four other members, except that any quorum must include at least two members outside the Service.

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4. The Board shall meet for the conduct of its business at such places and on such days as the Chairman may appoint.
5. A question put before the Board at a meeting shall be decided by consensus and where this is not possible, by a majority of the votes of the members present and voting.
6. The Chairman shall, in the case of an equality of votes, have a casting vote in addition to his deliberative vote.
7. Where the Board seeks the advice of any person on a particular matter, the Board may invite that person to attend for such period as it deems fit, but a person who is invited by virtue of this paragraph shall not be entitled to vote at any meeting of the Board and shall not count towards the quorum.

Committees

8. The Board may appoint one or more committees to carry out on behalf of the Board such of its functions as the Board may determine and report on any matter with which the Board is concerned.
9. A committee appointed under paragraph 8 of this Schedule shall be presided over by a member of the Board and shall consist of such number of persons (not necessarily all members of the Board) as may be determined by the Board, and a person other than a member of the Board shall hold office on the committee in accordance with the terms of his appointment.
10. A decision of a committee of the Board shall be of no effect until it is confirmed by the Board.

Miscellaneous

11. The fixing of the seal of the Service shall be authenticated by the signature of the Executive Chairman and the Secretary to the Board or the Executive Chairman and such other person authorized by the Board to act for that purpose.
12. A contract or an instrument which, if made or executed by any person not being a body corporate, would not be required to be under seal, may be made or executed on behalf of the Service by the Executive Chairman or by any person generally or specifically authorized to act for that purpose by the Board.

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- 13. A document purporting to be a contract, an instrument or other document signed or sealed on behalf of the Service shall be received in evidence and, unless the contrary is proved, be presumed without further proof, to have been properly signed or sealed.

- 14. The validity of any proceeding of the Board or its committees shall not be affected by-
 - (a) any vacancy in the membership of the Board or its committees;

 - (b) reason that a person not entitled to do so took part in the proceedings; or (c) any defect in the appointment of a member.

- 15. Any member of the Board or committee who has a personal interest in any contract or arrangement entered into or proposed to be considered by the Board or any committee shall-
 - (a) disclose his interest to the Board or committee; and

 - (b) not vote on any question relating to the contract or arrangement.

THIRD SCHEDULE *Section 29 (7) (a)*

FORM OF AUTHORISATION TO ACCESS LANDS, BUILDINGS, BOOKS AND DOCUMENTS

To.....The Federal Inland Revenue Service, by virtue of the powers vested in it by section 29 of the Federal Inland Revenue Service Act 2007, hereby authorises you to enter the premises, office, place of management or residence of any person, the principal officer, agent factor or representative or any person who has been suspected by the Service of fraud, evasion, willful default, etc., in connection with a tax due to government; and whose premises, office, place of management or residence of the principal officer, agent factor or representative is atand for carrying out your assignment thereof further authorise you, with the aid of any police officer (if necessary), which assistance he is hereby required to give, search and remove (if necessary) such records, books and documents wherever they may be found either in possession of any person in respect of who the tax remains unpaid. And for the purpose of this assignment you are hereby authorised, if necessary, with such assistance as aforesaid to break open any building or place in the daytime.

SIGNED and issued under the hand of the Executive Chairman..... at
THIS day of..... 20.....

.....

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Executive Chairman

.....
Judicial Officer

FOURTH SCHEDULE *Sections 33 (2)*

FORM OF WARRANT OF DISTRAINT

To.....

Name Company.....

Amount of tax to be levied by distress.....

The Federal Inland Revenue Service, in exercise of powers vested in it by section 33 of the Federal Inland Revenue Service Act, 2007, hereby authorizes you to collect and recover the sum ofbeing arrears of tax due for the years of assessment hereinafter mentioned from the above named company whose place of business is atand for the recovery thereof the said Service further authorizes that you, with the aid (if necessary) of your assistants and calling to your assistance any police officer (if necessary) which assistance he is by Law required to give, do forthwith levy by distraint, the said sum together with the costs and charges of and incidental to the taking and keeping of such distraint, on goods, chattels, land, premises, or other distrainable things of the said company wherever the same may be found and on all goods which you may find in any premises or on any land in the use of or possession of the said company or any other person on its behalf or in trust for the company.

And for the purpose of levying such distraint you are hereby authorised, if necessary, with such assistance as aforesaid to break open any building or place in the daytime.

2. The particulars of the said arrears of tax are as follows

<i>Year of Assessment</i>	<i>No. of Notice of Assessment</i>	<i>Amount of Tax due</i>
(i)
(ii)
(iii)

SIGNED and issued under the hand of the Executive Chairman of the Federal Inland Revenue Service at..... this day of..... 20.....

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Signature.....

*Executive Chairman
Federal Inland Reve*

SCHEDULE

FIFTH SCHEDULE *Sections 59 (1)*

ESTABLISHMENT, JURISDICTION, AUTHORITY AND PROCEDURE OF THE TAX APPEAL TRIBUNAL

Establishment of Tax Appeal Tribunals

1.
 - (1) Pursuant to section 59 (1) of this Act, there shall be established a Tax Appeal Tribunal (hereinafter-referred to as —the tribunal) to exercise the jurisdiction, powers and authority conferred on it by or under this Schedule.
 - (2) The Minister may by notice in the Federal Gazette specify the number of zones, matters and places in relation to which the Tribunal may exercise jurisdiction.

Composition of the Tribunal

2.
 - (1) A Tribunal shall consist of five members (hereinafter referred to as —Tax Appeal Commissioners) to be appointed by the Minister.

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- (2) A Chairman for each zone shall be a legal practitioner who has been so qualified to practice for a period of not less than 15 years with cognate experience in tax legislation and tax matters.
- (3) A Chairman shall preside at every sitting of the Tribunal and in his absence the members shall appoint one of them to be the Chairman.
- (4) The quorum at any sitting of the Tribunal shall be three members.

Qualifications for appointment as a Tax Appeal Commissioner

3. A person shall not be qualified for appointment as a Tax Appeal Commissioner unless he is knowledgeable about the laws, regulations, norms, practices and operations of taxation in Nigeria as well as persons that have shown capacity in the management of trade or business or a retired public servant in tax administration.

Term of Office

4. A Tax Appeal Commissioner shall hold office for a term of three years, renewable for another term of three years only and no more, from the date on which he assumes his office or until he attains the age of 70 years whichever is earlier.

Resignation and Removal

5.
 - (1) A Tax Appeal Commissioner may by notice in writing under his hand addressed to the Minister resign his office:

Provided that the Tax Appeal Commissioner shall, unless he is permitted by the Minister to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor assumes his office or until the expiry of his term of office, whichever is earlier.

- (2) A Tax Appeal Commissioner may be removed from office by the Minister on the grounds of gross misconduct or incapacity after due inquiry has been made and the Tax Appeal Commissioner concerned has been informed of the reasons for his removal and given an opportunity of being heard in respect of the reasons.

Salary, Allowances and Conditions of Service of Tax Appeal Commissioners

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6. The salary and allowances payable to and the terms and conditions of service of the Tax Appeal Commissioners shall be determined by the Revenue Mobilization Allocation and Fiscal Commission and shall be prescribed in their Letters of Appointment:

Provided that neither the salary and allowances nor the other terms and conditions of service of a Tax Appeal Commissioner shall be varied to his disadvantage after appointment.

Filling Up of Vacancies

7. If for reason other than temporary absence, any vacancy occurs in the office of a Tax Appeal Commissioner, then the Minister shall appoint another person in accordance with the provisions of this Act to fill the vacancy.

Order Constituting a Tribunal to be Final

8. The question as to the validity of the appointment of any person as a Tax Appeal Commissioner shall not be the cause of any litigation in any court or tribunal and no act or proceedings before the Tribunal shall be called into question in any manner on the ground merely of any defect in the constitution of the Tribunal.

Secretary to the Tribunal

- 9.
- (1) The Minister shall appoint for each place or zone where the Tribunal is to exercise jurisdiction a Secretary who shall-
- (a) subject to the general control of the Tax Appeal Commissioners, be responsible for keeping records of the proceedings of the Tribunal;
 - (b) be the head of the secretariat and responsible for-
 - i. the day-to-day administration; and
 - ii. the direction and control of all other employees of the Tribunal
- (2) The official address of the Secretary appointed for each zone shall be published in the Federal Gazette.

Other Staff of the Tribunal, etc.

- 10.

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- (1) The Minister shall appoint such other employees as he may deem necessary for the efficient performance of the functions of the Tribunal and the remuneration of persons so employed shall be determined by the National Salaries and Wages Commission.
- (2) It is declared that employment in the Tribunal shall be subject to the provisions of the Pension Reform Act and, accordingly, officers and employees of the Service shall be entitled to pensions and other retirement benefits as are prescribed under the Pension Reform Act.

Jurisdiction of the Tribunal, etc.

11.

- (1) The Tribunal shall have power to adjudicate on disputes, and controversies arising from the following tax laws (hereinafter referred to as —the tax laws)-
 - i. Companies Income Tax Act, CAP. 60 LFN; 1990.
 - ii. Personal Income Tax Act No. 104, 1993.
 - iii. Petroleum Profits Tax Act CAP. 354 LFN; 1990;
 - iv. Value Added Tax Act No. 102; 1993;
 - v. Capital Gains Tax Act CAP. 42 LFN; 1990, and
 - vi. any other law contained in or specified in the First Schedule to this Act or other laws made or to be made from time to time by the National Assembly.
- (2) The Tribunal shall apply such provisions of the tax laws referred to in subparagraph (1) of this paragraph as may be applicable in the determination or resolution of any dispute or controversy before it.

Criminal Prosecution

12. Where in the course of its adjudication, the Tribunal discovers evidence of possible criminality, the Tribunal shall be obliged to pass such information to the appropriate criminal prosecuting authorities, such as the office of the Attorney-General of the Federation or the Attorney General of any state of the Federation or any relevant law enforcement agency.

Appeals from Decisions of the Service

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13.

- (1) 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 referred to in paragraph 11, may appeal against such decision or assessment or demand notice within the period stipulated under this Schedule to the Tribunal.
- (2) An appeal under this schedule shall be filed within a period of 30 days from the date on which a copy of the order or decision which is being appealed against is made, or deemed to have been made by the Service and it shall be in such form and be accompanied by such fee as may be prescribed provided that the Tribunal may entertain an appeal after the expiry of the said period of 30 days if it is satisfied that there was sufficient cause for the delay.
- (3) Where a notice of appeal is not given by the appellant as required under subparagraph (1) of this paragraph within the period specified, the assessment or demand notices shall become final and conclusive and the Service may charge interests and penalties in addition to recovering the outstanding tax liabilities which remain unpaid from any person through proceedings at the Tribunal.

Appeals by the Service

14. Service aggrieved by the non-compliance by a person in respect of any provision of the tax laws, it may appeal to the Tribunal where the person is resident giving notice in writing through the Secretary to the appropriate zone of the Tribunal.

Procedure before Tax Appeal Tribunal

15.

- (1) As often as may be necessary, Tax Appeal Commissioners shall meet to hear appeals in the jurisdiction or zone assigned to that Tribunal.
- (2) Where a Tax Appeal Commissioner has a direct or indirect financial interest in any appeal pending before the Tribunal or where the taxpayer is or was a client of that Tax Appeal Commissioner in his professional capacity, he shall declare such interest to the other Tax Appeal Commissioners and refrain from sitting in any meeting for the hearing of that appeal.
- (3) The Secretary to the Tribunal shall give seven clear days notice to the Service and to the appellant of the date and place fixed for the hearing of each Appeal except in respect of any adjourned hearing for which the Tax Appeal Commissioners have fixed a date at their previous hearing.

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- (4) All notices, documents, other than decisions of the Tribunal, may be signified under the hand of the Secretary.
- (5) All appeals before the Tax Appeal Commissioners shall be held in public.
- (6) The onus of proving that the assessment complained of is excessive shall be on the appellant.
- (7) At the hearing of any appeal if the representative of the Service proves to the satisfaction of the Tribunal hearing the appeal in the first instance that-
 - (a) the appellant has for the year of assessment concerned, failed to prepare and deliver to the Service returns required to be furnished under the relevant provisions of the tax laws mentioned in paragraph 11;
 - (b) the appeal is frivolous or vexatious or is an abuse of the appeal process; or
 - (c) it is expedient to require the appellant to pay an amount as security for prosecuting the appeal,

the Tribunal may adjourn the hearing of the appeal to any subsequent day and order the appellant to deposit with the Service, before the day of the adjourned hearing, an amount, on account of the tax charged by the assessment under appeal, equal to the tax charged upon the appellant for the preceding year of assessment or one half of the tax charged by the assessment under appeal, whichever is the lesser plus a sum equal to ten percent of the said deposit, and if the appellant fails to comply with the order, the assessment against which he has appealed shall be confirmed and the appellant shall have no further right of appeal with respect to that assessment.

- (8) The Tribunal may, after giving the parties an opportunity of being heard, confirm, reduce, increase or annul the assessment or make any such order as it deems fit.
- (9) Every decision of the Tribunal shall be recorded in writing by the Chairman and subject to the provisions of paragraph 16, a certified copy of such decision shall be supplied to the appellant or the Service by the Secretary, upon a request made within 30 days of such decision.
- (10) Where upon the hearing of an appeal-
 - (a) no accounts, books or records relating to profits were produced by or on behalf of the appellant;

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- (b) such accounts, books or records were so produced but rejected by the Tribunal on the ground that it had been shown to its satisfaction that they were incomplete or unsatisfactory ;
- (c) the appellant or his representative, at the hearing of the appeal, has neglected or refused to comply with a notice delivered or sent to him by the Secretary to the Tribunal, without showing any reasonable cause; or
- (d) the appellant or any person employed, whether confidentially or otherwise, by the appellant or his agent (other than his legal practitioner or accountant acting for him in connection with his ability to tax) has refused to answer any question put to him by the Tribunal, without showing any reasonable cause the Chairman of the Tribunal shall record particulars of the same in his written decision.

Procedure following decision of the Tribunal

16.

- (1) Notice of the amount of the tax chargeable under the assessment as determined by the Tribunal shall be served by the Service upon the taxpayer or upon the person in whose name such taxpayer is chargeable.
- (2) An award or judgement of the Tribunal shall be enforced as if it were a judgement of the Federal High Court upon registration of a copy of such award or judgment with the Chief Registrar of the Federal High Court by the party seeking to enforce the award or judgment.
- (3) Notwithstanding that an appeal is pending, tax shall be paid in accordance with the decision of the Tribunal within one month of notification of the amount of the tax payable in pursuance of subparagraph (1) of this paragraph.

Appeal to the Federal High Court

17.

- (1) Any person dissatisfied with a decision of the Tribunal constituted under this Schedule may appeal against such decision on a point of law to the Federal High Court upon giving notice in writing to the Secretary to the Tribunal within 30 days after the date on which such decision was given.
- (2) A notice of appeal filed pursuant to subparagraph (1) of this paragraph shall set out all the grounds of law on which the appellant's case is based.

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- (3) If the Service is dissatisfied with the decision of the Tribunal, it may appeal against such decision to the Federal High Court on points of law by giving notice in writing as specified in subsection (1) of this section to the Secretary within 30 days after the date on which such decision was given.
- (4) Upon receipt of a notice of appeal under subparagraph (1) or (2) of this paragraph, the Secretary to the Tribunal shall cause the notice to be given to the Chief Registrar of the Federal High Court along with all the exhibits tendered at the hearing before the Tribunal.
- (5) The Chief Judge of the Federal High Court may make rules providing for the procedure in respect of appeals made under this Act and until such rules are made, the Federal High Court rules relating to hearing of appeals shall apply to the hearing of an appeal under this Act.

Right to Legal Representation

18.

- (1) A complainant or appellant, as the case may be, may either appear in person or authorize one or more legal practitioners or any of its officers to represent him or its case before the Tribunal.
- (2) Every individual or company in a case before the Tribunal shall be entitled to be represented at the hearing of an appeal by a solicitor or chartered accountant or adviser provided that, if the person appointed by the taxpayer to be representative in any matter before the Tribunal is unable for good cause to attend hearing thereof, the Tribunal may adjourn the hearing for such reasonable time as it deems fit, or admit the appeal to be made by some other person or by way of a written address.

Application of Statute of Limitation

19. The provisions of any statute of limitation shall not apply to any appeal brought before the Tribunal.

Powers and procedures of the Tribunal

20.

- (1) The Tribunal may make rules regulating its procedures.
- (2) The Tribunal shall, for the purposes of discharging its functions under this Schedule, have power to-
 - i. summon and enforce the attendance of any person and examine him on oath;

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- ii. require the discovery and production of documents;
 - iii. receive evidence on affidavits;
 - iv. call for the examination of witnesses or documents;
 - v. review its decisions;
 - vi. dismiss an application for default or deciding matters *ex parte* ;
 - vii. set aside any order or dismissal of any application for default or any order passed by it *ex parte*; and
 - viii. do anything which in the opinion of the Tribunal is incidental or ancillary to its functions under this Schedule.
- (3) Any proceeding before the Tribunal shall be deemed to be a judicial proceeding and the Tribunal shall be deemed to be a civil court for all purposes.

Minister to make Rules and Regulations

21. The Minister may make rules prescribing the procedure to be followed in the conduct of appeals before the Tribunal.

Costs

22. Each party to an appeal shall bear its own cost.

Further Appeals

23. An appeal against the decision of the Federal High Court at the instance of either party shall lie to the Court of Appeal.

CHAPTER I4

INCOME TAX (AUTHORISED COMMUNICATIONS) ACT

ARRANGEMENT OF SECTIONS

SECTION

1. Authorised communication as to income tax matters, etc.
2. Powers of the Inspector-General of Police or other designated officer.
3. Application of certain enactments and protection of authorised communication.
4. Offences.

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5. Short title, extent and interpretation.

SCHEDULE

CHAPTER I4

INCOME TAX (AUTHORISED COMMUNICATIONS) ACT

An Act to make provision for authorised communications on income tax matters.
[1966 No. 30.]

[Commencement]

23rd April, 1966

1. Authorised communication as to income tax matters, etc.

For the purposes of any investigation or enquiry authorised in any manner whatsoever by the Federal Government-

[1966 No. 32.]

(a) the President may, by an order in writing in Form 1 specified in the Schedule to this Act, authorise the Inspector-General of Police or any other person to inspect, and if necessary remove, any books, records, lists, returns or other documents in the possession or control of the Federal Board of Inland Revenue (in this Act called —the Board^{ll}) and to obtain any such other information as the Inspector-General of Police or such other person may require for the purposes of any investigation or enquiry;

[Schedule. Form 1.]

(b) where an order is made under paragraph (a) of this section, the Board shall permit the Inspector-General of Police or such other person so authorised to make such inspection and remove any documents as he may require, and shall disclose to the person any information or document as may be required for the purposes of the investigation or enquiry, and if required to do so by the Inspector-General of Police or such other person, the Board or any public officer authorised in that behalf by the Board, shall prepare a record of any income tax matter relating to any person over such period as may be required;

(c) in the application of this section, references to —the Board^{ll} include references to any other tax authority from whom the Board is entitled under any enactment to require disclosure or transfer of information or any document or record, and the words —the Board^{ll} shall have effect accordingly.

[1966 No. 32.]

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2. Power of the Inspector-General of Police or other designated officer

- (1) Where an order is made under section 1 (a) of this Act, the Inspector-General of Police or any person as may be designated in the order may, in writing in Form 2 specified in the Schedule to this Act, direct the chairman of the Board or any public officer of the department responsible for such matters or the custody of the relevant information or document to produce such relevant information or document as may be required and the chairman of the Board or such officer shall comply with such direction within the period specified in the document or as may be agreed upon by the chairman of the Board or such officer and the Inspector-General of Police or the person designated by the order.

[1966 No. 32. Schedule.]

- (2) Where an approval or consent of any person is required to be obtained by virtue of any enactment before any disclosure, transfer, inspection or production of any relevant information or document, such enactment shall not apply in relation to the relevant information or document required to be disclosed, transferred, inspected or produced by virtue of this Act.

3. Application of certain enactments and protection of authorised communication

- (1) Subject to the provisions of this Act, the provisions of the Personal Income Tax Act and the Companies Income Tax Act, shall apply in relation to the information, documents or other records specified in those Acts.

[Cap. P8. Cap. C21.]

- (2) Without prejudice to any other provisions relating to the protection of official information, any person, who-

(a) transmits any relevant information or document to a person, other than a person authorised by this Act;

(b) obtains, reproduces or retains any relevant information or document, which he is not authorised so to do in accordance with this Act,

shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding five years.

4. Offences

Any person, who refuses or neglects to comply with any order, direction or requirement contained in any order or in any document authorised by this Act, shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding two years.

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5. Short title, extent and interpretation

- (1) This Act may be cited as the Income Tax (Authorised Communications) Act.
- (2) In this Act, **“the relevant information or document”** means any information, returns, assessment lists or copies thereof as to the personal circumstances of any taxable person or the profit or item of profits of any person, or such other record or document as may be specified in an order to which section 1 of this Act relates.

SCHEDULE

FORM 1

[Section 1 (a).]

Order for inspection and/or removal of books, etc.

(under the Income Tax (Authorised Communications) Act)

To the Inspector-General of Police and all other officers of police of and above the rank of Chief Superintendent.

You and each of you are hereby authorised by the President under the powers conferred by the Income Tax (Authorised Communication) Act, as his delegate to require disclosure of relevant information or any document from the Federal Board of Inland Revenue and any other appropriate authority relating to the affairs of.....

(name of the person affected)

[Cap. 14.]

and if necessary to remove any relevant document, book, record, list or return, relating to the person aforesaid in the possession or control of the Federal Board of Inland Revenue or other appropriate tax authority:

AND for such purposes this order shall be your sufficient authority.

DATED at.....this.....day of.....20.....

(Signature).....

President

FORM 2

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[Section 2 (1).]

Direction to produce information and documents

(under the Income Tax (Authorised Communications) Act)

To..... *(here insert name of tax authority according as to whether it is the Federal Board of Inland Revenue or other appropriate tax authority)*

You are hereby directed and required under the provisions of section 2 of the Income Tax (Authorised Communications) Act, to produce on or before the.....day of.....20..... to any officer of police not below the rank of Chief Superintendent on production of his identity and authority, any information he may require in your possession or control relating to.....
(name of person, etc)

[Cap.14]

and any relevant books records, lists, returns or other document:

AND the receipt therefore by any such officer of police shall be your sufficient acquittance and indemnity.

DATED at..... this..... day of..... 20.....

.....
Inspector-General of Police

CHAPTER I7

**INDUSTRIAL DEVELOPMENT (INCOME TAX RELIEF) ACT CAP I7 LAWS OF THE
FEDERATION OF NIGERIA 2004**

ARRANGEMENT OF SECTIONS

Pioneer conditions

SECTION

1. Publication of list of pioneer industries and products and issuing of pioneer certificate.
2. Mode of application for pioneer certificate, etc., and fee payable.
3. Terms of pioneer certificate.
4. Amending of pioneer certificate by adding additional pioneer product.
5. Provisions where pioneer certificate operates retrospectively.

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6. Certifying the date of production day and the amount of qualifying capital expenditure.
ele.
7. Cancellation of pioneer certificates.
8. Information.
9. Publication of pioneer certificate, etc.

Income tax relief

10. Tax relief period.
11. Provisions governing old and new trade or business.
12. Restrictions on trading prior to end of tax relief period. etc.
13. Power to direct in certain events.
14. Capital allowances and losses.
15. Returns of profits.
16. Profits exempted from income tax.
17. Exemption of certain dividends from income tax.
18. Restrictions on distribution of dividends and on the granting of loans.
19. Exclusion of small companies' relief.
20. Provisions for plantation industry.

Miscellaneous and general

21. False information.
22. Offences by body corporate, etc.
23. Liability under undertaking enforceable notwithstanding proceedings.

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24. Repeal, savings and transitional provisions.

25. Interpretation.

26. Short title.

CHAPTER 17

INDUSTRIAL DEVELOPMENT (INCOME TAX RELIEF) ACT

An Act to repeal and re-enact, with major changes, the Industrial Development (Income Tax Relief) Act and to make provision for tax relief for certain industries that may be issued with pioneer certificates by the Minister and other matters ancillary thereto.

[1971 No. 22.]

[Commencement.] [1st April,
1970]

Pioneer conditions

1. Publication of list of pioneer industries and products and issuing of pioneer certificates

(1) Where the President is satisfied that-

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- (a) any industry is not being carried on in Nigeria on a scale suitable to the economic requirements of Nigeria or at all, or there are favourable prospects of further development in Nigeria of any industry; or
- (b) it is expedient in the public interest to encourage the development or establishment of any industry in Nigeria by declaring the industry to be a pioneer industry and any product of the industry to be a pioneer product,

the President may direct publication in the *Gazette* of a list of such industries and products (in this Act referred to as —the list of pioneer industries and pioneer products!) and upon publication as aforesaid, but subject to subsections (5) and (6) of this section, application may at any time thereafter be made under this Act, for the issue of a pioneer certificate to any company in relation to any such pioneer industry or pioneer product, and the President may, in accordance with the provisions of this Act, issue the certificate to the company in any proper case.

- (2) An application may also be made under this section for any industry to be included in the list of pioneer industries and pioneer products.
- (3) Any application under this section may be made by a company incorporated in Nigeria, or by a group of persons on behalf of a company which is to be so incorporated.
- (4) No application for the issue of a pioneer certificate to any company shall be made under this section unless the estimated cost of qualifying capital expenditure to be incurred by the company on or before production day (if the application is approved) is an amount which-
 - (a) in the case of an indigenous-controlled company, is not less than N50,000; or
 - (b) in the case of any other company, is not less than N150,000.
- (5) The President may from time to time, on any ground which appears to it sufficient, amend the list of pioneer industries and pioneer products.
- (6) Where, in exercise of the powers conferred under subsection (5) of this section, any industry or product is deleted from the list of pioneer industries and pioneer products, then-
 - (a) no application under this section shall thereafter be made by any company in relation to that industry or product; and

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- (b) as respects any pending application made under subsection (1) of this section, no pioneer certificate shall be issued under this Act, to any company in relation to that industry or product.

2. Mode of application for pioneer certificate, etc., and fee payable

- (1) Subject to the provisions of this Act, every application under section 1 of this Act shall be addressed to the Minister and shall be in such form as he may from time to time, specify.
- (2) Every such application shall state the grounds upon which the applicant relies and, if the application is for the issue of a pioneer certificate to any company, the applicant shall
 - (a) state whether the company is, or the proposed company when incorporated shall be, an indigenous-controlled company;
 - (b) give particulars of the assets on which qualifying capital expenditure will be incurred by the company, including their source and estimated cost-
 - (i) on or before production day; and
 - (ii) during a period of three, years following production day;
 - (c) specify the place in which the assets, in respect of which qualifying expenditure will be incurred by the company or proposed company, are to be situated;
 - (d) estimate and state the probable date of production day of the company or proposed company;
 - (e) specify any product and by-product (not being a pioneer product) proposed to be produced by the company or proposed company, and give a reasonable estimate of the quantities and value of such product and by-product during a period of one year from production day;
 - (f) give particulars of the loan and share capital, or the proposed loan and share capital of the company, or proposed company, including the amount and date of each issue or proposed issue, and the source from which the capital is to be or has been raised;
 - (g) in the case of a company already incorporated, give the name, address and nationality of each director of the company and the number of shares held by him; and

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- (h) in the case of a proposed company give the name, address and nationality of each promoter of the company.
- (3) Every such application shall contain a declaration signed by the applicant that all the particulars contained in the application are true and an undertaking to produce proof, if required, to the satisfaction of the Minister, of the truth of any such particulars which, under subsection (5) of this section, the Minister may require the applicant to furnish.
- (4) The application shall be accompanied by a fee of N100 (which sum shall not be refundable to the applicant, whether the application is approved or not) and the fee shall be credited to the Consolidated Revenue Fund of the Federation.
- (5) Where an application is submitted to the Minister under this section, he may require the applicant to furnish such further particulars as the Minister may consider necessary, to enable the President to consider the application.
- (6) As soon as may be after the application is submitted to the Minister or, as the case may be, after any further particular required by the Minister under subsection (5) of this section has been furnished to him by the applicant, the Minister shall submit the application and, subject to the provisions of this Act, the President may approve or disapprove the application.

3. Terms of pioneer certificate

- (1) Without prejudice to subsection (3) of this section, every pioneer certificate shall be in the terms of the application to which it relates:
- Provided that the President may make any variation in any such application.
- (2) A pioneer certificate may specify any permissible by-product which may be produced by the pioneer company in addition to the pioneer product and, if the President thinks fit, the pioneer certificate may limit the proportion of the permissible by-product in relation to the pioneer product, either in quantity or in value or both.
- (3) Where an application for the issue of a pioneer certificate made on behalf of a proposed company is approved by the President, it shall-
- (a) specify the period within which the company must be incorporated, not being later than four months after the date of notification of the approval to the applicants;

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- (b) specify any other conditions to be endorsed on the pioneer certificate when it is issued.

- (4) Any pioneer certificate to be issued to any company to which subsection (3) of this section relates shall be issued only after the company has been incorporated and the certificate shall be effective from a date, not earlier than the date on which the application for the pioneer certificate was submitted to the Minister or the date on which the company is so incorporated, whichever is the later, and the President may require that an undertaking shall be given by the company for the purpose of ensuring the due compliance by the company with any conditions endorsed on its pioneer certificate.

- (5) Notice of any condition, specified by the President under subsection (3) of this section, or of any undertaking required under subsection (4) of this section, shall be given by the Minister to the applicants concerned.

- (6) Notwithstanding anything contained in section 10 of this Act, in any case where a pioneer company-
 - (a) has acquired or proposes to acquire assets from any company to which a pioneer certificate has been granted under the Aid to Pioneer Industries Act, the Industrial Development (Income Tax Relief) Act or this Act; or
[1952 No. 10. Cap. 87 of 1958 Edition.]
 - (b) has taken over or proposes to take over the whole assets of any other company which is not a pioneer company,

the pioneer certificate may specify the maximum tax relief period, not exceeding five years, to be enjoyed by the pioneer company.

4. Amending of pioneer certificate by adding additional pioneer product

- (1) At any time during its tax relief period, a pioneer company may make an application in writing to the Minister for its pioneer certificate to be amended by the Council by adding any additional product to the pioneer product or products specified in the certificate.

- (2) Every such application shall specify the additional pioneer product and the reasons for the application and, subject as aforesaid, the provisions of subsections (3), (5) and (6) of section 2 of this Act shall apply in relation to an application made under section I of this Act.

- (3) Where an application under this section is approved by the President (with or without variations), it shall amend the pioneer certificate of the pioneer company in such terms and subject to such conditions as the President may think fit.

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5. Provisions where pioneer certificate operates retrospectively

- (1) Subject to the provisions of section 6 of this Act, where a pioneer certificate is to be operative from a retrospective date, then any act or thing which has been done or which has happened for the purposes of the principal Act since that date, but which would not have been done or happened if the pioneer certificate had been in force at that date, shall, whenever necessary for the purposes of this Act and the principal Act, be treated as not having been done or not having happened, and if the act consists of the payment of any tax by a company certified to be a pioneer company, that tax shall, as soon as may be after the expiration of three months from the production day of that company, be repaid to the company by the Board.

6. Certifying the date of production day and the amount of qualifying capital expenditure, etc.

- (1) Not later than one month after the material date, a pioneer company shall make an application in writing to the Director to certify the date of its production day and shall propose a date to be so certified and give reason for proposing that date.
- (2) Not later than one month after the production day of a pioneer company has been finally determined and certified under this section, or within such extended time as the Board may allow, a pioneer company shall make an application in writing to the Board or certify the amount of the qualifying capital expenditure incurred by the pioneer company prior to production day and the company shall supply full particulars of the capital expenditure so incurred.
- (3) In determining the amount of qualifying capital expenditure incurred by a pioneer company prior to its production day, any sum derived directly or indirectly by that company from any disposal (made before that day) of any asset on which qualifying capital expenditure has been incurred shall be taken into account for the purpose of reducing the amount of the qualifying capital expenditure; but where the disposal of such asset is by way of bargain not made at arm's length or is to any person who is controlled by the pioneer company or who has control over the pioneer company, the asset shall be deemed to have been disposed of for an amount, which in the opinion of the Board, the asset would have fetched if sold in the open market at the date of the disposal, less the amount of any expenses which the company might reasonably be expected to incur if the asset were so sold.
- (4) After considering any application made under subsection (1) of this section, together with such further information as he may call for, the Director shall issue a certificate to the pioneer company certifying the date of its production day.

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- (5) After considering any application made under subsection (2) of this section, together with such further information as it may call for, the Board shall issue a certificate to the pioneer company certifying the amount of qualifying capital expenditure incurred by the company prior to production day.
- (6) The provisions of Parts IX and X of the principal Act (which relate to objections and appeals) and of any rules made thereunder, shall apply, *mutatis mutandis*, to any certificate issued by the Director or the Board under this section, as if such certificate were a notice of assessment given under the said provisions of the principal Act.
- (7) The Director shall notify the Minister and the Board of the date of the production day of the pioneer company when the same has been finally determined and certified by the Director.
- (8) When the amount of the qualifying capital expenditure incurred by the pioneer company prior to production day has been finally determined and certified by the Board, the Board shall notify the Minister of that amount.
- (9) On the receipt of the notifications mentioned in subsections (7) and (8) of this section, the Minister shall require the pioneer company to declare within a period not exceeding thirty days in what respects the proposals and estimates made in its application for a pioneer certificate, or any conditions contained in its pioneer certificate, have not been fulfilled.
- (10) Where a certificate issued by the Director under subsection (4) of this section certifies that the date of the production day of a pioneer company is more than one year later than the estimate thereof given in the company's application for a pioneer certificate, the Minister shall report that fact to the President and the President shall cancel the pioneer certificate of that company unless he is satisfied that the delay is due to causes outside the control of the company or to other good and sufficient causes.
- (11) Where a certificate issued by the Board under subsection (5) of this section certifies that the pioneer company has on or before production day incurred qualifying capital expenditure of an amount which-
 - (a) in the case of an indigenous-controlled company, is less than N50,000; or
 - (b) in the case of any other company, is less than N150,000,the Commissioner shall report that fact to the President and the President shall cancel the pioneer certificate of the company.

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- (12) For the purposes of subsection (1) of this section, “**material date**” means-
- (a) in relation to a pioneer company engaged in a pioneer industry consisting of the provision of services, the date on which the company is ready to provide such services on a commercial scale; and
 - (b) in relation to a pioneer company engaged in a manufacturing, processing, mining, agricultural or any other pioneer industry, the date on which the company begins to produce a pioneer product in marketable quantities.

7. Cancellation of pioneer certificates

- (1) The Minister shall cancel a pioneer certificate upon the application of the pioneer company concerned.
- (2) Subject to the provision of this section and without prejudice to section 6 (10) and (11) of this Act, if the Minister is of the opinion that a pioneer company has contravened any provision of this Act or has failed to fulfill any estimate or proposal made in its application for a pioneer certificate or any conditions contained in its pioneer certificate, the Minister shall report the circumstances to the President who may either cancel the pioneer certificate of the company or restrict the tax relief of that company to such period as the President may, notwithstanding the provisions of section 10 of this Act, consider appropriate.
- (3) The effective date of cancellation of a pioneer certificate of a company shall be where the company has been in operation as a pioneer company for a period less than one year after the pioneer date, the pioneer date; and where the company has been in operation as a pioneer company for a period of not less than one year after the pioneer date, the date of the last anniversary of the pioneer date, and in this subsection, “**the pioneer date**” means the date from which a pioneer certificate takes effect.
- (4) Where the pioneer certificate of a pioneer company is cancelled or the tax relief period of a company is restricted under subsection (2) of this section, the Minister shall give notice of the cancellation (specifying the effective date thereof) or of the restriction, to the pioneer company concerned.

8. Information

- (1) When authorised to do so by the Minister, an officer of the Federal Ministry of Industry not below the rank of assistant secretary may require a pioneer company to give information in sufficient detail to his satisfaction-

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- (a) as to the local production costs and factory prices of the products of the company;
- (b) in any appropriate case, as to the relative cost (including freight and insurance) of imported products equivalent or similar to the pioneer products produced by the company;
- (c) as to any other matter which the Minister may, in the case of that company, reasonably require for the purposes of this Act.

9. Publication of pioneer certificate, etc.

- (1) The Minister shall cause to be published in the *Gazette*-
 - (a) the name of any company to which a pioneer certificate has been given and the pioneer industry or pioneer product to which the certificate relates;
 - (b) the name of any company the pioneer certificate of which has been cancelled and the effective date of the cancellation;
 - (c) any restriction of the tax relief period of a pioneer company.
- (2) Subject to the provisions of subsection (1) of this section, the contents of any application made, or of any pioneer certificate given, under this Act with respect to a pioneer company shall not, except at the instance of the company, be published in the *Gazette* or in any other manner.

Income tax relief

10. Tax relief period

- (1) The tax relief period of a pioneer company shall commence on the date of the production day of the company, and subject to sections 3 (6) and of 7 (2) of this Act, the tax relief period shall continue for three years.
- (2) The tax relief period of a pioneer company may at the end of the three years be extended by the President-
 - (a) for a period of one year and thereafter for another period of one year commencing from the end of the first period of extension; or
 - (b) for one period of two years.

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- (3) The President shall not extend the tax relief period of a pioneer company in exercise of the power conferred under subsection (2) of this section unless the President is satisfied as to-
- a. the rate of expansion, standard of efficiency and the level of development of the company;
 - b. the implementation of any scheme-
 - (i) for the utilisation of local raw materials in the processes of the company; and
 - (ii) for the training and development of Nigerian personnel in the relevant industry;
 - c. the relative importance of the industry in the economy of the country;
 - d. the need for the extension, having regard to the location of the industry; and
 - e. such other relevant matters as may be required.
- (4) A pioneer company wishing to obtain a certificate for the purposes of subsection (2) of this section shall make an application in writing to the Board not later than one month after the expiration of its initial tax relief period of three years or of any extension thereof, and such application shall contain particulars of all capital expenditure incurred by the company by the requisite date which the company claims should be accepted as qualifying capital expenditure.
- (5) The Board shall, after considering any application made under subsection (4) of this section together with such information as it may call for, issue a certificate to the company certifying the amount of the qualifying capital expenditure incurred by the company by the requisite date; and section 6 (3) of this Act shall apply for the purposes of determining the amount of the qualifying capital expenditure incurred by the requisite date as it applies for the purposes of determining the amount of qualifying capital expenditure incurred prior to a production day as if for the reference in that subsection to the words —prior to its production day there were substituted a reference to the words —by the requisite date.
- (6) Where the Board is satisfied that a pioneer company has incurred a loss in any accounting period falling within a tax relief period specified in the provisions of subsections (1) and (2) of this section, it shall issue a certificate to the company accordingly.

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(7) The provisions of Parts IX and X of the principal Act (which relate to objections and appeals) and of any rule made thereunder shall apply, *mutatis mutandis*, to any certificate given by the Board under the provisions of this section, or any notice of refusal to give a certificate under this section, as if the certificate or the notice of refusal were a notice of assessment given under the said provisions of the principal Act.

(8) In this section “**the requisite date**” means the date when a tax relief period expires.

11. Provisions governing old and new trade or business

(1) Where a trade or business of a pioneer company is carried on by the company before and after the end of its tax relief period, then for the purposes of the principal Act and this Act-

(a) the trade or business of that company shall be deemed to have permanently ceased at the end of the tax relief period of the pioneer company;

(b) in respect of that trade or business, the pioneer company shall be deemed to have set up and commenced a new trade or business on the day next following the end of its tax relief period;

(c) the pioneer company shall make up accounts of its old trade or business for the following periods, that is to say-

(i) a period not exceeding one year commencing on its production day;

(ii) successive periods of one year thereafter; and

(iii) a period not exceeding one year ending at the date when its tax relief period (determined under subsections (1) and (2) of section 10 of this Act) ends;

(d) in making up the first accounts of its new trade or business, the pioneer company shall take as the opening figure for those accounts. the closing figures in respect of its assets and liabilities as shown in its last accounts in respect of its tax relief period; and its next accounts of its new trade or business shall be made up by reference to the closing figures in the said first accounts and any subsequent accounts shall be similarly made up by reference to the closing figures of the preceding accounts of its new trade or business.

12. Restrictions on trading prior to the end of tax relief period, etc.

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- (1) Prior to the expiration of its tax relief period, a pioneer company shall not carry on any trade or business other than a trade or business, the whole of the profits of which are derived from its pioneer enterprise.
- (2) Where, prior to the expiration of its tax relief period, any profit is earned by a pioneer company from any operations or activities whatsoever other than its pioneer enterprise, the profit shall be deemed, for the purposes of the principal Act, to be derived from Nigeria and shall be liable to tax under that Act.

13. Power to direct in certain events

- (1) For the purposes of the principal Act and this Act, the Board may direct that-
 - (a) any sums payable to a pioneer company in any accounting period which, but for the provisions of this Act, might reasonably and properly have been expected to have been payable in the normal course of business after the end of that period, shall be treated as not having been payable in that period but as having been payable on such date after that period, as the Board thinks fit, and where such date is after the end of the tax relief period of the pioneer company, as having been so payable on that date as a sum payable in respect of its new trade or business; and
 - (b) any expense incurred by a pioneer company within one year after the end of its tax relief period which, but for the provisions of this Act, might reasonably and properly have been expected to have been incurred in the normal course of business during its tax relief period, shall be treated as not having been incurred within that year, but as having been incurred for the purposes of its old trade or business and on such date during its tax relief period, as the Board thinks fit.
- (2) Where a direction has been given under this section with respect to a pioneer company and thereafter the length of the tax relief period of the pioneer company is varied under any of the provisions of this Act, the Board may amend that direction accordingly.
- (3) In determining whether a loss has been made in an accounting period for the purpose of section 10 (6) of this Act, and for that purpose only, the Board may in its absolute discretion exclude such sum as may be in excess of an amount appearing to the Board to be just and reasonably paid or payable by a pioneer company in respect of-
 - (a) remuneration to directors of the company;
 - (b) interest, service, agency or other similar charges made by a person who is a shareholder of the company or by a person controlled by such shareholder.

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14. Capital allowances and losses

- (1) The profits of a pioneer company in respect of its old trade or business falling to be ascertained in accordance with the provisions of the principal Act for any accounting period shall be so ascertained, after making any necessary adjustments in consequence of a direction under section 13 of this Act, without any regard to the provisions of sections 20 and 2 J of the principal Act.

- (2) Where any asset is used for the purposes of the new trade or business of a pioneer company, any capital expenditure incurred by the pioneer company in respect of that asset before the end of its tax relief period shall, for the purposes of the Second Schedule to the principal Act, be deemed to have been incurred on the day next following the end of its tax relief period.

- (3) Where a pioneer company incurs a net loss during an accounting period in its old trade or business, that loss shall be deemed for the purposes of computing total profits (but not profits) to have been incurred by the company on the day on which its new trade or business commences.

- (4) For each accounting period, the Board shall issue to the pioneer company a statement showing the amount of income ascertained under subsection (1) of this section or loss computed in accordance with subsection (3) thereof; and the provisions of Parts IX and X of the principal Act (which relate to objections and appeals) and of any rules made thereunder shall apply, *mutatis mutandis*, to the statement as if such statement were a notice of assessment given under the said provisions of the principal Act.

- (5) For the purposes of subsection (3) of this section, —net loss| means the aggregate of losses incurred during the tax relief period after deduction of profits, if any, made at any time during that period; and a loss shall be computed in the same manner as profits are computed under the provisions of subsection (1) of this section and without regard to the provisions of section 13 (3) of this Act.

15. Returns of profits

The provisions of Part VIII of the principal Act shall apply in all respects to the profits of a pioneer company from its old trade or business as if those profits were chargeable to tax under that Act.

16. Profits exempted from income tax

- (1) Subject to the provisions of subsection (2) of this section and section 17 (()) of this Act, where in the application of Parts IX and X of the principal Act. a statement issued under

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section 14 (4) of this Act has become final and conclusive, any profits shown by that statement shall not form part of the assessable profits or total profits of the pioneer company for any year of assessment and shall be exempt from tax under the principal Act.

- (2) The Board may, in relation to any statement issued under section 14 (4) of this Act, declare that the whole or a specified part of the profits is not in dispute, and any such undisputed profits shall be exempt from tax under the principal Act pending the statement becoming final and conclusive.

17. Exemption of certain dividends from income tax

- (1) Wherever any amount of profits of a pioneer company is exempt from tax under section] 6 of this Act, that amount shall immediately be credited by the pioneer company to an account to be kept by it for the purposes of this section.
- (2) Where at the date of payment of any dividends by the pioneer company the said account is in credit, the dividends, or so much of the dividends where (after the end of its tax relief period) the amount thereof exceeds such credit, as equal the amount of such credit, shall be debited to the account.
- (3) So much of the amount of any dividends so debited to the account as are received by a shareholder in the pioneer company shall, if the Board is satisfied with the entries in the account, be exempt from tax in the hands of that shareholder and shall for the purposes of the principal Act and the Personal Income Tax Act, be deemed to be paid out of profits on which tax is not paid or payable.
[Cap. P8.]
- (4) Any dividends so debited to the account shall be treated as having been distributed to the shareholders or any particular class of shareholders of the pioneer company, in the same proportions as those shareholders were entitled to payment of the dividends giving rise to the debit.
- (5) Whenever called upon so to do by notice in writing sent by the Board to the registered office of a pioneer company, the company shall, until such time as the Board is satisfied that there is no further need for maintaining the account, deliver to the Board a copy of the account made up to a date specified by the Board in the notice.
- (6) Notwithstanding the provisions of section 16 of this Act and of this section, where it disappears to the relevant tax authority that any amount of exempted profits of a pioneer company, or any dividend exempted in the hands of a shareholder, ought not to have been exempted by reason of-

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(a) a direction under section 13 of this Act having been made with respect to a pioneer company, after any profit of that company has been exempted under the provisions of section 16 of this Act; or

(b) the cancellation of a pioneer certificate,

the relevant tax authority may at any time within six years of the direction or cancellation make such additional assessment upon the pioneer company or shareholder as may appear to the relevant tax authority necessary in order to counteract any benefit obtained from the amount which ought not to have been exempted.

(7) For the purposes of subsection (6) of this section, “**relevant tax authority**” has the same meaning as in section 2 of the Personal Income Tax Act, and in relation to any additional assessment to be made on a company under the said subsection (6), it means the Board.
[Cap. P8.]

18. Restrictions on distribution of dividends and on the granting of loans

During its tax relief period, a pioneer company shall not-

(a) make any distribution to its shareholders, by way of dividend or bonus, in excess of the amount by which the account, to be kept by the company under section 7 of this Act, is in credit at the date of any such distribution; or

(b) grant any loan without first obtaining the consent of the Minister, whose consent shall only be given if he is satisfied that the pioneer company is obtaining adequate security and a reasonable rate of interest for any such loan.

19. Exclusion of small companies' relief

A pioneer company shall not be entitled to any relief under section 28 of the principal Act.

20. Provisions for plantation industry

For the purposes of the principal Act and this Act, the trade of a company which operates a plantation and to which a pioneer certificate has been granted shall be deemed to have commenced on the date when planting first reaches maturity, and any expenditure incurred on the maintenance of a planted area up to that date shall be deemed to have brought into existence an asset, and the expenditure shall be qualifying plantation expenditure for the purposes of the Second Schedule to the principal Act.

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Miscellaneous and general

21. False information

(1) Any person who, for the purpose of obtaining a pioneer certificate or of complying with any provisions of this Act-

- (a) makes or presents any declaration or statement which is false in any material particular; or
- (b) produces any invoice or undertaking which is false in any material particular or has not been given by the person by whom it purports to have been given or which has been in any way altered or tampered with,

shall be guilty of an offence under this section unless he proves that he has taken all reasonable steps to ascertain the truth of the statement made or contained in any document so presented or produced or to satisfy himself to the genuineness of the invoice or undertaking.

(2) Any person who is guilty of an offence under this section shall be liable on conviction to a fine not exceeding N1, 000 or to imprisonment for a term of five years or to both such fine and imprisonment.

22. Offences by body corporate, etc.

Where an offence under this Act is committed by a body corporate, or firm or other association of individuals-

- (a) every director, manager, secretary or other similar officer of the body corporate;
- (b) every partner or officer of the firm;
- (c) every person concerned in the management of the affairs of the association; or
- (d) every person who was purporting to act in any such capacity as aforesaid,

shall severally be guilty of that offence and liable to be prosecuted and punished for the offence in like manner as if he had himself committed the offence, unless the act or omission constituting the offence took place without his knowledge, consent or connivance.

23. Liability under undertaking enforceable notwithstanding proceedings

The institution of proceedings for, or imposition of a fine or term of imprisonment under this Act shall not relieve any person from liability to payment of any sum for which he is or may be liable under any undertaking given by him under any provision of this Act.

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24. Repeal, savings and transitional provisions

- (1) Subject to the provisions of this section, the industrial Development (Income Tax Relief) Act is hereby repealed.

[Cap. 87 of the 1958 Edition]

- (2) Subject as aforesaid, and notwithstanding the provisions of section 6 of the Interpretation Act (which relates to the effect of repeals) any pioneer certificate given under the Industrial Development (Income Tax Relief) Act (hereafter in this section referred to as —the repealed Act) by which an industry was declared to be pioneer industry or a company was declared to be a pioneer company (being a certificate which was in force immediately before the relevant date), shall from that date have effect as if it were a pioneer certificate issued under this Act.

[Cap. 123.]

- (3) Where any part of an initial tax relief period of two years granted to a company before the relevant date under the repealed Act has not expired at the relevant date and the qualifying capital expenditure incurred by the company concerned on or before its production day is:

(a) in the case of an indigenous-controlled company, not less than N50,000; or

(b) in the case of any other company, not less than N150,000,

the initial tax relief period shall be construed as if that period were three years instead of two years; and thereafter an application may be made by the company for an extension of the tax relief period under section 10 (2) of this Act.

- (4) Where, in any case other than a case mentioned in subsection (3) of this section, a pioneer certificate granted under the repealed Act to any company is in force immediately before the relevant date, the company may, on or before the expiry date of its pioneer certificate or tax relief period, apply under the provisions of section 10 (2) of this Act, for an extension of its tax relief period; and the provisions of section 1 (4) of this Act shall apply in relation to any application under section 1 of this Act, for the issue of a pioneer certificate.

- (5) A further tax relief period may be granted under section 10 (2) of this Act, to a pioneer company to which subsection (3) or (4) of this section applies, but nothing in this section shall have effect or be construed so as to authorise the grant, in any such case, of a tax relief period (under the repealed Act and this Act) in excess of five years from the production date of the pioneer company.

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- (6) Notwithstanding anything in this section, the President may amend or cancel any pioneer certificate to which subsection (2), (3), (4) or (5) of this section applies.
- (7) Where an application for a pioneer certificate made under the repealed Act is pending on the relevant date, the provisions of section 2 of this Act shall apply thereto as if the application had been made under this Act, and the Minister may-
- (a) require the applicant to furnish any particulars, or enter into any undertaking, which if the application had been made under this Act, would have been required to be included in the application or to be given in respect thereto;
 - (b) require the applicant to pay the fee prescribed under the said section 2, before the application is proceeded with under this Act.
- (8) Where an application for a pioneer certificate made under the repealed Act has been approved by the President. but no pioneer certificate had been issued in respect thereof, any certificate issued thereafter shall be deemed to have been in force immediately before the relevant date and effect shall be given thereto as if it were a pioneer certificate issued under that Act.

[1972 No. 42.]

- (9) In this section "relevant date" means the date of the making of this Act.

25. Interpretation

- (1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say-

“accounting period” means a period for which accounts have been made up in accordance with paragraph (c) of section 11 of this Act;

“Board” means the Federal Board of Inland Revenue established under section 1 of the principal Act;

“company” means a company (other than a private company) limited by shares and incorporated and registered in Nigeria and resident in Nigeria;

“the Director” means the director appointed pursuant to section 1 (3) of the Industrial Inspectorate Act;

[Cap.I8.]

“Gazette” means the Federal Gazette and includes the Gazette of any State in the Federation;

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“the Minister” means the Minister for Industry;

“new trade or business” means the trade or business of a pioneer company deemed under the provisions of section 11 of this Act to have been set up and commenced on the day following the end of its tax relief period;

“old trade or business” means the trade or business of a pioneer company carried on by it during its tax relief period in accordance with the provisions of section 11 of this Act and which either ceases within that period or is deemed, under those provisions, to cease at the end of that period;

“permissible by-product” means any goods or services so described in any certificate given under section 1 of this Act being goods or services necessarily or ordinarily produced in the course of producing a pioneer product;

“pioneer certificate” means a certificate given under this Act certifying, among other things, a company to be a pioneer company, or any such certificate as amended under this Act;

“pioneer company” means a company certified by any pioneer certificate to be a pioneer company;

“pioneer enterprise” in relation to a pioneer company, means the production and sale of its relevant pioneer product or products;

“pioneer industry” means any trade or business of the kind included in any list published under section 1 of this Act;

“pioneer product” means goods or service of the kind included in any list published under section 1 of this Act;

“principal Act” means the Companies Income Tax Act;
[Cap. C2I.]

“production day” means the day on which the trade or business of a pioneer company commences for the purposes of the principal Act;

“qualifying capital expenditure” means capital expenditure of such a nature as to rank as qualifying expenditure for the purposes of the Second Schedule to the principal Act;

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“relevant pioneer product” in relation to any pioneer company, means the pioneer product or products and the permissible by-products specified in its pioneer certificate; and

“tax relief period” means the period specified under subsection (1) of section 10 of this Act and any extension of that period made under that section.

- (2) References in this Act to an indigenous-controlled company are references to any company in which-
- (a) the beneficial ownership of the whole of the equity capital of the company and of all other class of shares conferring voting rights in the company, is vested in persons who are citizens of Nigeria, otherwise than by naturalisation or registration; and
 - (b) the persons mentioned in paragraph (a) of this subsection, control the composition of the board of directors of the company.
- (3) Nothing in this Act shall be taken as prejudicing the effect of section 3 of the Industrial Inspectorate Act (which relates to notice of intention to incur capital expenditure) or any other provision of that Act.

[Cap.18.]

26. Short title

This Act may be cited as the Industrial Development (Income Tax Relief) Act and shall be read as one with the principal Act.

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CHAPTER 18

INDUSTRIAL INSPECTORATE ACT

ARRANGEMENT OF SECTIONS

SECTION

1. Establishment and composition of Industrial Inspectorate Division.
2. Duties of the division.
3. Notice of intention to incur capital expenditure, etc.
4. Arbitration.
5. Certificate of acceptance or decision of arbitration to be binding.
6. Returns.
7. Offences relating to returns.
8. Power to enter business premises and obtain information, etc.
9. Offences by bodies corporate.
10. Regulations.
11. Interpretation.
12. Short title.

SCHEDULE

FIRST SCHEDULE

FORM I

Notification of intention to incur capital expenditure

FORM II

FIRS – TAX LAW COMPENDIUM

Certificate of acceptance

SECOND SCHEDULE

Matters about which a person may be required to submit returns under section 6

CHAPTER I 8

INDUSTRIAL INSPECTORATE ACT

An Act to establish the Industrial Inspectorate Division in the Federal Ministry of Industries for the purpose of investigating and following the undertakings of industries including investments and other related matters.

[9th October,

1970]

[Commencement]

1. Establishment and composition of Industrial Inspectorate Division

- (1) There shall be established as an integral part of the Federal Ministry of Industries a division to be known as the Industrial Inspectorate Division (hereafter in this Act referred to as "the division") which shall, subject to the overall control and direction of the Minister, have the powers and exercise the functions conferred by or under this Act.
- (2) The division shall consist of a Director and such number of inspectors as may, from time to time, be required to assist the Director.
- (3) The Director and inspectors shall be members of the public service of the Federation within the meaning of the Constitution of the Federal Republic of Nigeria 1999.
[Cap. C23.]
- (4) Any person who may be appointed as a Director or inspector shall have such qualifications and experience as are appropriate for a person required to perform the functions conferred by or under this Act.

2. Duties of the Division

- (1) It shall be the duty of the division generally to carry out investigations into any proposed, new and existing undertaking involving any proposed capital expenditure, and in particular, for the purposes of determining the investment valuation of the undertaking, that is-
 - (a) the actual capital (whether foreign or local) employed or proposed to be employed in the undertaking;

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- (b) the actual valuation of buildings, plants and other machinery employed or proposed to be employed in the undertaking and any addition thereto.
- (2) The division shall also obtain necessary information on economic trends in the country and for this purpose the division shall-
 - (a) prepare and keep detailed records of matters relating to any undertaking investigated by it;
 - (b) as far as possible prepare and keep records of all industrial plants and equipment in the country, their value and the value of similar plants and equipment in other countries.

3. Notice of intention to incur capital expenditure, etc.

- (1) As from the commencement of this Act, any person proposing-
 - (a) to start a new undertaking involving the expenditure of not less than twenty thousand naira; or
 - (b) to incur additional capital expenditure of not less than twenty thousand naira in respect of an existing undertaking,shall give to the Director notice of his intention in the form specified in the First Schedule to this Act.

[First Schedule]

- (2) The Director shall on receipt of the notice sent pursuant to subsection (1) of this section verify the information contained therein and may
 - (a) demand and make use of any document relating to the purchase (whether locally or abroad) of any plant or machinery or parts thereof;
 - (b) in the case of second-hand equipment, demand and make use of information relating to the history of the equipment;
 - (c) carry out physical checks on the site of any undertaking and inspect any building, plant or machinery.

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- (3) On being satisfied with the investment valuation as determined pursuant to the provisions of sections 1, 2 and 3 to this Act, the Director shall prepare and forward to the person carrying on the undertaking a certificate of acceptance which shall be in the form specified in the First Schedule to this Act.

[First Schedule]

- (4) Any person who fails to comply with subsection (1) of this section shall, unless he proves that he had reasonable excuse for the failure, be guilty of an offence and liable on conviction to a fine of one thousand naira.

4. Arbitration

- (1) Any person disputing a finding of the Director relative to the investment valuation of any matter concerning his undertaking may require the matter to be submitted to arbitration and the dispute shall be resolved in the following manner, that is to say-
- (a) there shall be a sole arbitrator who shall be a person agreed to by the Director and the party disputing the valuation (both of whom are hereafter in this section referred to as —the affected parties!) and who shall be appointed by the Minister;
 - (b) the sole arbitrator shall as soon as possible after his appointment view the building, plant or machinery which is the subject matter of the dispute and consider all documents and other information relating to them;
 - (c) the sole arbitrator shall decide on the investment valuation and make his award within one month after entering on the reference or any longer period allowed in writing by the Minister; and
 - (d) if there shall arise any question of law in the course of determining the dispute, the sole arbitrator may submit the question for the determination of a High Court of a State or of the Federal Capital Territory, Abuja where the undertaking is situated or in which the subject matter of the dispute arises (whichever is in the opinion of the arbitrator convenient to the affected parties) and the arbitrator shall be guided by the decision and direction of the court.
- (2) The investment valuation as determined by the sole arbitrator and any award made thereby shall be binding and final as between the affected parties.

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- (3) Each of the affected parties shall bear his costs incurred in respect of any submission under this section to arbitration, for the determination of a point of law, or both as the case may be.
- (4) The Arbitration and Conciliation Act shall extend to a submission to arbitration under subsection (1) of this section.

[Cap. A18.]

5. Certificate of acceptance or decision of arbitration to be binding

- (1) Where, in exercise of any of the functions conferred by or under any law, any of the bodies mentioned in subsection (2) of this section has to take account of any fact and-
- (a) there is included in a certificate of acceptance, issued by the Director pursuant to section 3 (3) of this Act, a finding regarding that fact; or
 - (b) there is, following any reference under section 4 of this Act, an arbitration decision in relation to that fact,

that finding, or as the case may be, the decision, shall for the purposes of the exercise of those functions be final and binding as between any of those bodies and the parties concerned.

- (2) The bodies referred to in subsection (1) of this section are-
- (a) the Federal Board of Inland Revenue;
 - (b) the Customs, Immigration and Prisons Services Board; and
 - (c) any department of the Government of the Federation or of a State.

6. Returns

- (1) The Director may, by notice in writing served on any person carrying on an undertaking require that person to furnish in such form as may be prescribed information on such of the matters set out in the Second Schedule to this Act (hereinafter in this Act referred to as —the returns) as the Director may specify.

[Second Schedule]

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- (2) A person required to furnish returns pursuant to subsection (1) of this section, shall, within two months of the date of the notice from the Director, comply with the notice.

7. Offences relating to returns

- (1) If any person required to furnish returns pursuant to section 6 of this Act fails to furnish those returns as required under this Act, he shall be guilty of an offence and liable on conviction to a fine of two hundred naira or in the case of a second or subsequent offence to a fine of four hundred naira.
- (2) If a person, in purported compliance with a requirement to furnish returns as specified in subsection (1) of this section, knowingly or recklessly makes any statement in the returns which is false in any material particular, he shall be guilty of an offence and liable on conviction to a fine of four hundred naira or imprisonment for a term of two years or to both such fine and imprisonment.

8. Power to enter business premises and obtain information, etc.

For the purpose of carrying out any of his functions under this Act the Director or any inspector authorised by him in writing-

- (a) shall have a right of access at all times to any building where an undertaking is being carried on; and
- (b) shall be entitled to require from the directors or other officers of the undertaking such information and explanation as may be required for the performance of any duty conferred under this Act.

9. Offences by bodies corporate

Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other official of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

10. Regulations

The Minister may, make such regulations as may be required from time to time, for carrying into effect the object of this Act and, without prejudice to the foregoing, he may by regulations-

- (a) prescribe anything required to be prescribed under this Act; and

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(b) amend, alter or vary any of the forms contained in the First Schedule to this Act.

[First Schedule]

11. Interpretation

In this Act, except where the context otherwise requires-

“**Director**” means the Director appointed pursuant to section 1 (3) of this Act;

“**inspector**” means the inspector appointed pursuant to section 1 (3) of this Act;

“**investment valuation**” in relation to any capital investment means any valuation determined pursuant to section 2 of this Act;

“**Minister**” means the Minister of Industries;

“**returns**” has the meaning assigned thereto in section 6 of this Act;

“**undertaking**” means any undertaking carried on by way of trade or business for the production of goods or services for sale and requiring the use of industrial machinery and other equipment, plants, buildings and other permanent or temporary fixtures on land.

12. Short title

This Act may be cited as the Industrial Inspectorate Act.

SCHEDULES

FIRST SCHEDULE

[Section 3]

FORM I

INDUSTRIAL INSPECTORATE ACT

Notification of intention to incur capital expenditure

In accordance with the Industrial Inspectorate Act, I hereby supply the following particulars:

1. Name of business/company.....

2. Address and location.....

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3. Postal address.....

4. Description of business.....

5. Cause for capital expenditure:

(Is it a new business about to be established or an existing business expanding)

.....
.....

6. Total new/additional investment envisaged:

.....
.....

7. Programme-

- (a) date building is to commence.....
- (b) date building is to end.....
- (c) date of importation of machinery.....
- (d) date machine installation is to commence
- (e) date machine installation is to end.....
- (f) date production is to start

8. Persons to be contacted at every stage-

- (a) name.....
- (b) address.....
- (c) telephone no.....
- (d) Signature.....

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FORM II

INDUSTRIAL INSPECTORATE DIVISION

FEDERAL MINISTRY OF INDUSTRIES

Industrial Inspectorate Act

CERTIFICATE OF ACCEPTANCE OF NEW/ADDITIONAL* INVESTMENT VALUE

No. of certificate:

Date of issue:

I hereby certify that the value of new/additional* capital expenditure on fixed assets incurred by

.....

Name of business/company.....

Address and location is as follows.....

.....

.....

Building and site development.....

Production machines and equipment.....

Installation.....

Vehicles, etc.....

TOTAL

and that the contribution for financing the above are Nigerian equity.....

Foreign equity

*Cancel whichever is not applicable.

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In cases of expansion only (cancel if not applicable).

SECOND SCHEDULE [Section 6.]

Matters about which a person may be required to submit returns under section 6

1. The nature of the undertaking (including its association with other undertakings), the date of its establishment or acquisition, the output, sales, deliveries and services provided.
2. The articles acquired or used, orders, stocks and work in progress.
3. The persons employed or normally employed (including working proprietors), the nature of their employment, their remuneration and the hours worked.
4. The outgoings and costs (including work given out to contractors, depreciation, rent, rates and taxes, other than taxes on profits) and capital expenditure.
5. The receipts of and debts owed to the undertaking.
6. The power used or generated.
7. The fixed capital assets, the plant, including the acquisition and disposal of those assets and that plant, and the premises occupied.

Local loans.....

Foreign loans.....

Previous investment up to

Acceptance Reference ,.....

was

Total investments to date.....

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CHAPTER N156

NATIONAL INFORMATION TECHNOLOGY DEVELOPMENT AGENCY ACT

ARRANGEMENT OF SECTIONS

PART I

Establishment of the Agency

SECTION

1. Establishment of the Agency.

PART II

Composition of the Governing Board, Powers and Functions

2. Establishment and membership of the Governing Board.
3. Tenure of Office.
4. Cessation of membership.
5. Emoluments, etc. of members.
6. Functions of the Agency.
7. Powers of the Board.

PART III

Staff and Structure of the Agency

8. Director-General, Secretary and other staff of the Agency.
9. Pensions Reform Act 2004 No.4.
10. Staff regulations.
11. Removal from Office of the Director-General, etc.

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PART IV

Establishment of the National Information Technology Development Fund

12. Establishment, etc., of the National Information Technology Development Fund.
13. Exempted from tax.
14. Investments.
15. Accounts and report of the fund.
16. Federal Inland Revenue Service to collect levy and pay into the Fund.
17. Offences.
18. Offences relating to body corporate.

PART V

Information Technology Parks

19. Information technology parks.

PART VI

Financial Provisions

20. Accounts of the Agency.
21. Expenditure of the Board.
22. Annual estimates and accounts.
23. Annual reports.
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26. Exemption from tax.

PART VII

Legal Proceedings

27. Limitation of suits against the Agency.

28. Service of documents.

29. Restriction on execution against property of the Agency.

30. Indemnity.

PART VIII

Miscellaneous

31. Directives by the Minister, etc.

32. Regulations by the Board.

33. Transitional provisions.

34. Interpretation.

35. Short title.

SCHEDULES

FIRST SCHEDULE

Supplementary Provisions relating to the Board, etc.

SECOND SCHEDULE

*Supplementary Provisions relating to the Supervision of the Management of the Country
Code Top Level Domain (.ng) on the Internet*

THIRD SCHEDULE

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CHAPTER N156

NATIONAL INFORMATION TECHNOLOGY DEVELOPMENT AGENCY ACT

An Act to provide for the establishment of the National Information Technology Development Agency; and for related matters.

[2007 No. 60.]

[24th April, 2007]

[Commencement]

ENACTED by the National Assembly of the Federal Republic of Nigeria.

PART I

Establishment of the Agency

1. Establishment of the Agency

- (1) There is established a body to be known as the National Information Technology Development Agency (hereinafter in this Act referred to as —the Agency¶).
- (2) The Agency shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.

PART II

Composition of the Governing Board, Powers and Functions

2. Establishment and membership of the Governing Board

- (1) There is established for the Agency, a Governing Board (in this Act, referred to as —the Board¶) which shall have overall control of the Agency.
- (2) The Board shall consist of-
 - (a) a chairman;
 - (b) a representative each of:
 - (i) the Federal Ministry of Science and Technology;

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- (ii) the Ministry of Communication;
 - (iii) the Federal Ministry of Education;
 - (iv) the Standards Organisation of Nigeria;
 - (v) the Nigerian Society of Engineers;
- (c) four persons to represent the affiliate bodies of the Computer Professionals' Registration Council of Nigeria;
- (d) two persons with cognate experience in Information Technology to represent the Academic Staff Union of Universities, and the Academic Staff Union of Polytechnics;
- (e) six persons who are experts in the area of Information Technology appointed by the President from each of the six geo-political zones of Nigeria; and
- (f) the Director-General of the Agency who shall be the Secretary of the Board;
- (g) the Director-General of the Agency who shall be the Secretary of the Board.
- (3) The Chairman and members of the Board, other than the ex officio members, shall be appointed by the President, on the recommendation of the Minister.
- (4) The supplementary provisions set out in the First Schedule to this Act shall have effect with respect to the proceedings of the Board and the other matters mentioned therein.
[First Schedule]

3. Tenure of Office

The Chairman and other members of the Board, other than ex officio members shall each hold Office-

- (a) for a term of 4 years in the first instance and may be re-appointed for a further term of 4 years and no more; and
- (b) on such terms and conditions as may be specified in his letter of appointment.

4. Cessation of membership

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- (1) Notwithstanding the provisions of section 3 of this Act, a member of the Board shall cease to hold Office if:
 - (a) he resigns his appointment as a member of the Board by notice, under his hand, addressed to the President;
 - (b) he becomes of unsound mind;
 - (c) becomes bankrupt or makes a compromise with his creditors;
 - (d) he is convicted of a felony or of any offence involving dishonesty or corruption;
 - (e) he becomes incapable of carrying out the functions of his office either arising from an infirmity of the mind or of the body; or
 - (f) the President is satisfied that it is not in the interest of the Agency or of the public for the person to continue in Office and notifies the member in writing to that effect.

- (2) When a vacancy occurs in the membership of the Board, it shall be filled by the appointment of a successor to hold Office for the remainder of the term of Office of his predecessor provided that the successor shall represent the same interest as his predecessor.

5. Emoluments, etc. of members

The Chairman and members of the Board shall be paid such emoluments, allowances and benefits as the Federal Government may, from time to time, direct.

6. Functions of the Agency

The Agency shall-

- (a) create a framework for the planning, research, development, standardisation, application, co-ordination, monitoring, evaluation and regulation of information technology practices, activities and systems in Nigeria and all matters related thereto and for that purpose, and which without detracting from the generality of the foregoing shall include providing universal access for information technology and systems penetration including rural, urban and underserved areas;

- (b) provide guidelines to facilitate the establishment and maintenance of appropriate infrastructure for information technology and systems application and development in

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- Nigeria for public and private sectors, urban-rural development, the economy and the Government;
- (c) develop guidelines for electronic governance and monitor the use of electronic data interchange and other forms of electronic communication transactions as an alternative to paper-based methods in Government, commerce, education, the private and public sectors, labour, and other fields, where the use of electronic communication may improve the exchange of data and information;
 - (d) develop guidelines for the networking of public and private sector establishments;
 - (e) develop guidelines for the standardisation and certification of Information technology Escrow Source Code and Object Code Domiciliation, Application and Delivery Systems in Nigeria;
 - (f) render advisory services in all information technology matters to the public and private sectors;
 - (g) create incentives to promote the information technology in all spheres of life in Nigeria including the setting up of information technology parks;
 - (h) create incentives to promote the use of information technology in all spheres of life in Nigeria including the development of guidelines for setting up of information technology systems and knowledge parks;
 - (i) introduce appropriate regulatory policies and incentives to encourage private sector investment in the information technology industry;
 - (j) collaborate with any Local or State Government, company, firm or person in any activity which in the opinion of the Agency is intended to facilitate the attainment of the objectives of this Act;
 - (k) determine critical areas in information technology requiring research intervention and facilitate research and development in those areas;
 - (l) advise the Government on ways of promoting the development of information technology in Nigeria including introducing appropriate information technology legislations, to enhance national security and the vibrancy of the industry;
 - (m) accelerate internet and intranet penetration in Nigeria and promote sound internet governance by giving effect to the Second Schedule of this Act; and
[Second Schedule]

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- (n) perform such other duties which, in the opinion of the Agency, are necessary or expedient to ensure the efficient performance of the functions of the Agency under this Act.

7. Powers of the Board

The Board shall have power to-

- (a) formulate overall policy for the management of the affairs of the Agency;
- (b) manage the National Information Technology Development Fund established under section 12 of this Act; and
- (c) appoint, promote, terminate, dismiss and exercise disciplinary control over the principal officers and senior staff of the Agency;
- (d) structure the Agency into such number of departments as it deems fit for the effective discharge of the functions of the Agency; and
- (e) exercise such powers as are necessary or expedient for giving effect to the provisions of this Act.

PART III

Staff and Structure of the Agency

8. Director-General and other staff of the Agency

- (1) There shall be for the Agency a Director-General who shall-
 - (a) be appointed by the President;
 - (b) be the chief executive and accounting officer of the Agency;
 - (c) be responsible for the execution of policy and the day to day administration of the affairs of the Agency; and
 - (d) perform such other duties as the Board may, from time to time, assign to him.

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- (2) The Director-General shall hold office for a term of 4, years in the first instance and may be re-appointed for a further term of 4 years and no more and on such terms and conditions as may be specified in his letter of appointment.
- (3) The Agency may, subject to the approval of the Board, appoint such other staff as it may deem necessary and expedient, from time to time, for the proper and efficient performance of the functions of the Agency.
- (4) The terms and conditions of service including remuneration, allowances, benefits and pensions of the staff and employees of the Agency shall be determined by the Board in such a manner as to attract and retain quality and high calibre manpower.
- (5) The Board shall consider and in consultation with the National Income and Wages Commission determine and review from time to time the remunerations and allowances payable to the Agency's staff.

9. Pensions Reform Act 2004 No.4

- (1) Service in the Agency shall be approved service for the purpose of the Pensions Act, and accordingly, officers and employees of the Agency shall be entitled to pensions, gratuities and other retirement benefits as are prescribed under the Pension Act.

[Cap. P4]

- (2) Without prejudice to the provisions of subsection (I) of this section, nothing in this Act shall prevent the appointment of a person to any Office on terms and conditions which preclude the grant of a pension, gratuity or other retirement benefits in respect of that Office.
- (3) For the purpose of the application of the provisions of the Pensions Act, any power exercisable by a Minister or other authority of the Federal Government, other than the power to make regulations, under section 23 thereof, is hereby vested in and shall be exercisable by the Board and not by any other person or authority.

10. Staff regulations

- (1) Subject to the provisions of this Act, the Agency may make staff regulations relating generally to the conditions of service of the staff and without prejudice to the generality of the foregoing, such regulations may provide for:

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- (a) the appointment, promotion, termination, dismissal and disciplinary control of staff or employees of the Agency; and
 - (b) appeals by staff or employees against dismissal or other disciplinary measures and until such regulations are made any instrument relating to conditions of service in the Public Service of the Federation shall be applicable, with such modifications as may be necessary, to the employees of the Agency.
- (2) The staff regulations made under subsection (1) of this section shall not have effect until approved by the Board, and when so approved the Agency shall cause a notice of the staff regulations to be issued to all affected staff in such manner as it may, from time to time, determine.

11. Removal from Office of the Director-General, etc.

Notwithstanding the provisions of sections 7 (c) and 9 of this Act, the Director-General of the Agency may be removed by the President on the recommendation of the Minister.

PART IV

Establishment of the National Information Technology Development Fund

12. Establishment, etc. of the National Information Technology Development Fund

- (1) There is established a fund, which shall be known as the National Information Technology Development Fund (in this Act referred to as —the Fund).
- (2) There shall be paid and credited into the Fund established under subsection (1) of this section-
 - (a) a levy of one percent of the profit before tax of companies and enterprises enumerated in the Third Schedule to this Act with an annual turnover of N100,000,000 and above and such paid by the companies shall be tax deductible;
[Third Schedule]
 - (b) grants-in-aid and assistance from bilateral and multilateral agencies;
 - (c) all other sums accruing to the Fund by way of gifts, endowments, bequest or other voluntary contributions by persons and organisations:

Provided that the terms and conditions attached to such gifts, endowments, bequest or contributions will not jeopardise the functions of the Agency;

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(d) such monies as may be appropriated for the Fund by the National Assembly; and

(e) all other monies or assets that may, from time to time accrue to the Fund.

13. Exempted from tax

All monies accruing to the Fund and accounts of the Agency from the sources specified in sections 12 and 19 of this Act respectively shall be exempted from income tax and all contributions to the Fund and the accounts of the Agency shall be tax deductible.

14. Investments

The Board may, in accordance with the Trustee Investments Act, invest any surplus funds in profit yielding ventures and the net incomes so generated shall be paid into the treasury.

[Cap. T22]

15. Accounts and report of the Fund

- (1) The Director-General of the Agency shall keep proper records of the accounts, sources and use of the monies and assets of the Fund and shall render accounts to the Board, from time to time.
- (2) The account of the Fund shall be audited not later than 3 months after the end of the year to which it relates by auditors appointed by the Board from the list and in accordance with the guidelines supplied by the Auditor-General for the Federation.

16. Federal Inland Revenue Service to collect levy and pay into the Fund

- (1) The Federal Inland Revenue Service shall assess and collect the levy imposed under section 12 of this Act.
- (2) The Federal Inland Revenue Service shall, while assessing any company for either company income tax or petroleum profit tax for an accounting period of the company, also assess such company for the levy or tax due under this Act.
- (3) The levy imposed under section 12 of this Act shall be due and payable within 60 days after the Federal Inland Revenue Service has served notice of the assessment on a

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company in such form as the Federal Inland Revenue Service may, from time to time, determine.

- (4) Where a levy due under section 12 of this Act is not paid within the time specified in that section, the Federal Inland Revenue Service shall serve on the company, a demand note for the unpaid tax plus a sum which is equal to 2 percent of the levy.
- (5) Any company, agency or organisation that fails within two months after a demand note, to pay the levy or the import duty imposed under section 11 of this Act commits an offence and is liable on conviction to a fine of not less than N 1,000,000.00 and the chief executive officer of the company, agency or organisation shall be liable to be prosecuted and punished for the offence in like manner as if he had himself committed the offence, unless he proves that the act or omission constituting the offence took place without his knowledge, consent or connivance.

- =
- (6) The institution of proceedings or imposition of a penalty under this Act shall not relieve a company or organisation from liability to pay to the Federal Inland Revenue Service such levy or levies that may become due under this Act.

17. Offences

- (1) Except as otherwise provided in this Act, any person or corporate body who contravenes or fails to comply with the provisions of this Act commits an offence.
- (2) Where a body corporate fails to make payment within two months after a demand note for unpaid levy plus a sum which is equal to 2 percent of this levy has been served on the body corporate, the body corporate commits an offence under this Act.
- (3) Where an offence under this Act is committed by a body corporate or firm or other association of individuals-
- (a) every chief executive officer of the body corporate or any officer acting in that capacity or on his behalf; and
 - (b) every person purporting to act in any capacity mentioned under paragraph (a) of this subsection commits an offence, unless he proves that the act or omission constituting the offence took place without his knowledge, consent or connivance.
- (4) Where a person or body corporate fails to comply with the guidelines and standards prescribed by the Agency in the discharge of its duties under this Act, such person or body corporate commits an offence.

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- (5) The Agency shall collaborate with the Standards Organisation of Nigeria to enforce the guidelines and standards formulated by the Agency in the discharge of its duties under the Act.

18. Offences relating to body corporate

- (1) Except as otherwise provided in this Act, anybody corporate or person who commits an offence under this Act where no specific penalty is provided is liable on conviction-
- (a) for a first offence, to a fine of N200,000 or imprisonment for a term of 1 year or to both such fine or imprisonment; and
- (b) for a second and subsequent offences, to a fine of N500,000 or to imprisonment for a term of 3 years or to both such fine and imprisonment.
- (2) The institution of proceedings or imposition of a penalty under this Act shall not relieve a body corporate from liability to pay to the Federal Inland Revenue Service such levy or tax which or may become due under this Act.

PART V

Information Technology Parks

19. Information technology parks

- (1) Subject to this Act, the Minister shall by Order, designate and facilitate the establishment of Information Technology Parks (in this Act referred to as —the Parks) all over the country.
- (2) Upon application made in that behalf by the Minister, through the Board charged with responsibility for matters relating to Commerce, the President may by Order designate the Parks as Free Zones and may specify in the Order such incentives and/or tax holidays that enterprises engaged in the Parks may enjoy.

PART VI

Financial Provisions

20. Accounts of the Agency

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(1) The Agency shall establish and maintain an account into which shall be paid and credited-

- (a) all subventions and budgetary allocations from the Federal Government;
- (b) gifts, loans, grants-in-aid from national, bilateral and multilateral organisations and agencies;
- (c) rents, fees and other internally generated revenues from services provided by the Agency; and
- (d) all other sums accruing to the Agency from time to time.

21. Expenditure of the Board

(1) The Agency may, from time to time, apply the proceeds of the Fund established under section 12 of this Act:

- (a) to the cost of administration of the Agency;
- (b) to the payment of the emoluments, allowances and benefits of members of the Board and for reimbursing members of the Board or of any committee set up by the Board and for such expenses as may be expressly authorised by the Boards;
- (c) to the payment of the salaries, fees or other remuneration or allowances, gratuities and pensions, and other benefits payable to the staff and other employees of the Agency, so however that no payment of any kind under this paragraph (except such as may be expressly authorised by the Board) shall be made to any person who is in receipt of emoluments from the Government of the Federation or of a State;
- (d) for the development and maintenance of any property vested in or owned by the Agency;
- (e) for maintaining general financial reserves subject to general or special directive that may be given in that behalf by the Minister in accordance with the provisions of this Act; and
- (f) to any other expenditure in connection with all or any of its functions under this Act.

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- (2) Proceeds from the Fund established under section 12 (b) shall be applied for the purpose which such gifts, loans or grants-in-aid were made.

- (3) Proceeds from the Funds established under section 12 (c) shall be remitted to the Treasury of the Federal Government.

22. Annual estimates and accounts

- (1) The Agency shall, not later than 30th September in each year, submit to the Minister an estimate of its expenditure and income (including payments to the Agency's Fund) for the next succeeding year.

- (2) The Agency shall keep proper accounts in respect of each year and proper records in relation to those accounts and shall cause its accounts to be audited within six months after the end of each year by auditors appointed from the list and in accordance with the guidelines supplied by the Auditor-General for the Federation.

23. Annual reports

The Agency shall prepare and submit to the Minister not later than 30th June in each year a report in such form as prescribed in this Act on the activities of the Agency during the immediately preceding year, and shall include in the report a copy of the audited accounts of the Agency for that year and of the auditor's report thereon.

24. Power to accept gifts

- (1) The Agency may accept gift of land, money or other property on such terms and conditions, if any, as may be specified by the person or organisation making the gift.

- (2) The Agency shall not accept any gift if the conditions attached by the person or organisation making the gift are inconsistent with the functions of the Agency under this Act.

25. Power to borrow

The Agency may, in accordance with the general authority of the Minister, borrow such sums of money as the Agency may require in the exercise of its functions under this Act or its subsidiary legislation.

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26. Exemption from tax

- (1) The Agency shall be exempted from the payment of income tax on any income accruing from investments made by the Board or otherwise howsoever.
- (2) The provisions, of any enactment relating to the taxation of companies or trust funds shall not apply to the Agency or the Board.

PART VII

Legal Proceedings

27. Limitation of suits against the Agency

- (1) Subject to the provisions of this Act, the provisions of the Public Officers Protection Act shall apply in relation to any suit instituted against any member or officer or employee of the Agency.

[Cap. P41]

- (2) Notwithstanding anything contained in any other law or enactment, no suit against a member of the Board, the Director-General or any other officer or employee of the Board, for any act done in pursuance or execution of this Act or any other law or enactment, or of any public duties or authority or in respect of any alleged neglect or default in the execution of this Act or any other law or enactment, duties or authority, shall lie or be instituted in any court unless it is commenced-

(a) within three months next after the act, neglect or default complained of; or

(b) in the case of a continuation of damage or injury, within six months after the ceasing thereof.

- (3) No suit shall be commenced against a member of the Board, the Director-General or any other officer or employee of the Agency before the expiration of a period of one month after written notice of the intention to commence the suit shall have been served on the Agency by the intending plaintiff or his agent.

- (4) The notice referred to in subsection (3) of this section shall clearly and explicitly state-

(a) the cause of action;

(b) the particulars of the claim;

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(c) the name and place of abode of the intending plaintiff; and

(d) the relief which he claims.

28. Service of documents

A notice, summons or other document required or authorised to be served on the Agency under the provisions of this Act or any other law or enactment may be served by delivering it to the Director-General or by sending it by registered post addressed to the Director-General at the principal office of the Agency.

29. Restriction on execution against property of the Agency

- (1) In any action or suit against the Agency, no execution or attachment of process in the nature thereof shall be issued against the Agency unless not less than three months notice of the intention to execute or attach has been given to the Agency.
- (2) Any sum of money which by the judgment of any court has been awarded against the Agency shall, subject to any direction given by the court, where no notice of appeal against the judgment has been given, be paid from the Fund of the Agency.

30. Indemnity

A member of the Board, the Director-General or any officer or employee of the Agency shall be indemnified out of the assets of the Agency against any liability incurred by him in defending any proceeding, whether civil or criminal, if the proceeding is brought against him in his capacity as a member, Director-General, officer or other employee of the Agency.

PART VIII

Miscellaneous

31. Directives by the Minister, etc.

The Minister may give to the Agency or the Director-General such directives of a general nature or relating generally to matters of policy with regards to the exercise of its or his functions as he may consider necessary and it shall be the duty of the Agency or the Director-General to comply with the directives or cause them to be complied with.

32. Regulations by the Board

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The Board may make such regulations as in its opinion are necessary or expedient for giving full effect to the provisions of this Act and for the due administration of its provisions.

33. Transitional provisions

The National Information Technology Development Agency is the successor-in-title in every way to the powers, duties and functions of the former National Information Technology Development Agency-

- (a) all existing contracts, agreements and compacts currently in effect by the National Information Technology Development Agency continue in effect;
- (b) all existing contracts currently in effect by the National Information Technology Development Agency continue in effect;
- (c) any positions authorised and allocated subject to the personnel laws of the former National Information Technology Development Agency are transferred to the National Information Technology Development Agency;
- (d) all records, property and equipment previously belonging to or allocated for use of the former National Information Technology Development Agency become on the effective date of this Act, part of the property of the National Information Technology Development Agency;
- (e) all existing forms, licences, letterheads and similar items bearing the name of or referring to the —National Information Technology Development Agencyl may be utilised by the National Information Technology Development Agency until existing supplies of those items are exhausted.

34. Interpretation

In this Act-

“**Agency**” means the National Information Technology Development Agency established under section I of this Act;

“**Board**” means the Governing Board of the Agency established under this Act;

“**computer**” means any electronic device or computational machinery using programmed instructions which has one or more of the capabilities of storage,

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retrieval, memory, logic, arithmetic or communication and includes all input, output, processing, storage, software., or communication facilities which are connected or related to such a device in a system or network or control functions by the manipulation of signals, including electronic, magnetic or optical, and shall include any input, output, data storage, processing or communication facilities directly related to or operating in conjunction with any such device or system or computer network;

“computer network” means the interconnection of one or more computers;

“computer system” means a device or collection of device, including input and ,output support devices and excluding calculators which are not programmable and capable of being used in conjunction with external files, which contain computer program; electronic instructions, input data and output data, that performs logic arithmetic, data storage and retrieval, communication control and other functions;

“data” means a representation of information, knowledge, facts, concepts or instruction which are being prepared or have been prepared in a formalised manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network, and may be in any form (including computer printout, magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computers;

“Director-General” means the Director-General of the Agency appointed under section 8 of this Act;

“electronic form” with reference to information means any information generated, sent, received or stored in media, magnetic, optical, computer memory film, computer generated, micro fiche or similar device;

“electronic record” means data, record or data generated, image, or sound stored, received or sent in an electronic for or micro film or computer generated micro fiche;

“Government” means the Federal Government of Nigeria;

“information technology” encompasses all forms of technology used to create, store, exchange and use, information in its various forms (business data, voice, conversation, still images, motion pictures, multimedia presentations and other forms including those not yet conceived);

“Minister” means the Minister charged with the responsibility of matters relating to Science and Technology;

“President” means the President of the Federal Republic of Nigeria;

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“software” includes any program, procedure and associated documentation concerned with the operation of a computer system.

35. Short title

This Act may be cited as the National Information Technology Development Agency Act, 2007.

SCHEDULES

FIRST SCHEDULE

[Section 2 (4)]

Supplementary Provisions relating to the Board, etc.

Proceedings of the Board

1. Subject to this Act and section 27 of the Interpretation Act (which provides for decisions of a statutory body to be taken by a majority of its members and for the person presiding at any meeting, when a vote is ordered, to have a second or casting vote), the Board may make standing orders regulating its proceedings or that of any of its committees.
2. At every meeting of the Board, the Chairman shall preside and in his absence the members present at that meeting shall appoint one of their numbers to preside at that meeting.
3. The quorum at a meeting of the Board shall be not less than one-third of the total number of the Board members at the date of the meeting.
4. The Board shall for the purposes of this Act, meet not less than four times in each year and subject, thereto, the Board shall meet, whenever it is summoned, by the Chairman, and if required to do so by notice given to him by not less than $\frac{1}{3}$ of members, he shall summon a meeting of the Board to be held within fourteen days from the date in which the notice is given.
5. Where the Board desires to obtain of any person on any particular matter, the Board may co-opt him to the Board for such as it thinks fit, but a person who is a member by virtue of this paragraph shall not be entitled to vote at any meeting of the Board and shall not count towards a quorum.

Committees

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- 6.
- (1) Subject to its standing orders, the Board may appoint such number of standing or *ad hoc* committees as it thinks fit to consider and report on any matter with which the Board is concerned.
 - (2) A committee appointed under this paragraph shall:-
 - (a) consist of such number of persons (not necessarily members of the Board as may be determined by the Board) and a person, other than a member of the Board, shall hold Office on the committee in accordance with the terms of his appointment; and
 - (b) be presided over by a member of the Board.
 - (3) The quorum of any committee set up by the Board shall be its quorum as provided under paragraph 3 of this Schedule.
 - (4) The decision of any committee of the Board shall constitute a recommendation to the Board.

Miscellaneous

7. The fixing of the Seal of the Agency shall be authenticated by the signature of the Chairman or any other person generally or specifically authorised by the Board to act for that purpose and that of the Director-General.
8. Any contract or instrument which if made by a person not being a body corporate, would not be required to be under seal may be made or executed on behalf of the Board by the Director-General or any other person generally or specifically authorised by the Board to Act for that purpose.
9. Any document purporting to be contract, instrument or other document duly signed or sealed on behalf of the Agency shall be received in evidence and shall, unless the contrary is proved, be presumed without further proof to have been so signed or sealed.
10. The validity of any proceedings of the Board or any of its committees shall not be affected by-
 - (a) any vacancy in the membership of the Board, or committee; or
 - (b) any defect in the appointment of a member of the Board or committee; or

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(c) reason that any person not entitled to do so took part in the proceedings of the Board or committee.

11. A member of the Board or committee who has a personal interest in any contract or arrangement entered into or proposed to be considered by the Board or committee shall forthwith disclose his interest to the Board or committee and shall not vote on any question relating to the contract or arrangement.

12. No member of the Board shall be personally liable for any act or omission done or made in good faith while engaged in the business of the Board.

SECOND SCHEDULE

[Section 6 (m).]

Supplementary Provisions relating to the Supervision of the Management of the Country Code Top Level Domain (.ng) on the internet

1. Subject to the provisions of this Act, the Agency shall advise the Federal Government generally on matters and issues that are related to the management and administration of Nigeria's country code top level domain (.ng).
2. The Agency shall have supervisory authority over organisations incorporated under the laws of Nigeria to manage and administer Nigeria's country code top level domain (.ng) including but not limited to the following-
 - (a) approve the constitution of the management of any such organisation created to carry out the acts mentioned in paragraph 2 (I) of this Schedule;
 - (b) lay down standards which shall ensure that the membership of the organisation when viewed collectively is broadly representative of the stakeholders of ICT community in the country;
 - (c) outline an operational rule for the organisation which shall include but not limited to the following-
 - (i) the creation of any departments of the organisation to perform specialised functions;
 - (ii) the establishment and functioning of committees including a management board;

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- (iii) the preparation by the organisation of an annual business plan in terms of which the activities of the organisation are planned annually;
 - (iv) the determination through arbitration of any dispute concerning the interpretation of the memorandum and articles of association of the organisation;
 - (v) the procedures and criteria for the establishment of second level domains and for delegations to such domains;
 - (vi) the domain name dispute resolution and related appeal mechanisms;
 - (vii) criteria for the qualification of and appointment of Domain Name Registrars and Domain Name Hosts.
3. The Agency shall ensure that the activities of the organisation comply with international best practice in the administration of country code top level domains.

THIRD SCHEDULE

[Section 12 (2) (a).]

Businesses which section 12 (2) (a) refers to:

- (i) GSM service providers and all telecommunications companies;
- (ii) cyber companies and internet providers;
- (iii) pensions managers and pension related companies;
- (iv) banks and other financial institutions;
- (v) insurance companies.

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CHAPTER N107

NIGERIA EXPORT PROCESSING ZONES ACT

ARRANGEMENT OF SECTIONS

SECTION

1. Establishment of the Nigeria Export Processing Zones.
2. Establishment of the Nigeria Export Processing Zones Authority and its governing Board, etc.
3. Membership of the governing Board.
4. Functions of the Authority.
5. Appointment of managing director, secretary and other employees.
6. Approved activities, etc.
7. Vesting of property in the Authority.
8. Exemption from taxes.
9. Approval of enterprise to undertake approved activity.
10. Power to grant licence.
11. Payment of goods and services.
12. Import of goods into the Zone.
13. Persons not to enter Zones without permission.
14. Prohibition of retail trade.
15. Special provisions relating to article imported with custom duty cessions.
16. Prohibition of storage of ammunition and dangerous explosives.
17. Export of goods from a Zone.

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18. Incentives and related matters.
19. Enterprises to submit returns.
20. Work permits.
21. Staff regulations.
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23. Annual estimates, accounts, etc.
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SCHEDULES

FIRST SCHEDULE

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Duty free articles

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CHAPTER N107

NIGERIA EXPORT PROCESSING ZONES ACT

An Act to provide for the establishment of the Nigeria Export Processing Zones and for matters connected therewith.

[1992 No. 63.]

[Commencement]

[19th November, 1992]

1. Establishment of the Nigeria Export Processing Zones

- (1) The President may from time to time, by order, upon the recommendation of the Nigeria Export Processing Zones Authority established under this Act, designate such areas as he thinks fit to be an export processing zone (in this Act referred to as —a Zone).
- (2) The Zone established pursuant to subsection (1) of this section, may be operated and managed by a public, private or combination of public and private entity under the supervision of and with the approval of the Nigeria Export Processing Zones Authority established by section 2 of this Act.
- (3) Every order made pursuant to subsection (1) of this section, shall specify the limits of the area designated and ascribe a name to that Zone.
- (4) The Nigeria Export Processing Zones Authority may from time to time, by order, amend, vary or add to the limits of a Zone or change the name of a Zone.
- (5) An order made under subsection (3) of this section shall not affect an approved enterprise existing before the commencement of the order.

2. Establishment of the Nigeria Export Processing Zones Authority and its governing Board, etc.

- (1) There is hereby established for the Nigeria Export Processing Zones, an authority to be known as the Nigeria Export Processing Zones Authority (in this Act referred to as —the Authority).
- (2) The Authority shall be a body corporate, with perpetual succession and a common seal and may sue and be sued in its corporate name and shall be capable of acquiring, holding or disposing of any property, movable or immovable, for the purpose of carrying out its functions.

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3. Membership of the governing Board

- (1) There shall be for the Authority a governing Board which shall consist of a chairman to be appointed by the President on the recommendation of the Minister and the following other members, that is to say-
- (a) a representative each from the following Federal Ministries, that is-
- [1993 No. 77]
- (i) Commerce;
 - (ii) Culture and Tourism;
 - (iii) Industry; and
 - (iv) Science and Technology;
- (b) the Comptroller- General of Customs or his representative not below the rank of an assistant director;
- (c) the Managing Director of the Nigerian Ports Authority or his representative not below the rank of a deputy director;
- (d) one representative each from the following bodies, that is-
- (i) the Nigerian Association of Chambers of Commerce, Industries, Mines and Agriculture;
 - (ii) the Manufacturers Association of Nigeria;

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- (iii) the Association of Nigerian Exporters

 - (e) two persons to be appointed by the Minister from the private sector who shall be persons possessing practical experience in industry, commerce, finance, export promotion and other related fields;

 - (f) a representative of the Central Bank of Nigeria not below the rank of a Director; and

 - (g) the managing director of the Authority.
- (2) A member of the Board other than *ex-officio* member shall, subject to the provisions of this Act, hold office for a period of four years from the date of his appointment as a member and shall be eligible for reappointment for one further period of two years and thereafter he shall no longer be eligible for reappointment.
- (3) Notwithstanding subsection (2) of this section, the President may on the recommendation of the Minister require any member to vacate his office if his continued membership will not be in the interest of the Authority.
- (4) Any member of the Board other than an *ex-officio* member may by notice in writing to the Board resign his appointment.
- (5) The supplementary provisions contained in the First Schedule to this Act shall have effect with respect to the tenure of office of the members and the proceedings of the Board and other matters relating to the Board.

[First Schedule.]

4. Functions of the Authority

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In addition to any other functions conferred on the Authority by this Act, the functions and responsibilities of the Authority shall include-

- (a) the administration of the Authority and management of all the Export Processing Zones;
- (b) the approval of development plans of the Authority and Zones' annual budgets in respect of infrastructures, administrative buildings, promotion of Zones, the provision and maintenance of services and facilities;
- (c) the establishment of customs, police, immigration and similar posts in the Zones;
- (d) the supervision and coordination of the functions of various public sector and private sector organisations operating within the Zones and resolving any dispute that may arise amongst them;
- (e) the resolution of trade disputes between employers and employees in the Zone, in consultation with the Federal Ministry of Employment, Labour and Productivity;
- (f) the adaptation of investment promotion strategies in the Zones, including the opening of investment promotion offices abroad;
- (g) the recommendation to the Federal Government of additional incentive measures for the Zones;
- (h) the establishment and supervision of zonal administrations for the purpose of managing the Zones and the grant of all requisite permits and licences to approved enterprises.

5. Appointment of managing director, secretary and other employees

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- (1) There shall be for the Authority a managing director who shall be the chief executive and shall be appointed by the President on the recommendation of the Minister.

- (2) The managing director shall be responsible for-
 - (a) the preparation of plans, annual programmes and budget;

 - (b) the recommendation of bye-laws applicable in each Zone;

 - (c) the development of strategies for the promotion of the Zones inside and outside the country;

 - (d) the implementation of the approved plans, programmes and budgets;

 - (e) the day-to-day administration of the Authority.

- (3) Without prejudice to the generality of subsection (1) of this section, the Authority shall have the power to-
 - (a) appoint a secretary who shall be qualified to practice as a legal practitioner in Nigeria and has been so qualified for not less than ten years;

 - (b) pay the employees such remuneration and allowances as it may, from time to time, determine;

 - (c) pay the employees such pensions and gratuities as are payable to persons of equivalent grades in the public service of the Federation.

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6. Approved activities, etc.

- (1) Subject to subsection (2) of this section, the activities specified in the Third Schedule to this Act shall be approved activities for the purposes of this Act.
[Third Schedule.]

- (2) The Authority may, from time to time, prescribe the activities which may be carried on in a Zone, and for this purpose may, by order, amend the Second Schedule to this Act.
[Second Schedule]

7. Vesting of property in the Authority

The President or Governor of a State respectively may, by order, transfer to the Authority, any property belonging to the Federal or State Governments respectively which appears to be necessary or expedient to the Authority in carrying out its functions under this Act and such property shall vest in the Authority by virtue of the order and without further assurance.

8. Exemption from taxes

Approved enterprises operating within a Zone shall be exempted from all Federal, State and Government taxes, levies and rates.

9. Approval of enterprise to undertake approved activity

- (1) Any enterprise which proposes to undertake an approved activity within a Zone, shall apply to the Authority in writing for permission to do so and shall submit such documents and information in support of its application as the Authority may require.

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- (2) Subject to the provisions of this Act, the Authority may grant, subject to such terms and conditions as it thinks fit, approval for an enterprise to undertake the approved activity specified in its application brought under subsection (1) of this section.
- (3) For the purposes of this section, “**approved activity**” means any of the activities specified in the Third Schedule to this Act.
[Third Schedule]

10. Power to grant licence

- (1) The Authority may grant a licence for any approved activity in a Zone to an individual or business concern whether or not the business is incorporated in the customs territory.
- (2) The grant of a licence by the Authority shall constitute registration for the purposes of company registration within the Zone.
- (3) A licensed company operating within a Zone and undertaking an approved activity shall notify the Authority of any purchase, assignment or transfer of shares in the company, except where the company’s shares in are quoted and are freely transferable on any international Stock Exchange.
- (4) The Authority shall by order, from time to time, prescribe the regulations governing the Zone.

11. Payment of goods and services

- (1) Where an approved enterprise operating in a Zone supplies goods and services to customers within the customs territory, that enterprise shall be entitled to receive payment for such goods and services in foreign currency and for the purposes of such payment, the normal rules and regulations applicable to importation of goods and services into Nigeria and repatriation of the proceeds of sales or services shall apply.

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- (2) Where a person within the customs territory supplies goods and services to an approved enterprise established within a Zone, that person shall be entitled to receive payment for such goods or services in foreign currency and the rules and regulations applicable to export from Nigeria and the repatriation of proceeds from sales or services shall apply.

12. Import of goods into the Zone

- (1) The Authority and any approved enterprise shall be entitled to import into a Zone, free of customs duty, any capital goods, raw materials, components or articles intended to be used for the purposes of and in connection with an approved activity, including any article for the construction, alteration, reconstruction, extension or repair of premises in a Zone or for equipping such premises.
- (2) For the purposes of this section, articles for equipping premises shall be deemed to include equipment for offices and other ancillary facilities necessary for the proper administration of the premises and for the health, safety, hygiene and welfare of the premises and of persons employed therein.
- (3) The Authority may by order, amend, or vary the articles specified in the Fourth Schedule to this Act.

[Fourth Schedule]

- (4) All goods brought into a Zone shall be consigned-
- (a) to the Authority or to an approved enterprise and the goods may, with the approval of the Authority, be transferred from one approved enterprise to another or from the Authority to an approved enterprise or from an approved enterprise to the Authority;
or

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- (b) without prejudice to the provisions of subsection (2) of this section, to a bank acting on behalf of any party to a transaction involving the Authority or an approved enterprise.

- (5) The Authority may take such steps as it deems necessary to preserve goods within a Zone, whether by moving the goods from one place to another or by storing the goods and where any expenses are incurred by the Authority in so doing, the owner or consignee of the goods shall reimburse the Authority for the expenses.

- (6) Subject to the provisions of this Act and any regulations made thereunder, goods brought into a Zone pursuant to this section may-
 - (a) unless otherwise directed by the Authority, be stored, sold, exhibited, broken up, packed, graded, cleaned, marked, re-marked, loaded, unloaded, reloaded, divided, mixed, separated or otherwise manipulated; or

 - (b) be worked, processed or reprocessed or otherwise manipulated or manufactured; or

 - (c) be consumed if the goods are meant for consumption in the Zone, unless otherwise directed by the Authority; or

 - (d) subject to subsection (7) of this section, be removed from a Zone or sent into the customs territory, whether as originally packed or otherwise; or

 - (e) subject to any enactment pertaining thereto, be destroyed.

- (7) Where any goods which are dutiable on entry into the customs territory are sent from a Zone into the customs territory, the goods shall be subject to the provisions of the Customs, Excise Tariff, etc. (Consolidation) Act and any regulations made thereunder, and if the goods are intended to be disposed of in the customs territory shall not be removed from the Zone unless-

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[Cap. C49.]

- (a) the consent of the Authority has been obtained; and

 - (b) the relevant customs authorities are satisfied that all import restrictions relevant thereto have been complied with and all duties payable in connection with the importation thereof into the customs territory have been paid.
- (8) Samples of goods being taken into the customs territory shall be subject to the provisions of subsection (6) of this section, except in cases where the relevant customs authority is satisfied that such goods are of no commercial value.
- (9) Where goods are brought from the customs territory into a Zone for the purposes of an approved activity the goods shall be deemed to be exported.
- (10) The Pre-Import Inspection Scheme shall not apply to imports of goods into the Zones for use by the approved enterprises in the Zones.

13. Persons not to enter Zones without permission

- (1) No person shall enter, remain in or reside in a Zone without the prior permission of the Authority.

- (2) Any person who contravenes the provisions of subsection (1) of this section shall have his permit revoked by the Authority.

14. Prohibition of retail trade

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- (1) No retail trade shall be conducted within a Zone without the prior approval of the Authority and which may be subject to such terms and conditions as may be imposed, from time to time, by the Authority.

- (2) Any person who contravenes the provisions of subsection (1) of this section or of a term or condition imposed pursuant to that subsection shall have his licence revoked by the Authority.

15. Special provisions relating to articles imported with custom duty cessions

- (1) An approved enterprise which imports into a Zone an article with a benefit in respect of customs duty under the provisions of this Act shall-
 - (a) keep such records of the articles so imported in such forms and containing such particulars as may be required by the Authority;

 - (b) cause the articles to be marked with such mark and in such manner as may be required by the Authority;

 - (c) permit the Authority or person authorised by the Authority at all reasonable times-
 - (i) to inspect the records relating to those articles; and

 - (ii) to have access to any factory, warehouse, assembly plant or other premises under the control of the approved enterprise

for the purpose of examining the article which the Authority believes to be therein and of satisfying itself of the accuracy of the particulars in relation to the article contained in such records.

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- (2) Any person who contravenes the provisions of subsection (1) of this section is guilty of an offence.

16. Prohibition of storage of ammunition and dangerous explosives

- (1) Notwithstanding any other provision of this Act, the following goods shall not be imported, taken into or stored in a Zone-
- (a) firearms and ammunition, other than by members of the Nigeria Police Force or the armed forces of the Federation or by security agencies employed to work in a Zone in the course of their duties or by such other persons as may be authorised by the Authority.
 - (b) dangerous explosives, without prior approval of the Authority;
 - (c) petrol, inflammable materials, hazardous cargoes or oil fuels, other than in such quantities and on such terms and conditions as may be prescribed by the Authority;
 - (d) goods which the Authority by order has imposed specific or absolute prohibition on their importation into a Zone.
- (2) Any person who contravenes the provisions of subsection (1) of this section is guilty of an offence.

17. Export of goods from a Zone

Export of goods from a Zone to the customs territory shall, except as otherwise prescribed by or pursuant to this Act, be subject to the same customs and licensing requirements as apply to goods imported from other countries.

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18. Incentives and related matters

(1) Approved enterprises within the Zones shall be entitled to the following incentives-

(a) legislative provisions pertaining to taxes, levies, duties and foreign exchange regulations shall not apply within the Zones;

(b) repatriation of foreign capital investment in the Zones at any time with capital appreciation of the investment;

(c) remittance of profits and dividends earned by foreign investors in the Zones;

(d) no import or export licences shall be required;

(e) up to 25% of production may be sold in the customs territory against a valid permit and on payment of appropriate duties;

(f) rent-free land at construction stage; thereafter rent shall be paid as determined by the Authority;

(g) up to 100% foreign ownership of business in the Zones allowable;

(h) foreign managers and qualified personnel may be employed by companies operating in the Zones.

(2) The Authority shall be the only agency qualified to-

(a) give all approvals; and

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- (b) cancel all licences

- (3) The Authority shall simplify all procedure necessary for authorisation of investments in a Zone and state by order, from time to time, its requirements for the grant of authorisations for investments in a Zone.

- (4) Operations within a Zone shall commence on the date when the construction of the perimeter fence and gate of the Zone has been completed and the Authority has assumed duties.

- (5) There shall be no strikes or lock-outs for a period of ten years following the commencement of operations within a Zone and any trade dispute arising within a Zone shall be resolved by the Authority.

19. Enterprises to submit returns

An approved enterprise shall submit to the Authority at such intervals as may be prescribed, such statistical data and such information and returns as regards the sales and purchases and other operations of the enterprise as the Authority may require or as may be prescribed, from time to time.

20. Work permits

Where a person who is a non-Nigerian citizen is employed by the Authority or by an approved enterprise established in a Zone, upon application by the enterprise for a licence to establish itself within the Zone or at any time thereafter, the enterprise shall apply on behalf of the non-Nigerian citizen, direct to the Authority for the purpose of immigration and employment permits, in such manner as may be prescribed by the Authority.

21. Staff regulations

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(1) The Authority may make staff regulations relating generally to the conditions of service of the employees of the Authority and without prejudice to the generality of the foregoing such regulations may provide for-

(a) the appointment, promotion and disciplinary control of all employees of the Authority; and

(b) appeal by such employees against dismissal or other disciplinary measures,

and until such regulations are made, the regulations relating to the conditions of service of the officers in the civil service of the Federation and the provisions of the Pensions Act shall be applicable with such modifications as may be necessary to the staff of the Authority.

(2) Approved enterprises operating within the Zones shall make provisions for the pensions and gratuities for their employees.

22. Fund of the Authority

(1) The Authority shall establish and maintain a fund which shall consist of-

(a) all moneys received from the Federal Government;

(b) proceeds from all activities, services and operations of the Authority;

(c) grants, gifts and donations made to the Authority; and

(d) such other sum as may accrue, from time to time, to the Authority

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- (2) The Authority shall, from time to time, apply proceeds of the fund established pursuant to subsection (1) of this section-
- (a) to the cost of administration of the Authority;
 - (b) to the payment of the salaries, fees or other remuneration or allowances, pensions and gratuities payable to the officers and employees of the Authority;
 - (c) for reimbursing members of the Board or of any committee set up by the Board for such expenses as may be expressly authorised by the Authority in accordance with the rates approved by the President;
 - (d) for the maintenance of any property vested in the Authority; and
 - (e) for investment, maintenance of Zones, marketing, promotion, training, research and similar activities.

23. Annual estimates, accounts, etc.

- (1) The Authority shall, not later than 31 October in each year, submit to the Minister an estimate of its expenditure and income (including payments into the fund of the Authority) during the next succeeding year.
- (2) The Authority shall keep proper accounts in respect of each year (and proper records in relation thereto) and shall cause its accounts to be audited within six months after the end of each year by auditors appointed from the list and in accordance with the guidelines supplied by the Auditor-General for the Federation.

24. Enactments applicable in customs territory to apply

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- (1) Except as provided under this Act, an enactment applicable in a customs territory shall apply within the Zones.
- (2) The Minister may, by order published in the Federal *Gazette*, modify the application of any enactment which is made applicable in a Zone by subsection (1) of this section, where the enactment concerned restricts or interferes with the smooth running of the Zone or operation of licences therein.

25. Omission and non-compliance

- (1) Every omission or neglect to comply with and every act done or attempted to be done contrary to the provisions of this Act or any regulations made thereunder shall be an offence and in respect of any such offence for which no penalty is expressly provided the offender shall be liable on conviction to a fine of N100,000 or to imprisonment for a term of three months or to both such fine and imprisonment.
- (2) Whoever attempts to commit any offence punishable under this Act or any regulations made thereunder or abets the commission of such offence shall be punished with the punishment provided for such an offence.
- (3) Where a body corporate is guilty of an offence under this Act, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity; he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

26. Repeal

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- (1) The governing board of the Nigeria Export Processing Zones Authority established by the Nigerian Export Processing Zones Act 1991 is hereby dissolved and the said Act is hereby repealed.

[1991 No. 34.]

- (2) The transitional and saving provisions in the Second Schedule to this Act shall have effect in relation to the employees, assets and liabilities of the board dissolved under this section and other matters mentioned therein notwithstanding anything to the contrary in this Act or any other enactment.

[Second Schedule.]

- (3) Notwithstanding subsection (1) of this section, any order made, registration effected, licence or permit issued, notice or information given, return made or other thing done under the repealed enactment which, immediately before the commencement of this Act was in force or effect, shall continue in force and have effect as if made, effected, issued, given or done under the corresponding provisions of this Act.

27. Regulations

The Authority may, with the approval of the Minister, make regulations for the proper implementation of this Act.

28. Interpretation

In this Act, unless the context otherwise requires-

“approved activities” means activities specified in the Third Schedule to this Act;

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“**approved enterprise**” means any enterprise established within a Zone approved by the Authority;

“**Authority**” means the Nigerian Export Processing Zones Authority established by section 2 of this Act;

“**member**” means a member of the Board and includes the chairman;

“**Minister**” means the Minister charged with responsibility for matters relating to trade.

29. Short title

This Act may be cited as the Nigeria Export Processing Zones Act.

SCHEDULES

FIRST SCHEDULE

[Section 3 (5).]

Supplementary provisions relating to the Authority

Proceedings of the Board

1.

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(1) Subject to this Act and to section 27 of the Interpretation Act, the Board may make standing orders regulating the proceedings of the Authority or of any committee thereof.
[Cap. I23.]

(2) The quorum of the Board shall be eight and the quorum of any committee of the Board shall be as may be determined by the Board from time to time.

2.

(1) The Board shall meet not less than four times in each year and, subject thereto, the Board shall meet whenever it is summoned by the chairman, and if the chairman is required to do so by notice given to him by not less than three other members, he shall summon a meeting of the Board to be held within fourteen days from the date on which the notice is given.

(2) At any meeting of the Board, the chairman shall preside, but if he is absent, the members present at the meeting shall appoint one of their number to preside at that meeting.

(3) Where the Board desires to obtain the advice of any person on a particular matter, the Board may co-opt him as a member for such period as it thinks fit:

Provided that a person who is a member by virtue of this sub-paragraph shall not be entitled to vote at any meeting of the Board and shall not count towards the quorum.

Committees

3.

(1) The Board may appoint one or more committees to carry out on behalf of the Board such of its functions as the Authority may determine.

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- (2) A committee appointed under this paragraph shall consist of such number of persons (not necessarily members of the Board) as may be determined by the Board; and a person other than a member of the Board shall hold office on the committee in accordance with the terms of his appointment.

Miscellaneous

4.

- (1) The fixing of the seal of the Authority shall be authenticated by the signature of the chairman and of any other member authorised generally or specially by the Board to act for that purpose.

- (2) Any contract or instrument which, if made or executed by a person not being a body corporate, would not be required to be under seal may be made or executed on behalf of the Board by the chairman and the managing director or any person authorised generally or specially by the Authority to act for that purpose.

- 5.** Members of the Board shall be paid out of moneys at the disposal of the Board such remuneration, fees or allowances in accordance with such scales as may be approved, from time to time, by the Minister.

- 6.** The validity of any proceedings of the Board or of a committee thereof shall not be adversely affected by any vacancy in the membership of the Board or of a committee or by the defect in the appointment of any member of the Board or committee or by reason that a person not entitled to do so took part in the proceedings.

7.

- (1) A member of the Board who is-

- (a) directly or indirectly interested in any company or enterprise the affairs of which are being deliberated upon by the Authority; or

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(b) is interested in any contract made or proposed to be made by the Authority

shall as soon as possible after the relevant facts have come to his knowledge disclose the nature of his interest at a meeting of the Board.

(2) A disclosure under sub-paragraph (1) of this paragraph shall be recorded in the minutes of the meeting of the Board and the member shall-

(a) not take part after such disclosure in any deliberation or decision of the Board with regard to the subject matter in respect of which his interest is thus disclosed;

(b) be excluded for the purposes of constituting a quorum of the Board for any such deliberation or decision.

SECOND SCHEDULE

[Section 26 (2).]

Transfer of assets and liabilities, etc.

1. By virtue of this Act, there shall be vested in the Authority established under this Act (in this Schedule referred to as —the Authority) all assets, funds, resources and other movable or immovable property which immediately before the commencement of this Act were vested in the Authority established under the repealed enactment (in this Schedule referred to as —the former Authority).

2. Subject to the provision of paragraph 1 of this Schedule-

(a) the rights, interest, obligations and liabilities of the former Authority existing immediately before the commencement of this Act under any

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contract or instrument, or at law or in equity apart from any contract or instrument, shall by virtue of this Act be deemed to have been assigned to and vested in the Authority;

(b) any such contract or instrument as is mentioned in subparagraph (a) of this paragraph shall be of the same force and effect against or in favour of the Authority and shall be enforceable as fully and effectively as if instead of the former Authority the Authority had been named therein or had been a party thereto; and

(c) the Authority shall be subject to all the obligations and liabilities to which the former Authority was subject immediately before the commencement of this Act and all persons shall, as from the commencement of this Act have the same rights, powers and remedies against the Authority as they had against the former Authority immediately before this day.

3. Any proceeding or cause of action pending or existing immediately before the commencement of this Act by or against the former Authority in respect of any rights, interest, obligation or liability of the former Authority may be continued, or as the case may require, commenced, and the determination of a court of law, tribunal or other authority or person may be enforced by or against the Authority to the same extent that such cause of action or determination might have been continued or commenced or enforced by or against the former Authority as if this Act had not been made.

4. Any person who immediately before the commencement of this Act held office under the former Authority shall, on the commencement of this Act be deemed to have been transferred to the Authority on terms and conditions not less favourable than those obtaining immediately before the commencement of this Act and service under the former Authority shall be deemed to be service under the Authority for pension purposes.

5. For the purposes of paragraph 4 of this Schedule, the terms and conditions comprised in any transferred appointment shall not be construed as being less favourable merely because they are not in all respects identical or superior to

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the terms and conditions enjoyed by any person concerned immediately before the commencement of this Act if the first-mentioned terms and conditions taken as a whole confer substantially equivalent or greater benefits.

6. Within the twelve months next after the making of this Act the Minister, if he thinks fit, may by order published in the Federal *Gazette* make additional transitional or savings provisions for better carrying out of the objectives of this Schedule.

THIRD SCHEDULE

[Sections 6 (2), 9 (3).]

Approved activities

1. Manufacturing of goods for export.
2. Warehousing, freight forwarding and customs clearance.
3. Handling of duty-free goods (transshipment, sorting, marketing, packaging, etc.).
4. Banking, stock exchange and other financial services, insurance and reinsurance.
5. Import of goods for special services, exhibitions and publicity.
6. International commercial arbitration services.
7. Activities relating to integrated Zones.

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8. Other activities deemed appropriate by the Nigeria
Export Processing Zones Authority

FOURTH SCHEDULE

[Section 12 (3).]

Duty free articles

1. Building materials.
2. Tools.
3. Plant.
4. Machinery.
5. Pipes.
6. Pumps.
7. Conveyor belts.
8. Other appliances and materials necessary for construction, alteration and repair of premises.
9. Capital and consumer goods, raw materials components of all articles intended to be used for the purpose of, and in connection with reconstruction, extension or repair of premises in a Zone or for equipping such premises and any other items approved by the Authority.

CHAPTER 05

OIL AND GAS EXPORT FREE ZONE ACT

ARRANGEMENT OF SECTIONS

Designation and establishment of the Oil and Gas Export Free Zone, etc.

SECTION

1. Designation and establishment of the Oil and Gas Export Free Zone.
2. Establishment of the Oil and Gas Export Free Zone Authority.
3. Establishment and membership of the governing board, etc.
4. Removal from office.
5. Functions of the Authority.

Staff of the authority

6. Appointment of the Managing Director, secretary and other employees, etc.
7. Vesting of property in the Authority.
8. Exemption from taxes.

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9. Approval of enterprise to undertake approval activity.

10. Power to grant licence.

11. Payments for goods and services.

12. Import of goods into the Export Free Zone.

13. Persons not to enter the Export Free Zone without permission.

14. Prohibition of retail trade.

15. Special provisions relating to articles imported with custom and duty cessions.

16. Prohibition of storage of ammunition and dangerous explosives.

17. Export of goods from the Export Free Zone.

18. Incentives and related matters.

19. Enterprises to submit returns.

20. Work permit.

21. Fund of the authority.

22. Annual estimates, accounts, etc.

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23. Enactments applicable in customs territory to apply.

24. Omission and non compliance.

25. Regulations.

26. Short title.

SCHEDULE

Supplementary provisions relating to the authority

CHAPTER 05

OIL AND GAS EXPORT FREE ZONE ACT

An Act to establish the Oil and Gas Export Free Zone Authority.

[1996 No. 8.]

[Commencement]

[29th March, 1996]

Designation and establishment of the Oil and Gas Export Free Zone, etc.

1. Designation and establishment of the Oil and Gas Export Free Zone

- (1) The President hereby designates the Onne/Ikpokiri area of Rivers State as an export free zone, (in this Act referred to as —the Export Free Zone).
- (2) The Export Free Zone established pursuant to subsection (1) of this section, shall be operated and managed by the Oil and Gas Export Free Zone Authority established by section 2 of this Act.

2. Establishment of the Oil and Gas Export Free Zone Authority

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- (1) There is hereby established for the Oil and Gas Export Free Zone, an authority to be known as the Oil and Gas Export Free Zone Authority (in this Act referred to as —the Authority|).

- (2) The Authority shall be a body corporate, with perpetual succession and a common seal and may sue and be sued in its corporate name and shall be capable of acquiring, holding or disposing of any property movable or immovable for the purpose of carrying out its functions.

3. Establishment and membership of the governing body, etc.

- (1) There shall be for the Authority a governing board (in this Act referred to as —the Board|) which shall consist of the following members, that is-
 - (a) A chairman, who shall be appointed by the President, being a person who by reason of his ability, experience or specialised knowledge of export and investment promotion, commercial or economic matters is capable of making outstanding contributions to the functions of the Authority;

 - (b) One representative each of the following Ministries, that is-
 - (i) Finance;

 - (ii) Commerce;

 - (iii) Industry;

 - (iv) Petroleum Resources;

 - (v) Justice;

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- (c) The Managing Director of the Nigerian Ports Authority or his representative not below the rank of a Director in the civil service of the Federation;
 - (d) The Comptroller–General of Customs or his representative;
 - (e) One representative each of the following bodies, that is-
 - (i) The Nigerian Chamber of Commerce, Industries and Mines and Agriculture;
 - (ii) The Corporate Affairs Commission;
 - (iii) The Manufacturers Association of Nigeria;
 - (iv) The Rivers State Government;
 - (f) Two eminent and knowledgeable Nigerians who shall not be employed in the public service and shall be persons with vast practical experience in the field of industry, commerce, finance, export promotion and such other related fields to be appointed by the Minister; and
 - (g) The Managing Director of the Authority.
- (2) A member of the Board other than *ex-officio* member shall hold office for a period of three years from the date of his appointment as a member and shall be eligible for re-appointment for one further period of two years and no more.
- (3) Notwithstanding subsection (2) of this section, the president may, on the recommendation of the Minister, require any member of the Board to vacate his office if he is satisfied that

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it is not in the interest of the Authority or interest of the public that the member should continue in office.

- (4) A member of the Board other than an *ex-officio* member may, by notice in writing addressed to the Board, resign his appointment.

- (5) The supplementary provisions contained in the schedule to this Act shall have effect with respect to the proceedings of the Board and other matters relating to the Board.

4. Removal from office

- (1) If it appears to the Board that a member of the Board should be removed from office on grounds of misconduct or inability to perform the functions of his office, the Board shall, after consultation with the interests, if any, represented by that member, make recommendations to that effect to the Minister and if the Minister approves the recommendations he may declare in writing, the office of that member vacant.

- (2) Without prejudice to subsection (1) of this section any member who is absent from two consecutive ordinary meetings of the Board shall file his explanation in writing with the secretary for consideration by the Board and if the explanation is not accepted by the Board, the Board shall recommend to the Minister that the member be removed from office and the Minister may declare, in writing, the office of that member vacant.

5. Functions of the Authority

- (1) In addition to any other functions conferred on the Authority by this Act, the functions and responsibilities of the Authority shall include-
 - (a) the administration of the Authority and management of the Export Free Zone;

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- (b) the grant of all requisite permits and licences to conduct approved enterprises within the Export Free Zone;

 - (c) the approval of development plans of the Authority and the Export Free Zone, the annual budgets in respect of infrastructure, administrative buildings, promotion of the Export Free Zone, the provision and maintenance of services and facilities;

 - (d) the establishment of customs, police, immigration and similar posts in the Export Free Zone;

 - (e) the supervision and co-ordination of the functions of various public and private sector organisations operating within the Export Free Zone and resolving any dispute which may arise amongst them; and

 - (f) the resolution of trade disputes between employers and employees in the Export Free Zone in consultation with the Federal Ministry of Employment Labour and Productivity.
- (2) The Authority shall have power to take over and perform such other functions being hitherto performed by the Nigerian Export Processing Zones Authority as they relate to the export of oil and gas from any of the Nigerian Export Processing Zones established by the Nigerian Export Processing Zone Act.
[Cap. N107.]
- (3) The Authority may, from time to time, prescribe the activities, which may be carried on in the Export Free Zone.

Staff of the Authority

6. Appointment of the Managing Director, secretary and other employees, etc.

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- (1) There shall be for the Authority, a Managing Director who shall-
 - (a) be chief executive; and
 - (b) be appointed by the President on the recommendation of the Minister.

- (2) The Managing Director shall be responsible for-
 - (a) the preparation of plans, annual programmes and budget of the Authority;
 - (b) the recommendation to the Minister, of such bye-laws which may be applicable in the Export Free Zone;
 - (c) the implementation of approved plans, programmes and budget of the Authority; and
 - (d) the day-to-day administration of the Authority.

- (3) Without prejudice to the generality of subsection (1) of this section, the Authority shall have power to-
 - (a) appoint a secretary who shall be qualified to practise as a legal practitioner in Nigeria and shall have been so qualified for not less than ten years;
 - (b) pay the employees such remuneration and allowances as it may, from time to time, determine;
 - (c) pay the employees such pensions and gratuities as are payable to persons of equivalent grades in the public service of the Federation.

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(4) The Authority may make staff regulations relating generally to the conditions of service of the employees of the Authority and without prejudice to the generality of the foregoing such regulations may provide for-

(a) the appointment, promotion and disciplinary control of all employees of the Authority; and

(b) appeal by such employees against dismissal or other disciplinary measures and until such regulations are made, the regulations relating to the conditions of service of the officers in the civil service of the Federation and the provisions of the Pensions Act shall be applicable with such modifications as may be necessary to the staff of the Authority.

[Cap. P4.]

(5) Approved enterprises operating within the Export Free Zone shall make provisions for the pensions and gratuities for their employees.

7. Vesting of property in the Authority

The President or the Governor of a State respectively may, by order, transfer to the Authority, any property belonging to the Federal or State Government which appears to be necessary or expedient to the Authority in carrying out its functions under this Act and such property shall vest in the Authority by virtue of that order and without further assurance.

8. Exemption from taxes

Approved enterprises operating within the Export Free Zone shall be exempt from all Federal, State and local government taxes, levies and rates.

9. Approval of enterprise to undertake approved activity

- (1) Any enterprise which proposes to undertake an approved activity within the Export Free Zone, shall apply to the Authority in writing for permission to do so and shall submit such documents and information in support of the application, as the Authority may require from time to time.

- (2) Subject to the provisions of this Act, the Authority may grant, subject to such terms and conditions as it thinks fit, approval for enterprise to undertake the approved activity specified in its application brought under subsection (1) of this section.

10. Power to grant licence

- (1) The Authority may grant a licence for any approved activity in the Export Free Zone to an individual or business concern whether or not the business is incorporated in the customs territory.

- (2) The grant of a licence by the Authority shall constitute registration for the purpose of company registration within the Export Free Zone.

- (3) A body corporate licensed to operate within the Export Free Zone and undertaking approved activity shall notify the Authority of any purchase, assignment or transfer of shares in the body corporate, except where its shares are quoted and are freely transferable on any international stock exchange.

- (4) The Authority shall by order, from time to time, prescribe the regulations governing the Export Free Zone.

11. Payments for goods and services

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- (1) Where an approved enterprise operating in the Export Free Zone supplies goods and services to customers within the customs territory, that enterprise shall be entitled to receive payment for such goods and services in foreign currency and for the purpose of such payment, the rules and regulations applicable to importation of goods and services into Nigeria and repatriation of the proceeds of sales or services shall apply.

- (2) Where a person within the customs territory supplies goods and services to approved enterprise established within the Export Free Zone, that person shall be entitled to receive payment for such goods or services in foreign currency and regulations applicable to export from Nigeria and the repatriation of proceeds from sales or services shall apply.

12. Import of goods into the Export Free Zone

- (1) The authority and any approved enterprise shall be entitled to import into the Export Free Zone, free of customs duty, any capital goods, consumer goods, raw materials, components or articles intended to be used for the purpose of and in connection with an approved activity, including any article for the construction, alteration, reconstruction, extension or repair of premises in the Export Free Zone or for equipping such premises.

- (2) For the purpose of this section, articles for equipping premises shall be deemed to include equipment for offices and other ancillary facilities necessary for the proper administration of the premises and for the health, safety, hygiene and welfare of the premises and for persons employed therein.

- (3) All goods brought into the Export Free Zone shall be consigned-
 - (a) to the Authority or to an approved enterprise and the goods may, with the approval of the authority, be transferred from one approved enterprise to another or from the Authority to an approved enterprise or from an approved enterprise to the Authority; and

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- (b) without prejudice to the provisions of subsection (2) of this section, to a bank acting on behalf of any party to a transaction involving the Authority or an approved enterprise.

- (4) The Authority may take such steps as it deems necessary to preserve goods within the Export Free Zone, whether by moving the goods from one place to another or by storing the goods and where any expenses are incurred by the Authority in so doing, the owner or consignee of the goods shall reimburse the Authority for the expenses.

- (5) Subject to the provisions of this Act and any regulations made thereunder, goods brought into the Export Free Zone pursuant to this section may-
 - (a) unless otherwise directed by the Authority, be stored, sold, exhibited, broken up, packed, graded, cleaned, marked, re-marked, loaded, unloaded, re-loaded, divided, mixed, separated or otherwise manipulated; or

 - (b) be worked, processed or re-processed or otherwise manipulated or manufactured; or

 - (c) be consumed if the goods are meant for consumption in the Export Free Zone, unless otherwise directed by the Authority; or

 - (d) subject to subsection (6) of this section, be removed from the Export Free Zone or sent into the customs territory, whether as originally packed or otherwise; or

 - (e) subject to any enactment pertaining thereto, be destroyed.

- (6) Where any goods which are dutiable on entry into the customs territory are sent from the Export Free Zone into the customs territory, the goods shall be subject to the provisions of the Customs, Excise Tariff, etc. (Consolidation) Act and any regulations made thereunder, and if the goods are intended to be disposed of in the customs territory, shall not be removed from the Export Free Zone unless-

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[Cap. C49.]

- (a) the consent of the Authority has been obtained; and

 - (b) the relevant customs authorities are satisfied that all import restrictions relevant thereto have been complied with and all duties payable in connection with the importation thereof into the customs territory have been paid.
- (7) Samples of goods being taken into customs territory shall be subject to the provisions of subsection (5) of this section, except in cases where the relevant customs authority is satisfied that such goods are of no commercial value.
- (8) Where goods are brought from the customs territory into the Export Free Zone for the purpose of an approved activity, the goods shall be deemed to be exported.
- (9) The president shall appoint for the Export Free Zone, an inspecting agent who shall be charged with responsibility of inspecting goods imported from the Export Free Zone into Nigeria for use by an approved enterprise within the Export Free Zone.

13. Persons not to enter the Export Free Zone without permission

- (1) No person shall, without the prior permission of the Authority, enter, remain in or reside in the Export Free Zone.

- (2) Any person who contravenes the provisions of subsection (1) of this section shall have his permit revoked by the Authority.

14. Prohibition of retail trade

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- (1) No retail trade shall be conducted within the Export Free Zone without the prior approval of the Authority and which may be subject to such terms and conditions as may be imposed, from time to time, by the Authority.

- (2) Any person who contravenes the provisions of subsection (1) of this section or of a term or condition imposed pursuant to that subsection shall have his license revoked by the Authority.

15. Special provisions relating to articles imported with custom duty cessions

- (1) An approved enterprise which imports into the Export Free Zone an article with a benefit in respect of customs duty under the provisions of this Act shall-
 - (a) keep such records of the articles so imported in such forms and containing such particulars as may be required by the Authority;

 - (b) cause the articles to be marked with such mark and in such manner as may be required by the Authority;

 - (c) permit the Authority or a person authorised by the Authority at all reasonable times-
 - (i) to inspect the records relating to those articles; and

 - (ii) to have access to any factory, warehouse, assembly plant or other premises under the control of the approved enterprise for the purpose of examining the articles which the Authority believes to be therein and of satisfying itself of the accuracy of the particulars in relation to the article contained in such records.

- (2) Any person who contravenes the provisions of subsection (1) of this section is guilty of an offence.

16. Prohibition of storage of ammunition and dangerous explosives

(1) Notwithstanding any other provision of this Act, the following goods shall not be imported, taken into or stored in the Export Free Zone-

- (a) firearms and ammunition, other than by members of the Nigeria Police Force, the Armed Forces of the Federation or any of the Security Agencies employed to work in the Export Free Zone in the course of their duties or by such other persons as may be authorised by the Authority;
- (b) dangerous explosives, without prior approval of the Authority;
- (c) petrol, inflammable materials, hazardous cargoes or oil fuels, other than in such quantities and on such terms and conditions as may be prescribed by the Authority;
- (d) goods which the Authority by Order has imposed specific or absolute prohibition on their importation into the Export Free Zone.

(2) Any person who contravenes the provisions of subsection (1) of this section is guilty of an offence.

17. Export of goods from the Export Free Zone

Export of goods from the Export Free Zone to the custom territory shall, except as otherwise prescribed by or pursuant to this Act, be subject to the same customs and licensing requirements as apply to goods imported from other countries.

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18. Incentives and related matters

(1) Approved enterprises within the Export Free Zone shall be entitled to the following incentives-

(a) legislative provisions pertaining to taxes, levies, duties and foreign exchange regulations shall not apply within the Export Free Zone;

(b) repatriation of foreign capital investment in the Export Free Zone at any time with capital appreciation of the investment;

(c) remittance of profits and dividends earned by foreign investors in the Export Free Zone;

(d) no import or export licences shall be required;

(e) up to a minimum of 25 percent of production may be sold in the customs territory against a valid permit, and on payment of appropriate duties;

(f) rent free land at construction stage, thereafter rent shall be as determined by the authority;

(g) up to 100 per cent foreign ownership of business in the Export Free Zone allowable;

(h) foreign managers and qualified personnel may be employed by companies operating in the Export Free Zone.

(2) The Authority shall be the only agency qualified to-

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- (a) give all approvals; and

- (b) cancel all licenses.

- (3) The Authority shall simplify all procedure necessary for authorisation of investments in the Export Free Zone and state by order from time to time its requirements for the grant of authorisations for investments in the Export Free Zone.

- (4) Operations within the Export Free Zone shall commence on the date when the construction of the perimeter fence and gate of the Export Free Zone have been completed and the Authority has assumed duties.

- (5) There shall be no strikes or lockouts for a period of 10 years following the commencement of operations within the Export Free Zone and any trade dispute arising within the Export Free Zone shall be resolved by the Authority.

19. Enterprises to submit returns

An approved enterprise shall submit to the Authority at such intervals as may be prescribed, such statistical data, and such information and returns as regards the sales and purchases and other operations of the enterprise as the Authority may require or as may be prescribed, from time to time.

20. Work permit

Where a person who is a non-Nigerian citizen is employed by the Authority or by an approved enterprise established in the Export Free Zone, upon application by the enterprise for a licence to establish itself within the Export Free Zone or at any time thereafter, the enterprise shall apply on behalf of the non-Nigerian citizen, direct to the Authority for the purpose of immigration and employment permits, in such manner as may be prescribed by the Authority.

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21. Fund of the Authority

(1) The Authority shall establish and maintain a fund which shall consist of-

- (a) all moneys received from the Federal Government;
- (b) proceeds from all activities, services and operations of the Authority;
- (c) grants, gifts and donations made to the Authority; and
- (d) such other sum as may accrue, from time to time, to the Authority.

(2) The Authority shall from time to time, apply the proceeds of the fund established pursuant to subsection (1) of this section-

- (a) to the cost of administration of the Authority;
- (b) to the payment of the salaries, fees or other remuneration or allowances, pensions and gratuities payable to the officers and employees of the Authority;
- (c) for reimbursing members of the Board or of any committee set up by the Board for such expenses as may be expressly authorised by the Authority in accordance with the rates approved by the President;
- (d) for the maintenance of any property vested in the Authority; and
- (e) for investment, maintenance of the Export Free Zone, marketing, promotion, training, research and similar activities.

22. Annual estimates, accounts, etc.

- (1) The Authority shall, not later than 31st October in each year, submit to the Minister an estimate of its expenditure and income (including payments into the fund of the authority) during the next succeeding year.

- (2) The Authority shall keep proper accounts in respect of each year (and proper records in relation thereto) and shall cause its accounts to be audited within six months after the end of each year by auditors appointed from the list and in accordance with the guidelines supplied by the Auditor-General for the Federation.

23. Enactments applicable in customs territory to apply

- (1) Except as provided under this Act, an enactment applicable in a customs territory shall apply within the Export Free Zone.

- (2) The Minister may, by order published in the *Gazette*, modify the application of any enactment which is made applicable in the Export Free Zone by subsection (1) of this section, where the enactment concerned restricts or interferes with the smooth running of the Export Free Zone or operating of licences therein.

24. Omission and non-compliance

- (1) Every omission or neglect to comply with and every act done or attempted to be done contrary to the provisions of this Act or any regulations made thereunder shall be an offence and in respect of any such offence for which no penalty is expressly provided the offender shall be liable on conviction to a fine of N100,000 or to imprisonment for a term of three months or to both such fine and imprisonment.

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- (2) Whoever attempts to commit any offence punishable under this Act or any regulations made thereunder or abets the commission of such offence shall be punished with the punishment provided for such an offence.
- (3) Where a body corporate is guilty of an offence under this Act, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity; he, as well as the body corporate, is guilty of that offence and liable to be proceeded against and punished accordingly.

25. Regulations

The Authority may, with the approval of the Minister make regulations for the proper implementation of this Act.

26. Interpretation

In this Act, unless the context otherwise requires-

“approved activities” means activities specified and approved by the Authority;

“approved enterprise” means any enterprise established within the Export Free Zone approved by the Authority;

“Authority” means the Oil and Gas Export Free Zone Authority established by section 2 of this Act;

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“**member**” means a member of the Board and includes the chairman;

“**Minister**” means the Minister charged with responsibility for matters relating to trade.

27. Short title

This Act may be cited as the Oil and Gas Export Free Zone Act.

SCHEDULE

[Section 3 (5).]

Supplementary provisions relating to the Authority

Proceedings of the Board

1.

(1) Subject to this Act and to section 26 of the Interpretation Act, the Board may make standing orders regulating the proceedings of the Authority or of any committee thereof.
[Cap. 123.]

(2) The quorum of the Board shall be eight and the quorum of any committee of the Board shall be as may be determined by the Board, from time to time.

2.

(1) The Board shall meet not less than four times in each year and, subject, thereto, the Board shall meet whenever it is summoned by the chairman, and if the chairman is required to do so by notice given to him by not less than three other members, he shall summon a

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meeting of the Board to be held within fourteen days from the date on which the notice is given.

- (2) At any meeting of the Board the chairman shall preside, but if he is absent, the members present at the meeting shall appoint one of their number to preside at the meeting.
- (3) Where the Board desires to obtain the advice of any person on a particular matter, the Board may co-opt him as a member for such period as it thinks fit:

Provided that a person who is a member by virtue of this sub-paragraph shall not be entitled to vote at any meeting of the Board and shall not count towards the quorum.

Committees

3.
 - (1) The Board may appoint one or more committees to carry out on behalf of the Board such of its functions as the Authority may determine.
 - (2) A committee appointed under this paragraph shall consist of such number of persons (not necessarily members of the Board) as may be determined by the Board; and a person other than a member of the Board shall hold office on the committee in accordance with the terms of his appointment.

Miscellaneous

4.
 - (1) The fixing of the seal of the Authority shall be authenticated by the signature of the chairman and of any other member authorised generally or specially by the Board to act for that purpose.
 - (2) Any contract or instrument which, if made or executed by a person not being a body corporate, would not be required to be under seal may be made or executed on behalf of the Board by the chairman and the Managing Director or any person authorised generally or specially by the Authority to act for that purpose.
5. Members of the Board shall be paid out of the moneys at the disposal of the Board such remuneration, fee or allowances in accordance with such scales as may be approved, from time to time, by the Minister.

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6. The validity of any proceedings of the Board or of a committee thereof shall not be adversely affected by any vacancy in the membership of the Board or of a committee or by the defect in the appointment of any member of the Board or committee or by reason that a person not entitled to do so took part in the proceedings.
- 7.
- (1) A member of the Board who is-
- (a) directly or indirectly interested in any company or enterprise the affairs of which are being deliberated upon by the Authority; or
 - (b) is interested in any contract made or proposed to be made by the Authority,
- shall as soon as possible after the relevant facts have come to his knowledge disclose the nature of his interest at a meeting of the Board.
- (2) A disclosure under subparagraph (1) of this paragraph, shall be recorded in the minutes of the meeting of the Board and the member shall-
- (a) not take part after such disclosure in any deliberation or decision of the Board with regard to the subject matter in respect of which his interest is thus disclosed;
 - (b) be excluded for the purpose of constituting a quorum of the Board for any such deliberation or decision.

Pace setters Academy Gwarimpa

Play group Discoverers

Pre- school 1 Trail Blazers

Pre- School 1 Legends

Pre 0 School 1 Super stars

Pre – School 2 legends

Pre – School 2 Super stars

Pre- School 2 Trail Blazers

Kindergarten Trail Blazers

CHAPTER P8

PERSONAL INCOME TAX ACT

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CHAPTER P8

PERSONAL INCOME TAX ACT

An Act to impose income tax on individuals, communities and families and on executors and trustees; and to provide for the assessment and collection and administration of the tax.

[1993 No. 104]

[Commencement] [25th August, 1993]

PART I

Imposition of tax and income chargeable

1. Imposition of tax

There is hereby imposed a tax on the income-

- (a) of individuals, communities and families; and
- (b) arising or due to a trustee or estate,

which shall be determined under and be subject to the provisions of this Act.

[1996 No. 30.]

2. Persons on whom tax is to be collected

[2011 No. 20.]

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

[Sixth Schedule]

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- (a) every individual other than persons covered under paragraph (b) of this subsection or corporation sole or body of individuals deemed to be resident for that year in the relevant State under the provisions of this Act; and

- (b) the following other persons, that is-
 - (i) persons employed in the Nigerian Army, the Nigerian Navy, the Nigerian Air Force, the Nigerian Police Force other than in a civilian capacity;
 - (ii) officers of the Nigerian Foreign Service;
 - (iii) every resident of the Federal Capital Territory, Abuja; and
 - (iv) a person resident outside Nigeria who derives income or profit from Nigeria.

(1A) Notwithstanding anything in the principal Act, the relevant tax authority in a State shall have powers to collect tax under this Act from itinerant workers.

[2011 No. 20.]

Individuals

- (2) In the case of an individual, other than an itinerant worker and persons covered under paragraph (b) of subsection (1) of this section, tax for any year of assessment may be collected only by the State in which the individual is deemed to be resident for that year under the provisions of the First Schedule to this Act and in the case of persons referred to in subsection (1) (b) of this section, tax shall be collected by the Federal Board of Inland Revenue.

[First Schedule.]

Itinerant workers

- (3) In the case of an itinerant worker, tax may be collected for any year by any State in which the itinerant worker is found during the year:

Provided that:

- (a) in an assessment for any year upon an itinerant worker credit shall be given against the tax payable, but not exceeding the amount thereof, for any income tax already paid by him to any other tax authority for the same year; and

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- (b) collection of so much of any tax imposed in a territory on an itinerant worker for a year of assessment as remains unpaid on the itinerant worker leaving that territory during that year shall remain in abeyance during his absence from that territory, and if he returns to that territory having during his absence paid tax in some other territory for that year, credit shall be given against any unpaid tax in the first-mentioned territory, but not exceeding that unpaid amount, for the tax paid in that other territory.

Communities

- (4) In the case of a village or other indigenous communities, tax may be collected for any year only by the law of the territory in which that community is to be found and the tax may be charged on-
 - (a) the estimated total income of all its members;
 - (b) 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
 - (c) the amount of any communal income which, in the opinion of the relevant tax authority in relation to such community, it is impracticable to apportion with certainty between its members.

Families

- (5) In the case of income of a family recognised under any law or custom in Nigeria as families income, in which the several interests of individual members of the family are indeterminate or uncertain, tax may be collected only by the territory in which the member of that family who customarily receives that income in the first instance in Nigeria usually resides.

Trustees

- (6) In the case of income arising to a trustee of any settlements or trusts, or estates or to an executor of any estate of a deceased person, tax may only be collected by the territory of which the tax authority is the relevant tax authority in relation to such settlement, trust or estate and to the extent provided in the Second Schedule to this Act.

[Second Schedule.]
- (7) Nothing in this section shall be construed as imposing liability to tax on the personal emoluments of any person serving as other rank and accordingly any other enactment or law imposing tax on the income or individuals shall not apply:

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Provided that where any other income accrues to a person serving as other rank (not being income by way of personal emoluments) that income shall be liable to tax under this Act or under any relevant enactment or law.

(8) In this section-

“**other rank**” has the meaning assigned thereto by the Armed Forces Pensions Act; and
[Cap. A23.]

“**personal emoluments**” means wages or salaries and includes allowances including benefits in kind, gratuities, superannuation or pension schemes and any other income derived solely by reason or employment as other rank.

[2011 No. 20]

3. Income chargeable

(1) Subject to the provisions of this Act, tax shall be payable for each year of assessment on the aggregate amounts each of which is the income of every taxable person, for the year, from a source inside or outside Nigeria, including, without restricting the generality of the foregoing-

(a) gain or profit from any trade, business, profession or vocation, for whatever period of time such trade, business, profession or vocation may have been carried on or exercised;

(b) any salary, wage, fee, allowance or other gain or profit from employment including compensations, bonuses, premiums, benefits or other perquisites allowed, given or granted by any person to any temporary or permanent employee other than so much of any sums as or expenses incurred by him in the performance of his duties, and from which it is not intended that the employee should make any profit or gain;

[2011 No. 20.]

(i) medical or dental expenses incurred by the employee;

(ii) the cost of any passage to or from Nigeria incurred by the employee;

(iii) any sum paid in respect of the maintenance or education of a child if any provision of this Act provides that any sum received by the employee during a year of assessment shall be deducted from the personal reliefs to be granted to him for the next following year;

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- (iv) so much of any amount of rent the employee is treated as being in receipt equal to the annual amount deemed to be incurred by the employer under section 4 of this Act;
 - (v) so much of any amount of rent the employee is treated as having received under the provisions of section 5 of this Act;
 - (vi) so much of the amount of rent subsidy or rent allowance paid by the employer, to or on account, for the employee not exceeding N100,000 per annum;
[1999 No. 30.]
 - (vii) meal subsidy or meal allowance, subject to a maximum of N5,000 per annum;
[1999 No. 30.]
 - (viii) utility allowance of N 10,000 per annum;
[1999 No. 30.]
 - (ix) entertainment allowance of N6,000 per annum;
 - (x) leave grant, subject to a maximum of ten per cent of annual basic salary;
[1999 No. 30.]
- (c) gain or profit including any premiums arising from a right granted to any other person for the use or occupation of any property;
- (d) dividend, interest or discount;
- (e) any pension, charge or annuity;
- (f) any profit, gain or other payment not falling within paragraphs (a) to (e) inclusive of this subsection.
- (g) For the purpose of this section-
- (a) **“allowance”** includes any sum paid or payable in respect of expenses and any sum put by an employer at the disposal of an employee and paid away by the employee;
 - (b) **“income”** includes any amount deemed to be income under this Act;
 - (c) the gains or profits arising from a right granted to any other person for the use or occupation of property under any lease or assignment thereof, being rent paid or

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expressed to be paid in advance, shall be deemed to accrue to the recipient from day to day over the period for which such rent has been paid:

Provided that where the period exceeds five years, the whole of the 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 said period;

(d) **“employment”** includes any service rendered by any person in return for any gains or profits;

(e) **“dividend”** means-

- (i) in relation to a company not being in the process of being wound up or liquidated, any profits distributed, whether such profits are of a capital nature or not, including an amount equal to the nominal value of bonus shares, debentures or securities awarded to the shareholder; and
- (ii) in relation to a company that is being wound up or liquidated, any profits distributed, whether in money or money's worth or otherwise, other than those of a capital nature earned before or during the winding up or liquidation.

4. General provisions as to valuation of benefits

(1) Where an employer incurs any expense in the provision of any benefit or perquisite in accordance with section 3 (1) (b) (vi) of this Act, other than the provision of living accommodation to which section 5 of this Act relates, the following provisions shall apply-

- (a) in any case where any assets which continue to belong to an employer is used wholly or partly in the making of such provisions, he shall be deemed to incur annual expenses in connection therewith of an amount equal to five per cent of the amount expended by him in acquiring the asset, but if that amount cannot be so ascertained, five per cent of the market value of the asset at the time of the acquisition, as determined by the relevant tax authority;
- (b) in a case where any sum by way of rent or hire is payable by the employer in respect of any such asset, he shall be deemed to incur an annual expense in connection with the making of such provisions equal to the annual amount of the rent or hire expended by him on the asset; and

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- (c) in any case, the employer shall be deemed to incur annual expense in connection with the making of such provisions equal to the annual amount expended thereon by him.
- (2) The employee shall be treated as being in receipt (in addition to any other emolument) of emolument equal to the annual amount so deemed to be incurred by the employer under subsection (1) of this section reduced by so much (if any) of the annual expense as is made good to the employer by the employee.
- (3) The provisions of subsections (1) and (2) of this section shall not apply to any expenses incurred by an employer-
 - (a) in connection with the provision of meals in any canteen in which meals are provided for the staff generally or of luncheon vouchers for his employees if those vouchers are not assignable by an employee to whom they are issued;
 - (b) in the provision of any uniform, overall or other protective clothing;
 - (c) where those expenses are reasonable removal expenses which may or may not include a temporary subsistence allowance incurred by the employer by reason of a change of the employee's employment which requires such employee to change his place of residence, and the employee shall not be treated as being in receipt of any remuneration in respect of the allowance.
- (4) A reference in this section to expenses incurred in connection with any matter includes a reference to a proper proportion of any expenses incurred partly in connection with the matter.
- (5) A reference in this section to anything provided for an employee shall, unless the reference is expressly to something provided for the employee himself, be construed as including a reference to anything provided for the spouse, family, servant, dependant or guest of that employee by the employer.

5. Valuation as to living accommodation

- (1) Where any premises in Nigeria are made available to the occupier by reason of his or his wife's holding an office or employment and-
 - (a) the occupier pays no rent for the premises; or
 - (b) the rent which the occupier pays for the premises is less than the annual value of the premises,

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the employee shall be treated as being in receipt (in addition to any other emoluments) of emoluments at an annual rate equal to the annual value of the premises, as determined under subsection (3) of this section, reduced by the annual amount of rent which the occupier pays for the premises.

(2) Subsection (1) of this section shall apply to an occupier being a woman as it applies to an occupier being a man with the substitution of —her husband‡ for —his wife‡ and that subsection shall accordingly be so construed.

(3) In this section, “**the annual value of the premises**” means-

(a) in relation to premises subject to any law governing assessment of local rates, the annual value of the premises as determined for purposes of local rates under that law;

(b) in any other case, the annual value as determined by the relevant tax authority, and a reference in this section to annual value shall include a reference (where applicable) to such proper proportion of the annual value-

(i) in relation to a period of occupation within a year; or (ii) in relation to the part of the premises occupied; or

(ii) in relation to both a period of occupation within a year and the part of the premises occupied, as may be determined by the relevant tax authority.

6. Business or trade only partially carried on or deemed to be carried on in Nigeria

Where an individual, an executor, or a trustee, outside Nigeria carries on a trade or business of which only part of the operations are carried out in Nigeria, the gains or profits of the trade or business shall be deemed to be derived from Nigeria to the extent to which such gains or profits are not attributable to that part of the operations carried on outside Nigeria:

Provided that-

(a) the individual, executor or trustee does not have a fixed base in Nigeria from which he carries on such trade or business;

(b) the individual, executor or trustee does not habitually operate a trade or business through a person in Nigeria authorised to conclude contracts on his behalf or on behalf of some other persons related to him or both of whom are controlled by some other person or does not habitually maintain a stock of goods or merchandise in Nigeria from which deliveries are regularly made on his behalf;

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- (c) the trade or business in Nigeria does not involve a single contract for surveys, deliveries, installations or construction;
- (d) the trade or business is not between persons both of whom are controlled by some other person and such that conditions are made or imposed between such persons in their commercial or financial relations which in the opinion of the relevant tax authority is deemed to be artificial or fictitious.

7. Relevant tax authority may assess and charge tax on the turnover of a business, etc.

- (1) Where, in respect of any business carried on by a person it appears to the relevant tax authority that for any year of assessment, the business produces either no assessable income or an assessable income which in the opinion of the relevant tax authority is less than might be expected to arise from that business or, as the case may be, the true amount of the assessable income of that person from the business cannot be readily ascertained, the relevant tax authority may for that year of assessment, in respect of that business, and notwithstanding any other provision of this Act-
 - (a) if the whole of the operations of the business are carried on in Nigeria, assess and charge the person carrying on the business on such fair and reasonable percentage of the turnover of the business, as the relevant tax authority may determine;
 - (b) if that person is a non-resident who-
 - (i) has a fixed base from where he carried on such business, assess and charge that person on such a fair and reasonable percentage of the turnover attributable to that fixed base;
 - (ii) operates a business through a person authorised to conclude contracts on his behalf or on behalf of some person related to him or both of whom are controlled by some other person or operates a business through a person who regularly makes deliveries from a stock of goods or merchandise habitually held in Nigeria on his behalf, assess and charge that person on a fair and reasonable percentage of the turnover of the business carried on through that person;
 - (iii) operates a business in Nigeria which involves a single contract for surveys, deliveries, installation or construction, assess and charge that person on a fair and reasonable percentage of the contract.

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- (2) The provisions of this Act as to notice of assessment, additional assessment, appeal and other proceedings shall apply to an assessment or additional assessment made under this section.
- (3) In this section-
- (a) “**business**” includes a trade, profession or vocation;
 - (b) “**person**” in relation to the carrying on of a business, has the meaning assigned to it by section 108 of this Act but does not include a company.

8. Partnership

- (1) The gains or profits from a partnership of a partner therein shall be the sum of-
- (a) any remuneration, interest on capital, or the cost of passages to or from Nigeria wholly or mainly undertaken for the purpose of leave or recreation, which is charged in the partnership accounts in respect of that partner; and
 - (b) his share in the income of the partnership, computed in accordance with the provisions of this Act after the deduction of charges to which paragraph (a) of this subsection applies in respect of all the partners but before the deduction of any other expenses of the partnership referable to a partner which would have been private or domestic expenditure within the meaning of subsection (1) (a) of section 21 of this Act if incurred directly by that partner.
- (2) When the income computed under paragraph (a) of this subsection results in a loss, the partner’s share therein shall be deducted from his gains or profits ascertained under the provisions of subsection (1) (b) of this section and he shall be deemed to have incurred a loss in the trade or business of partnership to the extent, if any, by which the deductible share exceeds those gains or profits.
- (3) For the purpose of subsection (1) of this section, the share of a partner in the computed income of a partnership shall be such proportion of that computed income as would accrue to him under the provisions of the partnership agreement if that computed income were wholly apportionable between the partners within the terms of the agreement, or where the computed income results in a loss, such proportion of that loss as would be chargeable to him if that loss falls to be allocated between the partners in the terms of the agreement.
- (4) The amount of the gains or profits or loss of a partner, ascertained under the foregoing provisions of this section, of any period, shall be deemed for all purposes of this Act to be

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his ascertained income or loss of that period from a trade, business, profession or vocation carried on by him during that period, and the provisions of Part III of this Act, other than paragraph (g) of section 21 of this Act, shall not apply to that partner with respect to the income or loss.

- (5) The determination of the income or loss from a partnership or a partner therein shall be made by the relevant tax authority in relation to that partnership, and where any partner is taxable for a year of assessment in the territory of some other authority, the relevant tax authority shall supply to that other authority particulars of that determination.
- (6) An appeal against an assessment by any individual in so far as it relates to any partnership income or loss, shall lie only to the body of Appeal Commissioners or court specified for income tax purpose in a law of the territory of which the tax authority is the relevant authority in relation to that partnership.
- (7) For the purposes of paragraph 6 of the First Schedule to this Act, the income of a partner from a partnership in Nigeria shall be deemed to be derived from the territory of the relevant tax authority in relation to that partnership.
[First Schedule.]
- (8) The partnership, employee or agent in charge of the principal office or place of business of a partnership in Nigeria shall without notice or demand thereof register or cause to be registered with the relevant tax authority, a certified copy of the partnership deed or, where no written deed is in existence, particulars of any written or oral agreement under which the partnership is currently established and where any such particulars, have been so registered, notice of any subsequent change therein agreed between the partners shall be similarly registered with that tax authority within thirty days of the agreement.
- (9) Where the particulars of any partnership have been registered under the provisions of subsection (8) of this section, the computation under this section of the gains or profits of a partner therein may be made by the relevant tax authority on the basis of those particulars as they apply at any relevant time and in the event of failure by a partnership to comply with any demand made under the foregoing subsection, notwithstanding the provisions of subsection (3) of this section, tax may be assessed and charged by the relevant tax authority as though the whole gains or profits of such partnership accrued to any individual partner therein or were divisible between any partner therein as may appear just and reasonable to the tax authority.

9. Agricultural, etc., profit

The gain or profit of an individual from any land used by him for agricultural purposes or from livestock shall, unless the relevant tax authority is satisfied to the contrary, be

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deemed to be the gain or profit which would be realised by him if the land were cultivated or used or the livestock were dealt with, as the case may be, in the manner and up to the average standard of cultivation, use or practice relating to the use of the land or the dealing with livestock prevailing in the neighbourhood.

10. Employment

- (1) The gain or profit from an employment shall be deemed to be derived from Nigeria if-
- (a) the duties of the employment are wholly or partly performed in Nigeria, unless-
 - (i) the duties are performed on behalf of an employer who is in a country other than Nigeria and the remuneration of the employee is not borne by a fixed base of the employer in Nigeria; and
[2011 No. 20.]
 - (ii) the employee is not in Nigeria for a period or periods amounting to an aggregate of 183 days (inclusive annual leave or temporary period of absence) or more in any twelve month period commencing in a calendar year and ending either within that same year or the following year; and
[2011. No. 20.]
 - (iii) the remuneration of the employee is liable to tax in that other country under the provisions of the avoidance of double taxation treaty with that other country;
[2011 No. 20.]
 - (b) the employer is in Nigeria, or has a fixed base in Nigeria.
[2011 No. 20]
- (2) Notwithstanding the provisions of paragraph (b) of subsection (1) of this section, the gains or profits from an employment by a Government in Nigeria shall be deemed to be derived from Nigeria wherever the remuneration is paid if the employee performs the duties of that employment in a country other than Nigeria which country under an agreement or diplomatic usage exempts the employee from tax on those gains or profits.
- (3) The gain or profit from any employment exercised in Nigeria shall be deemed to be derived from Nigeria whether the gains or profits from the employment are received in Nigeria or not.
- (4) The gains or profits from any employment, the duties of which are wholly or mainly performed in Nigeria, shall be deemed to be derived from Nigeria during any period of

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leave of the employee from the employment, and any period of his temporary absence on duty from Nigeria.

Former subsection (5) deleted by 2011 No. 20.

- (5) Notwithstanding any provision of this section, the gains or profits of an individual from any employment as a seafarer, other than any such employment in the Nigerian Navy or the Nigerian Ports Authority, shall be deemed to be derived from Nigeria only during any period in which the individual is serving under articles which he had signed in Nigeria or is performing stand-by duty on board a ship preparatory to his signing articles in Nigeria.

11. Tax credit allowable against tax payable on income derived from outside Nigeria

Notwithstanding the provisions of section 3 (1) of this Act, where a resident derives income from a source outside Nigeria and the income is brought into Nigeria through Government approved channels, he shall be allowed a tax credit against the tax payable by him but the tax credit shall not exceed the proportion of his total tax for the year of assessment which that income derived from outside and brought into Nigeria bears to his aggregate income chargeable to tax in Nigeria.

12. Nigerian dividends

- (1) The income from a dividend distributed by a Nigerian company shall be deemed to be derived from Nigeria, and shall be the gross amount of that dividend before deduction of any tax which the company is required to deduct on payment thereof under the provisions of any law in force in Nigeria at the relevant time imposing taxation on the profits of companies.
- (2) Any amount of the undistributed profit of a Nigerian company which is treated as distributed under the provisions of any law in force in Nigeria imposing tax on the profits of companies shall, for the purpose of this Act, be deemed to be income from a dividend accruing to any person who is a shareholder in the company in proportion to his share in the ordinary capital thereof at the relevant time, and the income from the dividend to be taken for assessment in his hands shall be his due proportion thereof increased by such amount as may be specified by the relevant tax authority in respect of tax deemed to be deducted at source.
- (3) The income from a dividend distributed by a Nigerian company shall be deemed to arise on the day on which payment of that dividend becomes due.

13. Foreign income

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The income from a dividend paid by a company other than a Nigerian company, or from any other source outside Nigeria, shall be the amount of that income brought into or received in Nigeria, provided that, if the income arose in a country to which section 39 of this Act applies, the amount of that income to be taken for assessment shall be the amount computed under subsection (5) of section 39 of this Act.

14. Interest

The income from any interest on money lent by an individual or an executor, or a trustee, outside Nigeria to a person in Nigeria (including a person who is resident or present in Nigeria at the time of the loan) shall be deemed to be derived from Nigeria if-

- (a) there is liability to payment in Nigeria of the interest regardless of what form the payment takes and wherever the payment is made;
- (b) the interest accrues in Nigeria to a foreign company or person regardless of what form the payment takes and wherever the payment is made.

15. Territory in which dividend or interest paid by a Nigerian company arises

Where a dividend or interest is distributed or paid by a Nigerian company, the dividend or interest, as the case may be, whenever necessary for the purpose of the First Schedule to the Act, shall be deemed to be derived from the territory in which the recipient of the dividend or interest resides or, where the recipient is not resident in Nigeria, the person shall be deemed to be a person to whom section 2 (1) (h) (iv) applies.

[First Schedule.]

16. Settlement, trusts and estates

The income of an individual or of a trustee or executor from a settlement, trust, or estate of a deceased person, made, created or administered in Nigeria, or in the case of settlement or trust made, created or administered in Nigeria, shall be ascertained in accordance with the provisions of the Second Schedule to this Act.

[Second Schedule.]

17. Artificial transactions

- (1) Where a tax authority is of opinion that any disposition is not in fact given effect to, or that any transaction which reduces or would reduce the amount of any tax payable is artificial or fictitious, the tax authority may disregard the disposition or direct that such adjustments shall be made as respects the income of an individual, an executor or a trustee.

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tee, as the tax authority considers appropriate so as to counteract the reduction of liability to tax effected, or reduction which would otherwise be effected by the transaction.

- (2) Where it appears that the interests of more than one tax authority are affected thereby, the exercise of any power conferred on a tax authority by subsection of this section shall be performed by the relevant tax authority alone and any decision or direction of the relevant tax authority under this section shall be binding on all tax authorities.
- (3) For the purposes of this section-
 - (a) **“disposition”** includes any trust, grant, covenant, agreement or arrangement;
 - (b) transactions between persons one of whom either has control over the other or in case of individuals who are related to each other or between persons both of whom are controlled by some other person, shall be deemed to be artificial or fictitious if in the opinion of the tax authority those transactions have not been made on terms which might fairly have been expected to have been made by independent persons engaged in the same or similar activities dealing with one another at arm’s length.

18. Certain appeals

An appeal with respect to assessment of income arising from any decision or direction of the relevant tax authority under subsection (2) of section 17 of this Act, shall lie only to the Federal High Court at the instance of the person in whose hand that income is assessed to tax, and no shareholder shall have any right of appeal with respect to any amount deemed to be his income under the provisions of subsection (2) of section 12 of this Act.

19. Income exempted

- (1) There shall be exempt from the tax all that income specified in the Third Schedule to this Act.
- (2) The Minister may by notice include in the Third Schedule to this Act all or any person or class of persons chargeable to tax by virtue of this Act, so as to exempt the income of that person or class of persons from tax in pursuance of- .

[Third Schedule.]

 - (a) any treaty, convention or agreement between the Federal Government of Nigeria and any other country or any arrangement with or decision of an international organisation of which the Federal Government of Nigeria is a member; or

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- (b) any arrangement in that behalf subsisting between the Government of the Federation and the Government of each State.
- (3) Nothing in this section or the Third Schedule to this Act shall be construed so as to-
- (a) exempt in the hands of the recipients any interest, bonuses, salaries or wages paid wholly or in part out of income exempted thereby; or
 - (b) authorise a State Government, a company or any person or agency of government, a company or any person, whether resident or not in Nigeria, to provide tax exemption clauses in an agreement or arrangement without seeking approval first from the Minister of Finance and thereafter from the President.

PART II

Ascertainment of income

20. Deduction allowed

- (1) For the purpose of ascertaining the income or loss of an individual for any period from any source chargeable with tax under this Act there shall be deducted all outgoing and expenses, or any part thereof, wholly, exclusively, necessarily and reasonably incurred during that period and ultimately borne by that individual in the production of the income, including-
- (a) a sum payable by way of interest on money borrowed and employed as capital in acquiring the income;
 - (b) interest on loans for developing an owner-occupied residential house;
 - (c) rent for that period, and premiums the liability for which was incurred during that period, payable in respect of land or buildings occupied for the purpose of acquiring the income; and
 - (d) any expense incurred for repair of premises, plant, machinery or fixtures employed in acquiring the income, or for the renewal, repair or alteration of any implement, utensil or article so employed:

Provided that if the premises, plant, machinery, fixtures, implement, utensil or article are used in part for domestic or private purposes, so much of the expense as relates to such use shall not be so deducted;

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- (e) bad debts incurred in any trade, business, profession or vocation, proved to have become bad during the period for which the income is being ascertained, and doubtful debts to the extent that they are respectively estimated to have become bad during the said period and notwithstanding that such bad or doubtful debts were due and payable prior to the commencement of the said period:

Provided that-

- (i) where in any period a deduction under this paragraph is to be made as respect any particular debt, and a deduction has in any previous period been allowed in respect of the same debt, the appropriate reduction shall be made in the deduction to be made in the period in question;
- (ii) all sums recovered during the said period on account of amounts previously written off or allowed in respect of bad or doubtful debts shall for the purposes of this Act be deemed to be income of the trade, business, profession or vocation of that period;
- (iii) it is proved that the debts in respect of which a deduction is claimed either were included as a receipt of the trade, business, profession or vocation in the income of the year within which they were incurred, or were advances not falling within the provisions of subsection (b) of section 21 of this Act made in the course of normal trading, business, professional or vocational operations;
- (f) a contribution or an abatement deducted from the salary or pension of a public officer under the Pensions Act or under any approved scheme within the meaning of that Act, and any contribution, other than a penalty, made under the provisions of any Act establishing the Nigeria Social Insurance Trust Fund or other retirement benefits scheme for employees throughout Nigeria;
[Cap. P4.]
- (g) a contribution to a pension, provident or other retirement benefits fund, society or scheme approved by the Board, subject to the provisions of the Fourth Schedule to this Act and such conditions as the Board in its absolute discretion may prescribe:
[Fourth Schedule.]

Provided that where the instruments establishing in Nigeria any such fund, society or scheme contain *inter alia* a general power or duty of the trustees or managers thereof to invest the moneys of the fund, society or scheme, and on the first day of any year of assessment commencing after the thirty-first day of March, 1962-

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(i) in the case of a fund, society or scheme deemed to have been approved under the provisions of this Act, less than thirty three and one third *per centum* of all moneys which are so invested is invested in securities issued by or under the authority of any Government in Nigeria; or

(ii) in the case of a fund, society or scheme approved under the provisions of this section, less than 50% of all moneys which are so invested is invested in securities issued by or under the authority of any Government in Nigeria,

the deemed approval or approval of such fund, society or scheme shall have no effect for any purpose of this Act for that year of assessment;

(h) in the case of income from a trade, business, profession or vocation, any expenses or part thereof incurred for that period (whether the liability was met during that or any previous period) wholly and exclusively for the purpose of the trade, business, profession or vocation unless those expenses are or the same part thereof is deductible for that or any other period under the foregoing provisions of this section, and for the purpose of this paragraph an expense incurred during a period shall be treated as having been incurred for that period to the extent that it is not specifically referable to the income of any other period;

(i) any expenses which are proved to the satisfaction of the relevant tax authority to have been incurred by the individual on research for the period including the amount of levy paid by him under the National Agency for Science and Engineering Infrastructure Act.

[Cap. N3.]

(2) Where the income is chargeable solely by reason of it being brought into or received in Nigeria, nothing in this section shall confer a right to any deduction from the amount of that income so brought into or received in Nigeria.

21. Deductions not allowed

Subject to the express provisions of this Act, no deduction shall be allowed for the purpose of ascertaining the income of any individual in respect of-

(a) domestic or private expense;

(b) capital withdrawn from a trade, business, profession or vocation and any expenditure of a capital nature;

(c) any loss or expense recoverable under an insurance or contract of indemnity;

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- (d) rent of or cost of repairs to any premises or part of premises not incurred for the purpose of producing the income;
- (e) taxes on income or profits levied in Nigeria or elsewhere except as provided in section 13 of this Act;
- (f) any payment to a pension, provident, savings or widows' and orphans' society, fund or scheme, except as permitted by paragraphs (f) and (g) of subsection (1) of section 20 of this Act;
- (g) the depreciation of any asset;
- (h) any sum reserved out of profits, except as permitted by paragraph (e) of subsection (1) of section 20 of this Act or as may be estimated by the relevant tax authority, pending determination of the amount, to represent the amount of any expense deductible under the provisions of that section, the liability for which was irrevocably incurred during the period for which the income is being ascertained;
- (i) any expenses of any description incurred within or outside Nigeria for the purpose of earning management fees unless prior approval of an agreement giving rise to such management fees has been obtained from the Minister;
- (j) any expense whatsoever incurred within or outside Nigeria as management fees under any agreement entered into after the commencement of this paragraph except to the extent as the Minister may allow.

22. Waiver of refund of liability or expense

Where a deduction has been allowed under the provisions of section 20 of this Act in respect of any liability or any expense incurred and the liability is waived or released or such expense is refunded in whole or in part, the amount of that liability or expense which is waived, released or refunded, as the case may be, shall be deemed to be income on the day on which such waiver, release or refund was made or given.

PART III

Ascertainment assessable income

23. Basis for computing assessable income

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- (1) Except as provided in this section, the income of any individual for each year of assessment from each source of his income (hereinafter referred to as —assessable income) shall be the amount of the income of the year immediately preceding the year of assessment from each such source, notwithstanding that he may have ceased to possess that source or that the source may have ceased to produce income.
- (2) Where the relevant tax authority is satisfied that an individual makes, or intends to make up the accounts of a trade, business, profession or vocation carried on by him to some day other than the thirty first day of December, it shall direct that the assessable income from that source be computed on the amount of the gains or profits of the year ending on that day in the year preceding the year of assessment.
- (3) Where the assessable income of an individual from a trade, business, profession or vocation has been computed by reference to an account made up to a certain day, and that individual fails to make up an account to the corresponding day in the year following, the assessable income from that source both for the year of assessment in which the failure occurs and for the two years of assessment next following shall be computed on such basis as the relevant tax authority in its discretion thinks fit.
- (4) Any basis adopted by a relevant tax authority under this section shall be subject to confirmation or amendment by the Board, with or without retrospective effect, if the individual is deemed to be resident in more than one territory for those three years of assessment, and such additional assessments, reductions or repayments shall be made so as to give effect to any determination of the Board under this subsection.

24. New trades

The assessable income of an individual from a trade, business, profession or vocation carried on by him in Nigeria for the year of assessment in which he commenced to carry on the trade, business, profession or vocation in Nigeria and for the two following years of assessment (which years are in this subsection respectively referred to as —the first year, —the second year, and —the third year) shall be ascertained in accordance with the following provision:

- (a) for the first year the assessable income shall be the amount of the income of that year;
- (b) for the second year the assessable income shall, unless such notice as hereinafter mentioned is given, be the amount of the income of one year from the date of the commencement in Nigeria of the trade, business, profession or vocation;

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- (c) for the third year the assessable income shall, unless such notice as is hereinafter mentioned be given, be computed in accordance with the provisions of section 23 (1) of this Act;
- (d) the individual carrying on the trade, business, profession or vocation shall be entitled, on giving notice in writing to the relevant tax authority within two years after the end of the second year, to require that the assessable income both for the second year and the third year (but not for one or other only of those years) shall be the income of the respective years of assessment:

Provided that he may, by notice in writing given to the relevant tax authority within twelve months after the end of the third year, revoke the notice, and in such case the assessable income both for the second year and the third year shall be computed as if the first notice had never been given;

- (e) where such a notice as aforesaid has been given or revoked, such additional assessment, or, on a claim being made for the purpose in writing, such reductions of assessments or repayments of tax shall be made as may be necessary to give effect to paragraph (d) of this subsection.

25. Cessation of trades, etc.

Where an individual permanently ceases to carry on a trade, business, profession or vocation in Nigeria, his assessable income therefrom shall be-

- (a) as regards the year of assessment in which the cessation occurs, the amount of the income of that year;
- (b) as regards the year of assessment preceding that in which the cessation occurs, the amount of the income as computed in accordance with the provisions of section 24 of this Act, or the amount of the income of such year, whichever is the greater, and he shall not be deemed to derive assessable income from such trade, business, profession or vocation for the year of assessment following that in which the cessation occurs.

26. Employment and pensions

- (1) With respect to income from an employment or pension which is derived, or deemed to be derived, from Nigeria, the assessable income of an individual shall be the amount of the income of the year of assessment.

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(2) For the purpose of subsection (1) of this section, income from an employment shall be deemed to arise from day to day except to the extent that it is derived from any bonus, commission or allowance payable on one occasion only or at intervals exceeding one month, and to that extent it shall be deemed to be income-

(a) of the day on which it is paid; or

(b) if it is paid after the cessation of the employment, of the last day of the employment including any terminal leave arising therefrom.

27. Trusts and estates

Notwithstanding the foregoing provisions of this Part of this Act, the assessable income of a trustee, or of an executor of the estate of a deceased individual, or of a beneficiary of a trust or estate for any year of assessment shall be the income of that person as determined under the provisions of the Second Schedule to this Act of the year preceding that year.

[Second Schedule.]

28. Itinerant workers

The assessable income for any year of assessment of an itinerant worker shall be determined either under the provisions of sections 23, 24, 25, 26 and 27 of this Act or be the income of the year ending on the thirty first day of December within the year of assessment.

29. Continuity of trades, etc.

An individual carrying on a trade, business, profession or vocation, shall not be treated as having commenced or ceased so to do solely by reason of a change in the territory in which he is deemed to be resident from one year to another, or by reason of his becoming or ceasing to be a partner in a partnership if the nature of the trade carried on by that partnership is the same as that carried on by him before or after he became or ceased to be a partner therein, as the case may be.

30. Apportionment of income

Where in the case of a trade, business, profession or vocation it is necessary in order to arrive at the income of any year of assessment or other period to allocate or apportion to specific periods the income or loss of any period for which accounts have been made up, or to aggregate any such income or loss or any apportioned parts thereof, it shall be lawful to make such allocation, apportionment or aggregation, and any apportionment

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under this section shall be made in proportion to the number of days in the respective periods.

31. Receipts and payment after cessation of trade, etc.

Where after the date on which an individual has ceased to carry on a trade, business, profession or vocation in Nigeria, he or, after his death, his personal representative receives or pays any sum which would have been included in or deducted from his gain or profit from that trade, business, profession or vocation if it had been received or paid prior to that date, that sum shall be deemed for all purposes of this Act to have been received or paid by him, as the case may be, on the last day on which he carried on that trade, business, profession or vocation.

32. Ascertainment of chargeable income

Where income tax is payable for any year of assessment on the chargeable income of an individual, other than a corporation sole or body of individuals, the amount of that chargeable income shall, notwithstanding anything to the contrary in any other enactment or law relating to the ascertainment of chargeable income, be the amount of the total income of that individual for that year, ascertained under the provisions of this Act, after any income exempted has been excluded therefrom and the deductions allowed by this Part of this Act have been made.

33. Personal relief and relief for children, dependants

- (1) There shall be allowed a consolidation relief allowance of N200,000.00 subject to a minimum of 1 percent of gross income whichever is higher plus 20 *per cent* of the gross income and the balance shall be taxable in accordance with the Income table in the Sixth schedule to this Act.

[2011 No. 20.]

- (2) For the purposes of this section, —gross emoluments means, wages, salaries, allowances (including benefits in kind), gratuities, superannuation and any other incomes derived solely by reason of employment.

[2011 No. 20]

- (3) In the case of an individual (other than a person to whom paragraph (b) (iv) of section 2 (1) of this Act relates) who ordinarily resides in Nigeria, or who at any time during the year of assessment-

- (a) becomes ordinarily resident in Nigeria in connection with any trade, business, profession or vocation carried on by him; or

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(b) exercises any employment, the whole gains or profits of which are deemed under the provisions of section 12 of this Act to be derived from Nigeria;

there shall also be allowed the deduction specified in subsection (4) of this section.

(4) The deduction allowed under subsection (3) of this section shall be-

(a) a deduction of the amount of any alimony not exceeding N300 paid to a former spouse under an order of a court of competent jurisdiction in the case of an individual whose marriage has been dissolved;

(b) a deduction of N2,500 in respect of each unmarried child who was maintained by the individual during the year preceding the year of assessment and who, on the first day of that preceding year, had either not attained sixteen years of age, or was receiving full-time instruction in a recognised educational establishment, or was under articles or indentures in a trade or profession:

[1999 No.19]

Provided that-

(i) no deduction under this paragraph shall be allowed to any individual in respect of more than four children and for the purpose of applying this restriction, a husband and his wife or wives not separated from him by deed or an order of any court shall be treated as one and the same individual;

(ii) no additional deduction shall be allowed in respect of the costs incurred in connection with the education of any child in respect of whom he is entitled to a deduction under this paragraph;

(iii) where the cost of maintaining a child is shared between two or more persons, the relevant tax authority may apportion the sum of N500 as may seem to it to be equitable between those persons, and the deduction to be allowed under this paragraph to any individual in respect of that child shall be his apportioned share of that sum;

(iv) a widow who remarries shall be allowed a deduction of N500 for every child (up to a maximum of four children) in respect of the children born by her to her deceased husband;

(c) a deduction of the costs incurred by the individual during the year preceding the year of assessment in maintaining or assisting to maintain a close relative of the individual or of the individual's spouse who was either incapacitated by old age or infirmity

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from maintaining himself or is the widowed mother (whether so incapacitated or not) of the individual's spouse:

Provided that-

(i) no deduction shall be allowed in respect of any relative whose income of the year preceding the year of assessment exceeded N1,000;

[1991 No.31.]

(ii) the aggregate of all deductions to be allowed to two or more individuals for any year in respect of anyone relative subject to a maximum of two relatives, shall not exceed N2,000 and, if the total of the costs incurred by them in respect of the same relative exceeds that sum, then the amount of the deduction to be allowed to any such individual shall be that same proportion of that sum and the cost so incurred;

[1998 No. 19.]

(iii) the aggregate of all deductions to be made under this paragraph in ascertaining the chargeable income of any one individual for any year, shall not exceed N4,000;

[1996 No. 30.]

(d) a deduction of the annual amount of any premium paid by the individual during the year preceding the year of assessment to an insurance company in respect of insurance on his life or the life of his spouse, or of a contract for a deferred annuity on his own life or the life of his spouse;

(e) a deduction of additional N3,000 or 20 per cent of the earned income, whichever is higher, in the case of a disabled person who uses special equipment or the services of an attendant in the course of a paid employment;

[1998 No. 19.]

Provided that the amount of deduction under this paragraph shall not exceed 10% of the earned income of the person for that year.

(5) A deduction to be allowed to an individual for a year of assessment under the provisions of this section, other than paragraph (a) of subsection (3) of this section, may-

(a) be claimed by and allowed to that individual or the spouse of that individual not separated from him by deed or an order of a court on the first day of such year; or

(b) be partly claimed by and allowed to each spouse,

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but in no case shall the aggregate of the deduction allowed to any husband and his wife or wives exceed the amount which would be allowed if such individuals were treated as one and the same individual.

- (6) Where a deduction is claimed in respect of any one child under paragraph (b), or any one dependant under paragraph (c) or any one annual premium under paragraph (d) of subsection (3) of this section, for the same year of assessment, by both husband and wife and the aggregate amount of the deductions so claimed exceeds the amount to be allowed, then in that case the relevant tax authority shall apportion the amount to be allowed as it sees fit for deduction in ascertaining the separate chargeable income of each such husband or wife.
- (7) Where pursuant to a direction of the relevant tax authority a deduction is allowed under this section to a husband or wife and the deduction has not been claimed, it shall be allowed to the husband or wife, or to be apportioned between them as the relevant tax authority in its absolute discretion may decide.

34. Deductions to be claimed

Unless the relevant tax authority otherwise directs, no deduction under this Part of this Act shall be allowed to any person for a year of assessment unless claimed by him in writing in such form as the relevant tax authority may prescribe.

35. Proof of claims

- (1) The relevant tax authority may require a claimant to a deduction under section 33 of this Act to produce such documentary evidence as may be available in support of any claim and in the absence of that evidence or if that evidence is, in the opinion of the relevant tax authority inadequate, the relevant tax authority may refuse to allow the deduction or allow such part only of the amount claimed as the relevant tax authority may decide.
- (2) Notwithstanding any provision of this Act-
 - (a) where a person has failed to produce documentary evidence in support of a claim to a deduction under section 33 of this Act, no objection to an assessment or, if the person is an employee, to any rate at which tax is required to be deducted from his remuneration under the provisions of this Act shall be valid on the grounds that the deduction, or the full amount thereof has not been allowed or taken into account by the relevant tax authority; and
 - (b) where an individual claims a deduction under this Act for a year of assessment, or produces evidence in support of a claim previously made and not admitted or not

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admitted in full by the relevant tax authority within two years after the end of such year, such repayment or set-off of tax, or reduction in any assessment shall be made so as to give effect to any amount or additional amount of the deduction which the relevant tax authority is satisfied should properly be allowed.

PART IV

Ascertainment of total income

36. Total income from all sources

- (1) The total income of an individual for any year of assessment shall be the amount of his total assessable income from all sources for that year, together with any addition thereto to be made in accordance with the provisions of the Fifth Schedule to this Act, less any deductions to be made or allowed in accordance with the provisions of subsection (2) of this section and of that Schedule.

[Fifth Schedule.]

Loss in trade, business, profession or vocation

- (2) There shall be deducted from the total assessable income of an individual-

- (a) the amount of a loss incurred by him during the year of assessment in the trade, business, profession or vocation:

provided that no such deduction shall be made unless it is claimed in writing within twelve months after the end of the year of assessment;

- (b) the amount of a loss which the relevant tax authority is satisfied has been incurred by him in the trade, business, provision or vocation during any year preceding the year of assessment which has not been allowed against his assessable income of a preceding year:

Provided that-

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

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assessable income of the first year of assessment after that in which the loss was incurred, and, so far as it cannot be so made then from such amount of such assessable income of the next year of assessment, and so on;

- (iii) when land or buildings are let by an individual for the purposes of producing income and during any year of assessment the expenses deductible under the provisions of section 20 of this Act in ascertaining the gains or profits from that income exceed the amount of that income, the excess shall be treated as if it were a loss incurred by the individual in a trade or business carried on by him; and
 - (iv) the period for carrying forward of any loss shall be limited to four years after which period any such loss shall lapse.
- (3) The amount of loss incurred by a person engaged in an agricultural trade or business shall be deducted as far as possible from the assessable profits of the first year of assessment after that in which the loss was incurred and so far as it cannot be so made, then from such amount of such assessable profits of the next year of assessment, and soon (without limit as to time) until the loss has been completely set off against the person's subsequent assessable profits.
- (4) For the purpose of subsection (2) of this section, the loss incurred during any year of assessment shall be computed by reference to the year ending on a day in that year of assessment which would have been adopted under subsection (2) of section 23 of this Act for the computation of assessable income of the following year of assessment if a profit had arisen.
- (5) Where under the provisions of section 30 of this Act for the purpose of computing the income of a period from a source chargeable with tax under this Act, being a period the income of which is assessable income from that source for any year, it has been necessary to allocate or apportion to specific periods which fall within that whole period both gains or profits and losses, then no deduction shall be made under the provisions of subsection (2) of this section in respect of the loss or apportioned part thereof referable to that specific period, except to the extent that the loss or part thereof exceeded the aggregate gains or profits apportioned to the remaining specific period or periods within that whole period.
- (6) Notwithstanding any of the provisions of this Act, where for all practical purposes the income of the taxpayer cannot be ascertained or records are not kept in such a manner as would enable proper assessment of income, then such a taxpayer shall be assessed on such terms and conditions as would be prescribed by the Minister in regulations by order of *gazette* under a presumptive tax regime.

[2011 No. 20.]

PART V

Rate of tax and double taxation

37. Charge of income tax

Subject to the provisions of this Act, the income tax that may be payable on the chargeable income of an individual ascertained in accordance with the provisions of this Act shall, in respect of each year of assessment, be assessed at the rate or rates specified in the Sixth Schedule to this Act so however that where after all deductions allowable under this Act the individual has no chargeable income or where the tax payable on the chargeable income of that individual is less than 1 per cent of the total income of that individual, the individual shall be charged to tax at the rate of 1 per cent of his total income.

[Sixth Schedule; 2011 No. 20.]

38. Avoidance of double taxation agreement

[2011 No. 20]

- (1) Where the Government of the Federal Republic of Nigeria has entered into agreement with the Government of any country outside Nigeria with a view to affording relief from double taxation in relation to tax imposed under the provisions of this Act, any tax of a similar character imposed by the laws of that country, and that it is expedient that the agreement have effect, the Agreement shall have effect —upon ratification by the National Assembly].

[2011 No. 20.]

- (2) Where Agreements have effect by virtue of this section, any obligation as to secrecy in this Act or in any law of a territory subject to or incorporating the provisions of this Act shall not prevent the disclosure to an authorised officer of the government with which the Agreements are made of such information as is required to be disclosed under the Agreements.

[2011 No. 20.]

- (3) The Minister may make rules for carrying out the provisions of Agreements having effect under this section.

[2011 No. 20.]

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

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- (5) For the purpose of according relief in Nigeria from double taxation, the Agreements specified in the Seventh Schedule shall be deemed to have been made under the provisions of this section and to apply throughout Nigeria with effect from the year of assessment on the first day of January 1989 in the case of the United Kingdom and in the case of any other country, on such date as is specified in the agreement with that country.
[Seventh Schedule; 2011 No. 20.]

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

- (1) The provisions of this section shall have effect where, under arrangements having effect under section 38 of this Act, foreign tax payable in respect of an income in the country with whom the arrangements are made is to be allowed as a credit against tax payable in respect of that income in Nigeria, and in this section “**foreign tax**” means any tax payable in that country which under the arrangements is to be so allowed.

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

Provided that credit shall not be allowed against tax for any year or assessment unless the person entitled to the income is resident in Nigeria in that year.

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

- (4) Without prejudice to the provisions of subsection (3) of this section, the total credit to be allowed to an individual for any year of assessment for foreign tax under arrangements having effect under section 38 of this Act, shall not exceed the total tax payable by him for that year of assessment.

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

(a) no deduction shall be allowed in respect of foreign tax (whether in respect of the same or any other income);

(b) where the tax chargeable depends on the amount received in Nigeria, that amount shall be increased by the appropriate amount of the foreign tax in respect of the income; and

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- (c) where the income includes a dividend, and under the arrangements foreign tax not chargeable directly or by deduction in respect of the dividend is to be taken into account in considering whether any, and if so what, credit is to be given against tax in respect of the dividend, the amount of the income shall be increased by the amount of the foreign tax not so chargeable which falls to be taken into account in computing the amount of the credit.
- (6) Notwithstanding the provisions of subsection (5) of this section, a deduction shall be allowed of any amount by which the foreign tax in respect of the income exceeds any credit given under the arrangements.
- (7) Paragraphs (a) and (b) of subsection (5) of this section shall apply to the computation of total income for the purposes of determining the rate mentioned in subsection (3) of this section, and shall apply thereto in relation to all income in respect of which credit falls to be given for foreign tax under arrangements for the time being in force under section 38 of this Act.
- (8) Credit shall not be allowed under the arrangements against tax chargeable in respect of the income of an individual for a year of assessment if he elects that credit shall not be allowed in the case of his income for that year.
- (9) A claim for an allowance by way of credit shall be made not later than two years after the end of the year of assessment, and in the event of dispute as to the amount allowable, the claim shall be subject to objection and appeal in like manner as an assessment.
- (10) Where the amount of a credit given under the arrangements is rendered excessive or insufficient by reason of any adjustment of the amount of any tax payable either in Nigeria or elsewhere, nothing in this Act or in any law of a territory, limiting the time for the making of assessments or claims for relief, shall apply to any assessment or claim to which the adjustment gives rise, being an assessment or claim made not later than two years from the time when all such assessments, adjustments and other determinations have been made, whether in Nigeria or elsewhere, as are material in determining whether any, and if so what, credit falls to be given.

PART VI

Persons chargeable and returns

40. Persons chargeable and returns

- (1) A taxable person shall be chargeable to the tax-

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- (a) in his own name; or
- (b) in the name of-

- (i) a receiver, trustee, guardian, curator or committee having the direction, control or management of property or concern on his behalf; or

- (ii) a person treated as his agent under section 4 of this Act or declared to be his agent under section 50 (1) of this Act,

in like manner and to the like amount as the taxable person would be chargeable.

- (2) A person in whose name a taxable person is chargeable to tax shall be answerable for all matters within his competence which are required to be done by virtue of this section for the assessment of the income of the taxable person and payment of any tax charged thereon.
- (3) Where two or more persons act in the capacity of trustees they may be charged jointly or severally with the tax to which they are chargeable in that capacity and shall be jointly and severally liable for payment of the tax.

41. Returns by taxable person

- (1) For each year of assessment, a taxable person shall, without notice or demand therefor, file a return of income in the prescribed form and containing the prescribed information with the tax authority of the State in which the taxable person is deemed to be a resident together with a true and correct statement in writing containing-
 - (a) the amount of income from every source of the year preceding the year of assessment computed in accordance with the provisions of this Act and rules or regulations made thereunder; and
 - (b) such particulars as by the return may be required for the purpose of this Act and rules or regulations made thereunder with respect to any such income, allowance, relief, deduction or otherwise as may be material for that purpose.
- (2) The form of return shall contain a declaration which shall be by or on behalf of the taxable person that the return contains a true and correct statement of the income computed in accordance with the provisions of this Act and rules or regulations made thereunder or that particulars given in the return are true and complete.
- (3) A taxable person shall file with the relevant tax authority the returns as stipulated in this section within 90 days from the commencement of every year of assessment.

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- (4) A written return, statement or an information affecting the liability to tax of an individual for a year of assessment made or given by a person to a tax authority may be treated as having been given to another tax authority in the territory of which that individual is deemed to be resident for that year and, if an error or omission in the return, statement or an information constitutes an offence under the income tax law of that other tax authority, proceedings may be taken by that other tax authority in respect of that offence as though the return, statement or information had been made or given to that other tax authority in the first instance.

42. Place of an offence

Where failure to comply with a requirement lawfully made by a tax authority of a territory under a provision of this Act constitutes an offence by virtue of the provision of an enactment of that territory, then the offence shall be deemed to have been committed at the place from which the notice of that requirement was issued by that tax authority, or at the place where the person charged with the offence resides or at such other place as that tax authority may decide.

43. Returns not to be filed where income is N30,000 or less

Notwithstanding that a tax authority requires a taxable person to file a return containing the amount of his income for each year of assessment, no return of income shall be filed by a person whose only source of income in any year of assessment is employment in which he earns N30,000 or less from that source.

[1998 No. 19.]

44. Self-assessment by individual

A taxable person required by this Act to file a return of income shall in the return calculate the amount of tax payable in the form as may be prescribed by the Minister by order of *gazette*.

[2011 No. 20]

45. Bonus for early filing of self-assessment return

A person who files a return under sections 41 and 44 of this Act within the time specified for filing of the return shall, if there is no default in the payment arrangement, be granted a bonus of 1 % of the tax payable.

[1996 No. 31.]

46. Power to call for further returns

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

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

- (1) For the purpose of obtaining full information in respect of the income or gain of a person, the relevant tax authority may give notice to the person requiring him, within the time limited by the notice, to-
- (a) complete and deliver to the relevant tax authority, any return specified in the notice;
 - (b) attend personally before an officer of the relevant tax authority for examination with respect to any matter relating to such income gains;
 - (c) produce or cause to be produced for examination at the place and time stated in the notice which time may be from day-to-day for such period as the relevant tax authority may consider necessary, for the purpose of the examination of any book, document, account and return which the relevant tax authority may deem necessary; or
 - (d) give orally or in writing any other information including a name and address specified in the notice:

Provided that a person engaged in banking shall not be required to disclose any information unless a disclosure is required in a letter signed by the chairman of the relevant tax authority.

[2011 No. 20.]

- (2) For the purpose of paragraphs (a) to (d) of subsection (1) of this section, the time limited by a notice shall not be less than seven days from the date of service of the notice, so however that an officer of the relevant tax authority not below the rank of a Chief Inspector of Taxes may act in any of the cases stipulated in subsection (1) (c) or (d) of this section, without giving any of the required notices set out in this section.
- (3) A person engaged in banking in Nigeria who contravenes the provisions of this section is, in respect of each offence, liable on conviction to a fine of N500,000 in the case of a body corporate, and a fine of N50,000 in the case of an individual.

[2011 No. 20.]

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- (4) Nothing in the foregoing provisions of this section or in any other provisions of this Act shall be construed as precluding the relevant tax authority from verifying by tax audit any matter relating to the income or gains of a person or any matter relating to entries in any book, document, account or return as the relevant tax authority may from time to time specify in any guideline by the relevant tax authority.

48. Disclosure and procurement of information

- (1) Where a tax authority is in possession of any information, document or record relating to an individual which in the interest of the public revenue in Nigeria should be disclosed or transferred to the Board, that information, document or record shall be disclosed or transferred notwithstanding any provision as to secrecy contained in any income tax law of a territory.
- (2) A member of the relevant tax authority, its secretary and any person employed in the offices of the relevant tax authority shall not disclose any information relating to the income, tax or personal circumstances of any person which has come into his possession in the course of his duties except as may be expedient-
- (a) in any legal proceeding arising from this, Act; or
 - (b) to any tax authority; or
 - (c) in accordance with any provision of an arrangement, with respect to taxes, made with any other country.
- (3) Any information disclosed to a tax authority pursuant to subsection (2) of this section shall thereafter be subject to the provisions of that subsection and to any secrecy provisions of the income tax law administered by that authority.
- (4) Subject to the provisions of subsections (1), (2) and (3) of this section, a tax authority may, for the purpose of obtaining information in respect of the income or personal circumstances of an individual, give notice to any person to deliver the information including a name and an address specified therein within the time limited by the notice.

49. Information to be delivered by bankers

- (1) Without prejudice to section 48 of this Act, a person engaged in banking shall prepare a return at the end of each month specifying the names and addresses of new customers of the bank and shall not later than the seventh day of the next following month deliver the return to a tax authority of the area where the bank operates, or where such customer is a company, to the Federal Board of Inland Revenue.

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[2011 No. 20.]

- (2) Subject to subsection (1) of this section, the relevant tax authority may, for the purpose of obtaining information relative to taxation, give notice to a person, including a person engaged in banking business in Nigeria to provide within the time stipulated in the notice, information including the name and address of any person specified in the notice:

[2011 No. 20.]

Provided that a person engaged in banking business in Nigeria shall not be required to disclose any further information under this section unless the disclosure is required by a notice signed by the chairman of the relevant tax authority.

[2011 No. 20.]

- (3) A person engaged in banking in Nigeria who contravenes the provisions of this section is, in respect of each offence, liable on conviction to a fine of N500,000 in the case of a body corporate, and a fine of N50,000 in the case of an individual.
- (4) Nothing in the foregoing provisions of this section or in any other provision of this Act shall preclude the relevant tax authority from verifying by tax audit any matter relating to the profits of a company or any matter relating to entries in any book, document, account or return as the relevant tax authority may, from time to time, specify in its guidelines.

50. Power to appoint agent

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

51. Returns to be deemed to be furnished with due authority

A return, statement or form purporting to be furnished under this Part of this Act by or on behalf of any person shall for all purposes be deemed to have been furnished by that

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person or by his authority, as the case may be, unless the contrary is proved, and any person signing any such return, statement or form shall be deemed to be cognisant of all matters therein.

52. Books of account

- (1) If a taxable person fails or refuses to keep books of accounts which, in the opinion of the relevant tax authority, are adequate for the purposes of the tax-
- (a) such a taxable person other than those in salary employment shall be liable on conviction to a penalty of N50,000 for individuals and N500,000 for corporate entities; and
[2011 No. 20.]
 - (b) the relevant tax authority may by notice in writing direct the person to keep such records, books and accounts, in such form and in such language as may be specified in the notice and, subject to the provisions of subsection (2) of this section, the person shall keep the records, books and accounts as so directed.
[2011 No. 20.]
- (2) A direction of the relevant tax authority made under this paragraph shall be subject to objection and appeal in like manner as an assessment, except that any decision of the Appeal Commissioners may confirm or modify such direction.

53. Power to enter and search premises, etc.

- (1) Where in respect of a trade, vocation, profession or business carried on in Nigeria by an individual (whether or not part of the operations is carried on outside Nigeria), the relevant tax authority-
- (a) is satisfied that there is reasonable ground for suspecting that an offence involving any form of total or partial non-disclosure of information, or any irregularity or an offence in connection with or in relation to tax has been committed; and
[Eighth Schedule.]
 - (b) is of the opinion that evidence of the offence or irregularity is to be found in the premises, the registered office, or any other office or place of management of the trade, vocation, profession or business or in the residence of the principal officer, factor, agent or representative of the individual,

the relevant tax authority may authorise any of its officers to enter, if necessary by force, the premises, registered office or the place of management or the residence of the

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individual, factor, agent or representative of the individual, at any time from the date of the authorisation and conduct a search.

- (2) An authority to enter the premises, registered office, place of management or residence of an individual, factor or agent of the individual, to conduct a search, shall be in the form contained in the Eighth Schedule to this Act, and the authority shall be sufficient warrant to search, seize and remove any records and documents found on such premises, office or place of management or residence of the individual, his factor or agent whether or not, belonging to that individual, factor, agent or the business.
- (3) On entering a premises with a warrant under this section, the officer may seize and remove anything whatsoever found therein which he has reasonable cause to believe may be required for the purposes of arriving at a fair and correct tax chargeable on the individual or as evidence for the purposes of a proceeding in respect of such an offence as is mentioned in subsection (1) of this section.
- (4) For the purposes of this section, an officer authorised by the relevant tax authority to execute a warrant of search under this section may call to his assistance a police officer, and it shall be the duty of the police officer when so required to aid and assist in the execution of a warrant for the purpose of obtaining an information on the tax charged or to be charged on the individual or of the proceeding in respect of an offence referred to in subsection (1) of this section.
- (5) Where an entry to a premises has been made with a warrant under this section and the officer making the entry has seized anything under the authority of the warrant, he shall, immediately before the seizure, if required by any person appearing to be the custodian of those things seized, provide that person with the list of items seized or surrendered.
- (6) An individual on whom a warrant under this section is served shall-
 - (a) cooperate fully with any person authorised to conduct a search by allowing him easy access to the premises to be searched and to the items or documents that may be required for the investigation;
 - (b) answer all questions and queries put to him in the course of the search;
 - (c) facilitate the removal of all items that may be required to assist the investigation
- (7) A person on whom a warrant of search is served and who refuses to cooperate with the person or persons or engages in an act or acts resulting in abuse, physical assault or similar behaviour is guilty of an offence and liable on conviction to a fine of N,5000 or to

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imprisonment for a term not exceeding three months or to both such fine and imprisonment.

- (8) A person may, before, during or after a warrant of search is or has been executed on him, be called upon to attend an interview before an officer of the relevant tax authority, in connection with the activities of the trade or business of the person as would enable the relevant tax authority to arrive at a fair and correct tax liability of the person.
- (9) In this section, “**warrant**” means the warrant as is mentioned under subsection (2) of this section.

PART VII

Assessments

54. Assessment of income tax

- (1) The relevant tax authority shall proceed to assess every taxable person chargeable with income tax as soon as may be, after the time allowed to the person for the delivery of the return provided for in section 41 of this Act, or otherwise as it appears to the relevant tax authority practicable to do so.
- (2) Where a taxable person has delivered a return, the relevant tax authority may-
- (a) accept the return and make an assessment accordingly; or
 - (b) refuse to accept the return and, to the best of its judgement, determine the amount of the assessable, total or chargeable income of that person and make an assessment accordingly.
- (3) Where a taxable person has not delivered a return within the time allowed and the relevant tax authority is of the opinion that tax is chargeable on that person, the relevant tax authority may, according to the best of its judgement, determine the amount of the assessable, total or chargeable income and make an assessment accordingly, but that assessment shall not affect any liability otherwise incurred by such person by reason of his failure or neglect to deliver a return.
- (4) Nothing in this section shall prevent the relevant tax authority from making assessment on a taxable person before the expiration of the time within which the person is required to deliver a return or give notice of his income under the provisions of section 41 of this

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Act, if any officer of the relevant tax authority considers the assessment to be necessary for any reason of urgency.

- (5) Notwithstanding the provisions of this section, no assessment to income tax for a year of assessment shall be made by the relevant tax authority on an employee with respect to his emolument or other income if that tax is recoverable by deduction under the provisions of section 81 of this Act unless, within six years after the end of that year-
- (a) he applies to the relevant tax authority so to be assessed, whether in connection with any claim to repayment of tax or otherwise; or
 - (b) the relevant tax authority considers the assessment to be necessary or expedient so as to arrive at the correct amount of the income tax to be charged on or to be payable by the employee for that year.

55. Additional assessment

- (1) If the relevant tax authority discovers or is of the opinion at any time that a taxable person liable to income tax has not been assessed or has been assessed at a less amount than that which ought to have been charged, the relevant tax authority may, within the year of assessment or within six years after the expiration thereof and as often as may be necessary assess the taxable person at such amount or additional amount as ought to have been charged, and the provisions of this Act as to notice of assessment, appeal and other proceedings shall apply to that assessment or additional assessment and the tax thereunder.
- (2) For the purpose of computing under subsection (1) of this section the amount or the additional amount which ought to have been charged, all relevant facts consistent with paragraph (b) of the proviso to section 66 (2) of this Act shall be taken into account whether or not known when a previous assessment or an additional assessment on the same taxable person for the same year was being made or could have been made:

Provided that where any form of fraud, willful default or neglect has been committed by or on behalf of a taxable person in connection with any tax imposed under this Act, the relevant tax authority may at any time and as often as may be necessary assess that taxable person at such amount or additional amount as may be necessary for the purpose of making good any loss of tax attributable to the fraud, willful default or neglect.

56. List of persons assessed, etc.

- (1) The relevant tax authority shall as soon as possible, prepare a list of taxable persons assessed to income tax under this Act.

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- (2) The list (in this Act referred to as —the assessment list¹) shall contain the names and addresses of the taxable persons assessed to income tax, the name and address of any person in whose name the taxable person is chargeable, the amount of the assessable, total or chargeable income on which, as the case may be, the tax is computed, the amount of the income tax charged, and such other particulars as may be prescribed by the relevant tax authority.

- (3) Where complete copies of all notices of assessment and of all notices amending assessments are filed in the offices of the relevant tax authority, they shall constitute the assessment lists for the purposes of this Act.

- (4) In the case of an employee from whom tax is recoverable by deduction from his emoluments under the provisions of section 81 of this Act, the relevant tax authority may, from time to time, prescribe-
 - (a) the form in which a record of his assessable and chargeable income, and of the tax so recovered from him, shall be maintained in the offices of the relevant tax authority;

 - (b) the form in which his employer shall maintain a like record; and

 - (c) the form in which his employer shall account to the relevant tax authority for the tax so deducted.

- (5) The employer shall produce the record maintained by him pursuant to subsection (4) of this section for examination by the relevant tax authority within 21 days of notice given to that effect by the relevant tax authority, and allow a duly authorised officer of the relevant tax authority access to the record and accounts or vouchers relating thereto in the premises of the employer at all reasonable times.

- (6) For the purpose of this section, a notice may be addressed in writing to the employer and served on him, or be given in respect of an employer or class of employers by publication in the relevant *Gazette*.

57. Service of notice of assessment

The relevant tax authority shall cause to be served on or sent by registered post or Courier Service or Electronic Mail to each taxable person, or person in whose name a taxable person is chargeable, whose name appears in the assessment lists, a notice stating the amount of any assessable, total or chargeable income, the tax charged, the place at which payment should be made, and setting out the rights of that person as contained in sections 58 and 59 of this Act.

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[2011 No. 20.]

58. Revision in case of objection

- (1) If a person disputes an assessment, he may apply to the relevant tax authority by notice of objection in writing, to review and revise the assessment, and the application shall state precisely the grounds of objection to the assessment and shall be made within thirty days from the date of service of the notice of the assessment.
- (2) On receipt of a notice of objection, the relevant tax authority may require the person giving that notice to furnish such particulars and to produce such books or other documents as the relevant tax authority may deem necessary, and may summon any person who may be able to give information which is material to the determination of the objection to attend for examination by an officer of the relevant tax authority on oath or otherwise.
- (3) If a person who has objected to an assessment agrees with the relevant tax authority as to the correct amount of the tax chargeable, the assessment shall be amended accordingly and notice of the tax chargeable shall be served on the person:

Provided that, if an applicant for revision under the provisions of this subsection fails to agree with the relevant tax authority on the amount of the tax chargeable, the relevant tax authority shall give notice of refusal to amend the assessment as desired by that person and may revise the assessment to such amount as the relevant tax authority may, according to the best of its judgement, determine and give notice of the revised assessment and of the tax payable together with notice of refusal to amend the revised assessment and, where requisite, any reference in this Act to an assessment or to an additional assessment shall be treated as revised under the provisions of this proviso.

- (4) If an employee from whom tax is recovered by deduction from his emoluments under the provisions of section 81 of this Act claims that inadequate relief under Part III of this Act has been taken into account in determining the rate or rates at which the deduction have been or is to be made-
 - (a) a determination of the relevant tax authority on the claim shall be conclusive with respect to those rates for the year of assessment concerned; and
 - (b) if the employee is aggrieved by that determination he may apply to the relevant tax authority to be assessed to income tax as soon as may be, after his assessable income for that year can be finally ascertained, and the assessment shall be subject to the provisions of this Act with respect to objections and appeals.

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59. Errors and defects in assessment and notice

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

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

PART VIII

Appeals

60. Establishment of body of Appeal Commissioners

The Tax Appeal Tribunal established pursuant to section 59 of the Federal Inland Revenue Service (Establishment) Act, 2007 shall have the powers to entertain all cases arising from the operations of this Act.

[2011 No. 20.]

61 to 67 deleted by 2011 No. 20

PART IX

Collection, recovery and repayment of tax

68. Payment of income tax

- (1) Income tax charged by an assessment which is not or has not been the subject of an objection or appeal, shall be payable, after the deduction of any amount to be set-off for the purposes of collection, or any amount deposited against the tax, at the place stated in the notice of assessment within two months after the date of service of that notice:

Provided that:

- (a) if the period of two months expires before the fourteenth day of December within the year of assessment for which the income tax has been charged, and the aggregate of the tax to be deducted as aforesaid and of any income tax paid for that year within that period amounts to not less than one half of the tax so charged, then payment of any balance of such tax may be made not later than that day;
- (b) the relevant tax authority in its discretion may extend the time within which payment is to be made.
- (2) Collection of income tax in a case where notice of an objection or an appeal has been given by or on behalf of the person shall remain in abeyance until the objection or appeal is determined, except that the relevant tax authority may enforce payment of that portion, if any, of the tax which is not in dispute.
- (3) On the determination of an objection or appeal, the relevant tax authority shall serve notice on the taxable person of the tax chargeable as so determined and that tax shall be payable within one month of the date of service of the notice:

Provided that, if the period of one month ends before the fourteenth day of December within the year of assessment and the conditions specified in paragraph (a) of the proviso to subsection (1) of this section are otherwise satisfied with respect to the amount, of the tax chargeable as so determined, then any balance of that tax to be paid may be paid not later than that day.

- (4) Notwithstanding any of the foregoing provisions of this section, if in a particular case the relevant tax authority has reason to believe that any income tax charged by an assessment may not be recovered, by reason of the person charged leaving Nigeria or otherwise, the relevant tax authority may give notice to pay the amount of the tax or to give security to

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the satisfaction of the relevant tax authority for payment thereof, and if the payment is not made, or security so given, within that time, the amount of the tax shall be recoverable forthwith for the purpose of this subsection, and the relevant tax authority may, if necessary, assess any taxable person for any year of assessment at any time during the preceding year of assessment.

69. Deduction of tax on rent

- (1) Where a rent becomes due or payable to a person, the payer of the rent shall, at the date when the rent is paid or credited, whichever first occurs, shall deduct therefrom tax at the rate prescribed in subsection (2) of this section and shall forthwith pay over to the relevant tax authority the amount so deducted.
- (2) The rate at which tax is to be deducted for the purpose of this section shall be 10 per cent of gross rent.
- (3) In accounting for the tax so deducted to the relevant tax authority, the payer shall state in writing the following particulars which shall accompany the remittance, that is-
 - (a) the gross amount of the rent;
 - (b) the amount of tax being accounted for;
 - (c) the name and address of the recipient and the period for which the rent has been paid or credited; and
 - (d) the address or accurate description of the location of the property concerned.
- (4) For the purpose of this section, the relevant tax authority shall be determined in accordance with the provisions of section 2 of this Act.
- (5) The payer of a rent in subsection (1) of this section refers to a company (corporate or unincorporated) and includes Government Ministries and Departments, parastatals, statutory bodies, institutions and other established organisations approved for the operation of Pay As You Earn system, whether or not liable itself to tax under any enactment or law relating to taxation of income in Nigeria or elsewhere.
- (6) The tax, when paid over to the relevant tax authority, shall be the final tax due from a non-resident recipient of the payments.

[1996 No. 30.]

70. Deduction of tax on interest, etc.

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- (1) Where a payment, such as interest or royalty, becomes due or payable to a person, the payer at the date when the payment is made or credited, whichever first occurs, shall deduct therefrom tax at the rate prescribed in subsection (2) of this section and shall forthwith pay over to the relevant tax authority the amount so deducted.
- (2) The rate at which tax is to be deducted under this section shall be 10 per cent of gross interest and 5 per cent of gross royalty.
[1996 No. 30.]
- (3) In accounting for the tax so deducted to the relevant tax authority, the payer shall state in writing the following particulars, that is-
 - (a) the gross amount of the payment;
 - (b) the name and address of the recipient; and
 - (c) the amount of the tax being accounted for.
- (4) For the purpose of this section, the relevant tax authority shall be determined in accordance with the provisions of section 2 of this Act, except in the case of savings interest where the relevant tax authority shall be that where the branch of the bank paying the interest is situated.
- (5) The payer in subsection (1) of this section refers to any company (corporate or unincorporated), including Government Ministries and Departments, any person engaged in banking or charged with the administration of parastatals, statutory bodies, institutions and other established organisations approved for the operation of Pay As You Earn System whether or not liable to tax under any enactment or law relating to taxation of income in Nigeria or elsewhere.
[2011 No. 20.]
- (6) The provisions of this section shall not apply to payments of interest by any person engaged in banking where the interest is due and payable on pass-book savings account, which is less than N50,000.
- (7) The tax, when paid over to the relevant tax authority, shall be the final tax due on the income.
[1996 No. 30.1996 No. 32.]

71. Deduction of tax on dividend

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- (1) Where a dividend or such other distribution becomes due from or payable by a Nigerian company to a person, the company making the payment shall at the date when the amount is paid or credited, whichever first occurs, deduct therefrom tax at the rate prescribed under subsection (2) of this section and shall forthwith pay over to the relevant tax authority the amount so deducted.

- (2) The rate at which tax is to be deducted in this section shall be 10 per cent.
[1996 No. 30.]

- (3) In accounting for the tax so deducted to the relevant tax authority, the company shall state in writing the following particulars, that is-
 - (a) the gross amount of the dividend or such other distribution;

 - (b) the name and address of the recipient; and

 - (c) the accounting period or periods of the company in respect of the profits of which the dividend or distribution is declared to be payable and the date on which payment is due.

- (4) For the purpose of this section, the relevant tax authority shall be determined in accordance with the provisions of section 2 of this Act.

- (5) The tax, when paid over to the relevant tax authority, shall be the final tax due on the income.

[1996 No. 30. 1996 No. 32.]

72. Deduction of tax on director's fees

- (1) Where any payment of director's fees becomes due or payable to a person, the payer at the date when the payment is made or credited, whichever first occurs, shall deduct therefrom tax at the rate prescribed in subsection (2) of this section and shall forthwith pay over to the relevant tax authority the amount so deducted.

- (2) The rate at which tax is to be deducted for the purpose of this section shall be 10 per cent.
[1996 No. 30.]

- (3) In accounting for the tax to be deducted to the relevant tax authority, the payer shall state in writing the following particulars, that is-
 - (a) the gross amount of the payment;

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- (b) the name and address of the recipient; and
 - (c) the amount of tax being accounted for.
- (4) For the purpose of this section, the relevant tax authority shall be determined in accordance with the provisions of section 2 of this Act.
- (5) The payer in subsection (1) of this section refers to any company (corporate and unincorporated) including Government Ministries and Departments, parastatals, statutory bodies, institutions and other established organisations approved for the operation of Pay As You Earn System whether or not liable itself to tax under any enactment or law relating to taxation of income in Nigeria or elsewhere..

73. Deduction of tax at source

- (1) Income tax assessable on a person whether or not an assessment has been made, shall, if the relevant tax authority so directs, be recoverable from any payment made by any person to that person.
- (2) A direction under subsection (1) of this section-
- (a) may apply to a person specified in the direction either with respect to a person or persons or a body of individuals, liable to pay tax;
 - (b) shall be in writing addressed to the person or be published in the *State Gazette* and shall specify the nature of payments and the rate at which tax is to be deducted.
- (3) In determining the rate of tax to be applied to any payment made to a person, the relevant tax authority may take into account-
- (a) any assessable income of that person for the year arising from any other source chargeable to income tax under this Act; and
 - (b) any income tax or arrears of tax payable by that person for any of the six preceding years of assessment.
- (4) Income tax recovered under the provisions of this section by deduction from payments made to a person shall be set-off for the purposes of collection against tax charged on that person by an assessment, except that any excess payment arising from compliance with sections 69, 70, 71, 72 of this Act shall be refunded by the relevant tax authority within

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90 days except if it is a final tax after the assessment has been fully filed, with the option of setting off against future tax pay by the payer.

[2011 No. 20.]

- (5) A person required under any provision of the Act to make a deduction from payments made to a person shall account to the relevant tax authority in such a manner as the relevant tax authority may prescribe for the deduction so made.
- (6) The Minister on the advice of the Board may, from time to time, make regulations for carrying out the provisions of this section.

74. Penalty for failure to deduct tax

- (1) Any person or body corporate who, being obliged to deduct tax under section 69, 70, 71 or 72 of this Act, fails to deduct, or having deducted, fails to remit such deductions to the relevant tax authority within thirty days from the date the amount was deducted or the time the duty to deduct arose, shall be liable to a penalty of an amount of 10 *per cent* fine of N5,000 or 10 per cent of the amount of the tax due, whichever is higher, in addition to the amount of tax deductible or deducted plus interest at the prevailing commercial rate.

[2011 No. 20.]

- (2) The Accountant-General of the Federation shall have power to deduct at source, from its budgetary allocation, un-remitted taxes due from any Ministry, Department or Government Agency and transfer such deduction to the relevant State upon request by such State.

[2011 No. 20.]

75. Application of provision

- (1) The provisions of sections 69, 70, 71 and 72 of this Act shall apply respectively to dividend, interest, rent and royalty forming part of the income or profit exempted from tax under any section of this Act and the Third Schedule thereto:

[Third Schedule.]

Provided however, that dividend, interest, rent or royalty derived from outside Nigeria and brought into Nigeria through Government approved channels shall remain exempted.

- (2) For the purpose of this section, “**Government approved channels**” means-

- (a) the Central Bank of Nigeria;

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- (b) any bank or corporate body appointed by the Minister as authorised dealer under Foreign Exchange (Monitoring and Miscellaneous Provisions) Act or any enactment replacing that Act.

[Cap. F34.]

76. Penalty for non-payment of income tax

- (1) If any income charged by any assessment is not paid within the periods prescribed in section 68 of this Act, a sum equal to 10 per cent per annum of the tax shall be added thereto, and the provisions of this Act relating to the recovery and collection of tax shall apply to the recovery and collection of that sum.
- (2) The relevant tax authority shall serve a demand note on the taxable person or the person in whose name the taxable person is chargeable and, if payment is not made within one month from the date of the service of the demand note, the relevant tax authority may proceed to enforce payment as hereinafter provided.
- (3) A penalty imposed under this section shall not be deemed to be part of the tax paid for the purpose of claiming relief under any provision of this Act.
- (4) A person who without lawful justification or excuse, the proof whereof shall lie on such person, fails to pay the income tax within the period of one month prescribed in subsection (2) of this section, shall be guilty of an offence under this Act.

77. Interest for late payment of income tax

The tax due from a taxable person shall carry interest on annual basis at bank base lending rate from the date when the tax becomes payable until it is paid.

[2011 No. 20]

78. Action for income tax by the relevant tax authority

- (1) Income tax may be sued for and recovered in a court of competent jurisdiction by the relevant tax authority in its official name with full costs of action from the person charged therewith as a debt due to the Government of the Federation or to the relevant tax authority.
- (2) For the purposes of this section a Court of competent jurisdiction shall include a magistrate's court, which court is hereby invested with the necessary jurisdiction, provided that the amount claimed in any action does not exceed the amount of the jurisdiction of the magistrate concerned with respect to action for debt.

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- (3) In an action brought under subsection (1) of this section, the production of a certificate signed by a person duly authorised by the chairman of the relevant tax authority giving the name and address of the defendant and the amount of income tax due, shall be sufficient evidence of the amount so due and sufficient authority for the court to give judgment for the said amount.

79. Remission of penalty

The relevant tax authority may, for any good cause shown, remit either before or after judgment the whole or any part of the penalty due under section 76 of this Act.

80. Remission of tax

The Governor of the State may, on the recommendation of the Commissioner responsible for finance acting on the advice of the relevant tax authority, remit wholly or in part, any tax payable under this Act if satisfied that it is just and equitable so to do.

81. P.A.Y.E.

- (1) Income tax chargeable on an employee by an assessment whether or not the assessment has been made, shall, if the relevant tax authority so directs, be recoverable from any emolument paid, or from any payment made on account of the emolument, by the employer to the employee.
- (2) Every employer shall be required to file a return with the relevant tax authority of all emoluments paid to its employees, not later than 31st January of every year in respect of all employees in its employment in the preceding year.
[2011 No. 20.]
- (3) Any employer who contravenes the provisions of this section shall be liable on conviction to a penalty of N500,000 in the case of a body corporate, and N50,000 in the case of an individual.
[2011 No. 20.]
- (4) Income tax recovered under the provisions of this section by deduction from payment made to a person shall be set-off for the purposes of collection against tax charged on that person by an assessment except that any excess payment arising from compliance with sections 69, 70, 71, 72 of this section of this Act shall be refunded by the relevant tax authority within 90 days after the assessment has been duly filed, with the option of setting off against future tax by the tax payer.
[2011 No. 20.]

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- (5) A direction under subsection (1) of this section shall be in writing addressed to an employer or be published in the State *Gazette*, and shall specify the emolument of an employee or class of employees to which it refers and the amount or amounts of income tax to be deducted, whether by reference to tax tables issued by the relevant tax authority or otherwise.
- (6) In arriving at the amount of income tax to be deducted from any payment of or on account of the emolument to an employee, the relevant tax authority shall secure so far as possible that the aggregate amount of all the deductions made during a year of assessment shall equal the income tax chargeable on him in respect of his emoluments for that year.
- (7) Notwithstanding the provisions of subsection (3) of this section, in determining the amount of a deduction or deductions to be made in the case of any particular employee, the relevant tax authority may take into account an assessable income of that employee for the same year arising from any other source chargeable with income tax under this Act.
- (8) Income tax recovered under the provisions of this section by deduction from the emoluments of an employee shall be set-off for the purposes of collection against tax charged on him by an assessment, but only to the extent that the deductions have been made on account of or by reference to an income charged by the assessment.
- (9) The Minister may make regulations generally for the carrying out of the provisions of this section.

82. Employer to be answerable for tax deducted

An employer required under a provision of this Act to make deductions from emoluments or amounts on account of emoluments paid by him to an employee shall account to the relevant tax authority in such manner as the relevant tax authority may prescribe for the deductions so made, and in the event of failure by the employer to make the deduction, or properly to account therefor, the amount thereof together with a penalty of 10 per cent per annum of the amount plus interest at the prevailing commercial rate shall be recoverable as a debt due by the employer to the relevant tax authority.

83. Relief in respect of error or mistake

- (1) If a taxable person who has paid income tax for a year of assessment alleges that an assessment made on him for that year was excessive by reason of some error or mistake in a return, statement or an account made by him or on his behalf for the purpose of the assessment, he may, at anytime not later than six years after the end of the year of

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assessment within which the assessment was made, make an application in writing to the relevant tax authority for relief.

- (2) On receiving an application, the relevant tax authority shall enquire into the matter and shall, subject to the provisions of this section, give, by way of repayment of tax, relief in respect of the error or mistake as appears to be reasonable and just:

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

- (3) In determining an application under this section, the relevant tax authority shall have regard to all the relevant circumstances of the case, and in particular, shall consider whether the granting of relief would result in the exclusion from charge to tax of any part of the income of the applicant, and for that purpose the relevant tax authority may take into consideration the liability to tax of the applicant and any assessment made on him for other years.
- (4) A determination of the relevant tax authority under the section shall be final and conclusive.

84. Payment of tax

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

85. Tax clearance certificate

- (1) Whenever the relevant tax authority is of opinion that tax assessed on the income of a person for the three years immediately preceding the current year of assessment has been fully paid or that no tax is due on the income or that the person is not liable to tax for any of those three years, it shall issue a tax clearance certificate to the person within two weeks of demand for the certificate by that person or give reasons for the denial, so

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however, that the payment of current year tax shall not be made a condition for the issuance of the certificate unless the applicant is leaving the country finally.

- (2) A Ministry, Department or an agency of Government or a commercial bank with whom a person has any dealing with respect to any of the transactions mentioned in subsection (4) of this section, shall demand from the person a tax clearance certificate for the three years immediately preceding the current year of assessment and shall verify the genuineness by referring same to the issuing tax authority.

[2011 No. 20.]

- (3) A tax clearance certificate shall disclose in respect of the last three years of assessment-

- (a) chargeable income;
- (b) tax payable;
- (c) tax paid; and
- (d) tax outstanding or alternatively a statement to the effect that no tax is due.
- (ee) tax payer identification number (T.I.N)

[2011 No. 20.]

- (4) The provisions of subsection (2) of this section shall apply in relation to the following, that is-

- (a) application for Government loan for industry or business;
- (b) registration of motor vehicle;
- (c) application for firearms licence;
- (d) application for foreign exchange or exchange control permission to remit funds outside Nigeria;
- (e) application for certificate of occupancy;
- (f) application for award of contracts by Government, its agencies and registered companies;
- (g) application for approval of building plans;

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- (h) application for trade licence;
 - (i) application for transfer of real property;
 - (j) application for import or export licence;
 - (k) application for agent licence;
 - (l) application for pools or gaming licence;
 - (m) application for registration as a contractor;
 - (n) application for distributorship;
 - (o) confirmation of appointment by Government as chairman or member of a public board, institution, commission, company or to any other similar position made by the Government;
 - (p) stamping of guarantor's form for a Nigerian passport;
 - (q) application for registration of a limited liability company or of a business name;
 - (r) application for allocation of market stalls;
 - (s) appointment or election into public office;
 - (t) for change of ownership of vehicle by the vendor;
[2011 No. 20.]
 - (u) application for plot of land;
[2011 No. 20.]
 - (v) any other transaction as may be determined from time to time
[2011 No. 20.]
- (5) An applicant for control permission to remit funds to a non-resident recipient in respect of income accruing from rent, dividend, interest, royalty, fees or any other similar income shall be required to produce a tax clearance certificate to the effect that tax has been paid on the fund in respect of which the application is sought or that no tax is payable, whichever is the case.

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- (6) When a person who has deducted any tax pursuant to the provisions of this Act fails to pay the tax so deducted to the relevant tax authority, no tax clearance certificate may be issued to that person even if he has fully discharged his own tax liability under this Act.
- (7) A person who-
- (a) for the purpose of obtaining a tax clearance certificate, gives incorrect information in relation to any matter or thing affecting his liability to tax; or
 - (b) obtains a tax clearance certificate through misrepresentation, forgery or falsification, is guilty of an offence and liable on conviction to a fine of N50,000 plus twice the tax payable by him or to imprisonment for three years or to both such fine and imprisonment.
- [2011 No. 20.]
- (8) Where a person is able to produce evidence that he has suffered tax deduction at source and that the year of assessment to which the tax relates falls within the period covered by the tax clearance certificate, the person shall not be denied a tax clearance certificate:
- Provided that any balance of tax after credit for the tax so deducted has been fully paid.
- (9) A person be it a government organization or corporate entity to whom section 85 (2) applies who fails to comply with same is guilty of an offence and is liable on conviction to a fine of N5,000,000.00 or to imprisonment for 3 years or both fine and imprisonment.
- [2011 No. 20.]

PART X

Administrative and transitional provisions

86. Joint Tax Board

- (1) There is hereby established a Board which shall be known as the Joint Tax Board (in this Act referred to as —the Board).
- (2) The Board shall consist of the following members, that is-
- (a) the chairman of the Federal Board of Inland Revenue, appointed pursuant to section 11 of the Federal Inland Revenue Service (Establishment) Act, 2007 who shall be chairman of the Board; and
- [2007 No. 13 2007; 2011 No. 20.]

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(b) one member from each State, being a person appointed pursuant to section 87 (2) (a) of this Act, and a nomination under this paragraph shall be evidenced by notice in writing delivered to the Secretary to the Board by the Governor.

[2011 No. 20.]

(3) The Joint Tax Board shall appoint an officer who is experienced in income tax matters to be secretary to the Board, and may, in accordance with existing law, appoint such other staff as the Board may deem to be necessary, from time to time, including on secondment or transfer, from any public service in Nigeria.

[2011 No. 20]

(4) The secretary shall not be a member of the Board but shall be responsible for maintaining records of the Board's proceedings and for signifying all decisions of the Board.

(5) The secretary shall summon a meeting of the Board whenever the business requiring its attention so warrants, or on the request of a member, and a majority decision of the members obtained by him in written correspondence on any matter, shall be treated in all respects as though it were a decision of the Board in an actual meeting, unless any member has requested the submission of that matter to such meeting.

(6) At a meeting of the Board, a member may be represented by an official duly authorised by the member for such purpose, and seven members or their representatives shall constitute a quorum.

(7) The chairman or any person duly authorised to represent him under subsection (6) of this section shall preside at all meetings of the Board and every decision of the Board shall, when there is no consensus, be by majority of the members present and voting, and the chairman shall have a casting vote apart from his deliberative vote when there is an equality of votes.

(8) The Legal Adviser, Federal Board of Inland Revenue shall be in attendance at meetings of the Board and shall serve thereat as adviser to the Board.

(9) The Board shall-

(a) exercise the power or duties conferred on it by express provisions of this Act, and any other powers and duties arising under this Act which may be agreed by the Government of each territory to be exercised by the Board;

(b) exercise powers and perform duties conferred on it by any enactment of the Federal Government imposing tax on the income and profits of companies, or which may be

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- agreed by the Minister to be exercised or performed by it under the enactment in place of the Federal Board of Inland Revenue;
- (c) advise the Federal Government, on request, in respect of double taxation arrangement concluded or under consideration with any other country, and in respect of rates of capital allowances and other taxation matters having effect throughout Nigeria and in respect of any proposed amendment to this Act;
- (d) use its best endeavours to promote uniformity both in the application of this Act and in the incidence of tax on individuals throughout Nigeria; and
- (e) impose its decisions on matters of procedure and interpretation of this Act on any State for purposes of conforming with agreed procedure or interpretation.
- (10) The Federal Government shall provide an office for the Board of which the recurrent expenses incurred by that Government, including the emoluments of the secretary and of any other officers or employees of the Board, shall be shared between the Federal and State Governments either in proportion to their respective tax revenues or in some other manner as those Governments may agree upon from time to time.

87. Establishment and composition of the State Board of Internal Revenue

- (1) There is hereby established for each State, a Board to be known as the State Board of Internal Revenue (in this Act referred to as —the State Board) whose operational arm shall be known as the State Internal Revenue Service (in this Act referred to as —the State Service).

[1996 No. 31.]

- (2) The State Board shall comprise-

- (a) the Chairman of the State Internal Revenue Service as Chairman of the State Board who shall be a person experienced in taxation and a member of a relevant recognized professional body, appointed by the State Governor, subject to confirmation by the State House of Assembly;

[2011 No. 20.]

- (b) the Directors from within or outside the State Service;

[2011 No. 20.]

- (c) a Director from the State Ministry of Finance;

- (d) the Legal Adviser to the State Service;

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(e) three other persons nominated by the State Governor on their personal merit, one each representing a Senatorial District in the State; and
[2011 No. 20.]

(f) the secretary of the State Service who shall be an *ex-officio* member.

- (3) Any five members of the State Board, of whom one shall be the chairman or a Director, shall constitute a quorum.
- (4) The secretary of the State Service shall be appointed by the Board from within the State Service.
- (5) Notwithstanding that the Legal Adviser to the State Service is a member of the State Board, he may appear for and represent the State Board or State Service in his professional capacity in any proceedings in which the State Board or State Service is a party, and the Legal Adviser shall not in such circumstances give evidence on behalf of the State Board or State Service.
- (6) The secretary shall summon a meeting of the State Board whenever the business requiring its attention so warrants, or on the request of a member.
- (7) A majority decision of the members on any matter obtained by the secretary in written correspondence shall be treated in all respects as though it were a decision of the Board in an actual meeting unless any member has requested the submission of the matter to such meeting.

88. Functions of the State Board

- (1) The State Board shall be responsible for-
[1996 No. 31.]
- (a) ensuring the effectiveness and optimum collection of all taxes and penalties due to the Government under the relevant laws;
- (b) 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:

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Provided that an amount of not less than 5 percent of revenue collected as may be approved by a State House Assembly shall be retained by the State Board of Internal Revenue to defray cost of collection and administration.

[2011 No. 20]

- (c) making recommendations, where appropriate, to the Joint Tax Board on tax policy, tax reform, tax legislation, tax treaties and exemption as may be required, from time to time;
 - (d) generally controlling the management of the State Service on matters of policy, subject to the provisions of the law setting up the State Service; and
 - (e) appointing, promoting, transferring and imposing discipline on employees of the State Service.
- (2) The State Board shall be autonomous in the day-to-day running of the technical, professional and administrative affairs of the State Service.
- (3) Subject to subsection (4) of this section, the State Board may, by notice in the *Gazette* or in writing, authorise any person to-
- [1998 No. 18.]
- (a) perform or exercise on behalf of the State Board, any function, duty or power conferred on the State Board; and
 - (b) receive any notice or other document to be given or delivered to or in consequence of this Act and any subsidiary legislation made under it.
- (4) Notwithstanding the provisions of subsection (3) of this section, the State Board shall not delegate any power conferred on it under sections 2, 6, 7, 17, 46, 47, 50, 53, 54, 55, 57, 78, 86, 99, 102, 103 and 104 of this Act to any person.

89. Establishment of Technical Committee of the State Board

- (1) There shall be a Technical Committee of the State Board (in this Act referred to as —the Technical Committee) which shall comprise-
- [1996 No. 31.]
- (a) the chairman of the State Board as chairman;
 - (b) the Directors within the State Service;

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(c) the Legal Adviser to the State Service;

(d) the secretary of the State Service.

(2) The Technical Committee shall-

(a) have powers to co-opt additional staff from within the State Service in the discharge of the duties;

(b) consider all matters that require professional and technical expertise and make recommendations to the State Board;

(c) advise the State Board on all its powers and duties specifically mentioned in section 88 of this Act;

(d) attend to such other matters as may, from to time, be referred to it by the Board.

90. Establishment of Local Government Revenue Committee

(1) There shall be established for each local government area of a State a Committee to be known as the Local Government Revenue Committee (in this Act referred to as —the Revenue Committeel).

[1996 No.31.]

(2) The Revenue Committee shall comprise-

(a) Supervisor for Finance as chairman;

(b) three local government councilors as members; and

(c) two other persons experienced in revenue matter to be nominated by the chairman of the local government on their personal merits.

91. Functions of the Revenue Committee

(1) The Revenue Committee shall be responsible for the 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.

[1996 No.31.]

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- (2) The revenue committee shall be autonomous of the local government treasury and shall be responsible for the day-to-day administration of the Department which forms its operational arm.

92. Establishment and composition of Joint State Revenue Committee

- (1) There is hereby established for each State of the Federation a Joint State Revenue Committee which shall comprise-
- [1998 No. 19.]
- (a) the chairman of the State Internal Revenue Service as the chairman;
 - (b) the chairman of the Local Government Revenue Committee;
 - (c) a representative of the bureau on local government affairs not below the rank of Director;
 - (d) a representative of the Revenue Mobilisation Allocation and Fiscal Commission, as an observer;
 - (e) the State Sector Commander of the Federal Road Safety Commission, as an observer;
 - (f) the Legal Adviser of the State Internal Revenue Service;
 - (g) the secretary of the Committee who shall be a staff of the State Internal Revenue Service.

93. Functions

- (1) The functions of the State Joint Revenue Committee shall be to-
- [1998 No. 19.]
- (a) implement decisions of the Joint Tax Board;
 - (b) advise the Joint Tax Board and the State and local governments on revenue matters;
 - (c) harmonise tax administration in the State;
 - (d) enlighten members of the public generally on State and local government revenue matters; and
 - (e) carry out such other functions as may be assigned to it by the Joint Tax Board.

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PART XI

Offences and penalties

94. Offences and penalties

- (1) A person guilty of an offence under this Act, or a person who contravenes or fails to comply with any of the provisions of this Act or any rule or regulation made thereunder for which no other penalty is specifically provided, shall be liable on conviction to a fine of N5,000 and where the offence is the failure to furnish a return, statement or information or to keep records required, a further sum of one hundred naira for every day during which the failure continues, and, in default of payment, to imprisonment for six months, and the liability to such further sum shall commence from the day following the conviction, or from such other day thereafter as the Court may order.

[2011 No. 20.]

- (2) A person who-

- (a) fails to comply with the requirements of a notice served on him under this Act; or
- (b) without sufficient cause, fails to attend in answer to a notice or summons served on him under this Act, or having attended fails to answer any question lawfully put to him,

is guilty of an offence against this Act.

- (3) Notwithstanding any of the provisions of the Criminal Procedure Act or the Criminal Procedure Law or Code of a State, a magistrate may dispense with the personal attendance of the defendant if he pleads guilty in writing or so pleads by a legal practitioner.

[Cap. C41.]

- (4) In the case of failure by a person to comply with the requirements of a notice given by the relevant tax authority under the provisions of section 41 of this Act for the purposes of the income tax for a year of assessment to be charged on that person, with respect to income from any source other than from an employment, the relevant tax authority may, in lieu of the institution of proceedings against the person under the provisions of subsection (2) of this section, impose a penalty on him of an amount equal to the income tax chargeable on him for the preceding year of assessment:

Provided that-

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

95. Penalty for making incorrect returns

(1) A person who, without reasonable excuse-

- (a) makes an incorrect return by omitting or understating any income liable to tax under this Act; or
- (b) gives an incorrect information in relation to a matter or thing affecting the liability to tax of any taxable person,

is guilty of an offence and liable on conviction to a fine of N20,000 and double the amount of tax which has been undercharged in consequence of the incorrect return or information, or would have been so undercharged if the return or information had been accepted as correct.

[1996 No. 30; 2011 No. 20.]

- (2) No person shall be liable to a penalty under this section unless the complaint concerning the offence was made in the year of assessment in respect of or during which the offence was committed or within six years after the expiration thereof.
- (3) The relevant tax authority may compound any offence under this section and may before judgment stay or compound any proceeding thereunder.

96. False statements and returns

(1) A person who-

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- (a) for the purpose of obtaining a deduction, set-off, relief or an overpayment in respect of tax for himself or any other person, or who in a return, account or particulars made or furnished with reference to tax, knowingly makes a false statement or false representation; or

- (b) aids, abets, assists, counsels, incites or induces any other person-
 - (i) to make or deliver a false return or statement under this Act; or

 - (ii) to keep or prepare false accounts or particulars concerning any income on which tax is payable under this Act; or

 - (iii)unlawfully refuses or neglects to pay tax,

is guilty of an offence and liable on conviction to a fine of N50,000 for individuals and N500,000 for corporate bodies or to imprisonment for not more than six months:

[2011 No. 20.]

Provided that where an offence under this section is committed by a person in relation to tax payable by, or repayable to him for a year of assessment, there shall be substituted for the amount of the fine as aforesaid, the amount of N10,000 or treble the tax chargeable on the person for that year, whichever is the greater.

[2011 No. 20]

- (2) The Board may compound an offence under this section and with the leave of the court may before judgment stay or compound any proceeding thereunder.

97. Penalty for offences by authorised and unauthorised persons

A person who-

- (a) being a person appointed for the due administration of this Act or employed in connection with the assessment or collection of the tax-
 - (i) demands from a person an amount in excess of the authorised assessment of the tax; or

 - (ii) withholds for his own use or otherwise, a portion of the amount of tax collected; or

 - (iii)renders a false return, whether orally or in writing, of the amount of tax collected or received by him; or

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(iv) defrauds a person, embezzles any money, or otherwise uses his position to deal wrongly with the relevant tax authority; or

(b) not being authorised under this Act to do so, collects or attempts to collect the tax under this Act,

is guilty of an offence and liable on conviction to a fine of N100,000 or to imprisonment for three years or both such fine and imprisonment.

[2011 No. 20.]

98. Tax to be payable notwithstanding proceedings

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

99. Prosecution to be with sanction of Board

No prosecution in respect of an offence under this Part of this Act may be commenced except at the instance of the relevant tax authority.

100. Saving for criminal proceedings

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

101. Place of an offence

An offence under this Act shall be deemed to occur in the State or at such place as the relevant tax authority may decide.

PART XII

Powers of tax collectors

102. Definition of tax collector

(1) For the purpose of this Part of this Act, a tax collector means a duly authorised official of the State Service or the Federal Board of Inland Revenue.

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- (2) The production by a tax collector of a certificate or warrant-
- (a) issued by, and having printed thereon the official name of the relevant tax authority;
 - (b) setting out his full name or names; and
 - (c) stating that he is, or is authorised to exercise the functions of a tax collector,
- shall be sufficient evidence that the tax collector is duly authorised for the purposes of this Act.

103. Power to enter and require information

Whenever it is necessary for the purpose of obtaining information in relation to a person who is or may be liable to the tax imposed by this Act, or the income, occupation or domestic circumstances of that person, or for the purpose of collecting the tax, a tax collector may, during daylight hours, enter into and upon any house or premises, provided he does so without damage to the house or premises, and require a person found therein to give all the information orally to him.

104. Power to distrain

[2011 No. 20.]

- (1) Without prejudice to any other power conferred on the relevant tax authority for the enforcement of payment of tax due from a taxable person that has been properly served with an assessment which has become final and conclusive and a demand notice has been served upon the person in accordance with the provisions of this Part of this Act, or has been served upon the person, then, if payment of tax is not made within the time specified by the demand notice, the relevant tax authority may, in the prescribed form, for the purpose of enforcing payment of tax due-
- (a) distrain the taxpayer by his goods, other chattels, bond or other securities; or
 - (b) distrain upon any land, premises or places in respect of which the taxpayer is the owner and, subject to the provisions of this section, recover the amount of tax due by sale of anything so distrained.

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- (2) The authority to distrain under this section shall be in the form prescribed by the relevant tax authority.
- (3) For the purpose of levying any distress under this section, an officer duly authorized by the relevant tax authority shall apply to a Judge of a High Court sitting in Chambers, under oath for the issue of a warrant under this section.
- (4) The Judge may, on application made ex-parte, authorize such officer, referred to in sub-section (3) of this section, in writing to execute any warrant of distress and, if necessary, break open any building or place in the daytime for the purpose of levying such distress and he may call to his assistance any police officer and it shall be the duty of any police officer when so required to aid and assist in the execution of any warrant of distress and in levying the distress.
- (5) The distress taken pursuant to this section may, at the cost of the owner, be kept for 14 days, at the end of which time, if the amount due in respect of tax and the cost and charges incidental to the distress are not paid, the same way be sold.
- (6) There shall be paid out of the proceeds of sale, in the first instance, the cost or charges incidental to the sale and keeping of the distress and the residue, if any, after the recovery of the tax liability, shall be payable to the owner of the things distrained or to the appropriate court where the owner cannot be traced, within 30 days of such sale.
- (7) In exercise of the powers of distress conferred by this section, the person to whom the authority is granted under sub-section (3) of this section may distrain upon all goods, chattels and effects belonging to the debtor wherever the same may be found in Nigeria.
- (8) Nothing in this section shall be construed as authorizing the sale of any immoveable property without an order of a court of competent jurisdiction.

105. Obstruction to be an offence

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Any person who-

- (a) having been required to give information under the provisions of the preceding section willfully obstructs a tax collector in the performance of his duties by neglecting or refusing to give such information; or
- (b) otherwise obstructs or willfully misleads or attempts to mislead a tax collector in the performance of his duties under this Part of this Act,

is guilty of an offence under this Act.

106. Immunity from action, etc.

A tax collector shall not be liable in any action or proceeding, whether civil or criminal, for anything done or said by him in the lawful exercise of the powers conferred upon him by section 102 of this Act.

106A. Power to make regulations

- (1) The Minister may, on the recommendation of the Joint Tax Board, make regulations generally for giving full effect to the provisions of this Act.
- (2) The National Assembly may, upon a proposal by the President, impose, increase, reduce, withdraw or cancel any rate of tax, duty or fee chargeable as specified in section 40 and Second Schedule of this Act and in accordance with section 59 (2) of the 1999 Constitution.

[2011 No. 20.]

PART XIII

Miscellaneous

107. Repeal of Cap. 173, Cap. 43 and Cap. 174 L.F.N. 1990

Subject to section 6 of the Interpretation Act, the Income Tax Management Act, the Capital Transfer Tax Act and the Income Tax (Armed Forces and Other Persons) (Special Provisions) Act are hereby repealed. .

[1996 No. 32. Cap. 123.]

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108. Interpretation

In this Act, unless the context otherwise requires-

“assessable income” means assessable income determined under the provisions of Part III of this Act;

“Board” means the Joint Tax Board established under section 86 of this Act;

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

“employment” includes any appointment or office, whether public or otherwise, for which remuneration is payable, and **“employee”** and **“employer”** shall be construed accordingly;

“executor” includes any person administering the estate of a deceased person;

“individual” includes a corporation sole and a body of individuals but does not include a company, partnership, community, family, trustee or executor, or any body of trustees or executors;

“itinerant worker” includes an individual irrespective of his status who works at any time in any State during a year of assessment (other than as a member of the armed forces) for wages, salaries or livelihood by working more than one State and work for a minimum of twenty (20) days in at least three (3) months of every assessment year;
[2011 No. 20.]

“Minister” means the Minister charged with responsibility for matters relating to taxation;

“Nigerian company” means any company incorporated under the Companies and Allied Matters Act or any enactment replaced by that Act;
[Cap. C20.]

“person” includes an executor, trustee, company, partnership, community, family and individual;

“relevant tax authority” means, in relation to-

- (a) an individual for a year of assessment, the tax authority of the territory in which the individual is deemed to be resident in that year;

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- (b) an executor, the tax authority of the territory in which the deceased individual was last deemed to be resident or would have been deemed to be resident if the provisions of this Act had been in force prior to the date of his death;
- (c) a trustee of a trust or settlement-
 - (i) where all the income of the settlement or trust for a year of assessment arises in one territory, the tax authority of that territory; or
 - (ii) where the income of the settlement or trust for a year of assessment arises in more than one territory, or in any other case (where the relevant tax authority cannot be determined under any of the foregoing provisions), the Federal Board of Inland Revenue;
- (d) a partnership for a year of assessment, the tax authority of the territory in which the principal office, or place of business of the partnership in Nigeria is situated on the first day of that year, or is first established during that year;
- (e) a village or other indigenous community, the tax authority of the territory in which that community is to be found;
- (f) a person to whom section 2 (1) (b) of this Act applies, the Federal Board of Inland Revenue;

“tax” means any income tax imposed in conformity with the provisions of this Act;

“State Relevant tax authority” means the State Relevant tax authority established under section 87 of this Act;

[1996 No. 31.]

“Tax Authority” means the Federal Board of Inland Revenue, the State Board or the Local Government Revenue Committee;

[1998 No. 18.]

“taxable person” means any individual or body of individuals (including a family, any corporation sole, trustee or executor) having any income which is chargeable with tax under the provisions of this Act;

“territory” means a State of the Federation and includes the Federal Capital Territory, Abuja;

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“total income” means, in relation to an individual for a year of assessment his aggregate assessable income for that year after the additions and deductions specified in Part IV of this Act have been made;

“year of assessment” means the period of twelve months commencing on the first day of January.

109. Short title and application

This Act may be cited as the Personal Income Tax Act and shall apply throughout the Federation except as herein provided.

SCHEDULES

FIRST SCHEDULE [Sections 8 (7), 15 and 27.]

Determination of residence

1. Interpretation

In this Schedule, unless where the context otherwise requires-

“earned income” in relation to an individual, means income derived by him from a trade, business, profession, vocation or employment carried on or exercised by him and a pension derived by him in respect of a previous employment;

“foreign employment” means an employment, the duties of which are wholly performed outside Nigeria save during any temporary visit of the employee to Nigeria;

“Nigerian employment” means any employment, not being a foreign employment, the duties of which are wholly or partly performed in Nigeria;

“Nigerian pension” means a pension in respect of past service under, and payable by, a government or governments in Nigeria;

“place of residence” in relation to an individual, means a place available for his domestic use in Nigeria on a relevant day, and does not include any hotel, rest-house or other place at which he is temporarily lodging unless no permanent place is available for his use on that day;

“principal place of residence” in relation to an individual with two or more places of residence on a relevant day, not being both within anyone territory means-

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- (a) in the case of an individual with no source of income other than a pension in Nigeria, that place of those places in which he usually resides;
- (b) in the case of an individual who has a source of earned income other than a pension in Nigeria, that place of those places which on a relevant day is nearest to his usual place of work;
- (c) in the case of an individual who has a source or sources of unearned income in Nigeria, that place of those places in which he usually resides.
- (d) in the case of an individual who works in the branch office or operational site of a company or other body corporate, the place at which the branch office or operational site is situate:

Provided that operational site shall include Oil terminals, Oil Platforms, Flow Stations, Factories, Quarries, Construction site with a minimum of 50 workers, etc.

[2011 No. 20.]

2. Foreign employments

An individual not being a person to whom subsection (1) (b) of section 2 of this Act applies, who holds a foreign employment on the 1st day of January in a year of assessment, or who first becomes liable to income tax in Nigeria for that year by reason of his entering that employment during that year, shall be deemed to be resident for that year in the territory in which the principal office of his employer is situated on that day or on the day his foreign employment commences, as the case may be.

3. Nigerian employment

An individual who holds a Nigerian employment on the 1st day of January in a year of assessment, or who first becomes liable to income tax in Nigeria for that year by reason of his entering that employment during that year, shall be deemed to be resident for that year in the territory in which he has a place or principal place of residence on that day or, as the case may be, on the day on which he enters upon the full duties of that employment in Nigeria:

Provided that if the individual is on leave from a Nigerian employment on the 1st day of January in a year of assessment he shall be deemed to be resident for that year by reference to his place or principal place of residence immediately before his leave began.

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4. Other employments

An employee whose remuneration is subject to income tax in Nigeria for a year of assessment, but who is not deemed to be resident in a territory for that year under the provisions of paragraph 3 of this Schedule, shall be deemed to hold a foreign employment, and if he has no territory of residence for that year under the provisions of paragraph 2 of this Schedule, he shall be deemed to be a person to whom subsection (1) (b) of section 2 of this Act applies.

5. Pensions

- (1) An individual whose only source of earned income arising in Nigeria on the 1st day of January in a year of assessment was a pension, and who had a place or principal place of residence on that day shall be deemed to be resident for that year in the territory in which that place or principal place of residence was situated on that day.
- (2) An individual whose only source of earned income arising in Nigeria on the 1st day of January in a year of assessment was a pension, and who had no place of residence on that day, shall be deemed to be resident for that year-
 - (a) if the pension is a Nigerian pension wholly payable by the Government of one territory, not being a Nigerian pension in respect of which the subsection (1) (b) of section 2 of this Act applies, in that territory;
 - (b) if the pension is not a Nigerian pension, in the territory in which the principal office in Nigeria of the pension fund or other person authorising payment of the pension is situated.
- (3) An individual whose only source of earned income arising in Nigeria on the 1st day of January in a year of assessment was a Nigerian pension, and who had no place of residence on that day shall, if the pension is payable by more than one government or if there are two or more pensions arising in different territories to the individual on that day, be subject to subsection (1) (b) of section 2 of this Act.

6. Other earned income

An individual (other than a corporation sole or body of individuals) who has a source of earned income in Nigeria for a year of assessment, other than an employment or a pension, shall be deemed to be resident for that year in the territory in which he had a place or principal place of residence on the 1st day of January in that year:

Provided that-

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- (a) if the source of the income is first acquired by the individual during the year of assessment, and he had no place of residence on the first day of that year, he shall be deemed to be resident for that year in the territory where he first establishes a place of residence during that year; and
- (b) in any other case, the individual shall be deemed to be resident for that year in any territory from which any part or the whole of his earned income arising in Nigeria is derived, if the income is derived from more than one territory.

7. Unearned income

An individual (other than a corporation sole or body of individuals) who has no source of earned income in Nigeria for a year of assessment but who has one or more source of unearned income in Nigeria for that year shall be deemed to be resident for that year in the territory in which he has a place or principal place of residence on the 1st day of January of that year:

Provided that-

- (a) if all the unearned income of the individual for that year arises in one territory, and he has no place of residence on that day, he shall be deemed to be resident for that year in that territory;
- (b) if the unearned income of the individual arises for that year in more than one territory, and he has no place of residence on that day, he shall be deemed to be resident .for that year in the territory from which any part of the unearned income arises.

8. Application

- (1) Where the territory of residence of an individual for a year of assessment may be determined under more than one of the preceding paragraphs of this Schedule, it shall be determined by the first-numbered paragraph which is applicable to his circumstances.
- (2) If, by reason of sub-paragraph (1) of this paragraph, or otherwise, a determination of residence of an individual for a year of assessment falls to be revised by a tax authority, other than that of the territory in which the individual is finally determined to be resident for that year, it shall discharge any assessment made by it on the income of the individual for that year.

9. Corporation sole or body of individuals

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- (1) A corporation sole or body of individuals other than a family or community shall be deemed to be resident for a year of assessment in the territory in which its principal office in Nigeria is situated on the first day of January in that year or, if it has no office in Nigeria on that day, in a territory in which any part or the whole of its income liable to tax in Nigeria arises for that year.

10. Objections, disputes and appeals

- (1) In an objection to an assessment which is or includes, an objection to the determination of an individual's territory of residence by any tax authority, the individual shall set out all the grounds on which he relies to refute that determination, and those grounds together with the observations thereon by that tax authority shall be referred by it to the Board.
- (2) Where a dispute arises as to the territory of residence of an individual for a year of assessment, either between two or more tax authorities or between a tax authority and an individual before he has been assessed to tax by that authority for that year, the facts may be referred to the Board by any tax authority which is a party to the dispute.
- (3) Where a dispute arises between two or more tax authorities with respect to the territory of residence of an individual for a year of assessment and that individual has already been assessed to tax in Nigeria for that year, the facts of that dispute may be referred to the Board by any tax authority.
- (4) The secretary to the Board shall give notice of any grounds, observations or facts referred to the Board under the provisions of sub-paragraphs (1), (2) or (3) of this paragraph to those parties, including the individuals who are affected or likely in his opinion to be affected by a determination of residence by the Board, and shall afford the parties a period being not less than thirty days from the issue of the notice in which to reply thereto.
- (5) The secretary to the Board may call for further information to be given by any party, including an individual, to an objection or dispute within such time as may appear to him to be reasonable, and after the expiry of that period or to the period mentioned in sub-paragraph (4) of this paragraph, whichever is the later, the Board shall proceed to determine the territory of residence of the individual for the relevant year of assessment.
- (6) Written notice of a determination by the Board shall be given by its secretary to the individual and to each tax authority affected thereby, and an assessment which has been made on that individual otherwise than in accordance with the determination of the Board shall be discharged.

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- (7) Pending a determination by the Board, the tax authority which has referred an objection to the Board under the provisions of this paragraph shall not determine that objection unless that objection, insofar as it concerns the territory of residence of the individual, is previously withdrawn by him in writing.
- (8) A determination by the Board under this paragraph shall be binding on all tax authorities and on an appeal tribunal or other body established under a law of a territory for the purposes of income tax within that territory, but may be questioned by the individual in the High Court of the territory of the tax authority which has made the relevant assessment.
- (9) It shall not be competent for an appellant in an appeal against an assessment to enter a ground of appeal concerning his territory of residence which he has not disclosed on a valid objection to the relevant assessment.
- (10) An appeal from a decision of a High Court in respect of the territory of residence of an individual shall lie to the Court of Appeal.
- (11) Where a tax authority discovers that an individual who has been assessed by it to tax for a year of assessment, is deemed to be resident for that year in the territory of some other tax authority, the assessment shall be discharged and any tax already paid by the individual in respect of that assessment shall be-
- (a) set-off against tax owing for any other year by that individual to the first mentioned authority; or
 - (b) paid to the Government of that other authority; or
 - (c) repaid to the individual,
- in such proportions as the first mentioned authority may decide.

SECOND SCHEDULE
[Sections 16 and 27.]

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PART I

Income from settlements, trusts and estates

1. Subject to Part II of this Schedule and notwithstanding Part III of this Schedule, the income of a settlement or trust shall for all the purposes of this Act be deemed to be the income of the settlor or person creating the trust, as the case may be, if-
 - (a) that settlor or person retains or acquires an immediately exercisable general power of appointment over the capital assets of the settlement or trust or over the income derived therefrom; or
 - (b) that settlor or person makes use, directly or indirectly, by borrowing or otherwise, of any part of the income arising under the settlement or trust; or
 - (c) the settlement or trust is revocable in circumstances whereby that settlor or person, or the spouse thereof, resumes control over any part of the income or assets comprised therein:

Provided that a settlement or trust shall not be regarded as revocable solely by reason of the fact that an income or asset comprised therein may revert to that settlor or person, or the spouse thereof, in the event of a beneficiary predeceasing that settlor or person, or of the happening of an uncertain event upon which the settlement or trust is limited.

2.
 - (1) For the purposes of this Part and Part III of this Schedule, the income of a settlement or trust, other than a settlement or trust to which the provisions of paragraph 4 of this Schedule apply, or of the estate of a deceased individual shall be so much of that income as is derived from a source in Nigeria and any of the income brought into or received in Nigeria.
 - (2) The amount of the income (in this Schedule referred to as the —computed income) of each period of twelve months ending on the thirty first day of December in each year shall be ascertained as though the provisions of Parts I and II of this Act applied thereto and-
 - (a) there shall be deducted-
 - (i) any expenses of the trustee or executor relative to the settlement, trust or estate which is authorised by the terms of the deed of settlement or trust or of the will, as the case may be;

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- (ii) any annuity of fixed annual amount paid out of the income of the settlement, trust or estate in accordance with the provisions of the deed or will; and
 - (b) if the income includes any gain or profit from a trade, business, profession or vocation, or a rent or premium, there shall be added or deducted, as the case may require, any sum which would have been added or deducted for the next following year of assessment under the provisions of Part IV of this Act if the income from those sources had been the assessable income of an individual for that year ascertained under the provisions of section 36 of this Act.
- 3. The computed income of a year of a settlement, trust or estate shall be apportioned for the assessment in the following manner-
 - (a) where-
 - (i) the terms of the deed of settlement or trust or of a will provide that the whole income of the settlement, trust or estate after deduction of any authorised expense or annuity of fixed amount is to be divided in specific proportions among the beneficiaries entitled thereto, from time to time; or
 - (ii) by operation of law, on an intestacy, the income of an estate is to be divided in the manner referred to in sub-paragraph (a) (i) of this paragraph,

the income of each beneficiary of any year from the settlement, trust or estate shall be his similarly apportioned share of the computed income;
 - (b) where a trustee or executor has discretion to make any payment (other than a payment on account) to a beneficiary out of the income of a settlement, trust or estate in such amount as he sees fit, from time to time; then-
 - (i) the amount of the payment to a beneficiary made in the course of a year shall be treated as income of that year which is assessable to tax in the hands of that beneficiary; and
 - (ii) out of the remainder of the computed income after deducting the aggregate amount of all the payments during any year, there shall be apportioned to each beneficiary who has any specified proportional interest in the income of the settlement, trust or estate, so much thereof as is obtained by applying the proportion to that remainder:

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Provided that if the aggregate amount exceeds the computed income, the amount of each payment to be treated as income in the hands of a beneficiary under this subparagraph shall be reduced proportionally so that the aggregate of the amount as so reduced does not exceed the computed income;

- (c) any remainder of the computed income of a settlement, trust or estate of any year after deducting all amounts apportioned to beneficiaries, or treated as income in the hands of beneficiaries under the provisions of sub-paragraph (b) of this paragraph shall be apportioned to the trustee or executor for assessment in his name as trustee of the settlement or trust or as executor of the estate.

PART II

Special provisions as to settlement on unmarried children

4.

- (1) Notwithstanding any other provision of this Act where, by virtue or in consequence of a settlement and during the life of the settlor an income is paid to or for the benefit of a child of the settlor in a year of assessment, the income shall, if at the time of payment the child was an infant and unmarried, be treated for the purposes of this Act as the income of the settlor for that year and not as the income of any other person.
- (2) Income paid to or for the benefit of a child of a settlor shall not be treated as provided in sub-paragraph (1) of this paragraph for any year of assessment in which the aggregate amount of the income paid to or for the benefit of that child, which but for this subparagraph, would be so treated by virtue of sub-paragraph (1) of this paragraph, does not exceed N500.
- (3) This paragraph shall not apply in relation to an income arising under a settlement in a year preceding a year of assessment if the settlor is not in Nigeria at any time during that year of assessment, or is not in Nigeria for a period or periods amounting to 183 days or more in any twelve-month period commencing in the calendar year and ending either in the same year or the following year.

5. For the purposes of paragraph 4 of this Schedule-

- (a) income which, by virtue or in consequence of a settlement, may become payable or applicable to or for the benefit of a child of the settlor in the future (whether on the fulfillment of a condition or on the happening of a contingency, or as the result of the exercise of a power or discretion conferred on any person, or otherwise) shall be deemed to be paid to or for the benefit of that child; and

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(b) an income dealt with as aforesaid which is not required by the settlement to be allocated, at the time when it is so dealt with, to any particular child or children of the settlor shall be deemed to be paid in equal shares to or for the benefit of each of the children to or for the benefit of whom or any of whom the income or assets representing the income will or may become payable or applicable.

6.

(1) Where, by virtue of paragraph 4 of this Schedule, any income tax becomes chargeable on and is paid by the settlor, he shall be entitled-

(a) to recover from any trustee or other person to whom the income is payable by virtue or in consequence of the settlement the amount of the tax so paid; and

(b) for that purpose to require the relevant tax authority to furnish to the settlor a certificate specifying the amount of income in respect of which he has so paid tax and the amount of the tax so paid, and any certificate so furnished shall be conclusive evidence of the facts appearing therein.

(2) Where the settlor obtains from a trustee or any other person a payment in excess of the amount he is entitled to recover by virtue of sub-paragraph (1) of this paragraph, then an amount equal to the excess shall be paid by him to the trustee or other person to whom the income is payable by virtue or in consequence of the settlement, or, where there are two or more such persons, the amount shall be apportioned among those persons as the case may require.

(3) If a question arises as to the amount of any payment or as to any apportionment to be made under sub-paragraph (2) of this paragraph, that question shall be decided by the relevant tax authority and its decision thereon shall be final and not subject to an appeal or any review whatsoever by any court of law.

7.

(1) In the case of any settlement where there are more than one settlor, paragraph 4 of this Schedule shall, subject to the provisions of this paragraph, have effect in relation to each settlor as if he were the only settlor.

(2) In the case of a settlement as aforesaid, income originating from that settlor or person may, for the purposes of paragraph 4 of this Schedule, be taken into account, in relation to any settlor, as income paid by virtue or in consequence of the settlement to or for the benefit of a child of the settlor.

(3) References in this paragraph to income originating from a settlor shall include references to the following, that is-

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- (a) income from property which that settlor has provided directly or indirectly for the purposes of the settlement;
- (b) income from property representing that property, including accumulated income from that property; and
- (c) income from so much of any property which represents both property provided as aforesaid and other property as, on a just apportionment, represents the property so provided.

8. In this Part of this Schedule-

“**child**” includes a stepchild, an adopted child and an illegitimate child;

“**settlement**” includes any disposition, trust, covenant, agreement, arrangement or transfer of assets;

“**settlor**” in relation to a settlement, includes a person by whom the settlement was made or entered into directly or indirectly, and in particular (but without prejudice to the generality of the foregoing) includes a person who has provided or undertaken to provide funds directly or indirectly for the purpose of the settlement, or has made with any other person a reciprocal arrangement for that other person to make or enter into the settlement.

PART III

Supplementary provisions

9. For the purposes of this Act, where an asset of a trade or business, profession or vocation forms part of the estate of a deceased individual, being an asset in respect of which an annual allowance may be claimed in arriving at the total income of that individual for the year of assessment in which he died, the provisions of the Fifth Schedule to this Act shall apply in the following manner-

- (a) notwithstanding any provision of that Schedule, no balancing allowance or charge shall be given or made to that individual in respect of the asset for that year; and
- (b) the estate shall be deemed to have incurred qualifying expenditure on the acquisition of the asset equal in amount to the residue of the expenditure on the day following the death of the individual; and

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- (c) in the event of the disposal of the asset on or after that day, an addition to be made by way of a balancing charge in computing the income of the estate shall be made by reference to the sum of all allowances or deductions made in respect of the asset to the individual and to the estate.
10. An individual in receipt of an annuity of fixed annual amount paid out of the income of a settlement, trust or an estate shall be assessable to tax on the full amount of the annuity.
11. The income arising from a settlement, trust or an estate assessable to tax under a provision of this Schedule in the hands of any trustee, executor, beneficiary or annuitant for a year of assessment shall be the amount of the income ascertained under the foregoing provisions of this Schedule of the year preceding that year.
- 12.
- (1) Where the income of a settlement, trust or estate of a year includes an income which has borne tax in Nigeria or elsewhere, whether by deduction or otherwise, the provisions of Part V of this Act with respect to any relief to be given or repayment to be made shall apply as though the whole of the taxed income were receivable by the persons to whom the computed income of that year is apportioned under the provisions of paragraph 3 of this Schedule-
- (a) in due proportion to their respective shares therein; or
- (b) where sub-paragraph (b) of paragraph 3 of this Schedule applies in proportion to their shares in the remainder of the computed income as therein specified, and where there is no computed income, the relief or repayment shall be given or made to the trustee or executor for the account of the settlement, trust or estate.
- (2) For the purposes of this paragraph, references to an individual in Part V of this Act shall be deemed to include references to a trustee or executor.
13. Subject to the foregoing provisions of this Schedule-
- (a) a trustee of a settlement or trust, and every executor, shall be answerable for all things to be done in connection with the tax to; and
- (b) an income apportioned to a trustee or executor shall be assessable by the relevant tax authority in relation to that settlement, trust or estate.
14. A trustee of a settlement or trust in Nigeria, and the executor of an estate in Nigeria, shall prepare accounts of the income from all sources of the settlement, trust or estate for

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successive periods to the thirty-first day of December in each year, and to the date on which the assets of the settlement, trust or estate are finally distributed.

15. An appeal against the inclusion of an income of a settlement, trust or estate in an assessment to tax, by whatever tax authority it may have been made, shall lie only in accordance with the appeal provisions of the income tax law of the territory to the tax authority of which the trustee or executor is answerable for the relevant year of assessment under the provisions of paragraph 13 of this Schedule.

THIRD SCHEDULE

Sections 19 (1),75.]

Income exempted

1. The incomes set out in this Schedule are exempted from taxation.

Paragraphs 2 and 3 deleted by 2011 No. 20

4. The emoluments payable from United Kingdom funds to members of visiting or other forces and to persons in the permanent service of the United Kingdom Government in Nigeria in respect of their offices under the United Kingdom Government and the emoluments payable to members of any civilian component, and the income of any authorised service organisations, accompanying the visiting forces:

Provided that this exemption shall not apply to any individual who is a citizen of Nigeria or who ordinarily resides in Nigeria.

5. All consular fees received on behalf of a foreign State, or by a consular officer or employee of the State of his own account, and all income of such officer or employee, other than income in respect of any trade, business, profession or vocation carried on by an officer or employee or in respect of any other employment exercised by him with Nigeria:

Provided that this exemption shall not apply where the employee is engaged on domestic duties or where the officer or employee ordinarily resides in Nigeria and is not also a national of the foreign State.

- 6.

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- (1) Interest accruing to a person who is not resident in Nigeria as specified in the following sub-paragraphs-
 - (a) the interest on a loan charged on the public revenue of the Federation and raised in the United Kingdom;
 - (b) the interest on a bond issued by the Government of the Federation to secure repayment of a loan raised from the International Bank for Reconstruction and Development under the authority of the Railway Loan (International Bank) Act;
 - (c) the interest on any money borrowed by the Government of the Federation or of a State on terms which include the exemption of interest from tax in the hands of a non-resident person;
 - (d) where the Minister of Finance so consents, the interest on any moneys borrowed outside Nigeria by a corporation established by a law in Nigeria upon terms which include the exemption of such interest from tax in the hands of any non-resident person;
 - (e) the interest on deposit accounts, provided the deposits into the account are transfers wholly made up of foreign currencies (funds) to Nigeria on or after 1 January 1990 through Government-approved channels and the depositor does not become non-resident after making the transfer while in Nigeria.
 - (2) For the purpose of the exemption referred to in sub-paragraph (1) of this paragraph, a person shall only be deemed to be resident in Nigeria for a year of assessment if he is in Nigeria for a period or periods amounting to 183 days or more in any twelve-month period commencing in the calendar year and ending either in the same year or the following year.
7. Interest on any loan granted by a bank on or after 1 January 1997 to a person engaged in-
[2011 No. 20.]
- (a) Agricultural trade or business; and
 - (b) the fabrication of any local plant and machinery;
8. The income of a national of the United States of America from employment by the International Cooperation Administration, being an administration or agency formed and directed by the Government of that country.

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9. The income of a national of the United States of America from employment by the International Development Services as agents or the International Cooperation Administration.

10. The income of an individual from employment by the Ohio University of Athens, Ohio, as agent for the International Cooperation Administration, in connection with any scheme for the training of teachers in Nigeria.

11. An income in respect of which tax is remitted or exempted under the provisions of the Diplomatic Immunities and Privileges Act or of any enactment, order or notice continued in force or effected by that Act.
[Cap. D9]

12. The income of a local government or government institution.

13. The income of any ecclesiastical, charitable or educational institution of a public character in so far as such income is not derived from a trade or business carried on by such institution.

14.
 - (1) Pension granted to any person pursuant to any enactment or law for the time being in force.

 - (2) Wound and disability pensions granted to members of the armed forces or of any recognised national defense organisation or to a person injured as a result of enemy action.
[2011 No. 20]

15. Pensions granted to a person under the provisions of the Pensions Reform Act, 2004 relating to widows and orphans.
[Cap. P4; 2011 No. 20.]

16. The income of a trade union registered under the Trade Unions Act, in so far as the income is not derived from a trade or business carried on by that trade union.
(Cap. T14.)

17. Gratuities payable to a public officer by the Government of the Federation or of a State in respect of services rendered by him under a contract of service with that Government and described as gratuities either in the contract or some other document issued by or on behalf of Government in connection with such contract.

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18. Gratuities payable to an employee in the private sector in respect of services rendered by him under a contract of service with his employer and described as gratuities either in the contract or some other document issued by or on behalf of the employer in connection with such contractor:

Provided that-

- (a) where the period of services does not amount to ten years, the exemption provided under this Schedule shall not apply;
- (b) where the total gratuity payable exceeds the amount of N100,000 the amount of any excess shall not be so exempt but shall be deemed to be income of the employee on the last day of his employment, including any terminal leave arising therefrom;
- (c) where the period of service (or where service is not continuous, the aggregate period of service in any 63 consecutive months) does not amount to five years, then, if the total gratuities exceed a sum calculated at the rate of N1,000 per annum for such period or aggregate period the amount of any excess shall not be so exempt but shall be deemed to be income of the last day of the employment, including any terminal leave arising therefrom.

19.

(1) Gratuities payable to a member or former member of the staff of the Nigerian College of Arts, Science and Technology by the College in respect of services rendered by him under a contract of service with the College and described as gratuities either in the contract or in some other document issued by or on behalf of the College in connection with the contract, subject to the like provisions as those contained in the proviso to paragraph (17) of this Schedule.

(2) For the purposes of this exemption, “**member of the staff**” means an individual appointed to an office specified in the Second Schedule to the Nigerian College of Arts, Science and Technology Act.

20. Gratuities payable to an employee or former employee under a contract of service with a body established pursuant to the Nigerian Research Institutes Act or any Act repealed by that Act or by the West African Council for Medical Research Act, being a gratuity so described either in his contract of service with the body or in some other document issued by or on behalf of the body in connection with that contract.

[1996 No. 32. Cap. N132.]

21. The income of a statutory or registered friendly society in so far as such income is not derived from a trade or business carried on by such society.

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22. The income of a co-operative society registered under the Nigerian Cooperative Societies Act, not being income from any trade or business carried on by the Society other than the co-operative activities solely carried out for and with its members or from any share or other interest possessed by that Society in a trade or business in Nigeria or elsewhere carried on by some other person or authority.

[Cap. N98.]

23. A sum received by way of death gratuities or as consolidated compensation for death or injuries.

24. A sum withdrawn or received by an employee from a pension, provident or other retirement benefits fund, society or scheme approved by the relevant tax authority under the provisions of paragraph (g) of section 20 of this Act other than a sum which is deemed to be income of the employee under an express provision of this Act, and a sum withdrawn or received by an employee from a national provident fund or other retirement benefits scheme established under the provisions of any enactment for employees throughout Nigeria.

25.

(1) Dividends paid to a person by a company incorporated in Nigeria:

Provided that-

(a) the equity participation of the person in the company paying the dividends is either wholly paid for in foreign currency or by assets brought into Nigeria between 1 January 1987 and 31 December 1992; and

(b) the person to whom the dividends are paid owns not less than 10 per cent of the equity share capital of the company.

(2) For the purpose of the exemption referred to in sub-paragraph (1) of this paragraph, the dividend tax-free period shall commence from the year of assessment following the year in which the new capital is brought into Nigeria for the real purpose of the trade or business in Nigeria of the company paying the dividends and shall continue for five years if the company paying the dividends is engaged in agricultural production within Nigeria or processing of Nigerian agricultural products produced within Nigeria or production of petrochemicals or liquefied natural gas, and in any other case, the tax-free period shall be limited to three years.

26. Any compensation for loss of employment.

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27. The income of a person, other than a citizen of Nigeria, from employment by any government, organisation or agency between which and the Government of the Federation or of a State there exists an arrangement for technical assistance, insofar as and to the extent only that the employment is solely in pursuit of the technical assistance arrangement.

[1996 No. 32.]

28. The interest accruing to a person on foreign currency domiciliary accounts.

29. Income earned from outside Nigeria by a temporary guest, lecturer, teacher, nurse, doctor and other professional and brought into Nigeria shall be exempt from tax provided that such income is deposited in a domiciliary account in an authorised bank in Nigeria.

[1996 No. 32.]

30. Income from dividend, interest, rent, royalties, fee, commission earned from abroad and brought into Nigeria by a Nigerian resident is exempt from tax, provided that such income is brought in convertible currency and paid into a domiciliary account in a bank approved by the Government.

31. Income earned from abroad by an author, sportsman, playwright, musician, artist and brought into Nigeria is exempt from tax provided that such income is brought in foreign currencies and paid into a domiciliary account in an authorised bank in Nigeria.

31A. Income earned from-

(a) Bonds issued by Federal, State and Local Governments and their agencies;

(b) Bonds issued by corporate including supra-nationals; and

(c) Interest earned by holders of the bonds, and short term securities listed in paragraphs (a) and (b)

[2011 No. 20.]

32. Nothing contained in this Schedule shall exempt any dividend, interest or royalty from a deduction to be made under the provisions of section 69 or 70 of this Act.

FOURTH SCHEDULE

[Section 20 (g).]

Retirement benefits schemes

1. In this Schedule-

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“pension fund” means a society, fund, contract or scheme the assets of which are held under irrevocable trusts and any scheme established by a law in Nigeria or elsewhere, the main objects of which are, in the opinion of the Board, the provision of non-assignable and non-commutable retirement pensions or annuities for an individual or his dependants after his death, or for any group or class of individuals and their dependants;

“provident fund” means a society, fund or scheme, not being a pension fund, established under irrevocable trusts or a law in Nigeria or elsewhere, the objects of which are the provision of retirement benefits for an individual or benefits for his dependants, after his death, or for any group or class of individuals and their dependants.

2. For the purpose of ascertaining the income of an individual the amount to be deducted in respect of a contribution made by him to a pension, provident or other retirement benefits fund, society or scheme approved by the Board under the provisions of paragraph (g) of section 20 (1) of this Act shall, subject to such conditions as the Board may prescribe, be computed in accordance with the provisions of this Schedule.
3. Subject to such conditions as may be prescribed by the Board, the amount to be deducted for the purpose of ascertaining the income of any period of an employer or employee in respect of any contribution paid to a pension fund shall be the amount of the contribution paid by the employer or employee respectively during that period.
4. Subject to such conditions as may be prescribed by the Board, the amount to be deducted for the purpose of ascertaining the income of any period of an employer or employee in respect of any contribution paid to a provident fund shall be the amount of the contribution paid by the employer or employee respectively during that period:

Provided that where the aggregate of the contributions made for any period by an employer and employee to a provident fund (other than a contribution made with the approval of the Board in respect of the past service of the employee with that employer) exceeds 25% of the remuneration paid by that employer to that employee for that period, the excess shall be excluded from the amount to be deducted in ascertaining the income of either the employer or employee by reference to the relevant accounting period of the employer or to the period for which the employee's income is to be ascertained, as the Board may decide.

5. In the case of an employee, no deduction shall be allowed under this Schedule in respect of an excess over N5,000 for a year of assessment of the aggregate of the following amounts-
 - (a) a deduction allowed under paragraph (f) of section 20 of this Act;

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- (b) a relief given to him for that year in respect of policies of insurance or contracts for deferred annuities on his life or the life of his wife;

 - (c) a deduction which would be otherwise allowed under this Schedule.
- 6.
- (1) In the case of an employee whose employment ceases before he has completed five years' employment with an employer, if the total value of any benefit (other than a sum paid by way of a pension or annuity) received by the employee from a pension or provident fund exceeds a sum calculated at the rate of N300 per annum for the period of the employment, the amount of the excess shall be deemed to be income derived by him from his employment on the last day thereof.

 - (2) For the purposes of this paragraph, where a person has had employment or successive employments with anyone or more Governments established in Nigeria (including in such expression the former Government of Nigeria) and his next employment is with a body directly incorporated by, or an unincorporated body established by, an Act or Law of any legislature in Nigeria, then his employment or successive employments with that Government or Governments and his next employment with that body shall be treated as one continuing employment.

 - (3) This paragraph shall, as respects a person who is not a citizen of Nigeria and ceases to be employed by a body corporate or unincorporated as is mentioned in sub-paragraph (2) of this paragraph, have effect subject to the following provisions that is-
 - (a) if the relevant tax authority within the meaning of this Act is satisfied that the employment in question ceased with a view to the employment of a citizen of Nigeria in the place of that person, the provisions of this paragraph 6 shall not apply in relation to that employment; and

 - (b) the relevant tax authority may if it thinks fit, in a case not falling within the foregoing paragraph, determine that those provisions shall apply in relation to that employment with the substitution for the reference to the rate aforesaid of a reference to such larger rate as may be specified in the determination.
7. Where in respect of a pension or provident fund an employer becomes entitled to any benefit whatsoever, the value of that benefit shall for the purpose of this Act be deemed to be income of the trade, business, profession or vocation in connection with which the fund was approved at the date when the right to the benefit first arose.
8. Where in respect of any pension or provident fund any benefit is paid to an employee before the cessation of his employment with an employer, such benefit shall be deemed

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to be income derived by him from his employment on the date on which the benefit is paid.

9. Where a contribution is made by a self-employed individual to a pension, provident, annuity or other retirement benefit fund, society or scheme approved by the Board for his eventual retirement from gainful employment, the premium shall be exempted from tax provided it does not exceed 10% of the self-employed total income.

[1996 No. 32.]

FIFTH SCHEDULE

[Section 36.]

Capital allowances

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

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FIFTH SCHEDULE [Section 36.]

Capital allowances

1. Interpretation

For the purpose of this Schedule-

“**basis period**” has the meaning assigned to it by the following provisions of this definition-

- (a) in the case of an individual to or on whom an allowance or a charge falls to be made in accordance with the provisions of this Schedule, his basis period for a year of

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assessment shall be the period by reference to the profits of which an assessable income for that year falls to be computed, under the provisions of sections 23 to 31 of the Act;

- (b) such income means income in respect of the trade or business in which there was used an asset in connection with which the allowance or charge falls to be made:

Provided that, in the case of the trade or business-

- (i) where two basis periods overlap, the period common to both shall be deemed, except for the purpose of making an annual allowance, to fall in the basis period ending at the earlier date and in no other basis period;
- (ii) where two basis periods coincide, they shall be treated as overlapping, and the basis period for the earlier year of assessment shall be treated as ending before the end of the basis period for the later year of assessment;
- (iii) where there is an interval between the end of the basis period for one year of assessment and the basis period for the next year of assessment, then unless the second-mentioned year of assessment is the year in which an individual permanently ceases to carry on the trade or business, the interval shall be deemed to be part of the second basis period, and
- (iv) where there is an interval between the end of the basis period for the year of assessment preceding that in which the trade or business permanently ceases to be carried on by an individual and the basis period for the year in which it so ceases, the interval shall be deemed to form part of the first basis period;

“**concession**” includes a mining right and a mining lease;

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

- (a) where, with the consent of the lessor, a lessee of an asset remains in possession thereof after the termination of the lease without a new lease being granted to him, that lease shall be deemed for the purposes of this Schedule to continue so long as he remains in possession as aforesaid; and

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- (b) where, on the termination of a lease of an asset, a new lease of that asset is granted to the lessee, the provisions of this Schedule shall have the effect as if the second lease were a continuation of the first lease;

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

- (a) capital expenditure (hereinafter called —qualifying plant expenditure) incurred on plant, machinery or fixtures;
- (b) capital expenditure (hereinafter called —qualifying building expenditure) incurred on the construction of buildings, structures or works of a permanent nature, other than expenditure which is included in sub-paragraphs (a) or (c) of this definition;
- (c) capital expenditure (hereinafter called —qualifying mining expenditure) incurred in connection with, or in preparation for, the working of a mine, oil well or other source of mineral deposits of a wasting nature (other than expenditure which is included in sub-paragraph (a) of this definition)-
- (i) on the acquisition of, or of rights in or over, the deposits or on the purchase of information relating to the existence and extent of the deposit;
 - (ii) on searching for or on discovering and testing deposits, or winning access thereto; or
 - (iii) on the construction of any work or building which is likely to be of little or no value when the source is no longer worked or, where the source is worked under a concession, which is likely to become valueless when the concession comes to an end to the individual working the source immediately before the concession comes to an end; or
- (d) capital expenditure (hereinafter called —qualifying plantation expenditure) incurred in connection with a plantation on the clearing of land for planting and on planting (other than replanting), and for the purposes of this definition where-
- (i) expenditure is incurred for the purpose of a trade or business by an individual about to carry on that trade or business; and
 - (ii) that expenditure is incurred in respect of an asset owned by that individual,

then, if that expenditure would have fallen to be treated as qualifying expenditure had it been incurred by that individual on the first day on which he carries on that trade or

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business, that expenditure shall be deemed to be qualifying expenditure incurred by him on that day;

“trade or business” means trade or business or that part of a trade or business the profits of which are assessable under this Act;

- (e) —capital expenditure^l that is, —qualifying research and development expenditure^l incurred-
- (i) on equipment and facilities, patents, licences, secret formulas or process; or
 - (ii) for information concerning industrial, commercial or scientific process, technical feasibility or products or process and purchase; or
 - (iii) on searching for and discovering and testing products or process for future market or use and such other similar costs which has brought into existence an asset;
- (f) capital expenditure, that is, qualifying agricultural expenditure incurred on plant in use in agricultural trades and business within the meaning of section 9 of the Companies Income Tax Act;
- [Cap. C21.]
- (g) capital expenditure, that is, qualifying public transportation motor vehicle expenditure, incurred on a fleet of buses of not less than three used for public transportation;
- (h) capital expenditure (hereinafter called —qualifying public transportation^l (intercity) new mass transit coach of 25 seats and above operated by a recognised private establishment.

2. Year of assessment

The provisions of this Schedule with respect to the making of allowances and charges shall have effect for the year of assessment commencing on the 1st January, 1993 and for each succeeding year of assessment and any references in this Schedule to a year of assessment shall not include any year commencing prior to the 1st January, 1993.

3. Provisions relating to mining expenditure

- (1) For the purposes of this Schedule, where-
- (a) qualifying mining expenditure has been incurred on the purchase of information relating to the existence and extent of the deposits or on searching for or on discovering and testing deposits or winning access thereto and the expenditure has

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been incurred for the purposes of a trade or business carried on by the individual incurring the expenditure, and such expenditure would have fallen to be treated as such qualifying mining expenditure if it had been incurred in a basis period;

- (b) the expenditure has not brought into existence an asset; and
- (c) the trade or business consists of the working of a mine, oil well or other source of mineral deposits of a wasting nature,

then such expenditure shall be deemed to have brought into existence an asset owned by the individual incurring the expenditure and in use for the purposes of the trade or business.

- (2) For the purpose of this Schedule, an asset in respect of which qualifying mining expenditure has been incurred by an individual for the purposes of a trade or business carried on by him and which has not been disposed of, shall be deemed not to cease to be used for the purposes of that trade or business so long as the individual continues to carry on that trade or business.
- (3) So much of a qualifying mining expenditure incurred on the acquisition of rights in or over mineral deposits and on the purchase of information relating to the existence and extent of the deposits as exceeds the total of the original cost of acquisition of those rights and of the cost of searching for, discovering and testing those deposits prior to the purchase of the information shall be left out of account for the purpose of this Schedule:

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

4. Owner and meaning of relevant interest

- (1) For the purposes of this Schedule, where an asset consists of a building, structure or works the owner thereof shall be taken to be the owner of the relevant interest in the building, structure or works.
- (2) Subject to the provisions of this paragraph, in this Schedule, the expression “**the relevant interest**” means, in relation to an expenditure incurred on the construction of a building, structure or works, the interest in that building, structure or works to which the person who incurred the expenditure was entitled when he incurred it.

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- (3) Where an individual incurs qualifying building expenditure or qualifying mining expenditure on the construction of a building, structure or works, he shall be entitled to two or more interests therein, and one of those interests is an interest which is reversionary on all the others, that interest shall be the relevant interest for the purposes of this Schedule.

5. Sale of buildings

- (1) Where capital expenditure has been incurred on the construction of a building, structure or works and thereafter the relevant interest therein is sold, the individual who buys that interest shall be deemed, for all the purposes of this Schedule except the granting of initial allowances, to have incurred, on the date when the purchase price became payable, capital expenditure on the construction thereof equal to the price paid by him for the interest or to the original costs of construction whichever is the less:

Provided that where the relevant interest is sold-

- (a) before the building, structure or works has been used, the foregoing provisions of this paragraph shall have effect with respect to the sale with the omission of the words —except the granting of initial allowances and the original cost of construction shall be taken to be the amount of the purchase price on such sale;
- (b) more than once before the building, structure or works is used, the provisions of paragraph (1) of this proviso shall have effect only in relation to the last of those sales.

6. Qualifying industrial building expenditure

For the purposes of this Schedule-

- (a) where but for this paragraph an individual is entitled to an annual allowance in respect of qualifying building expenditure in respect of an asset in use, for the purposes of a trade or business carried on by him, at the end of his basis period for any year of assessment commencing on or after the 1st January, 1993, then, if that asset is an industrial building or structure in use as such at the end of his basis period for any such year then, in lieu of such allowance and qualifying building expenditure, the qualifying expenditure in respect of that asset shall be taken to mean a qualifying industrial building expenditure for any allowance to be made to that individual, in respect of that qualifying expenditure, for that year; and
- (b) “**industrial building or structure**” means a building or structure in regular use-

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- (i) as a mill, factory, mechanical workshop, or other similar building, or as a structure used in connection with any such buildings;
- (ii) as a dock, port, wharf, pier, jetty or other similar building structure;
- (iii) for the operation of a railway for public use or of a water or electricity undertaking for the supply of water or electricity for public consumption; and
- (iv) for the running of a plantation or for the working of a mine or other source of mineral deposits of a wasting nature.

7. Initial allowances

- (1) Subject to the provisions of this Schedule, where in his basis period for a year of assessment the owner of an asset has incurred in respect thereof qualifying expenditure wholly and exclusively for the purposes of a trade or business carried on by him, there shall be made to that individual for the year of assessment in his basis period for which that asset was first used for the purposes of that trade or business an allowance (in this Schedule called —an initial allowance) at the appropriate rate *per centum*, set forth in the Table I to this Schedule, of the expenditure.
- [Table I.]

- (2) Where capital expenditure is incurred on the purchase of an asset and either the purchaser is a person over whom the seller has control, or some other person has control over both the purchaser and the seller, then, the amount of an initial allowance to be made in respect of the expenditure shall be such an amount as the relevant tax authority may determine to be just and reasonable having regard to all circumstances relating to the asset and control:

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

8. Annual allowance

- (1) Subject to the provisions of this Schedule, where in his basis period for a year of assessment the owner of an asset has incurred in respect thereof qualifying expenditure wholly, exclusively, necessarily and reasonably for the purposes of a trade or business carried on by him, whether or not an initial allowance may be made to him in respect of that qualifying expenditure, there shall be made to that individual for each year of assessment in his basis period for which that asset was used for the purposes of that trade or business an allowance (hereinafter called —an annual allowance) at the rate specified

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in respect thereof in Table II of this Schedule of the expenditure after the deduction of initial allowance where applicable:

[Table II.]

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

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

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

9. Asset to be in use at end of basis period

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

10. Balancing allowances

Subject to the provisions of this Schedule, where in his basis period for a year of assessment the owner of an asset, who has incurred in respect thereof qualifying expenditure wholly and exclusively for the purposes of a trade or business carried on by him, disposes of that asset, an allowance (hereinafter called —a balancing allowance) shall be made to that individual for that year of the excess of the residue of that expenditure, at the date the asset is disposed of, over the value of that asset at that date:

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

11. Balancing charges

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

Provided that a balancing charge shall only be made in respect of the asset if immediately prior to its disposal it was in use by the owner in the trade or business for the purposes of which the qualifying expenditure was incurred and shall not exceed the total of any allowances made under the provisions of this Schedule in respect of the asset and, in cases falling under paragraph 19 of this Schedule, of any allowance or deduction made under any income tax law in Nigeria in respect of the capital cost of the asset.

12. Residue

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

13. Meaning of “disposed of”

Subject to an express provision to the contrary, for the purpose of this Schedule-

- (a) a building, structure or works of a permanent nature is disposed of if-
 - (i) the relevant interest therein is sold; or
 - (ii) that interest, being an interest depending on the duration of a concession comes to an end on the coming to an end of that concession; or
 - (iii) that interest, being a leasehold interest, comes to an end otherwise than on the individual entitled thereto acquiring the interest which is reversionary thereon; or

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- (iv) the building, structure or works of a permanent nature is demolished or destroyed or without being demolished or destroyed, ceases altogether to be used for the purposes of a trade or business carried on by the owner thereof;
- (b) plant, machinery or fixture is disposed of if it is sold, discarded or ceases altogether to be used for the purposes of a trade or business carried on by the owner thereof;
- (c) an asset in respect of which qualifying mining expenditure is incurred is disposed of if it is sold or ceases to be used for the purposes of the trade or business of the individual incurring the expenditure either on that individual ceasing to carry on the trade or business or on that individual receiving insurance or compensation moneys, therefor.

14. Value of an asset

- (1) The value of an asset at the date of its disposal shall be the net proceeds of the sale thereof or of the relevant interest therein, or if it was disposed of without being sold, the amount which, in the opinion of the relevant tax authority, the asset or the relevant interest therein, as the case may be, would have fetched if sold in the open market at that date, less the amount of any expenses which the owner might reasonably be expected to incur if the asset were so sold.
- (2) For the purpose of this paragraph, if an asset is disposed of in such circumstances that insurance or compensation moneys are received by the owner thereof, the asset or the relevant interest therein, as the case may be, shall be treated as having been sold and as though the net proceeds of the insurance or compensation moneys were the net proceeds of the sale thereof.
- (3) So much of sub-paragraph (1) of this paragraph as relates to the circumstances for determining the value of an asset by reference to the disposal of the asset other than by way of sale shall have effect-
 - (a) in relation to an asset or the relevant interest therein disposed of, not being by way of bargain made at arm's length; or
 - (b) where the sale is between persons who are related to each other or between persons both of whom are controlled by some other person or one of whom has control over the other.

15. Apportionment

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

- (2) For the purposes of sub-paragraph (1) of this paragraph, all the assets which are purchased or disposed of in pursuance of one bargain shall be deemed to be purchased or disposed of together, notwithstanding that separate prices are or purport to be agreed for each of those assets or that there are or purport to be separate purchases or disposals of those assets.

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

16. Reference to asset to include part of an asset

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

17. Extension of meaning of “in use”

- (1) For the purposes of this Schedule, an asset shall be deemed to be in use during a period of temporary disuse,

- (2) For the purposes of paragraphs 7, 8 and 9 of this Schedule-
 - (a) an asset in respect of which qualifying expenditure has been incurred by the owner thereof for the purposes of a trade or business carried on by him shall be deemed to be in use, for the purposes of that trade or business, between the dates hereinafter mentioned where the relevant tax authority is of the opinion that the first use to which the asset will be put by the individual incurring the expenditure will be for the purposes of that trade or business;

 - (b) those dates shall be taken to be the dates on which the expenditure was incurred and the date on which the asset is in fact first put to use:

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

18. Exclusion of certain expenditure

Where an individual has incurred expenditure which is allowed to be deducted, in computing the gains or profits of his trade or business under section 20 of this Act, the expenditure shall not be treated as qualifying expenditure.

19. Application to lessor

(1) Where the owner of an asset other than a building-

(a) has incurred capital expenditure in respect thereof for the purposes of leasing that asset for use wholly and exclusively for the purposes of a trade or business carried on or about to be carried on by a person;

(b) leases the asset to such person; and

(c) during the whole or part of the term of the lease, the asset is used wholly and exclusively by such person in such trade or business,

the provisions of this Schedule shall apply, with such necessary modifications as the relevant tax authority may direct, as though such expenditure were incurred wholly and exclusively for the purposes of a trade or business carried on by the owner from the date when such expenditure was incurred and as though the owner were using the asset for the purposes of such last mentioned trade or business in the way in which and for the period or periods during which the asset is in fact used in the first-mentioned trade or business.

(2) The provisions of sub-paragraph (1) of this paragraph shall apply in the case of a building leased by its owner to any other person as though such leasing were a trade or business carried on by the owner and, if he incurred the capital expenditure in respect of that building after the 31st day of March, 1955, irrespective of the use thereof intended by the owner at the time he incurred such expenditure.

(3) For the purposes of this paragraph, in relation to the trade or business which an owner is to be treated as carrying on, his basis period for any year of assessment shall be taken to be the year immediately preceding that year of assessment.

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

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- (1) The following provisions of this paragraph shall apply where either or both of the following conditions apply with respect to an asset-
 - (a) the owner of the asset has incurred in respect thereof qualifying expenditure partly for the purpose of a trade or business carried on by him and partly for other purposes;
 - (b) the asset in respect of which qualifying expenditure has been incurred by the owner thereof is used partly for the purposes of a trade or business carried on by the owner and partly for other purposes.
- (2) An allowance and a charge which would be made if both expenditures were incurred wholly and exclusively for the purposes of the trade or business and the asset was used wholly and exclusively for the purposes of the trade or business, shall be computed in accordance with the provisions of this Schedule.
- (3) So much of the allowance and charge computed in accordance with the provisions of subparagraph (2) of this paragraph, shall be made as in the opinion of the relevant tax authority is just and reasonable having regard to all the circumstances and to the provisions of this Schedule.

21. Disposal without change of ownership

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

Provided that the owner shall be deemed to have bought the asset immediately after the disposal for a price equal to the residue of the qualifying expenditure at the date of the disposal, increased by the amount of any balancing charge or decreased by the amount of any balancing allowance made as a result of the disposal.

22. Application to professions and vocations

In relation to qualifying plant expenditure, the provisions of this Schedule shall apply as if references to a profession or vocation, the profits of which are assessable under this Act, and in relation to qualifying building expenditure, those provisions shall apply as if references to a profession, the profits of which are assessable under this Act.

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23. Partnerships

- (1) The provisions of this paragraph shall have effect for the purposes of this Schedule, in relation to a trade or business and the person or persons hereinafter mentioned carrying on the trade or business, throughout the period (hereinafter called —the relevant period) being-
- (a) a period during which the trade or business is carried on by persons in partnership and at least one of those persons, engaged in carrying on the trade or business as a partner in a partnership at any time, is so engaged immediately after that time, whether as a partner in the same partnership or as a partner in a different partnership carrying on the trade or business; or
 - (b) the aggregate of any of the following periods which are successive-
 - (i) a period, ending immediately prior to a person becoming a partner in a partnership carrying on the trade or business, during which the person was carrying on the trade or business on his own account;
 - (ii) a period ascertained under provision (a) of this sub-paragraph;
 - (iii) a period during which a person is carrying on the trade or business on his account, where that person was a partner in a partnership carrying on the trade or business immediately before that period.
- (2) The trade or business shall throughout the relevant period be deemed to be carried on by one and the same person (hereinafter called —the deemed person) and an allowance or a charge which would then fall to be made to or on the deemed person, under the provisions of this Schedule if the deemed person were an individual, shall be computed as though the deemed person had done all things which were done for the purposes of the trade or business by the person or persons actually carrying on that trade or business during the relevant period.
- (3) For the purpose of this paragraph, a basis period for a year of assessment shall be such period as the relevant tax authority shall determine by reference to the provisions of the definition of —basis period in paragraph 2 of this Schedule and to the provisions of sub-paragraph (2) of this paragraph:

Provided that, where at any time during the relevant period a person ceases to be engaged in carrying on the trade or business as a partner in a partnership or commences to be so engaged, the deemed person shall, for the purpose of determining basis periods under the

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provisions of this sub-paragraph and for that purpose only, be treated as having ceased to carry on the trade or business at that time and as having recommenced to carry on that trade or business immediately thereafter.

- (4) The amount of the computed allowance or charge in respect of an asset shall be allocated to the person, or apportioned amongst the persons, actually carrying on the trade or business, in the same manner as a capital loss, in the case of an allowance, or a capital gain, in the case of a charge, in respect of that asset would fall on or accrue to that person or those persons, if that loss or gain arose in the course of carrying on the trade or business and as a result of an event occurring-
- (a) in the case of an initial or annual allowance, at the end of the basis period by reference to which the allowance has been computed; and
- (b) in the case of a balancing allowance or charge, at the date of the disposal of the asset.
- (5) An amount so allocated to or apportioned to an individual in respect of a computed allowance or charge shall be treated as an allowance or charge for the purposes of the provisions of this Schedule relating to deductions from and additions to the remainder of assessable income and shall be made to or on him for the year of assessment for which the amount of the allowance or charge has been so computed:

Provided that, where an allowance or a charge falls to be recomputed, as a result of the application of the proviso to sub-paragraph (3) of this paragraph, all such additional assessments or repayments of tax shall be made as may be necessary to give effect to the provisions of this paragraph.

- (6) For the purposes of the provisions of this paragraph, an asset is not disposed of within the meaning of paragraph 13 of this Schedule if the asset is used for the purpose of the trade or business during the relevant period and at least one of the persons actually engaged in carrying on the trade or business has an interest in the asset, or in the relevant interest therein, during the relevant period.
- (7) In the application of this paragraph with any of the provisions of the other paragraphs of this Schedule, those provisions shall be applied with any modifications which the relevant tax authority may consider necessary in order to give effect to the principles and provisions of this paragraph, and the relevant tax authority may, from time to time, prescribe rules embodying those modifications.

24. Meaning of “allowances made”

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

25. Claims for allowances

No allowance shall be made to an individual for a year of assessment under the provisions of this Schedule unless claimed by him for that year or where the relevant tax authority is of the opinion that it would be reasonable and just so to do.

26. Election in double taxation cases

- (1) Where an individual makes a claim to an initial or annual allowance under this Schedule in connection with a trade or business, if the tax in respect of the profits of the trade or business is the subject of an arrangement, having effect by virtue of section 38 of this Act, between Nigeria and any other territory, for relief from double taxation, he may elect, at the time of making the claim or within such reasonable time thereafter as the relevant tax authority may allow, that allowance shall be calculated at a lesser rate than that provided for in paragraph 7 or 8 of this Schedule and in making the election he shall specify the amount of the lesser rate.
- (2) Where an election has been made under this paragraph, the amount of the lesser rate shall be taken to be the appropriate rate in relation to that allowance for all the purposes of this Schedule.

27. Manner of making allowances and charges

- (1) The amount of a charge to be made on an individual, under the provisions of this Schedule shall be made on him by making an addition to his assessable income for the year of assessment for which the charge falls to be made under the provisions of this Schedule:

Provided that where the charge falls to be made on an individual for a year of assessment, whenever necessary by reason of the assessment on that individual having become final and conclusive for that year or for other sufficient reason, the relevant tax authority may make an additional assessment on the individual in respect of the amount of the charge.

- (2) Subject to the provisions of this paragraph, the amount of an allowance to be made to an individual under the provisions of this Schedule shall be made to him by making a deduction from the remainder of his assessable income for the year of assessment for which the allowance falls to be made under the provisions of this Schedule.

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- (3) For the purposes of this paragraph the remainder of the assessable income of an individual for a year of assessment shall be ascertained by first giving full effect to the provisions of sub-paragraph (1) of this paragraph and to the provisions of section 36 of this Act relating to the deduction of the amount of a loss.
- (4) Where full effect cannot be given to a deduction to be made under sub-paragraph (2) of this paragraph for a year of assessment owing to there being no remainder of assessable income for that year, or owing to the remainder for that year being less than the deduction, the deduction or part of the deduction to which effect has not been given, as the case may be, shall, for the purpose of ascertaining total income (of the individual entitled to the deduction) under section 36 of this Act for the following year, be deemed to be a deduction for that year, in accordance with the provisions of sub-paragraph (2) of this paragraph, and so on for succeeding years.
- (5) Where an individual is entitled to a deduction under sub-paragraph (4) of this paragraph, or to a deduction in respect of a balancing allowance, in respect of an asset used in a trade or business carried on by him, for a year of assessment in which that trade or business permanently ceases to be carried on by him and full effect cannot be given to the deduction for that year owing-
- (1) to there being no remainder of assessable income for that year; or
- (2) to the remainder of his assessable income for that year being less than the deduction,
- that deduction or the part to which effect has not been given, as the case may be, may, on a claim being made by the individual, be given by way of a deduction from the remainder of his assessable income for the preceding year of assessment, and so on for other preceding years, so, however, that no such deduction shall be given by virtue of this sub-paragraph for any year earlier than the fifth year before the first-mentioned year of assessment:
- Provided that where a relief is given under this sub-paragraph in respect of the deduction, the provisions of sub-paragraph (4) of this paragraph shall cease to have effect in respect of that deduction for any year of assessment subsequent to the year of assessment in which such trade or business ceases.
- (6) Where a deduction falls to be given under the provisions of sub-paragraph (5) of this paragraph for any preceding year of assessment, whenever necessary, by reason of any assessment for a year having become final and conclusive, or for other sufficient reason, the relevant tax authority may, with respect to the year, make such repayment or set-off of the tax, or of any part of such tax, paid or charged for the year, as may be appropriate, in lieu of making the deduction.

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(7) In giving effect to the provisions of sub-paragraph (2) of this paragraph, the amount of capital allowance to be deducted from assessable profits in any year of assessment shall not exceed $66 \frac{2}{3}$ % of such assessable profits of an individual, but any individual in the agro-allied industry or which is engaged in the trade or business of manufacturing shall not be affected by the restriction under this sub-paragraph.

(8) For the purposes of this paragraph-

“an individual in the agro-allied industry” is a person who-

- (1) establishes or manages a plantation for the production of rubber, oil palm, cocoa, coffee, tea and similar crops;
- (2) cultivates or produces cereal crops, tubers, fruits of all kind, cotton, beans, groundnuts, sheanuts, beniseed, vegetables, pineapples, bananas and plantains;
- (3) establishes or manages animal husbandry, that is poultry, piggery, cattle rearing and the like and fish farming.

TABLES

TABLE I
[Paragraph 7.]

Initial allowance

	<i>Rate per centum</i>
Qualifying Expenditure in respect of-	
Qualifying Building Expenditure.....	5
Qualifying Industrial Building Expenditure.....	15
Qualifying Mining Expenditure.....	20
Qualifying Plant Expenditure (excluding Furniture and Fittings).....	20
Qualifying Plant Expenditure (Manufacturing, Construction and Agricultural Production).....	25
Qualifying Furniture and Fittings Expenditure.....	15

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Qualifying Motor Vehicle Expenditure.....	25
Qualifying Motor Vehicle (Public Transportation Expenditure with at least 3 buses).....	30
Qualifying Plantation Equipment Expenditure.....	20
Qualifying Housing Estate Expenditure.....	20
Qualifying Ranching and Plantation Expenditure.....	30
Qualifying Research and Development Expenditure.....	25

TABLE II
[Paragraph 8.]

Annual allowance

	<i>Rate per centum</i>
Qualifying Expenditure in respect of-	
Qualifying Building Expenditure.....	10
Qualifying Industrial Building Expenditure.....	10
Qualifying Mining Expenditure.....	10
Qualifying Plant Expenditure (excluding furniture and fittings).....	10
Qualifying Furniture and Fittings Expenditure.....	10
Qualifying Research and Development Expenditure.....	12 ½
Qualifying Housing Estate Expenditure.....	10
Qualifying Ranching and Plantation Expenditure.....	15
Qualifying Motor Vehicle Expenditure.....	20
Qualifying Plantation Equipment Expenditure.....	33 1/3

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SIXTH SCHEDULE

[Section 37.]

INCOME TAX TABLE

[2011 No. 20.]

- (1) A consolidated relief allowance shall be granted on income at a flat rate of N200,000 plus 20 *per cent* of gross income.
- (2) *Tax Exempt*: The following deductions are tax exempt-
 - (a) National Housing Fund Contribution
 - (b) National Health Insurance Scheme
 - (c) Life Assurance Premium
 - (d) National Pension Scheme
 - (e) Gratuities
- (3) After the relief allowance and exemptions had been granted in accordance with paragraphs 1 and 2 of this Schedule, the balance of income shall be taxed as specified in the following tax table:

Tax Income Rates

Graduated Tax rates with consolidated allowance of N200,000 + 20 *per cent* of Gross Income, subject to a minimum tax of 1 *per cent* of Gross Income whichever is higher.

1. First N300,000 @ 7 *per cent*
2. Next N300,000 @ 11 *per cent*
3. Next N500,000 @ 15 *per cent*
4. Next N500,000 @ 19 *per cent*
5. Next N1,600,000 @ 21 *per cent*
6. Above N3, 200,000 @ 24 *per cent*

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SEVENTH SCHEDULE [Section 38 (5).]

Double taxation arrangements

The double taxation arrangements referred to in section 38 (5) of this Act are contained in the Double Taxation Relief between the Federal Republic of Nigeria and United Kingdom of Great Britain and Northern Ireland Order 1988 published as a subsidiary legislation under the Companies Income Tax Act and any other such arrangements between the Federal Republic of Nigeria and any other country published as subsidiary legislation.

The Order was made under powers conferred by the Companies Income Tax Act, this Act and the Petroleum Profits Tax Act.

[Cap. C21. Cap. P13]

EIGHTH SCHEDULE [Section 53 (2).]

Warrant and authority to enter premises

To.....

Name of taxpayer.....

Incorporation or Identification No.....

Place of business taxpayer.....

The Board of Internal Revenue in exercise of the powers vested in it by section 53 of the Personal Income Tax Act hereby authorises you to enter the premises, office, place of management or residence of the above-named taxpayer, office of the agent, factory or representative of the taxpayer suspected by the Board of fraud, willful default, etc., in connection with the tax imposed under the aforesaid Act; and whose premises, office, place of management or residence of his principal officer, office of the agent, factor or representative is at..... and for the carrying out of your assignment, the said Board further authorises that you with the aid (if necessary) of your assistants and calling to your assistance a police officer, which assistance the police officer is by law required to give, search and remove (if necessary) such records, books and documents of the named taxpayer wherever they may be found either in possession of any employee of the taxpayer or any other person on his behalf.

And for the purpose of your entry into the aforementioned premises you are hereby authorised if

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necessary, with such assistance as aforesaid, to break open any building or place in the daytime.

Signed for and on behalf of the Board of Internal Revenue of

State Tax Authority at.....this.....day of.....20.....

Signature.....

*Chairman/Director
Board of Internal Revenue*

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CHAPTER P13

PETROLEUM PROFITS TAX ACT

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CHAPTER P13

PETROLEUM PROFITS TAX ACT

An Act to impose a tax upon profits from the winning of Petroleum in Nigeria, to provide for the assessment and collection thereof and for purpose connected therewith.

[1959 No. 15. 1991 No. 21. 1996 No. 30. 1996 No.31. 1996 No. 32. 1998 No. 18. 1999 No. 30.]

[Commencement.]

[1st January 1958]

PART I

Preliminary

1. Short title

This Act may be cited as the Petroleum Profits Tax Act.

2. Interpretation

In this Act, unless the context otherwise requires-

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“accounting period” in relation to a company engaged in petroleum operations, means-

- (a) a period of one year commencing on 1 January and ending on 31 December of the same year; or
- (b) any shorter period commencing on the day the company first makes a sale or bulk disposal of chargeable oil under a programme of continuous production and sales, domestic, export or both, and ending on 31 December of the same year; or
- (c) any period of less than a year being a period commencing on 1 January of any year and ending on the date in the same year when the company ceases to be engaged in petroleum operations,

and in the event of any dispute with respect to the date of the first sale of chargeable oil above or with respect to the date on which the company ceases to be engaged in petroleum operations, the Minister of Petroleum Resources shall determine the same and no appeal shall lie therefrom;

“adjusted profit” means adjusted profit for the purpose of section 9 of this Act;

“assessable profits” means assessable profits for the purpose of section 9 of this Act;

“assessable tax” means assessable tax ascertained under section 21 of this Act;

“Board” means the Federal Board of Inland Revenue established and constituted in accordance with section 1 of the Companies Income Tax Act;
[Cap. C21]

“casinghead petroleum spirit” means any liquid hydrocarbons obtained in Nigeria from natural gas by separation or by any chemical or physical process but before the same has been refined or otherwise treated;

“chargeable natural gas” in relation to a company engaged in petroleum operations means natural gas actually delivered by such company to the Nigerian National Petroleum Corporation under a Gas Sales Contract but does not include natural gas taken by or on behalf of the Government of the Federation in pursuance of this Act;

“chargeable profits” means chargeable profits for the purpose of section 9 of this Act;

“chargeable tax” means chargeable tax ascertained under section 22 of this Act and imposed under this Act;

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“company” means anybody corporate incorporated under any law in force in Nigeria or elsewhere;

“crude oil” means any oil (other than oil extracted by destructive distillation from coal, bituminous shales or other stratified deposits) won in Nigeria either in its natural state or after the extraction of water, sand or other foreign substance therefrom but before any such oil has been refined or otherwise treated;

“disposal” and **“disposed of”**, in relation to chargeable oil owned by a company engaged in petroleum operations, mean or connote respectively-

(a) delivery, without sale, of chargeable oil to; and

(b) chargeable oil delivered, without sale, to a refinery or to an adjacent storage tank for refining by the company;

“G-Factor” means gas production cost adjustment factor;

“High Court” means a High Court in Nigeria within whose jurisdiction-

(a) in relation to any offence under this Act, the place is situated where such offence is, for the purposes of this Act, deemed to have occurred;

(b) in relation to any suit for tax or appeal against an assessment of tax, the place is situated where the return under section 33 of this Act was submitted or where the assessment of the tax was made as the case may be;

(c) in relation to any direction under section 32 (2) of this Act, the place is situated from which the direction was issued; and

(d) in relation to any claim or other matter which is subject to appeal in like manner as an assessment, or to which the provisions of section 38 of this Act apply with any modifications, the place is situated from which the claim or other matter was refused by the Board;

“intangible drilling costs” means all expenditure for labour, fuel, repairs, maintenance, hauling, and supplies and materials (not being supplies and materials for well cement, casing or other well fixtures) which are for or incidental to drilling, cleaning, deepening or completing wells or the preparation thereof incurred in respect of-

(a) determination of well locations geological studies and topographical and geographical surveys preparatory to drilling;

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(b) drilling, shooting, testing and cleaning wells;

(c) cleaning, draining and levelling land, road building and the laying of foundations;

(d) erection of rigs and tankage assembly and installation of pipelines and other plant and equipment required in the preparation or drilling of wells producing petroleum;

“liquified natural gas” means natural gas in its liquid state at approximately atmospheric pressure;

“loss” means a loss ascertained in like manner as an adjusted profit;

“Minister” means the Minister charged with responsibility for matters relating to taxes on incomes and profits;

“MMcf” means one million cubic feet;

“natural gas” means gas obtained in Nigeria from boreholes and wells and consisting primarily of hydrocarbons;

“Nigeria” includes the submarine areas beneath the territorial waters of Nigeria and submarine areas beneath any other waters which are or at any time shall in respect or mines and minerals become subject to the legislative competence of the National Assembly;

“non-productive rents” means and includes the amount of any rent as to which there is provision for its deduction from the amount of any royalty under a petroleum prospecting license or oil mining lease to the extent that such rent is not so deducted;

“oil mining lease” means a lease granted to a company, under the Minerals and Mining Act, for the purpose of winning petroleum or any assignment of such lease;
[Cap. MI2.]

“oil prospecting licence” means a licence granted to a company, under the Minerals and Mining Act, for the purpose of winning petroleum, or any assignment of such licence;

“person” includes a company and any unincorporated body of persons;

“petroleum” means any mineral oil or relative hydrocarbon and natural gas existing in its natural condition in Nigeria but does not include liquefied natural gas, coal, bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation;

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

“profits” means profits for the purpose of section 9 of this Act;

“resident in Nigeria” in relation to a company, means a company the control and management of the business of which are exercised in Nigeria;

“royalties” means and includes-

- (a) the amount of any rent as to which there is provision for its deduction from the amount of any royalties under an oil prospecting licence or oil mining lease to the extent that such rent is so deducted; and
- (b) the amount of any royalties payable under any such licence or lease less any such rent deducted from those royalties

“tax” means chargeable tax.

PART II

Administration

3. Powers and duties of the Board

(1) Subject to the provisions of this Act-

- (a) the due administration of this Act and the tax shall be under the care and management of the Board which may do all such acts 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 Minister;
- (b) whenever the Board shall consider it necessary with respect to any tax due, the Board may acquire, hold and dispose of any property taken as security for or in satisfaction of any tax or any judgment debt due in respect of any tax and shall account for any such property and the proceeds of sale thereof in a manner to be prescribed as aforesaid;

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- (c) the Board may sue and be sued in its official name and, subject to any express provisions under any subsidiary legislation or otherwise, the Board may authorise any person to accept service of any document to be sent, served upon or delivered to the Board and to represent the Board in any proceedings:

- (d) subject to such conditions as the Board may specify the Board may by notice in the Federal Gazette direct that any information, return or documents required to be supplied to such other person whether within or outside Nigeria as the Board may direct;

- (e) the Board may by notice in the Federal Gazette or in writing authorise any person within or without Nigeria to-
 - (i) perform or exercise, on behalf of the Board. any power or duty conferred upon the Board other than the powers or duties specified in the First Schedule; and
[First Schedule.]

 - (ii) receive any notice or other document to be given. delivered or served upon the Board under or in consequence of this Act or any subsidiary legislation made thereunder;

- (f) in the exercise of the powers and duties conferred upon the Board. the Board shall be subject to the authority, direction, and control of the Minister and any written direction, order or instruction given by him after consultation with the chairman of the Board shall be carried out by the Board:

Provided that the Minister shall not give any direction, order or instruction in respect of any particular company which would have the effect of requiring the Board to raise an additional assessment upon such company or to increase or decrease any assessment made or to be made or any penalty imposed or to be imposed upon or any relief given or to be given to or to defer the collection of any tax, penalty or judgment debt due by such company, or which would have the effect of altering the normal course of any proceedings, whether civil or criminal, relating either to the recovery of any tax or penalty or any offence relating to tax;

- (g) every claim, objection, appeal, representation or the like made by any person under any provision of this Act or of any subsidiary legislation made thereunder shall be made in accordance with such Act and legislation; and

- (h) in any claim or matter or upon any objection or appeal under this Act, any act, matter or thing done by or with the authority of the Board, in pursuance of any provisions of this Act shall not be subject to challenge on the ground that such act matter or thing

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was not or was not proved to be in accordance with any direction, order or instruction given by the Minister.

4. Signification and execution of powers, duties, etc.

- (1) Anything required to be done by the Board, in relation to the powers or duties specified in the First Schedule of this Act, may be signified under the hand of the chair man of the Board, or of an officer of the Federal Inland Revenue Department who has been authorised by the Board to signify from time to time, anything done or to be done by the Board in respect of such powers or duties.

[First Schedule.]

- (2) Any authorisation given by the Board under or by virtue of this Act shall be signified under the hand of the chairman of the Board unless such authority is notified in the Federal Gazette.
- (3) Subject to subsection (1) of this section, any notice or other document to be given under this Act shall be valid if-
- (a) it is signed by the chairman of the Board or by any person authorised by him; or
 - (b) such notice or document is printed and the official name of the Board is duly printed or stamped thereon.
- (4) Every notice, authorisation or other document purporting to be a notice, authorisation or other document duly given and signified, notified or bearing the official name of the Board in accordance with the provisions of this section, shall be deemed to be so given and signified, notified or otherwise without further proof, until the contrary is shown.

5. Official secrecy, etc.

- (1) Every person having any official duty or being employed in the administration of this Act shall regard and deal with all documents, information, returns, assessment lists and copies of such lists relating to the income, chargeable profits or items thereof of any company, as secret and confidential.
- (2) Every person having possession of or control over any documents, information, returns or assessment lists or copies of such lists relating to tax or petroleum operations or the amount and value of chargeable oil won by any company, who at any time communicates or attempts to communicate such information or anything contained in such documents, returns, lists, or copies to any person-
- (a) other than a person to whom he is authorised by the Minister to communicate it; or

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- (b) otherwise than for the purpose of this Act or of any Act or law, relating to a tax upon income, in force in any part of Nigeria,
 - (c) shall be guilty of an offence.
- (3) No person appointed under or employed in carrying out the provisions of this Act shall be required to produce in any court, any return, document or assessment, or to divulge or communicate to any court any matter or thing coming under his notice in the performance of his duties under this Act except as may be necessary for the purpose of carrying into effect the provisions of this Act, or in order to institute a prosecution, or in the course of a prosecution for any offence committed in relation to tax.
- (4) Where under any law in force in any territory outside Nigeria provision is made for the allowance of relief from income tax and similar taxes in respect of the payment of income tax and similar taxes in Nigeria or for the exemption of income from income tax and similar taxes in respect of income subject to income tax and similar taxes in Nigeria, the obligation as to secrecy imposed by this section shall not prevent the disclosure to the authorised officers of the Government in that territory of such facts as may be necessary to enable the proper relief or exemption to be given in cases where relief or exemption is claimed from income tax and similar taxes in Nigeria or from income tax and similar taxes in that territory, For the purposes of this subsection, tax (as defined in this Act) shall be regarded as a tax similar to an income tax.
- (5) Notwithstanding anything contained in this section, the Board may permit the Auditor-General for the Federation or any officer duly authorised in that behalf to have such access to any records or documents as may be necessary for the performance of his official duties; and the Auditor-General for the Federation or any such officer shall be deemed to be a person employed in carrying out the provisions of this Act for the purpose of this section.

6. Rules and forms

- (1) The Minister may, from time to time, make rules generally for the carrying out of the provisions of this Act.
- (2) The Board may, from time to time, specify the form of returns, claims, statements and notices under this Act.

7. Service and signature of notices

- (1) Except where it is provided by this Act that service shall be effected either personally or by registered post the provisions of section 26 of the Interpretation Act shall apply to the

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service of a notice, if such notice is addressed in accordance with the provisions of subsection (3) of this section.

[Cap. 123.]

- (2) Where a notice is sent by registered post it shall be deemed to have been served on the day succeeding the day on which the addressee of the registered letter containing the notice would have been informed in the ordinary course of events that such notice is addressed in accordance with the provisions of subsection (3) of this section:

Provided that a notice shall not be deemed to have been served under this subsection if the addressee proves that no notification, informing him of the fact that the registered letter was awaiting him at a post office, was left at the address given on such registered letter.

- (3) A notice to be served in accordance with subsection (1) or (2) of this section shall be addressed-

(a) in the case of a company incorporated in Nigeria to the registered office of the Company; and

(b) in the case of a company incorporated outside Nigeria, either to the individual authorised to accept service of process under the Companies and Allied Matters Act at the address filed with the Registrar-General, or to the registered office of the company wherever it may be situated.

[Cap. C20.]

- (4) Any notice to be given, sent or posted under this Act may be served by being left at the appropriate office or address determined under subsection (3) of this section unless such address is a registered post office box number.

PART III

Imposition of tax and ascertainment of profits

8. Charge of tax

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

9. Ascertainment of profits, adjusted profit, assessable, profits and chargeable profits

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- (1) Subject to any express provisions of this Act, in relation to any accounting period, the profits of that period of a company shall be taken to be the aggregate of-
 - (a) the proceeds of sale of all chargeable oil sold by the company in that period;
 - (b) the value of all chargeable oil disposed of by the company in that period; and
 - (c) all income of the company of that period incidental to and arising from any one or more of its petroleum operations.
- (2) For the purposes of subsection (1) (b) of this section, the value of any chargeable oil so disposed of shall be taken to be the aggregate of-
 - (a) the value of that oil as determined, for the purpose of royalty, in accordance with the provisions of any enactment applicable thereto and any financial agreement or arrangement between the Federal Government of Nigeria and the company;
 - (b) any cost of extraction of that oil deducted in determining its value as referred to in paragraph (a) of this subsection; and
 - (c) any cost incurred by the company in transportation and storage of that oil between the field of production and the place of its disposal.
- (3) The adjusted profit of an accounting period shall be the profits of that period after the deductions allowed by subsection (1) of section 10 of this Act and any adjustments to be made in accordance with the provisions of section 14 of this Act.
- (4) The assessable profit of an accounting period shall be the adjusted profit of that period after any deduction allowed by section 20 of this Act.
- (5) The chargeable profits of an accounting period shall be the assessable profits of that period after the deduction allowed by section 20 of this Act.

10. Deductions

- (1) In computing the adjusted profit of any company of any accounting period from its petroleum operations, there shall be deducted all outgoings and expenses wholly, exclusively and necessarily incurred, whether within or without Nigeria, during that period by such company for the purpose of those operations, including but without otherwise expanding or limiting the generality of the foregoing-

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- (a) rents incurred by the company for that period in respect of land or buildings occupied under an oil prospecting licence or an oil mining lease for disturbance of surface rights or for any other like disturbance;

[1996 No. 31.]

- (b) all non-productive rents, the liability for which was incurred by the company during that period;

[1999 No. 30.]

- (c) all royalties, the liability for which was incurred by the company during that period in respect of natural gas sold and actually delivered to the Nigerian National Petroleum Corporation, or sold to any other buyer or customer or disposed of in any other commercial manner;

[1996 No. 31.]

- (d) all royalties the liability for which was incurred by the company during that period in respect of crude oil or of casinghead petroleum spirit won in Nigeria:

- (e) all sums the liability for which was incurred by the company to the Federal Government of Nigeria during that period by way of customs or excise duty or other like charges levied in respect of machineries, equipment and goods used in the company's petroleum operation; and

[1999 No. 30.]

- (f) sums incurred by way of interest upon any money borrowed by such company, where the Board is satisfied that the interest was payable on capital employed in carrying on its petroleum operations;

- (g) all sums incurred by way of interest on any inter-company loans obtained under terms prevailing in the open market, that is the London Inter-Bank Offer Rate, by companies that engage in crude oil production operations in the Nigerian oil industry;

[1999 No. 30.]

- (h) any expense incurred for repair of premises, plant machinery, or fixtures employed for the purpose of carrying on petroleum operations or for the renewal, repair or alteration of any implement, utensils or articles so employed;

- (i) debts directly incurred to the company and proved to the satisfaction of the Board to have become bad or doubtful in the accounting period for which the adjusted profits is being ascertained notwithstanding that such bad or doubtful debts were due and payable prior to the commencement of that period:

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Provided that-

- (i) the deduction to be made in respect of a doubtful debt shall not exceed that portion of the debt which is proved to have become doubtful during that accounting period, nor in respect of any particular debt shall it include any amount deducted under the provisions of this paragraph in determining the adjusted profit of a previous accounting period;
- (ii) all sums recovered by the company during that accounting period on account of amounts previously deducted in respect of bad or doubtful debts shall, for the purposes of subsection (1) (c) of section 9 of this Act, be treated as income of that company of that period; and
- (iii) it is proved to the satisfaction of the Board that the debts in respect of which a deduction is claimed were either-
 - (a) included as a profit from the carrying on of petroleum operations in the accounting period in which they were incurred; or
 - (b) advances made in the normal course of carrying on petroleum operations not being advances on account of any item falling within the provisions of section 13 of this Act;
- (j) any other expenditure, including tangible drilling costs directly incurred in connection with drilling and appraisal of a development well but excluding an expenditure which is qualifying expenditure for the purpose of the Second Schedule to this Act, and any expense or deduction in respect of a liability incurred which is deductible under any other provision of this section-

[1996 No. 31.]

 - (i) any expenditure (tangible or intangible) directly incurred in connection with the drilling of an exploration well and the next two appraisal wells in the same field whether the wells are productive or not-
 - (ii) where a deduction may be given under this section in respect of any such expenditure that expenditure shall not be treated as qualifying drilling expenditure for the purpose of the Second Schedule;

[Second Schedule.]
- (k) any contributions to a pension, provident or other society, scheme or fund which may be approved, with or without retrospective effect, by the Board subject to such general conditions or particular conditions in the case of any such society, scheme or fund as the Board may prescribe:

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Provided that any sum received by or the value of any benefit obtained by such company, from any approved pension, provident or other society, scheme or fund, in any accounting period of that company shall, for the purposes of subsection (1) (c) of section 9 of this Act, be treated as income of that company of that accounting period;

- (l) all sums, the liability of which was incurred by the company during that period to the Federal Government, or to any State or Local Government Council in Nigeria by way of duty, customs and excise duties, stamp duties, education tax, tax (other than the tax imposed by this Act) or any other rate, fee or other like charges;

[1996 No.3]

(m) such other deductions as may be prescribed by any rule made under this Act.

- (2) Where a deduction has been allowed to a company under this section in respect of any liability of the company and such liability or any part thereof is waived or released the amount of the deduction or the part thereof corresponding to such part of the liability shall for the purposes of subsection (1) (c) of section 9 of this Act, be treated as income of the company of its accounting period in which such waiver or release was made or given.

11. Incentives for utilisation of associated gas

- (1) The following incentives shall apply to a company engaged in the utilisation of associated gas, that is-

[1998 No.19.]

- (a) investment required to separate crude oil and gas from the reservoir into usable products shall be considered as part of the oil field development;
- (b) capital investment on facilities equipment to deliver associated gas in usable form at utilisation or designated custody transfer points shall be treated for tax purposes, as part of the capital investment for oil development;
- (c) capital allowances, operating expenses and basis of tax assessment shall be subject to the provisions of this Act and the tax incentives under the revised memorandum of understanding.

- (2) The incentives specified under subsection (1) of this section shall be subject to the following conditions, that is-

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- (a) condensates extracted and re-injected into the crude oil stream shall be treated as oil but those not re-injected shall be treated under existing tax arrangement;
- (b) the company shall pay the minimum amount charged by the Minister of Petroleum Resources for any gas flared by the company;
- (c) the company shall, where practicable, keep the expenses incurred in the utilisation of associated gas separate from those incurred on crude oil operation and only expenses not able to be separated shall be allowable against the crude oil income of the company under this Act;
- (d) expenses identified as incurred exclusively in the utilization of associated gas shall be regarded as gas expenses and be allowable against the gas income and profit to be taxed under the Companies Income Tax Act;
[Cap. C21.]
- (e) only companies which invest in natural gas liquid extraction facilities to supply gas in usable form to downstream projects, including aluminium smelter and methanol, Methyl Tertiary Butyl Ether and other associated gas utilisation projects shall benefit from the incentives;
- (f) all capital investments relating to the gas-to-liquids facilities shall be treated as chargeable capital allowance and recovered against the crude oil income:
[1999 No. 30.]
- (g) gas transferred from the natural gas liquid facility to the gas-to-liquid facilities shall be at zero per cent tax and zero per cent royalty.
[1999 No. 30.]

12. Application of incentives to utilisation of non-associated gas

All incentives granted in respect of investments in associated gas shall be applicable to investments in non-associated gas.

[1999 No. 30.]

13. Deductions not allowed

- (1) Subject to the express provisions of this Act, for the purpose of ascertaining the adjusted profit of any company of any accounting period from its petroleum operations, no deduction shall be allowed in respect of-

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- (a) disbursements or expenses not been money wholly and exclusively laid out or expended, or any liability not being a liability wholly or exclusively incurred for the purpose of those operations;
 - (b) any capital withdrawn or any sum employed or intended to be employed as capital;
 - (c) any capital employed in improvements as distinct from repairs;
 - (d) any sum recoverable under on insurance or contract of indemnity;
 - (e) rent of or cost of repairs to any premises or port of premises not incurred for the purposes of those operations;
 - (f) any amounts incurred in respect of any income tax, profits tax or other similar tax whether charged within Nigeria or elsewhere;
 - (g) the depreciation of any premises, buildings, structures, works of a permanent nature, plant, machinery or fixtures;
 - (h) any payment to any provident, savings widows' and orphans' or other society scheme or fund, except such payments as are allowed under subsection (1) (g) of section 10 of this Act;
 - (i) any customs duty on goods (including articles or any other thing) imported by the company-
[1996 No.31.]
 - (i) for resale or for personal consumption of employees of the company; or
 - (ii) where goods of the same quality to those so imported are produced in Nigeria and are available, at the time the imported goods were ordered by the company for sale to the public at the prices less or equivalent to the cost to the company of the imported goods;
 - (j) any expenditure for the purchase of information relating to the existence and extent of petroleum deposits.
- (2) Notwithstanding the provisions of subsection (1) (d) of section 10 of this Act, in computing the adjusted profit of any company of any accounting period no deduction shall be allowed in respect of sums incurred by way of interest during that period upon any borrowed money where such money was borrowed from a second company if during that period-

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- (a) either company has an interest in the other company: or
 - (b) both have interests in another company either directly or through other companies; or
 - (c) both are subsidiaries of another company.
- (3) For the purposes of subsection (2) of this section-
- (a) a company shall be deemed to be a subsidiary of another company if and so long as an interest in it is held by that other company either directly or through any other company or companies;
 - (b) an interest means a beneficial interest in issued share capital (by whatever name called); and
 - (c) the Board shall disregard any such last-mentioned interest which in their opinion is insignificant or remote, or where in their opinion that interest that arises from a normal market investment and the companies concerned have no other dealings or connection between each other.

14. Exclusion of certain profits, etc.

Where a company engaged in petroleum operations is engaged in the transportation of chargeable oil by ocean going oil-tankers operated by or on behalf of the company from Nigeria to another territory then such adjustments shall be made in computing an adjusted profit or a loss as shall have the effect of excluding therefrom any profit or loss attributable to such transportation.

15. Artificial transactions, etc.

- (1) Where the Board is of opinion that any disposition is not in fact given effect to or that any transaction which reduces or would reduce the amount of any tax payable is artificial or fictitious, the Board may disregard any such disposition or direct that such adjustments shall be made as respects liability to tax as the Board considers appropriate so as to counteract the reduction of liability to tax effected, or reduction which would otherwise be effected, by the transaction and the companies concerned shall be assessable accordingly. In this subsection, the expression “**disposition**” includes any trust, grant, covenant, agreement or arrangement.
- (2) For the purpose of this section, the following transactions shall be deemed to be artificial or fictitious, namely, transactions between persons one of whom has control over the other or between persons both of whom are controlled by some other person which, in the opinion of the Board, have not been made on the terms which might fairly have been

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expected to have been made by independent person engaged in the same or similar activities dealing with one another at arm's length.

- (3) Nothing in this section shall prevent the decision of the Board in the exercise of any discretion given to the Board by this section from being questioned in an appeal against an assessment in accordance with Part VIII of this Act and on the hearing of any such appeal the appropriate Appeal Commissioners or the Court may confirm or vary any such decision including any directions made under this section.

16. Assessable profits and losses

- (1) Subject to the provisions of this section, the assessable profits of any company for any accounting period shall be the amount of the adjusted profit of that period after the deduction of-
- (a) the amount of any loss incurred by that company during any previous accounting period; and
 - (b) in a case to which section 18 of this Act applies, the amount of any loss which under that section is deemed to be a loss incurred by that company in its trade or business during its first accounting period.
- (2) A deduction under subsection (1) of this section shall be made so far as possible from the amount, if any, of the adjusted profit of the first accounting period after that in which the loss was incurred, and, so far as it cannot be so made, then from the amount of the adjusted profit of the next succeeding accounting period and so on.
- (3) Within five months after the end of any accounting period of a company or within such further time as the Board may permit in writing in any instance, the company may elect in writing that a deduction or any part thereof to be made under this section shall be deferred to and be made in the succeeding accounting period, and may so elect from time to time in any succeeding accounting period.

17. Trade or business sold or transferred to a Nigerian company

- (1) Without prejudice to section 28 of this Act, where a trade or business of petroleum operations carried on in Nigeria by a company incorporated under any law in force in Nigeria is sold or transferred to a Nigerian company for the purposes of better organisation of that trade or business or the transfer of its management to Nigeria and any asset employed in that trade or business is so sold or transferred, then, if the Board is satisfied that one of those companies has control over the other or that both companies are controlled by some other person or are members of a reorganised group of companies the provisions set out in subsection (2) of this section shall have effect.

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- (2) In a case to which subsection (1) of this section applies, the Board may in its discretion-
- (a) if, on or before the date on which the trade or business is so sold or transferred, the first sale of or bulk disposal of chargeable oil by or on behalf of the company selling or transferring the trade or business has occurred, but the first sale of or bulk disposal of chargeable oil by or behalf of the Nigerian company acquiring that trade or business has not occurred-
 - (i) direct that the first accounting period of the Nigerian company shall be the period of twelve months commencing on the date on which the sale or transfer of the trade or business takes place, or commencing on such date within the calendar month in which the sale or transfer takes place as may be selected by the Nigerian company with the approval of the Board; and
 - (ii) for the purposes of subsection (2) (a) (i) of this section, an accounting period as respects the Nigerian company shall be a period of twelve months commencing on the date on which the sale or transfer of the trade or business to the Nigerian company takes place, or commencing on such date within the calendar month in which the sale or transfer takes place as may be selected by the Nigerian company with the approval of the Board and the definition of “**accounting period**” in section 2 of this Act shall be construed accordingly, but without prejudice to the continued application in respect of the Nigerian company of the provisions of paragraphs (b), (c) and (d) of that definition;
[Second Schedule.]
 - (b) direct that for the purposes of the Second Schedule the asset sold or transferred to the Nigerian company by the company selling or transferring the trade or business shall be deemed to have been sold for an amount equal to the residue of the qualifying expenditure on the asset on the day following the day on which the sale or transfer thereof occurred; and
 - (c) direct that the Nigerian company acquiring the asset so sold or transferred shall not be entitled to any initial allowance in respect of that asset, and shall be deemed to have received all allowances given to the company selling or transferring the trade or business in respect of the asset under the Second Schedule and any allowances deemed to have been received by that company under the provisions of this paragraph:

Provided that the Board in its discretion:

- (i) may require the company selling or transferring the trade or business or the Nigerian company acquiring that trade or business, to guarantee or give security,

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to the satisfaction of the Board, for payment in full of all tax due or to become due from the company selling or transferring the trade or business; and

- (ii) may impose such conditions as it sees fit on either of the companies aforesaid or on both of them;

and in the event of failure by that company or, as the case may be, those companies to carry out or fulfil the guarantee or conditions, the Board may revoke the direction and may make all such additional assessments or repayment of tax as may be necessary to give effect to the revocation.

- (3) In this section-

“Nigerian company” means any company the control and management of whose activities are exercised in Nigeria; and

“references to a trade or business” shall include references to any part thereof.

18. Trade or business transferred under the Companies and Allied Matters Act

- (1) Where in pursuance of the provisions of Part X of the Companies and Allied Matters Act, a company (in this subsection referred to as —the Reconstituted Company) is incorporated under that Act to carry on any trade or business of petroleum operations previously carried on in Nigeria by a foreign company and the assets employed in Nigeria by the foreign company in that trade or business vest in the reconstituted company, then, if the Board is satisfied that the trade or business carried on by the Reconstructed Company immediately after the incorporation of that company under that Act is not substantially different in nature from the trade or business previously carried on in Nigeria by the foreign company, the provisions set out in subsection (2) of this section shall have effect, notwithstanding anything in this Act to the contrary.

[Cap.C20]

- (2) The following provisions shall have effect in a case to which subsection (1) of this section applies, namely-

- (a) if as respects the trade or business previously carried on in Nigeria by the foreign company the first sale of or bulk disposal of chargeable oil by or on behalf of the foreign company has occurred on or before the date on which the Reconstituted Company is incorporated-

- (i) the first accounting period of the Reconstituted Company shall be the period of twelve months commencing on the date on which that Company is incorporated, or commencing on such date within the calendar month in which the company is

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incorporated as may be selected by the company with the approval of the Board;
and

- (ii) for the purpose of subsection (2) (a) (i) of this section, an accounting period as respects the Reconstituted Company shall be a period of twelve months commencing on the date on which that company is incorporated, or commencing on such date within the calendar month in which the Reconstituted Company is incorporated as may be selected by the Company with the approval of the Board, and the definition of “**accounting period**” in section 2 of this Act shall be construed accordingly, but without prejudice to the continued application in respect of the Reconstituted Company of the provisions of paragraphs (b), (c) and (d) of that definition;

- (b) for the purpose of the Second Schedule to this Act, the assets so vested in the Reconstructed Company shall be deemed to have been sold to it, on the day of its incorporation, for an amount equal to the residue of the qualifying expenditure thereon on the day following the day on which the trade or business previously carried on in Nigeria by the foreign Company ceased;
[Second Schedule]

- (c) the Reconstructed Company shall not be entitled to any initial allowances as respects those assets, and shall be deemed to have received all allowances given to the foreign Company in respect of those assets under the Second Schedule and any allowances deemed to have been received by the foreign company under the provisions of this paragraph or section 17 of this Act; and

- (d) the amount of any loss incurred during any accounting period by the foreign company in the said trade or business previously carried on by it in Nigeria, being a loss which has not been allowed against any assessable profits of any accounting period of that foreign company, shall be deemed to be a loss incurred by the Reconstructed Company in its trade or business during its first accounting period; and the amount of that loss shall in accordance with the provisions of section 16 of this Act, be deducted from the adjusted profits of the Reconstituted Company;

Provided that:

- (i) no deduction shall be made under this paragraph in respect of the loss aforesaid except to extent, if any, to which it is proved by the Reconstituted Company to the satisfaction of the Chief Petroleum Engineer in the civil service of the Federation that the loss was not the result of any damage or destruction caused by any military or other operation connected with the civil war in which Nigeria was engaged;

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- (ii) notwithstanding the foregoing proviso, the President may by order, direct that, to the extent specified in the direction, a deduction under this paragraph shall be made in respect of a loss which is the result of any damage or destruction caused by any military or other operations mentioned in that proviso:

Provided however, that no deduction in respect of any loss to which this paragraph applies shall be made unless within two years after the incorporation of the Reconstituted Company a claim for that deduction is lodged by that company with the Chief Petroleum Engineer aforesaid and a copy of the claim is forwarded by that company to the Board.

- (3) In this section “**foreign company**” means a company incorporated outside Nigeria before 18 November 1968, and having on that date an established place of business in Nigeria.

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

For the purposes of sections 17 and 18 of this Act, the Board may by notice require any person (including a company to which any assets are sold or transferred, or in which any assets have vested in pursuance of Part X of the Companies and Allied Matters Act), to complete and deliver to the Board any returns specified in the notice or any such information as the Board may require about the assets; and it shall be the duty of that person to comply with requirements of any such notice within the period specified in the notice not being a period of less than 21 days from the service thereof.

[Cap. C20.]

20. Chargeable profits and capital allowances

- (1) The chargeable profits of any company of any accounting period shall be the amount of the assessable profits of that period after the deduction of any amount to be allowed in accordance with the provisions of this section.
- (2) There shall be computed the aggregate amount of all allowances due to the company under the provisions of the Second Schedule for the accounting period.

[Second Schedule.]

- (3) In calculating the amount of the deduction to be allowed under this section for the accounting period, the limitation imposed by subsection (4) of this section shall be applied to ensure that the amount of any tax chargeable on the company for that period shall be not less than fifteen percent of the tax which would be chargeable on the company for that period if no deduction were to be made under this section for that period.

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(4) The amount to be allowed as a deduction under subsection (1) in respect of the said allowances shall be-

(a) the aggregate amount computed under subsection (2) of this section; or

(b) a sum equal to 85% of the assessable profits of the accounting period less 170% of the total amount of the deduction allowed as petroleum investment allowance computed under the Second Schedule to this Act for that period.

whichever is the less.

[Second Schedule.]

(5) Where the total amount of the allowances computed under subsection (2) of this section cannot be deducted under subsection (1) of this section owing to there being an insufficiency of or no assessable profits of the accounting period or to the limitation imposed by subsection (4) of this section such total amount or the part thereof which has not been so deducted as the case may be, shall be added to the aggregate amount to be computed under subsection (2) of this section for the following accounting period of the company, and thereafter shall be deemed to be an allowance due to the company, under the provisions of the Second Schedule to this Act for that following accounting period.

PART IV

Ascertainment of assessable tax and of chargeable tax

21. Assessable tax

(1) The assessable tax for any accounting period of a company shall be an amount equal to 85% of its chargeable profits of that period.

(2) Where a company has not qualified for treatment under paragraph 6 (4) of the Second Schedule to this Act, that is to say, where a company has not yet commenced to make a sale or bulk disposal of chargeable oil under a programme of continuous production and sales as at 1 April 1977, its assessable tax for any accounting period during which it has not fully amortised all pre-production capitalised expenditure due to it less the amount to be retained in the book as provided for in paragraph 6 of the Second Schedule to this Act shall be 65.75% of the chargeable profits for that period.

[Second Schedule.]

22. Chargeable tax

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- (1) A crude oil producing company which executed a Production Sharing Contract with the Nigerian National Petroleum Corporation in 1993 shall, throughout the duration of the Production Sharing Contract, be entitled to claim an investment tax credit allowance as an offset against tax in accordance with the provision of the Production Sharing Contract.
[1999 No. 30.]
- (2) The investment tax credit rate applicable to the contract area shall be 50% flat rate of chargeable profit for the duration of the Production Sharing Contract.
[1999 No. 30.]
- (3) In computing the tax payable, the investment tax credit shall be applicable in full to petroleum operations in the contract area such that the chargeable tax is the amount of the assessable tax less the investment tax credit.
[1999 No. 30.]
- (4) The chargeable tax computed under subsection (3) of this section shall be split between the Nigerian National Petroleum Corporation and the crude oil producing company in accordance with the proportion of the percentage of profit of oil split.
[1999 No. 30.]
- (5) In this section-

“**contract area**” means the contract area as defined in the Production Sharing Contract:

“**Production Sharing Contract**” has the meaning assigned to it in the Deep Offshore and Inland Basin Production Sharing Contracts Act. .

[1999 No. 30. Cap. D3.]

23. Additional chargeable tax payable in certain circumstances

- (1) If, for any accounting period of a company, the amount of the chargeable tax for that period, calculated in accordance with the provisions of this Act other than this section, is less than the amount mentioned in subsection (2) of this section, the company shall be liable to pay an additional amount of chargeable tax for that period equal to the difference between those two amounts.
- (2) The amount referred to in the foregoing subsection is, for any accounting period of a company, the amount which the chargeable tax for that period, calculated in accordance with the provisions of this Act, would come to if, in the case of crude oil exported from Nigeria by the company, the reference in section 9 (1) (a) of this Act to the proceeds of sale thereof were a reference to the amount obtained by multiplying the number of barrels of that crude oil by the relevant sum per barrel.

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- (3) For the purposes of subsection (2) of this section the relevant sum per barrel of crude oil exported by a company is the posted price applicable to that crude oil reduced by such allowances (if any) as may from time to time be agreed in writing between the Government of Nigeria and the company.
- (4) The whole of any additional chargeable tax payable by a company by virtue of this section for any accounting period shall be payable concurrently with the final instalment of the chargeable tax payable for that period apart from this section, and shall be assessed and be paid by the company accordingly under the provisions of this Act.
- (5) In this section, “**posted price**”, in relation to any crude oil exported from Nigeria by a company, means the price F.O.B. at the Nigerian port of export for crude oil of the gravity and quality in question which is from time to time established by the company after agreement with the Government of Nigeria as to the procedure to be followed for the purpose, as its posted price for Nigerian crude oil of that gravity and quality.
- (6) Every posted price established as aforesaid must bear a fair and reasonable relationship-
- (a) to the established posted prices of Nigerian crude oils of comparable quality and gravity, if any; or
 - (b) if there are no such established posted prices for such Nigerian crude oils to the posted prices at main international trading export centres for crude oil of comparable quality and gravity,
- due regard being had in either case to freight differentials and all other relevant factors.
- (7) References in this section to crude oil include references to casinghead petroleum spirit which has been injected into crude oil.
- (8) Where any crude oil which in relation to a particular company is chargeable oil is exported from Nigeria otherwise than by that company, that crude oil shall for the purposes of this section be deemed to be exported from Nigeria by that company.

PART V

Persons chargeable

24. Partnerships, etc.

- (1) Any person (other than a company) who engages in petroleum operations either on his own account or jointly with any other person or in partnership with any other person with a view to sharing the profits arising from those operations shall be guilty of an offence.

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- (2) Where two or more companies are engaged in petroleum operations either in partnership, in a joint adventure or in concert under any scheme or arrangement, the Minister may make rules for the ascertainment of the tax to be charged and assessed upon each company so engaged.
- (3) Any such rules may modify the provisions of this Act in such manner as the Minister may think fit and may if necessary, provide for the apportionment of any profits, outgoings, expenses, liabilities, deductions, qualifying expenditure and the tax chargeable upon each company, or may provide for the computation of any tax as if the partnership, joint adventure, scheme or arrangement were carried on by one company and apportion that tax between the companies concerned or may accept some other basis of ascertaining the tax chargeable upon each of the companies which may be put forward by those companies and such rules may contain provisions which have regard to any circumstances whereby such operations are partly carried on for any companies by an operating company whose expenses are reimbursed by those companies.
- (4) Any such rules may be expressed to be of general application for the purposes of this section and Act or of particular application to a specified partnership, joint adventure, scheme or arrangement.
- (5) Any such rules may be amended or replaced from time to time with or without retrospective effect.
- (6) The effect of any such rules shall not impose a greater burden of tax upon any company so engaged in any partnership, joint adventure, scheme or arrangement than would have been imposed upon that company under this Act if all things enjoyed, done or suffered by such partnership, joint adventure, scheme or arrangement had been enjoyed, done or suffered by that company in the proportion in which it enjoys, does or suffers those things under or by virtue of that partnership, joint adventure, scheme or arrangement.

25. Companies not resident in Nigeria

- (1) A company not resident in Nigeria which is or has been engaged in petroleum operations (hereinafter in this section referred to as a —non-resident company) shall be assessable and chargeable to tax, either directly or in the name of its manager, or in the name of any other person who is resident in Nigeria, employed in the management of the petroleum operations carried on by such non-resident company, as such non-resident company would be assessed and charged if it were resident in Nigeria.
- (2) The person in whose name a non-resident company is assessable and chargeable to tax shall be answerable-

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- (a) for all matters required to be done by virtue of this Act for the assessment of the tax as might be required to be done by such non-resident company if it were resident in Nigeria; and
- (b) for paying any tax assessed and charged in the name of such person by virtue of subsection (1) of this section.

26. Manager of companies, etc., to be answerable

The manager or any principal officer in Nigeria of every company which is or has been engaged in petroleum operations shall be answerable for doing all such acts as are required to be done by virtue of this Act for the assessment and charge to tax of such company and for payment of such tax.

27. Company wound up, etc.

- (1) Where a company is being wound up or where in respect of a company a receiver has been appointed by any Court, by the holders of any debentures issued by the company or otherwise, the company may be assessed and charged to tax in the name of the liquidator of the company, the receiver or any agent in Nigeria of the liquidator or receiver and may be so assessed and charged to tax for any accounting period whether before, during or after the date of the appointment of the liquidator or receiver.
- (2) Any such liquidator, receiver or agent shall be answerable for doing all such acts as are required to be done by virtue of this Act for the assessment and charge to tax of such company and for payment of such tax.
- (3) Such liquidator or receiver shall not distribute any assets of the company to the shareholders or debenture holders thereof unless he has made provision For the payment in full of any tax which may be found payable by the company or by such liquidator, receiver or agent on behalf of the company.

28. Avoidance by transfer

Where a company which is or was engaged in petroleum operations transfers a substantial part of its assets to any person without having paid any tax, assessed or chargeable upon the company, for any accounting period ending prior to such transfer and in the opinion of the Board one reason for such transfer by the company was to avoid payment of such tax then that tax as charged upon the company may be sued for and recovered from that person in a manner similar to a suit for any other tax under section 48 of this Act subject to any necessary modification of that section.

29. Indemnification of representative

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Every person answerable under this Act for the payment of tax on behalf of a company may retain out of any money in or coming to his hands or within his *de facto* control on behalf of such company so much thereof as shall be sufficient to pay such tax, and shall be and is hereby indemnified against any person whatsoever for all payments made by him in accordance with the provisions of this Act.

PART VI

Accounts and particulars

30. Preparation and delivery of accounts and particulars

- (1) Every company which is or has been engaged in petroleum operations shall for each accounting period of the company, make up accounts of its profits or losses, arising from those operations, of that period and shall prepare the following particulars-
- (a) computations of its estimated adjusted profit or loss and of its estimated assessable profits of that period;
 - (b) in connection with the Second Schedule to this Act. a schedule showing-
 - [Second Schedule.]
 - (i) the residues at the end of that period in respect of its assets;
 - (ii) all qualifying petroleum expenditure incurred by it in that period;
 - (iii) the values of any of its assets (estimated by references to the provisions of that Schedule) disposed of in that period; and
 - (iv) the allowances due to it under that Schedule for that period;
 - (c) a computation of its estimated chargeable profits of that period;
 - (d) a statement of other sums, deductible under section 22 of this Act, the liability for which were incurred during that period;
 - (e) a statement of all amounts repaid, refunded, waived or released to it, as referred to in subsection (5) of section 20 of this Act, during that period; and
 - (f) a computation of its estimated tax for that period.
- (2) Every company which is or has been engaged in petroleum operations shall, with respect to any accounting period of the company, within five months after the expiration of that

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period or within five months after the date of publication of this Act in the Federal *Gazette* upon enactment (whichever is later) deliver to the Board a copy of its accounts (bearing an auditor's certificate) of that period, made up in accordance with the provisions of subsection (1) of this section, and copies of the particulars referred to in that subsection relating to that period; and such copy of those accounts and each copy of those particulars (not being estimates) shall contain a declaration, which shall be signed by a duly authorised officer of the company or by its liquidator, receiver or the agent of such liquidator or receiver, that the same is true and complete and where such copies are estimates each copy shall contain a declaration, similarly signed, that such estimate was made to the best of the ability of the person signing the same.

31. Board may call for further information

The Board may give notice in writing to any company which is or has been engaged in petroleum operations when and as often as to the Board may seem necessary requiring it to furnish within such reasonable time as may be specified by such notice fuller or further information as to any of the matters either referred to in section 30 of this Act or as to any other matters which the Board may consider necessary for the purposes of this Act.

32. Power to call for returns, books, etc.

- (1) For the purpose of obtaining full information in respect of any company's petroleum operations the Board may give notice to such company requiring it within the time limited by such notice, which time shall not be less than 21 days from the date of service of such notice, to complete and deliver to the Board any information called for in such notice and in addition or alternatively requiring an authorised representative of such company or its liquidator, receiver or the agent of such liquidator or receiver, to attend before the Board or its authorised representative on such date or dates as may be specified in such notice and to produce for examination any books, documents, accounts and particulars which the Board may deem necessary.

- (2) If a company assessable to tax under the provisions of this Act fails or refuses to keep books or accounts which, in the opinion of the Board are adequate for the purpose of ascertaining the tax, the Board may by notice in writing require it to keep such records, books and accounts as the Board considers to be adequate in such form and in such language as the Board may in the said notice direct and, subject to the provisions of subsections (3) and (4) of this section, the company shall keep records, books and accounts as directed.

- (3) An appeal shall lie from any direction of the Board made under this section to a judge of the High Court.

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- (4) On hearing such appeal the judge may confirm or modify such direction and any such decision shall be final.

33. Returns of estimated tax

- (1) Not later than two months after the commencement of each accounting period of any company engaged in petroleum operations, the company shall submit to the Board a return, the form of which the Board may prescribe, of its estimated tax for such accounting period.
- (2) If, at any time during any such accounting period the company having made a return as provided for in subsection (1) of this subsection is aware that the estimate in such return requires revision then it shall submit a further return containing its revised estimated tax for such period.

34. Extension of periods for making returns

Where it is shown by any company to the satisfaction of the Board that for some good reason the company is not able to comply with the provisions of section 30 of this Act within the time limited by that section or any notice given to it under section 31 or 32 of this Act, within the time limited by any such notice, the Board may grant in writing such extension of that time as the Board may consider necessary.

PART VII

Assessments

35. Board to make assessments

- (1) The Board shall proceed to assess every company with the tax for any accounting period of the company as soon as may be after the expiration of the time allowed to such company for the delivery of the accounts and particulars provided for in section 30 of this Act.
- (2) Where a company has delivered accounts and particulars for any accounting period of the company, the Board may-
- (a) accept the same and make an assessment accordingly; or
 - (b) refuse to accept the same and proceed as provided in subsection (3) of this section upon any failure as therein mentioned and the like consequences shall ensue.

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- (3) Where, for any accounting period of a company, the company has failed to deliver accounts and particulars provided for in section 30 of this Act within the time limited by that section or has failed to comply with any notice given to it under the provisions of section 31 or 32 of this Act within the time specified in such notice or within any extended time provided for in section 34 of this Act and the Board is of the opinion that such company is liable to pay tax, the Board may estimate the amount of the tax to be paid by such company for that accounting period and make an assessment accordingly, but such assessment shall not affect any liability otherwise incurred by such company by reason of its failure or neglect to deliver such accounts and particulars or to comply with such notices; and nothing in this subsection shall affect the right of the Board to make any additional assessment under the provisions of section 36 of this Act.

36. Additional assessments

- (1) If the Board discovers or is of the opinion at any time that, with respect to any company liable to tax, tax has not been charged and assessed upon the company or has been charged and assessed upon the company at a less amount than that which ought to have been charged and assessed for any accounting period of the company, the Board may within six years after the expiration of that accounting period and as often as may be necessary, assess such company with tax for that accounting period at such amount or additional amount as in the opinion of the Board ought to have been charged and assessed, and may make any consequential revision of the tax charged or to be charged for any subsequent accounting period of the company.
- (2) Where a revision under subsection (1) of this section results in a greater amount of tax to be charged than has been charged or would otherwise be charged an additional assessment or an assessment for any such subsequent accounting period shall be made accordingly, and the provisions of this Act as to notice of assessment, objection, appeal and other proceedings under this Act shall apply to any such assessment or additional assessment and to the tax charged thereunder.
- (3) For the purpose of computing under subsection (1) of this section the amount or the additional amount of tax for any accounting period of a company which ought to have been charged, all relevant facts consistent with subsection (3) of section 43 of this Act shall be taken into account even though not known when any previous assessment or additional assessment on the company for that accounting period was being made or could have been made.
- (4) Notwithstanding the other provisions of this section, where any form of fraud, wilful default or neglect has been committed by or on behalf of any company in connection with any tax imposed under this Act, the Board may, at any time and as often as may be

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necessary, assess the company on such amount as may be necessary for the purpose of recovering any loss of tax attributable to the fraud, wilful default or neglect.

[1996 No. 30]

37. Making of assessments, etc.

- (1) Assessments of tax shall be made in such form and in such manner as the Board shall authorise and shall contain the names and addresses of the companies assessed to tax or of the persons in whose names any companies (with the names of such companies) have been assessed to tax, and in the case of each company for each of its accounting periods, the particular accounting period and the amount of the chargeable profits of and assessable tax and chargeable tax for that period.
- (2) When any assessment requires to be amended or revised, a form of amended or revised assessment shall be made in a manner similar to that in which the original of that assessment was made under subsection (1) of this section but showing the amended or revised amount of the chargeable profits, assessable tax and chargeable tax.
- (3) A copy of each assessment, and of each amended or revised assessment shall be filed in a list which shall constitute the Assessment List for the purpose of this Act.

38. Notices of assessment, etc.

- (1) The Board shall cause to be served personally on or sent by registered post to each person whose name appears on an assessment in the Assessment List, a notice of assessment stating its accounting period and the amount of its chargeable profits, assessable tax and chargeable tax charged and assessed upon the company, the place at which payment of the tax should be made, and informing such company of its rights under subsection (2) of this section.
- (2) If any person in whose name an assessment was made in accordance with the provisions of this Act disputes the assessment, that person may apply to the Board, by notice of objection in writing, to review and revise the assessment so made on him: and such application shall be made within 21 days from the date of service of the notice of such assessment and shall state the amount of chargeable profits of the company of the accounting period in respect of which the assessment is made and the amount of the assessable tax and the tax which such person claims should be stated on the notice of assessment.
- (3) The Board, upon being satisfied that owing to absence from Nigeria, sickness or other reasonable cause, the person in whose name the assessment was made was prevented from making the application within such period of 21 days, shall extend the period as may be reasonable in the circumstances.

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- (4) After receipt of a notice of objection referred to in subsection (2) of this section the Board may within such time and at such place as the Board shall specify, require the person giving the notice of objection to furnish such particulars as the Board may deem necessary, and may by notice within such time and at such place as the Board shall specify, require any person to give evidence orally or in writing respecting any matters necessary for the ascertainment of the tax payable, and the Board may require such evidence if given orally to be given on oath or if given in writing to be given by affidavit.
- (5) In the event of any person assessed who has objected to an assessment made upon him agreeing with the Board as to the amount of tax liable to be assessed, the assessment shall be amended accordingly and notice of the tax payable shall be served upon such person.
- (6) If an applicant for revision under the provisions of subsection (2) of this section fails to agree with the Board the amount of the tax, the Board shall give such applicant notice of refusal to amend the assessment as desired by such applicant, and may revise the assessment to such amount as the Board may determine and give such applicant notice of the revised assessment and of the tax payable together with notice of refusal to amend the revised assessment and, wherever requisite, any reference in this Act to an assessment or to an additional assessment shall be treated as a reference to an assessment or to an additional assessment as revised under the provisions of this subsection.

39. Errors and defects in assessment and notice

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

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if in cases of assessment, the notice thereof be duly served on the company intended to be assessed or on the person in whose name the assessment was to be made on a company, and such notice contains, in substance and effect, the particulars on which the assessment is made.

40. Income tax computation

- (1) Notwithstanding anything to the contrary in any law, all income tax computation made under sections 28 and 31 of this Act shall be made in the currency in which the transaction was effected.

[1996 No. 30.]

- (2) Accordingly and notwithstanding anything to the contrary in any law, any assessment made under section 35 (1) of this Act shall also be made in the currency in which the computation giving rise to the assessment was made.

PART VIII

Appeals

41. Appeals to Appeal Commissioners

- (1) Any person (being a company or a person in whose name a company is assessed) being aggrieved by an assessment made upon him, who has failed to agree with the Board as referred to in section 38 (6) of this Act, may appeal against the assessment to the appropriate Appeal Commissioners upon giving notice in writing to the Board and to the secretary to such Commissioners within thirty days after the date of service upon him of notice of the refusal of the Board to amend the assessment as desired:

Provided that notwithstanding the lapse of such period of thirty days, by not more than a further period of sixty days, such person may appeal against the said assessment if he gives such Commissioners the particulars mentioned in paragraphs (a) to (c) inclusive of subsection (2) of this section and if he shows to their satisfaction that, owing to absence from Nigeria, sickness or other reasonable cause he was prevented from giving notice of appeal within such period of thirty days, and that there has been no unreasonable delay on his part; and upon the Commissioners being so satisfied, such person shall give such notice in writing to the Board and to such secretary within seven days thereof.

- (2) A notice of an appeal against an assessment, to be given under subsection (1) of this section, shall specify the following particulars-
- (a) the official number of the assessment and the accounting period for which it was made;

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- (b) the amount of the tax charged by the assessment;
- (c) the date upon which the appellant was served with notice of refusal of the Board to amend the assessment as desired;
- (d) the precise grounds of his appeal against the assessment; and
- (e) an address for service of any notices, precepts or other documents to be given, by the secretary to the appropriate Appeal Commissioners, to the appellant:

Provided that at any time the appellant may give notice to such secretary and to the Board, by delivering the same or by registered post, of a change of such address but any such notice shall not be valid until delivered or received.

- (3) For the purposes of this section, the appropriate Appeal Commissioners and their secretary to whom an appellant may give notice of appeal against an assessment under subsection (1) of this section shall be the body of Appeal Commissioners, if any, established, under the provisions of section 53 (1) of the Companies Income Tax Act, for the area in which is situated the office of the Federal Inland Revenue Service from which the notice of that assessment was issued.

[Cap. C21.]

- (4) For the purposes of this Act, the provisions of sections 54 and 55 of the Companies Income Tax Act shall apply in like manner as they apply to the provisions of the last mentioned Act.
- (5) The provisions of subsection (5), (7), (8) and (9) of section 42 of this Act shall apply to an appeal under this section with any necessary modifications.
- (6) All appeals shall be heard *in camera*.
- (7) The Minister may make rules prescribing the procedure to be followed with respect to precepts and other like documents to be issued on behalf of Appeal Commissioners, for the examination of witnesses and in the conduct of appeals before them.
- (8) Pending the making of any rules under subsection 7 of this section, any rules made or to be made (or any rules replacing any such rules) under section 55 (12) of the Companies Income Tax Act shall apply to any appeal or to any such procedure for the purposes of this section and Act with any necessary modifications.

42. Appeals to Federal High Court against assessments

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- (1) Any person (being a company or a person in whose name a company is assessed) who, having appealed against an assessment made upon him to the appropriate Appeal Commissioners under the provisions of section 41 of this Act, is aggrieved by the decision of such Commissioners may appeal against the assessment and such decision to the Federal High Court upon giving notice in writing to the Board within thirty days after the date upon which such decision was given.

- (2) Notwithstanding the lapse of such period of thirty days by not more than a further period of sixty days, such person may appeal against the said assessment and decision if he shows to the satisfaction of the judge that, owing to absence from Nigeria, sickness or other reasonable cause he was prevented from giving notice of appeal within such period of thirty days, and that there has been no unreasonable delay on his part; and upon the judge being so satisfied such person shall give such notice in writing to the Board within seven days thereof.

- (3) Where no appropriate body of Appeal Commissioners has been appointed with jurisdiction to hear an appeal, against an assessment made upon any person, under the provisions referred to in subsection (3) of section 41 of this Act, such person being aggrieved by the assessment and having failed to agree with the Board as referred to in subsection (6) of section 36, may appeal against the assessment to the Federal High Court upon giving notice in writing to the Board within thirty days after the date of service upon him of notice of the refusal of the Board to amend the assessment as desired and the provisions of subsection (2) of this section, so far as they are applicable, shall apply.

- (4) If the Board is dissatisfied with a decision of any Appeal Commissioners, it may appeal against the decision to the Federal High Court upon giving notice in writing to the other party to the appeal under section 4] of this Act upon which such decision was given, within thirty days after the date upon which such decision was given and the provisions of this section, so far as they are applicable, shall apply to any such appeal to the Federal High Court by the Board.

- (5) Every company appealing shall appoint an authorised representative who shall attend before the court in person on the day and at the time fixed for the hearing of its appeal, but if it be proved to the satisfaction of the judge that owing to absence from Nigeria, sickness or other reasonable cause any duly appointed representative is prevented from attending in person at the hearing of the company's appeal on the day and at the time fixed for that purpose, the judge may postpone the hearing of the appeal for such reasonable time as he thinks necessary for the attendance of the appellant's representative or he may admit the appeal to be made by any other agent, clerk or servant of the appellant, on its behalf or by way of written statement.

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- (6) Twenty-one clear days' notice shall, unless rules made hereunder otherwise provide, be given to the Board of the date fixed for the hearing of the appeal.
- (7) The onus of proving that the assessment complained of is excessive shall be on the appellant.
- (8) The judge may confirm, reduce, increase or annul the assessment or make such order thereon as to him may seem fit.
- (9) Notice of the amount of tax payable under the assessment as determined by the judge shall be served by a duly authorised representative of the Board either personally on, or by registered post to, the appellant.
- (10) Notwithstanding anything contained in section 47 of this Act, if in any particular case, the judge from information given at the hearing of the appeal, is of the opinion that the tax may not be recovered, he may on application being made by or on behalf of the Board require the appellant to furnish within such time as may be specified security for payment of the tax and if such security is not given within the time specified the tax assessed shall become payable and recoverable forthwith.
- (11) All appeals shall be heard in camera, unless the judge shall, on the application of the appellant, otherwise direct.
- (12) The costs of the appeal shall be at the discretion of the judge hearing the appeal and shall be a sum fixed by the judge.
- (13)
- (a) The Chief Judge of the Federal High Court may make rules providing for the method of tendering evidence before a judge on appeal, the conduct of such appeals and the procedure to be followed by a judge upon stating a case for the opinion of the Court of Appeal.
- (b) Pending the making of any rules under this subsection, the rules applicable in civil appeal cases from Magistrates Court to the High Court of Lagos State shall apply to any appeal or to any such procedure for the purposes of this section and Act with any necessary modifications.
- (14) An appeal against the decision of the judge shall lie to the Court of Appeal-
- (a) at the instance of the appellant where the decision of the judge is to the effect that the correct assessment of tax is in the sum of N1,000 or upwards: and

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- (b) at the instance of the Board where the decision of the judge is in respect of a matter in which the Board claimed that the correct assessment of tax was in the sum of N1,000 or upwards.

43. Assessment to be final and conclusive

- (1) Where no valid objection or appeal has been lodged within the time limited by section 38, 41 or 42 of this Act, as the case may be, against an assessment as regards the amount of the tax assessed thereby, or where the amount of the tax has been agreed to under subsection (5) of section 38 of this Act, or where the amount of the tax has been determined on objection or revision under subsection (6) of section 38 of this Act, or on appeal, the assessment as made, agreed to, revised or determined on appeal, as the case may be, shall be final and conclusive for all purposes of this Act as regards the amount of such tax, and if the full amount of the tax in respect of any such final and conclusive assessment is not paid within the appropriate period or periods prescribed in this Act, the provisions thereof relating to the recovery of tax, and to any penalty under section 42 of this Act, shall apply to the collection and recovery thereof subject only to the set-off of the amount of any tax repayable under any claim, made under any provisions of this Act, which has been agreed to by the Board or determined on any appeal against a refusal to admit any such claim.
- (2) Where all assessment has become final and conclusive, any tax overpaid shall be repaid.
- (3) Nothing in section 38 of this Act or in this Part shall prevent the Board from making any assessment or additional assessment to tax for any accounting period which does not involve re-opening any issue on the same facts which has been determined for that accounting period, under subsection (5) or (6) of section 38 of this Act by agreement or otherwise or on appeal.

PART IX

Collection, recovery and repayment of tax

44. Procedure in cases where objection or appeal is pending

Collection of tax shall in cases where notice of an objection or an appeal has been given remain in abeyance, any pending proceedings for any instalment thereof being stayed until such objection or appeal is determined but the Board may in any such case enforce payment of that portion of the tax (if any) which is not in dispute.

45. Time within which payment is to be made

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- (1) Subject to the provisions of section 44 of this Act, tax for any accounting period shall be payable in equal monthly instalments together with a final instalment as provided in subsection (4) of this section.
- (2) The first monthly payment shall be due and payable not later than the third month of the accounting period and shall be in an amount equal to one-twelfth or, where the accounting period is less than a year, in an amount equal to equal monthly proportion, of the amount of tax estimated to be chargeable for such accounting period in accordance with section 33 (1) of this Act.
- (3) Each of the remainder of monthly payments to be made subsequent to the payment under subsection (2) of this section shall be due and payable not later than the last day of the month in question and shall be in an amount equal to the amount of tax estimated to be chargeable for such period by reference to the latest returns submitted by the company in accordance with section 33 (2) of this Act less so much as has already been paid for such accounting period divided by the number of such of the monthly payments remaining to be made in respect of such accounting period.
- (4) A final statement of tax shall be due and payable within 21 days after the service of the notice of assessment of tax for such accounting period, and shall be the amount of the tax assessment for that accounting period less so much thereof as has already been paid under subsection (2) and (3) of this section or is the subject of proceedings.
- (5) Any instalments on account of tax estimated to be chargeable shall be treated as tax charged and assessed for the purposes of sections 46 and 48 of this Act.
- (6) For the purposes of subsection (1) of this section, the conversion of the timing of payments of tax to provide for the making of monthly payments shall be given effect to as set out in the Third Schedule of this Act.

[Third Schedule.]

46. Penalty for non-payment of tax and enforcement of payment

- (1) If any instalment of tax due and payable pursuant to section 41 is not paid within the appropriate time limit prescribed in section 45 of this Act-
 - (a) a sum equal to five per cent of the amount of the instalment of tax due and payable shall be added thereto, and the provisions of this Act relating to the collection and recovery of tax shall apply to the collection and recovery of such sum;
 - (b) the Board shall cause to be served a demand note upon the company assessed or upon the person in whose name the company is assessed; and if payment is not made

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within one month from the date of the service of such demand note, the Board may proceed to enforce payment as hereinafter provided;

(c) a penalty imposed under this subsection shall not be deemed to be part of the tax paid for the purpose of any of the provisions of this Act, other than those relating to enforcement and collection of any tax.

- (2) Any company or person in whose name the company is assessed who without lawful justification or excuse, the proof whereof shall lie on the company, or such person assessed, fails to pay the tax within the period of one month prescribed in subsection (1) (b) of this section, shall be guilty of an offence.
- (3) The Board may, for any good cause shown, remit the whole or any part of the penalty due under subsection (1) of this section.

47. Collection of tax after determination of objection or appeal

Where payment of tax in whole or in part has been held over pending the result of a notice of objection or of appeal, the tax outstanding under the assessment as determined on such objection or appeal as the case may be shall be payable forthwith as to any part thereof in proceedings stayed pending such determination and as to the balance thereof within one month from the date of service on the company assessed, or on the person in whose name the company is assessed, of the notification of the tax payable, and if such balance is not paid within such period the provisions of section 42 of this Act shall apply.

48. Suit for tax by the Board

- (1) Tax may be sued for and recovered in a court of competent jurisdiction at the place at which payment should be made, by the Board in its official name with full costs of suit from the company assessed to such tax or from the person in whose name the company is assessed to such tax as a debt due to the Government of the Federation.
- (2) For the purposes of this section, a court of competent jurisdiction shall include a magistrate's court, which court is hereby invested with the necessary jurisdiction, if the amount claimed in any suit does not exceed the amount of the jurisdiction of the magistrate concerned with respect to personal suits.
- (3) In any suit under subsection (1) of this section the production of a certificate signed by any person duly authorised by the Board giving the name and address of the defendant and the amount of tax due by the defendant shall be sufficient evidence of the amount so due and sufficient authority for the court to give judgment for the said amount.

49. Relief in respect of error or mistake

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- (1) If any person who has paid tax for any accounting period alleges that any assessment, made upon him or in his name for that period, was excessive by reason of some error or mistake in the accounts, particulars or other written information supplied by him to the Board for the purpose of the assessment, such person may at any time, not later than six years after the end of the accounting period in respect of which the assessment was made, make an application in writing to the Board for relief.
- (2) On receiving any such application the Board shall inquire into the matter and subject to the provisions of this section shall by way of repayment of tax give such relief in respect of the error or mistake as appears to the Board to be reasonable and just.
- (3) No relief shall be given under this section in respect of an error or mistake as to the basis on which the liability of the applicant ought to have been computed where such accounts, particulars or information was in fact made or given on the basis or in accordance with the practice of the Board generally prevailing at the time when such accounts, particulars or information was made or given.
- (4) In determining any application under this section the Board shall have regard to all the relevant circumstances of the case, and in particular shall consider whether the granting of relief would result in the exclusion from charge to tax of any part of the chargeable profits of the applicant, and for this purpose the Board may take into consideration the liability of the applicant and assessments made upon him in respect of other years.
- (5) No appeal shall lie from a determination of the Board under this section, which determination shall be final and conclusive.

50. Repayment of tax

- (1) Save as is otherwise in this Act expressly provided, no claim for the repayment of any tax overpaid shall be allowed unless it is made in writing within six years next after the end of the accounting period to which it relates and if the Board disputes any such claim it shall give to the claimant notice of refusal to admit the claim and the provisions of sections 36 and 37 of this Act shall apply with any necessary modifications.
- (2) The Board shall give a certificate of the amount of any tax to be repaid under any of the provisions of this Act or under any order of a court of competent jurisdiction and upon the receipt of the certificate, the Accountant-General of the Federation shall cause repayment to be made in conformity therewith.

PART X

Offences and penalties

51. Penalty for offences

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- (1) Any person guilty of an offence against this Act or of any rule made thereunder for which no other penalty is specifically provided, shall be liable to a fine of N 10,000 and where such offence is one under subsection (1) of section 24 of this Act, or is a failure to submit a return under section 33 of this Act or is a failure, arising from the provisions of Part VI this Act, to deliver accounts, particulars or information or to keep records required, a further sum of N2,000 for each and every day during which such offence or failure continues, and in default of payment to imprisonment for six months, the liability for such further sum to commence from the day following the conviction, or from such day thereafter as the court may order. —
- (2) Any person who—
- (a) fails to comply with the requirements of a notice served on him under this Act; or
 - (b) having a duty so to do, fails to comply with the provisions of section 30 of this Act; or
 - (c) without sufficient cause fails to attend in answer to a notice or summons served on him under this Act or having attended fails to answer any question lawfully put to him; or
 - (d) fails to submit any return required to be submitted by section 29 of this Act in accordance with that section or in accordance with that section and section 34 of this Act,
- shall be guilty of an offence.
- (3) Any offence in respect of which a penalty is provided by subsection (1) of this section shall be deemed to occur in Lagos.

52. Penalty for making incorrect accounts, etc.

- (1) Every person who without reasonable excuse—
- (a) makes up or causes to be made up any incorrect accounts by omitting or understating any profits or overstating any losses of which he is required by this Act to make up accounts; or
 - (b) prepares or causes to be prepared any incorrect schedule required to be prepared by section 30 of this Act by overstating any expenditure or any incorrect statement required to be prepared by section 3D of this Act by overstating any royalties or other sums or by omitting or understating any amounts repaid, refunded, waived or released; or

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- (c) gives or causes to be given any incorrect information in relation to any matter or thing affecting his liability to tax,

shall be guilty of an offence and shall be liable to a fine of N1,000 and double the amount of tax which has been under this Act for the accounting period in respect of or during which the offence was committed, or to imprisonment for six months, or to both such fine and imprisonment.

- (2) The Board may compound any offence under this section and with the leave of the court may before judgment stay or compound any proceedings thereunder. —

53. False statements and returns

- (1) Any person who-

(a) for the purpose of obtaining any deduction, rebate, reduction or repayment in respect of tax for himself or for any other person, or who in any return, account, particulars or statement made or furnished with reference to tax, knowingly makes any false statement or false representation, or forges or fraudulently lends, or allows to be used by any other person any receipt or token evidencing payment of the tax under this Act; or

- (b) aids, abets, assists, counsels, incites or induces any other person-

(i) to make or deliver any false return or statement under this Act;

(ii) to keep or prepare any false accounts or particulars affecting tax; or

(iii) unlawfully to refuse or neglect to pay tax,

shall be guilty of an offence and shall be liable to a fine of N1,000 and treble the amount of tax for which the person assessable is liable under this Act for the accounting period in respect of or during which the offence was committed, or to imprisonment for six months or to both such fine and imprisonment.

54. Penalty for failure to withhold tax

- (1) Any person who, being required to deduct withholding tax under this Act, fails to deduct or, having deducted, fails to remit to the Federal Inland Revenue Service within 30 days from the date the amount was deducted or the time the duty to deduct arose shall be guilty of an offence and liable on conviction to a fine of 200% of tax not withheld or not remitted plus interest at the prevailing commercial rate.

[1996 No.31]

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- (2) The relevant tax authority shall cause to be served on or sent by registered post to any person who fails to withhold or, if withheld, fails to remit the amount required to be withheld, a notice stating the amount of tax not withheld or not remitted and the place at which payment should be made, and the provisions of this Act relating to tax assessment and recovery shall apply.

55. Penalties for offences by authorised and unauthorised persons

- (1) Any person who-

- (a) being a member of the Board charged with the due administration of this Act or any assistant employed in connection with the assessment and collection of the tax who-
- (i) demands from any person an amount in excess of the authorised assessment of the tax payable;
 - (ii) withholds for his own use or otherwise any portion of the amount of tax collected;
 - (iii) renders a false return, whether verbal or in writing, of the amounts of tax collected or received by him;
 - (iv) defrauds any person, embezzles any money, or otherwise uses his position so as to deal wrongfully either with the Board or any other individual; or
 - (v) not being authorised under this Act to do so collects or attempts to collect the tax under this Act,

shall be guilty of an offence and be liable to a fine of N600 or to imprisonment for three years or both.

56. Deduction of tax at source

- (1) Income tax assessable on any company, partnership or person (whether or not resident in Nigeria) who provides petroleum operation services and related activities to a company carrying on petroleum operations in Nigeria, whether or not an assessment has been made, shall be recoverable from any payment (whether or not made in Nigeria) made by any person to such company, partnership or person.
- (2) For the purpose of this section, the rate at which tax is to be deducted and the nature of the activities and services for which a company making payment is to deduct tax at the date when the payment is made or credited, whichever first occurs, shall be as specified in Government Notice No. 450, Official Gazette No. 34 Vol. 72 of 27 June 1985 or any Government Notice replacing it.

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- (3) A company which has deducted tax under this section shall forward to the Board the amount of tax deducted and shall also forward a statement showing the name and address of the person who suffered the tax deduction and the nature of activities or services in respect of which any payment was made.
- (4) Income tax recovered under the provisions of this section by deduction from payments made to a company, partnership or person shall be set-off for the purposes of collection against tax charged on such company, partnership or persons by an assessment, provided that the total of such deduction does not exceed the amount of the assessment.

57. Tax to be payable notwithstanding any proceedings for penalties

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

58. Prosecution to be with the sanction of the Board

No prosecution in respect of an offence under sections 5, 52, 53 or 55 of this Act may be commenced, except at the instance of or with the sanction of the Board.

59. Saving for criminal proceedings

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

PART XI

Miscellaneous

60. Restrictions on effect of the Personal Income Tax Act and other Acts

No tax shall be charged under the provisions of the Personal Income Tax Act or any other Act in respect of any income or dividends paid out of any profits which are taken into account under the provisions of this Act, in the calculation of the amount of any chargeable profits upon which tax is charged, assessed and paid under the provisions of this Act.

[Cap. P8.]

61. Double taxation arrangements with other territories

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- (1) If the Minister by order declares that arrangements specified in the order have been made with the Government of any territory outside Nigeria with a view to affording relief from double taxation in relation to tax imposed under the provisions of this Act and any tax of a similar character imposed by the laws of that territory, and that it is expedient that those arrangements should have effect, the arrangements shall have effect notwithstanding anything in any enactment.
- (2) The Minister may make rules for carrying out the provisions of any arrangements having effect under this section.
- (3) An order made under the provisions of subsection (1) of this section may include provisions for relief from tax for accounting periods commencing or terminating before the making of the order and provisions as to income (which expression includes profits) which is not itself liable to double taxation.
- (4) Where, before the publication of this Act in the Federal *Gazette* upon enactment, any order has been made under the provisions of section 33 of the Income Tax Act and the arrangements specified in that order, with any modifications, are expressed to apply to a tax in a territory outside Nigeria and to income tax in Nigeria and to any other taxes of a substantially similar character either imposed in that territory or Nigeria or imposed by either contracting party to any such arrangements after those arrangements came into force and-

[Cap. 85 of the 1958 Laws of Nigeria.]

- (a) such order was made before the 1st day of January 1958, then, for the purposes of this Act, that order shall be deemed to have been made under this section on that day and those arrangements shall have effect, in Nigeria, as respects tax for any accounting period: or
- (b) such order was made on a day after the year 1957, then for the purposes of this Act, that order shall be deemed to have been made under this section on that day and the arrangements specified therein shall have effect in Nigeria as respects tax for any accounting period beginning on or after the date when those arrangements come into force and for the unexpired portion of any accounting period current at that date,

and where any arrangements, to which this subsection applies, contain a provision for exchange of information with the Commissioner of Income Tax or the Commissioner as defined in section 2 of the Income Tax Act then the order with respect to those arrangements as deemed to have been made under this section, shall be deemed to provide for such exchange with the chairman of the Board as respects tax.

[Cap. 85 of the 1958 Laws of Nigeria.]

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- (5) The Minister may by order replace or vary any order deemed to have been made under this section for the purposes of this Act, without otherwise affecting such last mentioned order for the purpose of any other Act.

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

- (1) The provisions of this section shall have effect where, under arrangements having effect under section 61 of this Act, foreign tax payable in respect of any income in the territory with the Government of which the arrangements are made is to be allowed as a credit against tax payable in respect of that income in Nigeria: and in this section the expression “**foreign tax**” means any tax payable in that territory which under the arrangements, is to be so allowed, and “**income**” means that part of the profits of any accounting period which is liable to both tax and foreign tax, before the deduction of any tax, foreign tax, credit therefor or relief granted under subsection (6) of this section.
- (2) The amount of the credit admissible to any company under the terms of any such arrangements shall be set off against the tax chargeable upon that company in respect of the income and where that tax has been paid the amount of the credit may be repaid to that company or carried forward against the tax chargeable upon that company of any subsequent accounting period.
- (3) The credit for an accounting period shall not exceed whichever is the less of the following amounts, that is to say-
- (a) the amount of the foreign tax payable on the income: or
 - (b) the amount of the difference between the tax chargeable under this Act (before allowance of credit under any arrangements having effect under section 61 of this Act) and the tax which would be so chargeable if the income were excluded in computing profits.
- (4) Without prejudice to the provisions of subsection (3) of this section, the total credit to be allowed to a company for any accounting period for foreign tax under all arrangements having effect under section 61 of this Act shall not exceed the total tax which would be ultimately borne by that company, for that accounting period, if no such credit had been allowed.
- (5) Where the income includes a dividend and under the arrangements foreign tax not chargeable directly or by deduction in respect of the dividend is to be taken into account in considering if any, and if so what, credit is to be given against tax in respect of the dividend, the amount of the income shall be increased by the amount of the foreign tax not so chargeable which falls to be taken into account in computing the amount of the credit.

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- (6) Where the amount of the foreign tax attributable to the income exceeds the credit therefor computed under subsection (3) of this section, then the amount of that income. to be included in computing profits for any purpose of this Act other than that of subsection (3) of this section, shall be taken to be the amount of that income increased by the amount of the credit therefor after deduction of the foreign tax.
- (7) Where-
- (a) the arrangements provide, in relation to dividends of some classes, but not in relation to dividends of other classes, that foreign tax not chargeable directly or by deduction in respect of dividends is to be taken into account in considering if any, and if so what, credit is to be given against tax in respect of the dividends; and
 - (b) a dividend is paid which is not of a class in relation to which the arrangements so provide,
- then, if the dividend is paid to a company which controls, directly or indirectly. not less than half of the voting power in the company paying the dividends, credit shall be allowed as if the dividend were a dividend of a class in relation to which the arrangements so provide.
- (8) Any claim for an allowance by way of credit shall be made not later than three years after the end of the accounting period, and in the event of any dispute as to the amount allowable the Board shall give to the claimant notice of refusal to admit the claim which shall be subject to appeal in like manner as an assessment.
- (9) Where the amount of any credit given under the arrangements is rendered excessive or insufficient by reason of any adjustment of the amount of any tax payable either in Nigeria or elsewhere, nothing in this Act limiting the time for the making of assessments or claims for repayment of tax shall apply to any assessment or claim to which the adjustment gives rise, being an assessment or claim made not later than three years from the time when all such assessments, adjustments and other determinations have been made, whether in Nigeria or elsewhere, as are material in determining whether any, and if so what, credit falls to be given.
- (10) Where a company is not resident in Nigeria throughout an accounting period no credit shall be admitted in respect of any income included in the profits of that company of that period.

63. Power to amend the First Schedule

At any time after the enactment of this Act, the Minister may by order delete any of the powers or duties specified in the First Schedule or include therein additional powers or

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duties and may do so by amendment of such Schedule or by substituting a new Schedule therefor.

FIRST SCHEDULE

[Section 3 (e), 4 and 62.]

Powers or duties to be performed or exercised by the Board alone

The powers or duties specified in or imported into the following sections of this Act (other than such part of any powers or duties as consist of a power or duty to make enquiries or other incidental or preparatory powers or duties of a like nature) shall only be performed or exercised by the Board, who shall have no power to authorise any other person to perform the same, namely, powers or duties in sections 3 (b), (d) and (e), 6 (2), 10 (1) (k), 13 (3) (c), 15, 31 (2), 33 (1), 37 (1), 49, 52, 53 and 58 of this Act.

SECOND SCHEDULE

[Sections 10, 20 and 30.]

Capital allowances

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

1. Interpretation.
2. Provisions relating to qualifying petroleum expenditure.
3. Owner and meaning of relevant interest.
4. Sale of buildings, etc.
5. Petroleum investment allowance
6. Annual allowances.
7. Asset to be in use at end *of* accounting period.
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9. Balancing charges.
10. Residue.
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13. Apportionment.
14. Part of an asset.
15. Extension of meaning of —in usel.
16. Exclusion of certain expenditure.
17. Asset used or expenditure incurred partly for the purpose of petroleum operations.
18. Disposal without change of ownership.

1. Interpretation

- (1) For the purposes of this Schedule, unless the context otherwise requires-

“concession” includes an oil exploration licence, an oil prospecting licence, an oil mining lease, any right, title or interest in or to petroleum oil in the ground and any option of acquiring any such right, title or interest;

“lease” includes an agreement for a lease where the term to be covered by the lease has begun, any tenancy and any agreement for the letting or hiring out of an asset, but does not include a mortgage, and all cognate expressions including **“leasehold interest”** shall be construed accordingly; and

- (a) where, with the consent of the lessor, a lessee of any asset remains in possession thereof after the termination of the lease without a new lease being granted to him, that lease shall be deemed for the purposes of this Schedule to continue so long as he remains in possession as aforesaid; and

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(b) where, on the termination of a lease of any asset, a new lease of that asset is granted to the lessee, the provisions of this Schedule shall have effect as if the second lease were a continuation of the first lease;

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“qualifying expenditure” means, subject to the express provisions of this Schedule, expenditure incurred in an accounting period which is-

- (a) capital expenditure (hereinafter called —qualifying plant expenditure) incurred on plant, machinery or fixtures;
- (b) capital expenditure (hereinafter called —qualifying pipeline and storage expenditure) incurred on pipelines and storage tanks;
- (c) capital expenditure (hereinafter called —qualifying building expenditure), other than expenditure which is included in paragraphs (a), (b) or (d) of this interpretation, incurred on the construction of buildings, structures or works of a permanent nature; or
- (d) capital expenditure (hereinafter called —qualifying drilling expenditure) other than expenditure which is included in paragraph (a) or (b) of this interpretation, incurred in connection with, or with petroleum operations in view of-
 - (i) the acquisition of, or of rights in or over, petroleum deposits;
 - (ii) searching for or discovering and testing petroleum deposits, or winning access thereto; or
 - (iii) the construction of any works or buildings which are likely to be of little or no value when the petroleum operations for which they were constructed cease to be carried on:

Provided that, for the purposes of this definition qualifying expenditure shall not include any sum which may be deducted under the provisions of section 10 of this Act.

- (2) For the purposes of this interpretation of qualifying expenditure, where expenditure is incurred by a company before its first accounting period and such expenditure would have fallen to be treated as qualifying expenditure (ascertained without the qualification contained in the foregoing proviso) if it had been incurred by the company on the first day of its first accounting period, and-

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- (a) that expenditure is incurred in respect of an asset owned by the company then such expenditure shall be deemed to be qualifying expenditure incurred by it on that day;
or
- (b) that expenditure is incurred in respect of an asset which has been disposed of by the company before the beginning of its first accounting period then any loss suffered by the company on the disposal of such asset shall be deemed to be qualifying petroleum expenditure incurred by the company on that day and be deemed to have brought into existence an asset owned by the company in use for the purposes of petroleum operations carried on by the company, and any profit realised by the company on such disposal shall be treated as income of the company of its first accounting period for the purposes of subsection (1) (a) of section 9 of this Act.

2. Provisions relating to qualifying petroleum expenditure

(1) For the purposes of this Schedule where-

(a) expenditure has been incurred before its first accounting period and such expenditure would have been treated as such qualifying petroleum expenditure (ascertained without the qualification contained in the proviso in the interpretation of qualifying expenditure) if it had been incurred in that first accounting period; and

(b) such expenditure has not brought into existence an asset,

then such expenditure (ascertained in the case of sub-paragraph (1) (a) of this paragraph without such qualification) shall be deemed to have brought into existence an asset owned by the company incurring the expenditure and in use for the purposes of such petroleum operations.

(2) For the purposes of this Schedule, an asset in respect of which qualifying drilling expenditure has been incurred by any company for the purposes of petroleum operations carried on by it during any accounting period of the company, and which has not been disposed of, shall be deemed not to cease to be used for the purposes of such operations so long as such company continues to carry on such operations.

(3) So much of any qualifying petroleum expenditure incurred on the acquisition of rights in or over petroleum deposits and on the purchase of information relating to the existence and extent of such deposits as exceeds the total of the original cost of acquisition of such rights and of the cost of searching for, discovering and testing such deposits prior to the purchase of such information shall be left out of account for the purposes of this Schedule:

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

3. Owner and meaning of relevant interest

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

4. Sale of buildings, etc.

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

Provided that-

- (a) where such relevant interest is sold before the building, structure or works has been used, the foregoing provisions of this paragraph shall have effect with respect to such sale with the omission of the words —except the granting of petroleum investment allowance and the original cost of construction shall be taken to be the amount of the purchase price on such sale;
- (b) where any such relevant interest is sold more than once before the building, structure or works is used, the provisions of sub paragraph (a) shall have effect only in relation to the last of those sales.

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5. Petroleum investment allowance

- (1) For the purposes of this Act and subject to the provisions of this Schedule, where a company has incurred any qualifying capital expenditure wholly, exclusively and necessarily for the purposes of petroleum operations carried out by it, there shall be due to that company, for the accounting period in which that asset was first used or for the purposes of such operations, an allowance (in this Schedule called —Petroleum Investment Allowance) at the appropriate rate per cent, set forth in Table 1 to this Schedule, of such expenditure.
- (2) For the purpose of this Act, the Petroleum Investment Allowance shall be added to the annual allowance computed under paragraph 6 of this Schedule and shall be subject to the same rules under this Act.

6. Annual allowance

- (1) Subject to the provisions of this Schedule, where in any accounting period, a company owning any assets has incurred in respect thereof qualifying expenditure wholly, necessarily and exclusively for the purposes of petroleum operations carried on by it, there shall be due to that company as from the accounting period in which such expenditure was incurred, an allowance (in this Act referred to as —an annual allowance) at the appropriate rate *per centum* specified in Table II of this Schedule.
- (2) Notwithstanding the provisions of sub-paragraph (1) of this paragraph, there shall be retained in the books, in respect of each asset 1% of the initial cost asset which may only be written off in accordance with sub-paragraph (3) of this paragraph.
- (3) Any asset or part thereof in respect of which capital allowances have been granted may only be disposed of on the authority of a Certificate of Disposal issued by the Minister or any person authorised by him.
- (4) Any unrecovered capitalised expenditure prior to 1 April 1977 shall be deemed to have been capitalised with effect from 1 April 1977 and shall, as provided for in sub paragraph (1) of this paragraph, be amortised in five equal instalments and shall be subject to the provisions of sub-paragraphs (2) and (3) of this paragraph.

7. Asset to be in use at end of account period

An initial or an annual allowance in respect of qualifying expenditure incurred in respect of any asset shall only be due to a company for any accounting period if at the end of such accounting period it was the owner of that asset and the asset was in use for the purposes of the petroleum operations carried on by it.

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8. Balancing allowances

Subject to the provisions of this Schedule, where in any accounting period of a company, the company owning any asset in respect of which it has incurred qualifying expenditure wholly and exclusively for the purposes of petroleum operations carried on by it, disposes of that asset an allowance (hereinafter called —a balancing allowance) shall be due to that company for that accounting period of the excess of the residue of that expenditure, at the date such asset is disposed of, over the value of that asset at that date:

Provided that a balancing allowance shall only be due in respect of such asset if immediately prior to its disposal it was in use by such company for the purposes of the petroleum operations for which such qualifying expenditure was incurred.

9. Balancing charges

Subject to the provisions of this Schedule, where in any accounting period of a company, the company owning any asset in respect of which it has incurred qualifying expenditure wholly and exclusively for the purposes of petroleum operations carried on by it, disposes of that asset, the excess (hereinafter called —a balancing charge) of the value of that asset, at the date of its disposal, over the residue of that expenditure at that date shall, for the purposes of subsection (1) (a) of section 9 of this Act, be treated as income of the company of that accounting period:

Provided that a balancing charge in respect of such asset shall only be so treated if immediately prior to the disposal of that asset it was in use by such company for the purposes of the petroleum operations for which such qualifying expenditure was incurred and shall not exceed the total of any allowances due under the provisions of this Schedule, in respect of such asset.

10. Residue

The residue of qualifying expenditure, in respect of any asset, at any date, shall be taken to be the total qualifying expenditure incurred on or before that date, by the owner thereof at that date, in respect of that asset, less the total of any annual allowances due to such owner, in respect of that asset, before that date.

11. Meaning of “disposed of”

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

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

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

12. Value of an asset

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

13. Apportionment

- (1) Any reference in this Schedule to the disposal, sale or purchase of any asset includes a reference to the disposal, sale or purchase of that asset, as the case may be, together with any other asset, whether or not qualifying expenditure has been incurred on such last-mentioned asset, and, where an asset is disposed of, sold, or purchased together with

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another asset, so much of the value of the assets as, on a just apportionment, is properly attributable to the first mentioned asset shall, for the purposes of this Schedule, be deemed to be the value of, or the price paid for, that asset, as the case may be. For the purposes of this sub-paragraph, all the assets which are purchased or disposed of in pursuance of one bargain shall be deemed to be purchased or disposed of together, notwithstanding that separate prices are or purport to be agreed for each of those assets or that there are or purport to be separate purchases or disposals of those assets.

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

14. Part of an asset

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

15. Extension of meaning of “in use”

- (1) For the purposes of this Schedule, an asset shall be deemed to be in use during a period of temporary disuse.
- (2) For the purposes of paragraphs 5, 6 and 7 of this Schedule-
- (a) an asset in respect of which qualifying expenditure has been incurred by the owner thereof for the purposes of petroleum operations carried on by him shall be deemed to be in use for the purposes of such operations, between the dates hereinafter mentioned, where the Board is of the opinion that the first use to which the asset will be put by that owner incurring such expenditure will be for the purposes of such operations;
 - (b) the said dates shall be taken to be the date on which such expenditure was incurred and the date on which the asset is in fact first put to use:

Provided that where any allowances have been given in consequence of this subparagraph (2) of this paragraph and the first use to which such asset is put is not for the purposes of such operations, all such additional assessments shall be made as may be necessary to counteract the benefit obtained from the giving of any such allowances.

16. Exclusion of certain expenditure

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- (1) Subject to the express provisions of this Schedule, where any company has incurred expenditure which is allowed to be deducted under any provision (other than a provision of this Schedule) of this Act, such expenditure shall not be or be treated as qualifying expenditure.
- (2) Where any company has incurred expenditure upon any ocean going oil tanker plying between Nigeria and any other territory that expenditure shall not be treated as qualifying expenditure.

17. Asset used or expenditure incurred partly for the purpose of petroleum operations

- (1) The following provisions of this paragraph shall apply where, either or both of the following conditions apply with respect to any asset-
 - (a) the owner of the asset has incurred in respect thereof qualifying expenditure partly for the purposes of petroleum operations carried on by him and partly for other purposes;
 - (b) the asset in respect of which qualifying expenditure has been incurred by the owner thereof is used partly for the purposes of petroleum operations carried on by such owner and partly for other purposes.
- (2) Any allowances which would be due or any balancing charges which would be treated as income if both such expenditure were incurred wholly and exclusively for the purposes of such petroleum operations and such asset were used wholly and exclusively for the purposes of such operations shall be computed in accordance with the provisions of this Schedule.
- (3) So much of the allowances and charges computed in accordance with the provisions of sub-paragraph (2) of this paragraph shall be due or shall be so treated, as the case may be, as in the opinion of the Board is just and reasonable having regard to all the circumstances and to the provisions of this Schedule.

18. Disposal without change of ownership

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

- (a) qualifying expenditure incurred by such owner in respect of such asset prior to the date of such disposal shall be left out of account; but

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

TABLE I

[Paragraph 5.]

<i>Qualifying expenditure in respect of</i>	<i>Rate per centum</i>
On-shore operations	5
Operations in territorial waters and continental shelf areas up to and including 100 metres of water depth.....	10
Operations in territorial waters and continental shelf areas in water depth between 100 metres and 200 metres.....	15
Operations in territorial waters and continental shelf areas beyond 200 metres of water depth.....	20

TABLE II

[Paragraph 6.]

<i>Annual allowance</i>	<i>Rate per centum</i>
First year	20
2nd year	20
3rd year	20
4th year	20
5th year	19

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6th year and after19

THIRD SCHEDULE

[Section 45.]

Time for payments

1. In respect of the company's petroleum operations for the 1971 accounting period, 50% of the tax shall continue to be payable in instalments on the basis set out in section 45; the remaining 50% of the tax shall be payable in six consecutive monthly instalments on the basis set out in section 45 (6) (b), the first of such instalments being due not later than 30 September 1971.
2. In respect of the company's petroleum operations for the 1972 accounting period, 25% of the tax shall continue to be payable in instalments on the basis set out in section 42; the remaining 75% of the tax shall be payable in monthly instalments.
3. In respect of the company's petroleum operations for the 1973 accounting period and of each subsequent accounting period, the tax due for each such year shall be payable in monthly instalments.

FOURTH SCHEDULE

[Section 9 (1) (c).]

1. Interpretation of Fourth Schedule

(1) For the purposes of this Schedule, unless the context otherwise requires-

“**contract capacity**” means the maximum quantity of natural gas expressed in MMcf to which a customer of a company is entitled in the accounting period under an individual gas sales contract between the company and such customer;

“**gas take**” means the actual quantity of natural gas expressed in MMcf actually taken or paid for by a customer in the accounting period under an individual gas sales contract between the company and a customer of the company.

2. Ascertainment of G-Factor

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- (1) The value of all chargeable natural gas in the accounting period shall be the sum of gross proceeds under individual gas sales contracts in the accounting period less the G-Factor allowance as applicable to any such individual gas sales contracts at the appropriate rate per cent of such proceeds under any such individual gas sales contracts as specified in the Table to this Schedule.
- (2) G-Factor *per centum* in respect of factors in between the figures mentioned in the Table to this Schedule shall be calculated on pro-rata basis.

3. Power of review

The Government of the Federation may from time to time review the G-Factor allowance specified in the Table to this Schedule.

TABLE

<i>Load factor</i>	<i>G-Factor per centum</i>
50	16.9
60	15.5
70	14.3
80	13.6

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CHAPTER S8

STAMP DUTIES ACT

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- 44. Bills of lading.

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SCHEDULES

CHAPTER S8

STAMP DUTIES ACT

An Act to provide for the levying of stamp duties on certain matters.

[5 of 1939, 28 of 1941, 17 of 1942, 26 of 1946, 38 of 1950, 2 of 1953, Resolution and Order 2 of 1948, 1 of 1951, Resolution 6 of 1951, Order 47 of 1951, L.N. 64 of 1954, 131 of 1954, 47 of 1955, 90 of 1956.]

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[Commencement]

[1st April, 1939]

1. Short title

This Act may be cited as the Stamp Duties Act.

[54 & 55. Vict. C. 38 (s.27) L.N. 131 of J 954.]

2. Interpretation

In this Act unless the context so requires-

“**Accountant-General**” means the Accountant-General of the Federation;

“**commissioner**” means a commissioner of stamp duties appointed as hereinafter provided;

“**die**” includes any plate, type, tool, or implement whatever used under the direction of the Minister of Finance or his counterpart in the State, as the case may be, for expressing or denoting any duty, or rate of duty, or the fact that any duty, or rate of duty or penalty has been paid, or that an instrument is duly stamped, or is not chargeable with any duty, or for denoting any fee, and also any part of any such plate, type, tool or implement;

“**duty**” means any stamp duty for the time being chargeable under this or any other Act and also includes any fee chargeable hereunder;

“**executed**” and “**execution**” with reference to instruments not under seal, mean signed and signature;

“**Government**” includes the Government of the Federation or of a State and any department thereof, local government council, and an officer acting in his official capacity on behalf of the Government of the Federation or of a State or any department thereof, or of a local government area, and not on behalf of a private person;

“**instrument**” includes every written document;

“**marketable security**” includes a security of such a description as to be capable of being sold in any stock market;

“**material**” includes every sort of material upon which words or figures can be expressed;

“**money**” includes all sums expressed in naira or in any foreign currency;

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“**stamp**” means a stamp impressed by means of a die as an adhesive stamp for denoting any duty or fee;

“**stamped**” with reference to instruments and material, applies as well to instruments and material impressed with stamps by means of a die as to instruments and material having adhesive stamps affixed thereto;

“**stock**” includes any share in any stocks transferable at the Central Bank of Nigeria, promissory notes, and any share in the stocks or funds of any foreign State or Government, or in the capital stock or funded debt of any local authority, corporation, company or society in Nigeria or of any foreign corporation, company, or society;

“**write**”, "written" and "writing" include every mode in which words or figures can be expressed upon material.

PART I

Provisions applicable to instruments generally

Charge of duty upon instruments

3. Charge of duties in Schedule

- (1) From and after the commencement of this Act, the duties to be charged upon the several instruments specified in the Schedule to this Act shall be the several duties set out in the said Schedule, which duties shall be in substitution for the duties heretofore chargeable under the enactments repealed by this Act and shall be subject to the exemptions contained in this Act and in any other Act for the time being in force.

[L.N. 49 of 1961. L.N. 131 of 1954. L.N. 112 of 1964. Schedule.]

- (2) The duties charged under this Act shall be accounted for in a manner to be prescribed in proper case by the Minister after consultation with the Governors of the States.
- (3) The functions under this Act shall be respectively confined to matters in respect of which the Government of the Federation and the Government of such State shall be competent to make laws:

Provided that nothing herein shall be interpreted as preventing the appointment by the President and by a Governor of the same person to be both a Federal and a State commissioner under section 6 of this Act.

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4. Stamping and collection of duties on corporate instruments

- (1) The Federal Government shall be the only competent authority to impose, charge and collect duties upon instruments specified in the Schedule to this Act if such instrument relates to matters executed between a company and an individual, group or body of individuals.
- (2) The State Governments shall collect duties in respect of instruments executed between persons or individuals at such rates to be imposed or charged as may be agreed with the Federal Government.
- (3) In this section, “**company**” includes banks and other financial institutions.

5. Manner of denoting duty

- (1) All duties for the time being chargeable under the provisions of this Act upon any instruments shall be paid and denoted according to the provisions in this Act, and, except where express provision is made to the contrary in this Act or by the regulations made thereunder are to be denoted by impressed stamps only.
- (2) Where the duty may be denoted by adhesive stamps, postage stamps may, subject to the provisions of any Act or regulation, be used for the purpose.
- (3) Every instrument written upon stamped material shall be written in such a manner, and every instrument partly or wholly written before being stamped shall be so stamped, that the stamp shall appear on the face of the instrument and cannot be used or applied to any other instrument written upon the same piece of material.
- (4) No impressed or embossed stamp or stamps made by means of a die shall be used in any manner except upon the document upon which it was originally impressed, embossed or stamped.
- (5) The amount of the duty upon any instrument may be denoted by several stamps, and stamps of greater value than is required may be used upon any instrument.

Appointment of commissioners

6. Commissioners of stamp duties

- (1) The relevant Civil Service Commission may appoint one or more officers who shall be commissioners of stamp duties and shall have the care and management of the duties to be taken under this Act.

[L.N. 131 of 1954.]

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- (2) Except as otherwise provided by this Act or by any law for the time being in force, any decision, act or thing required to be made or done by a commissioner may be made or done by anyone of the said commissioners when there are more than one commissioners.
- (3) When appointing a commissioner, the President or Governor, as the case may be may signify that the duty of such commissioner shall be confined to adjudication under section 15 of this Act.

7. Discontinuance and issue of dies

- (1) Until discontinued as provided in this section, the dies for impressed revenue stamps in use at the coming into force of this Act shall continue to be used, and the commissioners may, from time to time, procure new dies of the same design.
[L.N. 131 of 1954.]

- (2) No die of new design of impressed revenue stamp shall be used without the approval of the Minister or Governor, as the case may be, and a notification of such approval shall be published in the Federal *Gazette* at least one month before such new die shall be used.

- (3) The Minister or Governor, as the case may be, may by notice in the Federal *Gazette* determine to discontinue the use of any die for the use of a revenue stamp and provide a new die to be used in lieu thereof: then from and after any day to be stated in the notice (such day not being within one month after the same is so published) the new die shall be the only lawful die for denoting the duty chargeable in any case in which the discontinued die would have been used; any and every instrument first executed by any person, or bearing date after the day so stated, and stamped with the discontinued die, shall be deemed to be not duly stamped:

Provided that:

- (a) if any instrument stamped as last aforesaid, and first executed after the day so stated at any place out of Nigeria is brought to a commissioner within 21 days after it has been received in Nigeria, then, upon proof of the facts to the satisfaction of the commissioner, the stamps thereon shall be cancelled and the instrument shall be stamped with the same amount of duty by means of the lawful die, without the payment of any penalty;
- (b) all persons having in their possession any material stamped with the discontinued dies, and which by reason of the providing of such new die has been rendered useless, may, at any time within six months after the day stated in the notice, send the said material to the Accountant-General who shall cause the stamp on such material to be cancelled and refund the amount of duty paid upon such material.

8. Instruments to be separately charged with duty in certain cases

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Except where express provision to the contrary is made by this or any other Act-

- (a) an instrument containing or relating to several distinct matters shall be separately and distinctly charged, as if it were a separate instrument, with duty in respect of each of such matters;
- (b) an instrument made for any consideration or consideration in respect whereof it is chargeable with *ad valorem* duty, and also for any further or other valuable consideration, or considerations, shall be separately and distinctly charged, as if it were a separate instrument, with duty in respect of each of the considerations.

9. Facts and circumstances affecting duty to be set forth in instrument

All the facts and circumstances affecting the liability of any instrument to duty, or the amount of the duty with which any instrument is chargeable, shall be fully set forth in the instrument; and every person who, with intent to defraud the Government of the Federation or of any State-

[L.N. 131 of 1954.]

- (a) executes any instrument in which all the said facts and circumstances are not fully and truly set forth; or
- (b) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all the said facts and circumstances,

shall be guilty of an offence and liable on conviction to a fine of forty naira.

10. Mode of calculating *ad valorem* duty in certain cases

(1) Where an instrument is chargeable with *ad valorem* duty in respect of-

- (a) any money in any foreign currency; or
- (b) any stock or marketable security,

the duty shall be calculated on the value, on the day of the date of the instrument, of the money in United States dollars according to the current rate of exchange, or of the stock or security according to the average price thereof.

(2) Where an instrument contains a statement of current rate of exchange, or average rate of exchange, or average price, as the case may require, and is stamped in accordance with that statement, it shall, so far as regards the subject matter of the statement, be deemed

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duly stamped, unless or until it is shown that the statement is untrue, and that the instrument is in fact insufficiently stamped.

Use of adhesive stamps

11. Cancellation of adhesive stamps

- (1) An instrument, the duty upon which is required or permitted by law to be denoted by an adhesive stamp, shall not be deemed duly stamped with an adhesive stamp unless the person required by law to cancel such adhesive stamp cancels the same by writing on or across the stamp his name or, initials, or the name or initials of his firm, together with the true date of his so writing, or otherwise effectively cancels the stamp and renders the same incapable of being used for any other instrument or for any postal purpose or for payment of a telegram:

Provided that when the person required by law to cancel an adhesive stamp is an illiterate person, the stamp shall be deemed to be sufficiently cancelled, if the mark of such person, together with the true date of the making thereof, is written on or across such stamp.

- (2) When two or more adhesive stamps are used to denote the duty upon an instrument each or every stamp shall be cancelled in the manner aforesaid.
- (3) Every person who, being required by law to cancel an adhesive stamp neglects or refuses duly and effectively to do so in the manner aforesaid, shall be guilty of an offence and liable on conviction to a fine of twenty naira.

12. Proper time for stamping instruments

- (1) Every instrument first executed in Nigeria, which by law may be or is required to be stamped with an adhesive stamp, shall be stamped on or before its first execution, and such stamp shall be cancelled by the person by whom the instrument is first executed and at the time of such execution:

[28 of 1941.]

Provided that where an instrument is prepared or attested by or executed before a commissioner of oaths, a justice of the peace or a notary public, such stamp shall be cancelled by such commissioner of oaths, justice of the peace or notary public at the time of its first execution.

13. Penalty for fraud in relation to adhesive stamps

- (1) If any person-

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- (a) fraudulently removes or causes to be removed from any instrument any adhesive stamp, or affixes to any other instrument or uses for any postal purpose any adhesive stamp which has been so removed, with intent that the stamp may be used again; or
- (b) sells or offers for sale, or utters any adhesive stamp which has been so removed, or utters any instrument having thereon any adhesive stamp which has to his knowledge been so removed as aforesaid,

he shall be guilty of an offence and liable on conviction in addition to any other fine or penalty to which he may be liable, to a fine of one hundred naira.

- (2) The expression “**instrument**” in this section, includes a telegram and any postal article within the meaning of the Nigerian Postal Services Act.

[Cap. N 127.]

Appropriated stamps

14. Appropriated stamps

- (1) A stamp which by any word or words on the face of it is appropriated to any particular description of instrument shall not be used, or if used, shall not be available, for an instrument of any other description.
- (2) An instrument falling under the particular description to which any stamp is so appropriated as aforesaid shall not be deemed duly stamped, unless it is stamped with the stamp so appropriated.

Adjudication by a commissioner

15. As to denoting certificate

Where the duty with which an instrument is chargeable depends in any manner upon the duty paid upon another instrument, the payment of such last-mentioned duty shall, upon the application to a commissioner, payment of a fee of 26 kobo and production of both the instruments, be denoted upon such first-mentioned instrument by a certificate under the hand of the commissioner.

16. The commissioner may be required to express his opinion as to duty

- (1) Subject to such regulations as the Minister or Governor, as the case may be, may think fit to make, a commissioner may be required by any person to express his opinion with reference to the amount of duty (if any) payable on any executed instrument; and in such

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case, a certificate' shall be endorsed on the instrument, under the hand of the commissioner, stating that, in his opinion, such instrument is not chargeable with any duty, or the particular amount with which, in his opinion, it is chargeable or, if in his opinion such is the case, that it is duly stamped:

[26 of 1946.]

Provided that nothing in this section shall extend to any instrument chargeable with *ad valorem* duty and made as a security for money or stock without limit; or shall authorise the stamping after the execution thereof of any instrument which by law cannot be stamped after execution.

- (2) An adhesive stamp for the fee prescribed under sections 15 and 66 of this Act shall be supplied to the commissioner by the person requiring the certificate at the time when the application for the certificate is made and such stamp shall be fixed to the instrument by the commissioner and cancelled by him prior to giving the certificate.

17. The commissioner may call for and refuse to proceed without evidence

In any case of application to a commissioner with reference to any instrument, the commissioner may require to be furnished with such evidence by means of affidavit or otherwise as he may deem necessary in order to show to his satisfaction whether all the facts and circumstances affecting the liability of the instrument to duty, or the amount of the duty chargeable thereon, are fully and truly set forth therein, and may refuse to proceed upon any such application until such evidence has been furnished accordingly.

18. Persons authorised to take declarations and affidavits

Any statutory declaration or affidavit made in pursuance of or for the purposes of this Act or any other Act for the time being in force relating to stamp duties may be made before any of the commissioners or any other person authorised by law to administer oaths.

19. Effect of assessment by commissioner and payment of duty in accordance therewith

Every instrument bearing a certificate of a commissioner that it is not chargeable with duty or that it is duly stamped, or being stamped with the amount of duty assessed and certified by him shall be admissible in evidence and available for all purposes, not withstanding any objection relating to duty:

Provided that an instrument upon which the duty has been assessed by a commissioner shall not be stamped otherwise than in accordance with the assessment of the commissioner.

20. Two commissioners not to adjudicate on same instrument

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Any person, other than a public officer in the exercise of his official duties who, after an instrument has been submitted to a commissioner for his opinion as to the amount of duty with which the instrument is chargeable, subsequently submits the same instrument to a different commissioner for an expression of his opinion as to the amount of duty with which the instrument is chargeable, shall be guilty of an offence and shall be liable on conviction to a fine of twenty naira.

21. Persons dissatisfied may appeal

- (1) Any person who is dissatisfied with the assessment of a commissioner may, within 21 days after the date of the assessment, and on payment of duty in conformity therewith, appeal against the assessment to the High Court of the State in which the assessment was made and may for that purpose require the commissioner to state and sign a case, setting forth the question upon which his opinion was required, and the assessment made by him.

[L.N. 47 of 1955.]

- (2) The commissioner shall thereupon state and sign a case and deliver the same to the person by whom it is required, and the case may, within seven days thereafter but not later, be filed by him in the High Court and thereafter be heard by the said court.
- (3) Upon the hearing of the case, the court shall determine the question submitted, and, if the instrument in question is in the opinion of the court chargeable with any duty, shall assess the duty with which it is chargeable.
- (4) If it is decided by the court that the assessment of the commissioner is wrong, the court shall assess the correct amount of duty; and
 - (a) in the event of an excess of duty having been paid in conformity with the erroneous decision of the commissioner, any excess of duty which may have been paid in conformity with such decision, together with any fine or penalty which may have been paid in consequence thereof, shall be ordered by the court to be repaid to the appellant, with or without costs as the court may determine; and
 - (b) in the event of the court assessing an amount of duty greater than that assessed by the commissioner, the difference between the amount of duty assessed by the commissioner and the amount assessed by the court together with any fine or penalty which may have been incurred but not yet paid, with or without costs as the court may determine, shall be paid by the appellant, forthwith or within such time as the court may direct, in stamps which shall be affixed to or impressed on the document in the presence of a commissioner and in the case of adhesive stamps, cancelled by him.

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22. Terms upon which instruments not duly stamped may be received in evidence

- (1) Upon the production of an instrument chargeable with any duty as evidence in any court of civil judicature in Nigeria, or before any arbitrator or referee, notice shall be taken by the judge, magistrate, arbitrator, or referee of any omission or insufficiency of the stamps thereon, and if the instrument is one which may legally be stamped after the execution thereof, it may, on payment to the officer of the court whose duty it is to read the instrument, or to the arbitrator or referee, of the amount of the unpaid duty, and the penalty payable on stamping the same, and of a further sum of two naira, be received in evidence, saving all just exceptions on other grounds.
- (2) The officer, or arbitrator, or referee receiving the duty and penalty shall give a receipt for the same, and make an entry in the proper book kept for the purpose of showing receipts of money and of the amount thereof, and shall communicate to a commissioner the name or title of the proceedings in which and of the part from whom, he received the duty and penalty, and the date and description of the instrument, and shall pay over to the Accountant-General the money so received by him for the duty and penalty.
- (3) On production to the commissioner of any instrument in respect of which any duty or penalty has been paid, together with the receipt, the payment of the duty and penalty shall be denoted on the instrument.
- (4) Except as aforesaid and subject to the provisions of section 90 (3) of this Act, an instrument executed in Nigeria, or relating, wheresoever executed, to any property situate or to any matter or thing done or to be done in Nigeria, shall not, except in criminal proceedings, be given in evidence, or be available for any purpose whatever, unless it is duly stamped in accordance with the law in force in Nigeria at the time when it was first executed.

Stamping of instruments after execution

23. Stamping of instruments after execution

- (1) Except where other express provision is made in this Act, any unstamped or insufficiently stamped instrument may be stamped with an impressed stamp at any time within forty days from the first execution thereof (unless such period of forty days is reduced by an order as provided in subsection (7) of this section) upon payment of the duty or unpaid duty only but after that time the said instrument may only be stamped upon payment of the unpaid duty and a penalty of twenty naira, and also by way of further penalty, where the unpaid duty exceeds twenty naira, of interest on such duty, at the rate of ten per cent *per annum*, from the day upon which the instrument was first executed up to the time when the amount of interest is equal to the unpaid duty.

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[28 of 1941. L.N. 131 of 1954. L.N. 112 of 1964. 28 of 1941.]

(2) Stamps representing the amount of the unpaid duty together with the penalty shall-

(a) in the case of impressed stamps, be impressed on the instrument; and

(b) in the case of adhesive stamps, be affixed to the instrument,

in the presence of a commissioner, who shall thereupon, in the case of adhesive stamps, cancel the stamps by writing his initials and the date thereon, and in addition, in the case of those stamps whether impressed or adhesive which do not clearly indicate that they represent a penalty, write the word —Penalty thereon, and any such cancellation shall be effective for all purposes.

(3) In the case of such instruments hereinafter mentioned as are chargeable with *ad valorem* duty, the following provisions shall have effect-

(a) the instrument, unless it is written upon duly stamped material, shall be duly stamped with the proper *ad valorem* duty before the expiration of thirty days after it is first executed, or after it has been first received in Nigeria if it was first executed at any place outside Nigeria;

(b) if any such instrument executed after the coming into operation of this Act has not been or is not duly stamped in conformity with the foregoing provisions of this subsection, the person in that behalf specified in paragraph (c) of this subsection shall be guilty of an offence and liable on conviction to a fine of twenty naira, and in addition to the penalty prescribed under subsection (1) and (2) on stamping the instrument there shall be paid a further penalty equivalent to the unpaid duty thereon, unless a reasonable excuse for the delay in stamping or the omission to stamp, or the insufficiency of stamp, is afforded to the satisfaction of the commissioner, or of the court, arbitrator or referee before whom it is produced;

(c) the instruments and persons to which the provisions of this subsection are to apply are as follows-

<i>Title of instrument as described in the Schedule</i>	<i>Person liable to penalty</i>
Bond, covenant, or instrument of any kind whatsoever	The obligee, covenantee or other person taking the security

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Conveyance on sale..... The vendee or transferee.

Conveyances or transfers operating as voluntary dispositions *inter vivos* The grantor or transferor.

Lease..... The lessee.

Mortgage bond, debenture, covenant, and warrant of attorney to confess and enter judgment	The mortgagee or obligee, in the case of a transfer or reconveyance, the transferee, assignee or disponee or the person redeeming the security.	
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Settlement..... The settler.

(4) Except where other express provision is made by this Act in relation to any particular instrument, any unstamped or insufficiently stamped instrument which has been first executed at any place outside Nigeria, may be stamped, at any time within thirty days after it has been first received in Nigeria, on payment of the unpaid duty only.

(5) Where an instrument is void unless it has been approved or sanctioned by the Minister or some public officer, the periods mentioned in this section shall be deemed to run' from the date of such approval or sanction.

(6) Where an instrument has been submitted to a commissioner for his opinion before the period within which it may be stamped has expired, the instrument may be stamped in accordance with the assessment of the commissioner within 21 days after notice of the assessment.

(7) The date of the approval or sanction referred to in subsection (4) and of the notice of assessment in subsection (6) of this section shall be the date upon which such approval, sanction or notice of assessment has been sent by registered or ordinary letter post to the address of the person who requested the approval or sanction referred to in subsection (5) of this section or the assessment in subsection (6) of this section, as the case may be, or after notice of such approval, sanction or assessment has been handed personally to such person or his representative.

(8) Where the Minister or Governor, as the case may be, is of the opinion that the period of forty days specified in subsection (1) of this section or of thirty days specified in subsections (3) and (4) of this section is-

(a) being used in any manner for the purpose of evading the payment of stamp duties; or

(b) too long or too short in view of the fact that a commissioner is either easy or difficult of access for the purposes of assessing the duty payable upon any instrument or of

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having stamps impressed upon an instrument liable to duty, the Minister or Governor, as the case may be, may by order declare that for the period of forty days specified in subsection (1) and for the periods of thirty days specified in subsections (3) and (4) of this section or either of them, there shall be substituted such lesser or longer period of time as may be specified in the said order and thereafter such lesser period shall be substituted for the period of forty days specified in subsection (1) of this section and such lesser or longer period for the periods of thirty days specified in subsections (3) and (4) of this section or either of them, as the case may be, in the application of this section to instruments first executed or received in those towns, areas or places to which the order relates.

- (9) An order under this subsection may specify different periods of time in respect of different places and may be restricted or increased in the case of a period of time referred to in subsection (3) of this section to instruments first executed in Nigeria.

Entries upon rolls, books and documents

24. Certain rolls and books to be open to inspection

- (1) Every person having in his custody any rolls, books, records, papers, documents, or proceedings, the inspection whereof may tend to secure any duty, or to prove or lead to the discovery of any fraud or omission in relation to any duty, shall at all reasonable times permit any person thereto authorised by the commissioner to inspect the rolls, books, records, papers, documents, and proceedings, and to take such notes and extracts as he deems necessary, without fee or reward, and in case of refusal, shall for every such refusal be guilty of an offence and be liable on conviction to a fine of twenty naira.
- (2) Where such rolls, books, records, papers, documents or proceedings are in the custody of any bank, such inspection shall first be made by a commissioner unaccompanied by any other person unless the commissioner decides that it is necessary for him to have assistance in determining whether any fraud or omission in relation to any duty has taken place.

25. Penalty for enrolling instrument not stamped

If any person whose office it is to enroll, register or enter in or upon any rolls, books or records any instrument chargeable with duty, enrolls, registers or enters any such instrument not being duly stamped, he shall be guilty of an offence and liable on conviction to a fine of twenty naira.

Destruction of unclaimed instruments

26. Destruction of unclaimed instruments

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Where any instrument has been left with or at the office of any commissioner for any purpose connected with any of the provisions of this Act and the instrument is not claimed by the person to whom the same belongs within six months of its being so left, a notice may be inserted in an issue of the Federal *Gazette* stating that the instrument will be destroyed if not claimed by such person within two months of the publication of the notice and if the instrument is not so claimed it may be destroyed.

Regulations applicable to particular instruments

Admission

27. Mode of denoting duty

- (1) The duty payable upon an admission shall be denoted on the instrument of admission delivered to the person admitted, if there is any such instrument, or if not, on the register, entry or memorandum of the admission in the rolls, books or records of the court in which the person is admitted and in cases in which no instrument of admission is delivered, and no register, entry, or memorandum is made, on the receipt or warrant for admission.

[28 of 1941.]

- (2) If any person whose office it is to prepare or deliver out any instrument of admission chargeable with duty, or to register, enter, or make any memorandum of any admission in respect of which no instrument of admission is delivered to the person admitted, neglects or refuses, within one month after the admission, to prepare a duly stamped instrument of admission, or to make a duly stamped register, entry, or memorandum of the admission as the case may require, he shall be guilty of an offence and liable on conviction to a fine of twenty naira.

Agreements

28. Adhesive stamps may be used for agreements

- (1) The duty of ten kobo on an agreement may be denoted by an adhesive stamp which must be cancelled by the person by whom the agreement is first signed before he delivers it out of his hands.

29. Certain mortgages of stock to be chargeable as agreements

- (1) Every instrument under hand only (not being a promissory note or bill of exchange) given upon the occasion of the deposit of any share warrant or stock certificate to bearer, or foreign share certificate or any security for money transferable by delivery, by way of

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security for any loan, shall be deemed to be an agreement, and shall be charged with duty accordingly.

- (2) Every instrument under hand only (not being a promissory note or bill of exchange) making redeemable or qualifying a duly stamped transfer, intended as a security, of any registered stock or marketable security shall be deemed to be an agreement and shall be charged with duty accordingly.
- (3) A release or discharge of any such instrument shall not be chargeable with any *ad valorem* duty.

30. Hire purchase agreement to be stamped

Any agreement for or relating to the supply of goods on hire, whereby the goods in consideration of periodical payments shall or may become the property of the person to whom they are supplied, shall be charged with duty as an agreement and if under seal as a deed, as the case requires, and the exemption numbered (3) under the heading "Agreement or any Memorandum of an Agreement" in the Schedule to this Act shall not apply in the case of any such instrument.

Appraisements

31. Definition of "appraiser"

- (1) For the purposes of this Act, the expression "appraiser" means a person who values or appraises any estate or property, real or personal, or any interest, whether in possession or not, in any estate or property, or any goods, merchandise, or effects for or in expectation of any hire, gain, fee or reward.

32. Appraisements to be written out

- (1) Every appraiser, by whom an appraisal or valuation chargeable with duty is made, shall, within fourteen days after the making thereof, write out the same in words and figures showing the full amount thereof, and shall duly stamp the same and if he neglects or omits so to do, or in any other manner first discloses the amount of the appraisal or valuation, he shall be guilty of an offence and liable to a fine of one hundred naira.

[28 of 1941.]

- (2) Every person who receives from any appraiser, or pays for the making of any such appraisal or valuation, not so written out and stamped as aforesaid, shall incur a fine of forty naira.

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Instruments of apprenticeship

33. Meaning of instrument of apprenticeship

Every writing relating to the service or tuition of any apprentice, clerk, or servant placed with any master to learn any profession, trade or employment, is to be deemed an instrument of apprenticeship.

Bank notes, bills of exchange and promissory notes

34. Meaning of “banker” and “bank note”

For the purposes of this Act, the expression —banker| means any person carrying on the business of banking in Nigeria and the expression —bank note| includes-

- (a) any bill of exchange or promissory note issued by any banker for the payment of money not exceeding *two* hundred naira to the bearer on demand; and
- (b) any bill of exchange or promissory note so issued which entitles or is intended to entitle the bearer or holder thereof, without endorsement or without any further or other endorsement than may be thereon at the time of the issuing thereof, to the payment of money not exceeding two hundred naira on demand, whether the same be so expressed or not and in whatever form, and by whomsoever the bill or note is drawn or made.

35. Bankers not to issue bank notes in Nigeria other than those of Central Bank of Nigeria

- (1) It shall not be lawful for any banker to issue in Nigeria any bank note.

[L.N. 112 of 1964.]

- (2) Any person who commits an offence against this section shall be guilty of an offence and liable on conviction to a fine of two hundred naira.
- (3) The provisions of this section shall not apply to the issue or uttering by any banker of bills or notes issued by the Central Bank of Nigeria.

Bills of exchange and promissory notes

36. Meaning of “bill of exchange”

For the purposes of this Act, the expression “**bill of exchange**” includes draft, order, cheque and letter of credit, and any document or writing (except a bank note) entitling or

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purporting to entitle any person, whether named therein or not, to payment by any other person of or to draw upon any other person for, any sum of money; and the expression **“bill of exchange payable on demand”** includes:

- (a) an order for the payment of any sum of money by a bill of exchange or a promissory note, or for the delivery of any bill of exchange or promissory note in satisfaction of any sum of money or for payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen; and

- (b) an order for the payment of any sum of money weekly, monthly or at any other stated periods, and also an order for the payment by any person at any time after the date thereof of any sum of money, and sent or delivered by the person making the same to the person by whom the payment is to be made and not to the person to whom the payment is to be made, or to any person on his behalf.

37. Meaning of “promissory note”

- (1) For the purposes of this Act, the expression **“promissory note”** includes any document or writing (except a bank note) containing a promise to pay any sum of money.

- (2) A note promising the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen, shall be deemed a promissory note for that sum of money.

38. Statement of duty payable on promissory note containing guarantee

Where an instrument under hand only contains both a promissory note by a principal debtor and a guarantee by a surety but there is no memorandum of charge, pledge or deposit or other form of security, such instrument shall be stamped both as a promissory note and as a guarantee, and all other matters contained in a promissory note which would be liable to duty if contained in a separate instrument, shall be charged separately.

39. Provisions for use of adhesive stamps on bills and notes

- (1) The fixed duty of two kobo on a bill of exchange, payable on demand or at sight or on presentation or within three days after date or sight, may be denoted by an adhesive stamp, which, where the bill is drawn in Nigeria, shall be cancelled by the person by whom the bill is signed before he delivers it out of his hands, custody, or power.

- (2) The *ad valorem* duties upon bills of exchange and promissory notes drawn or made out of Nigeria are to be denoted by adhesive stamps.

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40. Provisions as to stamping foreign bills and notes

- (1) Every person into whose hands any bill of exchange or promissory note, drawn or made out of Nigeria, comes in Nigeria before it is stamped shall, before he presents for payment, or endorses, transfers or in any manner negotiates, or pays the bill or note, affix thereto a proper adhesive stamp or proper adhesive stamps of sufficient amount, and cancel every stamp so affixed thereto-

Provided:

- (a) that if at the time when any such bill or note comes into the hands of any *bona fide* holder there is affixed thereto an adhesive stamp effectually cancelled, the stamp shall, so far as it relates to the holder, be deemed to be duly cancelled, although it may not appear to have been fixed or cancelled by the proper person;
- (b) that if at the time when any such bill or note comes into the hands of any *bona fide* holder there is affixed thereto an adhesive stamp not duly cancelled, it shall be competent for the holder to cancel the stamp as if he were the person by whom it was affixed, and upon his so doing the bill or note shall be deemed duly stamped and as valid and available as if the stamp had been cancelled by the person by whom it was affixed.
- (2) Neither of the provisions specified in paragraphs (a) and (b) of subsection (1) of this section shall relieve any person from any fine or penalty incurred by him for not cancelling an adhesive stamp.

41. Provisions as to bills and notes purporting to be drawn abroad

A bill of exchange or promissory note which purports to be drawn or made out of Nigeria shall, for the purposes of determining the mode in which the duty thereon is to be denoted, be deemed to have been so drawn or made, although it may in fact have been drawn or made in Nigeria.

42. Penalty for issuing any unstamped bill or note

- (1) Every person who issues, endorses, transfers, negotiates, presents for payment, or pays any bill of exchange or promissory note liable to duty and not being duly stamped, shall be guilty of an offence and liable on conviction to a fine of twenty naira, and the person who takes or receives from any other person any such bill or note either in payment or as a security, or by purchase or otherwise, shall not be entitled to recover thereon, or to make the same available for any purpose whatever:

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Provided that if any bill of exchange payable on demand or at sight or on presentation, or within three days after date or sight is presented for payment unstamped, the person to whom it is presented may affix thereto an adhesive stamp of two kobo, and cancel the same, as if he had been the drawer of the bill, and may thereupon pay the sum in the bill mentioned, and charge the duty in account against the person by whom the bill was drawn, or deduct the duty from the said sum, and the bill shall, so far as respects the duty, be deemed valid and available.

- (2) The proviso to subsection (1) of this section shall not relieve any person from any fine or penalty incurred by him in relation to such bill.

43. One bill only of a set need be stamped

When a bill of exchange is drawn in a set according to the custom of merchants, and one of the set is duly stamped, the other or others of the set shall, unless issued or in some manner negotiated apart from the stamped bill, be exempt from duty; and upon proof of the loss or destruction of a duly stamped bill forming one of the set, any other bill of the set which has not been issued or in any manner negotiated apart from the lost or destroyed bill may, although unstamped, be admitted in evidence to prove the contents of the lost or destroyed bill.

Bills of lading

44. Bills of lading

- (1) A bill of lading is not to be stamped after the execution thereof.
- (2) Every person who makes or executes any bill of lading not duly stamped shall be guilty of an offence and liable on conviction to a fine of one hundred naira.

Bills of sale

45. Bills of sale

A bill of sale shall not be registered under any law for the time being in force relating to the registration of bills of sale unless the original, duly stamped, is produced to the proper officer.

46. Provisions as to duty on charter-party

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- (1) For the purposes of this Act, the expression “**charter-party**” includes any agreement or contract for the charter of any ship or vessel or any memorandum, letter, or other writing between the captain, master or owner of any ship or vessel, and any other person for or relating to the freight or conveyance of any money, goods, or effects on board of a ship or vessel.

[28 of 1941.]

- (2) The duty upon a charter-party may be denoted by an adhesive stamp, which shall be cancelled by the person by whom the instrument is last executed, or by whose execution it is completed as a binding contract.

47. Charter-parties executed abroad

Where a charter-party is first executed out of Nigeria without being duly stamped, any party thereto may, within ten days after it has been first received in Nigeria, and before it has been executed by any person in Nigeria, affix thereto an adhesive stamp denoting the duty chargeable thereon, and at the same time cancel such adhesive stamp, and the instrument when so stamped shall be deemed duly stamped.

[28 of 1941.]

48. Terms upon which charter-parties may be stamped after execution

A charter-party may be stamped with an impressed stamp after execution upon the following terms-

[28 of 1941.]

- (a) within seven days after the first execution thereof, on payment of the duty and a penalty of 45 kobo;
- (b) after seven days but within one month after the first execution thereof, on payment of the duty and a penalty of twenty naira,

and shall not in any other case be stamped with an impressed stamp.

Contract notes

49. Provisions as to contract notes

- (1) For the purpose of this Act, the expression “**contract note**” means the note sent by a broker or agent to his principal, or by any person who, by way of business, deals, or holds himself out as dealing, as a principal in any stock or marketable securities, advising the

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principal, or the vendor or purchaser, as the case may be, of the sale or purchase of any stock or marketable security, but does not include a note sent by a broker or agent to his principal where the principal is himself acting as broker or agent for a principal.

- (2) Where a contract note is a continuation or carrying over note made for the purpose of continuing or carrying over any transaction for the sale or purchase of stock or marketable security, the contract note, although it is made in respect of both a sale and, purchase, shall be charged with duty under this section as if it related to one of those transactions only, and, if different rates of duty are chargeable in respect of those transactions, to that one of those transactions which would render the contract note chargeable at the highest rate.
- (3) Where a contract note advises the sale or purchase of more than one description of stock or marketable security, the note shall be deemed to be as many contract notes as there are descriptions of stocks or securities sold or purchased.

50. Obligation to execute contract note

- (1) Any person who effects any sale or purchase of any stock or marketable security as a broker or agent, and any person who, by way of business, deals, or holds himself out as dealing, as a principal in any stock or marketable security, and buys or sells any such stock or marketable security, shall forthwith make and execute a contract note and transmit the note to his principal, or to the vendor or purchaser of the stock or marketable security, as the case may be, and in default of so doing shall be guilty of an offence and liable on conviction to a fine of forty naira.
- (2) If any person makes or executes any contract note chargeable with duty and not being duly stamped, he shall be guilty of an offence and liable on conviction to a fine of forty naira.
- (3) No broker, agent, or other person shall have any legal claim to any charge for brokerage, commission or agency, with reference to the sale or purchase of any stock or marketable security if he fails to comply with the provisions of this section.
- (4) All stamp duties on a contract note may be denoted by an adhesive stamp which is to be cancelled by the person by whom the note is executed.
- (5) Any duty on a contract note may be added to the charge for brokerage or agency, and shall be recoverable as part of such charge.

51. Extension of provisions as to contract notes to sale or purchase of options

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- (1) The provisions of this Act as to contract notes shall apply to any contract under which an option is given or taken to purchase or sell any stock or marketable security at a future time at a certain price, as it applies to the sale or purchase of any stock or marketable security, but the duty on such a contract shall be one half only of that chargeable on a contract note:

Provided that, if under the contract a double option is given or taken, the contract shall be deemed to be a separate contract in respect of each option.

- (2) Any contract note made or executed in pursuance and in consequence of the exercise of an option given or taken under a contract duly stamped in accordance with the provisions of this section, shall be charged with one half only of the duty which would otherwise have been chargeable thereon under this Act:

Provided that it bears on its face a certificate by the broker, agent or other person mentioned in section 50 of this Act to the effect that it is made or executed in the exercise of an option for which a duly stamped contract has been rendered on the date mentioned in the certificate.

Conveyances on sale

52. Meaning of “conveyance on sale”

- (1) For the purposes of this Act, the expression “**conveyance on sale**” includes-

- (a) every instrument, and every decree or order of any court whereby any property, or any estate or interest in any property, upon the sale thereof is transferred to or vested in a purchaser, or any other person on his behalf or by his direction;
- (b) a decree or order for, or having the effect of an order for foreclosure.

- (2) Notwithstanding subsection (1) of this section-

- (a) the *ad valorem* duty upon any such decree or order shall not exceed the duty on a sum equal to the value of the property to which the decree or order relates, and where the decree or order states that value, that statement shall be conclusive for the purposes of determining the amount of the duty; and
- (b) where *ad valorem* duty is paid upon such decree or order, any conveyance following upon such decree or order shall be exempt from the *ad valorem* duty.

53. How *ad valorem* duty is to be calculated in respect of stock and securities

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- (1) Where the consideration, or any part of the consideration, for a conveyance on sale consists of any stock or marketable security, the conveyance shall be charged with *ad valorem* duty in respect of the value of the stock or security.
- (2) Where the consideration, or any part of the consideration, for a conveyance on sale consists of any security not being a marketable security, the conveyance shall be charged with *ad valorem* duty in respect of the amount due on the day of the date thereof for principal and interest upon the security.

54. How consideration consisting of periodical payments to be charged

- (1) Where the consideration, or any part of the consideration, for the conveyance on sale consists of money payable periodically for a definite period not exceeding twenty years, so that the total amount to be paid can be previously ascertained, the conveyance shall be charged in respect of that consideration with *ad valorem* duty on such total amount.
- (2) Where the consideration, or any part of the consideration, for a conveyance on sale consists of money payable periodically for a definite period exceeding twenty years or in perpetuity or for an indefinite period not terminable with life, the conveyance shall be charged in respect of that consideration with *ad valorem* duty on the total amount which shall or may, according to the terms of sale, be payable during the period of twenty years next after the day of the date of the instrument.
- (3) Where the consideration, or any part of the consideration, for the conveyance on sale consists of money payable periodically during any life or lives, the conveyance shall be charged in respect of that consideration with *ad valorem* duty on the amount which shall or may, according to the terms of the sale, be payable during the period of twelve years next after the day of the date of the instrument.
- (4) No conveyance on sale chargeable with *ad valorem* duty in respect of any periodical payments, and containing also provision for securing the payments, shall be charged with any duty in respect of such provision, and no separate instrument made in that case for securing the payments is to be charged with any higher duty than one naira.

55. Conveyance on sale with further covenant

A conveyance on sale made for any consideration in respect whereof it is chargeable with *ad valorem* duty, and in further consideration of a covenant by the purchaser to make, or of his having previously made, any substantial improvement of or addition to the property conveyed to him, or of any covenant relating to the subject matter of the conveyance, shall not be chargeable, and shall be deemed not to have been chargeable, with any duty in respect of such further consideration.

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56. How conveyance in consideration of a debt is to be charged

Where any property is conveyed to any person in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or encumbrance upon the property or not, the debt, money or stock shall be deemed the whole or part, as the case may be, of the consideration in respect whereof the conveyance is chargeable with *ad valorem* duty.

57. Direction as to duty in certain cases

- (1) Where property contracted to be sold for one consideration for the whole is conveyed to the purchaser in separate parts or parcels by different instruments, the consideration shall be apportioned in such manner as the parties think fit, so that a distinct consideration for each separate part or parcel is set forth in the conveyance relating thereto, and such conveyance shall be charged with *ad valorem* duty in respect of such distinct consideration.
- (2) Where property contracted to be purchased for one consideration for the whole by two or more persons jointly, or by any person for himself and others, or wholly for others, is conveyed in separate parts or parcels by separate instruments to the persons by or for whom the same was purchased for distinct parts of the consideration, the conveyance of each separate part or parcel shall be charged with *ad valorem* duty in respect of the distinct part of the consideration therein specified.
- (3) Where there are several instruments of conveyance for completing the purchaser's title to property sold, the principal instrument of conveyance only shall be charged with *ad valorem* duty, and the other instruments shall respectively be charged with such other duty as they may be liable to, but the last mentioned duty shall not exceed the *ad valorem* duty payable in respect of the principal instrument.
- (4) Where a person having contracted for the purchase of any property, but not having obtained a conveyance thereof, contracts to sell the same to any other person, and the property is in consequence conveyed immediately to the sub-purchaser, the conveyance shall be charged with *ad valorem* duty in respect of the consideration moving from the sub-purchaser.
- (5) Where a person having contracted for the purchase of any property but not having obtained a conveyance, contracts to sell the whole, or any part or parts thereof, to any other person or person, and the property is in consequence conveyed by the original seller to different persons in parts or parcels, the conveyance of each part or parcel shall be charged with *ad valorem* duty in respect only of the consideration moving from the sub-purchaser thereof, without regard to the amount or value of the original consideration.

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- (6) Where a sub-purchaser takes an actual conveyance of the interest of the person immediately selling to him, which is chargeable with *ad valorem* duty in respect of the consideration moving from him, and is duly stamped accordingly, any conveyance to be afterwards made to him of the same property by the original seller shall be chargeable only with such other duty as it may be liable to, but the last mentioned duty shall not exceed the *ad valorem* duty.

58. Certain contracts to be chargeable as conveyances on sale

- (1) Any contract or agreement under seal, or under hand only, for the sale of any equitable estate or interest in any property whatsoever, or for the sale of any estate or interest in any property except property locally situated out of Nigeria, or goods, wares, or merchandise, or stock or marketable securities, or any ship or vessel or part interest, share, or property of or in any ship or vessel, shall be charged with the same *ad valorem* duty, to be paid by the purchaser, as if it were an actual conveyance on sale of the estate, interest or property contracted or agreed to be sold.
- (2) Where the purchaser has paid the said *ad valorem* duty and before having obtained a conveyance or transfer of the property, enters into a contract or agreement for the sale of the same, the contract or agreement shall be charged, if the consideration for that sale is in excess of the consideration for the original sale, with the *ad valorem* duty payable in respect of such excess consideration, and in any other case with the fixed duty of two naira or ten kobo, as the case may require.
- (3) Where the duty has been paid in conformity with the foregoing provisions, the conveyance or transfer made to the purchaser or sub-purchaser, or any other person on his behalf or by his direction, shall not be chargeable with any duty, and a commissioner upon application, either shall denote the payment of the *ad valorem* duty upon the conveyance or transfer, or shall transfer the *ad valorem* duty thereto upon production of the contract or agreement, or contracts or agreements, duly stamped.
- (4) Where any such contract or agreement is stamped with the fixed duty of three naira, as the case may require, the contract or agreement shall be regarded as duly stamped for the mere purpose of proceeding to enforce specific performance or recover damages for the breach thereof.
- (5) Where any such contract or agreement is stamped with the said fixed duty, and a conveyance or transfer made in conformity with the contract or agreement is presented to a commissioner for stamping with the *ad valorem* duty chargeable thereon within a period of six months after the first creation of the contract or agreement, or within any such longer time as the commissioner may think reasonable in the circumstances of the

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case, the conveyance or transfer shall be stamped accordingly, and the same, and the said contract or agreement shall be deemed to be duly stamped:

Provided that nothing in this subsection shall alter or affect the provisions as to stamping an instrument after the execution thereof.

- (6) The *ad valorem* duty paid upon any such contract or agreement shall be returned by the Accountant-General on a certificate by the commissioner in case the contract or agreement be afterwards rescinded or annulled, or for any other reason be not substantially performed or carried into effect, so as to operate as or be followed by a conveyance or transfer.
- (7) Any certificate required from the commissioner under this section shall be free of charge.

59. Where interest in land transferred by sale and possession without a conveyance

Where any instrument which purports to convey any estate or interest in land, hereditament or heritage does not operate in law to transfer such estate or interest, then, if the instrument constitutes an agreement or contract to sell such estate or interest, it shall be deemed to be a contract or agreement within the meaning of section 58 of this Act:

[28 of 1941.]

Provided that where the purchaser is entitled to such an estate or interest by virtue of an instrument creating or transferring the same and such estate, interest or instrument is registered under any Act, any contract or agreement for the sale of such estate or interest shall not be chargeable with duty under section 58 of this Act.

60. Provision as to sale of an annuity or right not before in existence

Where upon the sale of an annuity or other right not before in existence such annuity or other right is not created by actual grant or conveyance, but is only secured by bond, warrant of attorney, covenant, contract, or otherwise, the bond or other instrument, or some one of such instruments, if there be more than one, shall be charged with the same duty as an actual grant or conveyance, and shall for the purposes of this Act be deemed an instrument of conveyance on sale.

61. Principal instrument, how to be ascertained

The parties may determine for themselves which of several instruments shall be deemed the principal instrument, and may pay the *ad valorem* duty thereon accordingly.

62. Duty payable in certain cases under an Act on vesting of property

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(1) Where by virtue of an Act, either-

[L.N. 112 of 1964.]

(a) any property is vested by way of sale in any person; or

(b) any person is authorised to purchase property,

such person shall within three months of the passing of the Act, or the date of vesting, whichever is later, or after the completion of the purchase, as the case may be, produce to a commissioner a copy of the Act or some instrument relating to the vesting in the first case, and an instrument of the conveyance of the property in the other case, duly stamped with *ad valorem* duty payable upon a conveyance on sale of the property; and in default of such production, the duty with interest thereon at the rate of ten per cent *per annum* from the passing of the Act, date of vesting or completion of the purchase, as the case may be, shall be a debt to the Government of the Federation from such person.

63. Duty on gifts *inter vivos*

(1) Any conveyance or transfer operating as a voluntary disposition *inter vivos* shall be chargeable with the like duty as if it were a conveyance or transfer on sale, with the substitution in each case of the value of the property conveyed or transferred for the amount or value of the consideration for the sale:

[26 of 1946.]

Provided that this section shall not apply to a conveyance or transfer operating as a voluntary disposition of property to a body of persons incorporated by a special Act, if that body is by its Act precluded from dividing any profit among its members and the property conveyed is to be held for the purposes of an open space or for the purposes of its preservation for the benefit of Nigeria.

(2) A commissioner may be required to express his opinion under section 16 of this Act on any conveyance or transfer operating as a voluntary disposition *inter vivos*, and no such conveyance or transfer shall be deemed to be duly stamped unless a commissioner has expressed his opinion thereon in accordance with that section.

(3) Where any instrument is chargeable with duty both as a conveyance or transfer under this section and a settlement under the heading —SETTLEMENTI in the Schedule to this Act, the instrument shall be charged with duty as a conveyance or transfer under this section, and not as a settlement.

(4) Any conveyance or transfer (not being a disposition made in favour of a purchaser or incumbrancer or other person in good faith and for valuable consideration) shall, for the purposes of this section, be deemed to be a conveyance or transfer operating as a

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voluntary disposition *inter vivos*, and (except where marriage is the consideration) the consideration for any conveyance or transfer shall not for this purpose be deemed to be valuable consideration where the commissioner is of opinion that by reason of the inadequacy of the sum paid as consideration or other circumstances the conveyance or transfer confers a substantial benefit on the person to whom the property is conveyed or transferred.

- (5) A conveyance or transfer made for nominal consideration for the purpose of securing the repayment of an advance or loan or made for effectuating the appointment of a new trustee or the retirement of a trustee, whether the trust is expressed or implied, or under which no beneficial interest passes in the property conveyed or transferred, or made to a beneficiary by a trustee or other person in a fiduciary capacity under any trust, whether expressed or implied, or a disentailing assurance not limiting any new estate other than an estate in fee simple in the person disentailing the property, shall not be charged with duty under this section, and this subsection shall have effect notwithstanding that the circumstances exempting the conveyance or transfer from charge under this section are not set forth in the conveyance or transfer.

64. Licence with a grant to enter upon land

A licence to a person to enter upon land coupled with a grant, whether such grant be the removal of material from land or other transfer of property, shall (where a premium is paid by the licensee) be subject to *ad valorem* duty as a conveyance on sale for the premium so paid or, where rent is paid by the licensee, be subject to duty as a lease at the rent so payable.

Conveyances on any occasion except sale or mortgage

65. What is to be deemed a conveyance on any occasion not being a sale or mortgage

Every instrument, and every decree or order of any court, whereby any property on any occasion, except a sale, or mortgage, is transferred to or vested in any person, shall be charged with duty as a conveyance or transfer of property:

Provided that a conveyance or transfer made for effectuating the appointment of a new trustee or for effectuating the retirement of a trustee although no new trustee is appointed, shall not be charged with any higher duty than one naira.

Duplicates and counterparts

66. Provision as to duplicates and counterparts

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The duplicate or counterpart of an instrument chargeable with duty (except the counterpart of an instrument chargeable as a lease, such counterpart not being executed by or, on behalf of any lessor or grantor) shall not be deemed duly stamped, unless it is stamped as an original instrument, or unless it is made to appear to a commissioner (who shall upon payment of a fee of 25 kobo in adhesive stamps, certify on such duplicate or counterpart accordingly) that the full and proper duty has been paid upon the original instrument of which it is the duplicate or counterpart.

Exchange and partition or division

67. Provisions as to exchange

Where upon the exchange of any real property for any other real property, or upon the partition or division of any real property, any consideration exceeding in amount or value two hundred naira is paid or given, or agreed to be paid or given, for equality, the principal or only instrument whereby the exchange or partition is effected shall be charged with the same *ad valorem* duty as a conveyance on sale for the consideration, and with that duty only; and where in any such case there are several instruments for completing the title of either party, the principal instrument shall be ascertained, and the other instruments shall be charged with duty in the manner hereinbefore provided in the case of several instruments of conveyance.

Leases

68. Agreements to be charged as lease

- (1) An agreement for a lease, or with respect to the letting of any lands or tenements, shall be charged with the same duty as if it were an actual lease made for the term and consideration mentioned in the agreement.
- (2) A lease made subsequently to, and in conformity with, such an agreement duly stamped, is to be charged with the duty of ten kobo only.

69. Leases, how to be charged in respect of produce

- (1) Where the consideration, or any part of the consideration, for which a lease is granted or agreed to be granted, consists of any produce or other goods, the value of the produce or goods shall be deemed a consideration in respect of which the lease or agreement is chargeable with *ad valorem* duty as for a conveyance on sale.
- (2) Where it is stipulated that the value of the produce or goods is to amount at least to, or is not to exceed, a given sum, or where the lessee is specially charged with, or has the option of paying after any permanent rate of conversion, the value of the produce or

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goods shall, for the purpose of assessing the *ad valorem* duty, be estimated at the given sum or according to the permanent rate.

- (3) A lease or agreement for a lease made either wholly or partially for any such consideration, if it contains a statement of the value thereof, and is stamped in accordance with the statement, shall, so far as regards the subject matter of the statement, be deemed duly stamped, unless or until it is otherwise shown that the statement is incorrect, and that the lease or agreement is in fact not duly stamped.

70. Directions as to duty in certain cases

- (1) A lease or agreement for a lease or with respect to, any letting, is not to be charged with any duty in respect of any penal rent, or increased rent in the nature of a penal rent, thereby reserved or agreed to be reserved or made payable, or by reason of being made in consideration of the surrender or abandonment of any existing lease, or agreement, of or relating to the same subject matter.
- (2) A lease made for any consideration in respect whereof it is chargeable with *ad valorem* duty, and in further consideration either of a covenant by the lessee to make, or of his having previously made, any substantial improvement of or addition to the property demised to him, or of any covenant relating to the matter of the lease, shall not be charged with any duty in respect of such further consideration:

Provided that if the further consideration in the lease consists of a covenant which if it were contained in a separate deed would be charged with *ad valorem* duty, the lease shall in any such case be charged with duty in respect of any such further consideration under section 8 of this Act.

- (3) An instrument whereby the rent reserved by any other instrument chargeable with duty and duly stamped as a lease is increased, shall not be charged with duty otherwise than as a lease in consideration of the additional rent thereby made payable.

71. Duty on certain leases may be denoted by adhesive stamp

The duty upon an instrument chargeable with duty as lease for any definite term less than a year and the duty upon the duplicate or counterpart of any such instrument, may be denoted by an adhesive stamp which shall be cancelled by the person by whom the instrument is first executed.

[28 of 1941.]

Letter of allotment or renunciation, scrip certificates and scrip

72. Provisions as to letters of allotment

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Every person who executes, grants, issues, or delivers out any document chargeable with duty as a letter of allotment, letter of renunciation, or scrip certificate, or as scrip, before the same is duly stamped, shall be guilty of an offence and liable on conviction to a fine of forty naira.

73. Duty on both letter of allotment and letter of renunciation

A separate duty shall be charged in respect of letters of allotment and letters of renunciation, although they may be contained in the same document.

Letters or powers of attorney and voting papers

74. Provisions as to proxies and voting papers

- (1) Every letter or power of attorney for the purpose of appointing a proxy to vote at a meeting, and every voting paper, hereby respectively charged with the duty of two kobo, shall specify the day upon which the meeting at which it is intended to be used is to be held, and shall be available only at the meeting so specified, and any adjournment thereof.
- (2) Every person who makes or executes, or votes, or attempts to vote, under or by means of any such letter or power of attorney or voting paper, not being duly stamped, shall be guilty of an offence and liable on conviction to a fine of one hundred naira, and every vote given or tendered under the authority or by means of the letter or power of attorney or voting paper, shall be void.

75. Power by more than one person or to more than one person to count as one power

No instrument chargeable with duty under the heading —LETTER OR POWER OF ATTORNEY, and COMMISSION, FACTORY, MANDATE or other instrument in the nature thereof in the Schedule to this Act shall be charged with duty more than once by reason only that more persons than one are named in the instrument as donors or donees (whether jointly, severally or otherwise) of the powers thereby conferred or that those powers relate to more than one matter.

Marketable securities

76. Meaning of “marketable securities”

Marketable securities, whether or not transferrable by delivery for the purposes of, the charge of duty thereon, include-

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- (a) a marketable security made or issued by or on behalf of any company or body of persons corporate or unincorporate formed or established in Nigeria;
- (b) a marketable security by or on behalf of any foreign State or Government, or foreign corporation (hereinafter called a —foreign security^l) formed or established outside Nigeria-
 - (i) which is made or issued in Nigeria;
 - (ii) which, though originally issued out of Nigeria is offered for subscription, and is given or delivered to a subscriber in Nigeria;
 - (iii) which is assigned, transferred or in any manner negotiated in Nigeria;
- (c) a marketable security by or on behalf of any Commonwealth Government which, if the borrower were a foreign Government, would be a foreign security (hereinafter called a —Commonwealth Government Security^l).

77. Meaning of marketable security transferable on delivery and instrument to bearer

An instrument used for the purpose of assigning, transferring or in any manner negotiating the right to any marketable security, share or stock, shall, if the delivery thereof is by usage treated as sufficient for the purpose of a sale on the market, whether that delivery constitutes a legal assignment, transferable on delivery or an instrument to bearer, as the case may be, and the delivery thereof an assignment, transfer or negotiation.

78. Marketable security transferable on delivery to be stamped on execution

- (1) A marketable security transferable on delivery (not being a foreign security or a Commonwealth Government Security made or issued out of Nigeria) shall be stamped on or before the issue or first execution thereof, and a foreign security made or issued out of Nigeria shall be stamped before being dealt with in the manner specified in section 75 (b) (ii) and (iii) of this Act.
- (2) Any person who contravenes the provisions of this section shall be guilty of an offence and shall be liable on conviction to a fine of forty naira.

79. Duty reduced in case of short-term marketable securities

- (1) The stamp duty charged on marketable securities transferable by delivery shall, when the amount secured by the security is to be paid off within a term not exceeding three years

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after the date on which the duty is payable, and the date by which the amount is to be paid off is conspicuously stated on the face of the security, be reduced to five kobo for every twenty naira or fractional part of twenty naira of the money secured, if that money is to be paid off within a term not exceeding one year from the date on which the duty is payable, and ten kobo for every twenty naira or fractional part of twenty naira of the money secured, if that money is to be paid off within a term exceeding one year but not exceeding three years from the date on which the duty is payable.

[28 of 1941.]

- (2) If the marketable security upon which the stamp duty has been charged in accordance with this section is assigned, transferred or in any manner negotiated in Nigeria after the date stated on the face of the security as the date by which the amount secured is to be paid off, stamp duty thereon shall be charged at the full rate of duty, an allowance being made for the duty already paid, and if any person in Nigeria after the said date assigns, transfers or in any manner negotiates or is concerned as booker or agent in assigning, transferring or in any manner negotiating any such security, and the security is not stamped in accordance with this provision, that person shall be guilty of an offence and liable on conviction to a fine of forty naira.
- (3) Paragraph (3) under the heading —MARKETABLE SECURITY in the Schedule to this Act, shall not apply in the case of marketable securities given in substitution for marketable securities which have been stamped only with the reduced rate under this section.

Mortgages

80. Meaning of “mortgage” and “equitable mortgage”

- (1) For the purposes of this Act, the expression “**mortgage**” means a security by way of mortgage for the payment of any definite and certain sum of money advanced or lent at the time, or previously due and owing, or forborne to be paid, being payable, or for the repayment of money to be thereafter lent, advanced, or paid, or which may become due upon an account current, together with any sum already advanced or due, or without, as the case may be; and includes-
 - (a) conditional surrender by way of mortgage, further charge or disposition;
 - (b) any conveyance of any lands, estate or property whatsoever in trust to be sold or otherwise converted into money, intended only as a security and redeemable before the sale or other disposal thereof, either by express stipulation or otherwise, except where the conveyance is made for the benefit of creditors generally, or for the benefit

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- of creditors specified who accept the provision made for payment of their debts in full satisfaction thereof, or who exceed five in number;
- (c) an defeasance, letter of reversion, declaration or other deed or writing for defeating or making redeemable or explaining or qualifying any conveyance, transfer or disposition of any lands, estate or property whatsoever, apparently absolute, but intended only as a security;
 - (d) any agreement (other than an agreement chargeable with duty as an equitable mortgage), contract, or bond accompanied with a deposit of title deeds for making a mortgage, or any other security or conveyance as aforesaid of any land, estate, or property comprised in title deeds, or for pledging or charging the same as a security; and
 - (e) any deed operating as a mortgage of any stock or marketable security.
- (2) For the purposes of this Act, the expression “**equitable mortgage**” means an agreement or memorandum under hand only-
- (a) relating to the deposit of any title deed or instrument constituting or being evidence of the title to any property whatever (other than stock or marketable security); or
 - (b) creating a charge on lands, tenements or hereditaments whether or not such charge is expressed to be created by —pledge or otherwise.
- (3) Where a mortgage gives a power of sale to the party taking the security or power to enter into receipt of rents and profits or declaring that he is to have the power conferred by law upon mortgagees, such mortgage shall be chargeable with duty as a legal mortgage notwithstanding that it would have been an equitable mortgage had it not contained the power of sale or other provisions specified in this subsection.

81. Direction as to duty in certain cases

- (1) A security for the transfer or re-transfer of any stock shall be charged with the same duty as a similar security for a sum of money equal in amount to the value of the stock; and a transfer, assignment or disposition of any such security, and a reconveyance, release, discharge, surrender, re-surrender, warrant to vacate, or renunciation of any such security, shall be charged with the same duty as an instrument of the same description relating to a sum of money equal in amount to the value of the stock.
- (2) A security for the payment of any rent charge, annuity, or periodical payments, by way of repayment, or in satisfaction or discharge of any loan, advance, or payment intended to

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be so repaid, satisfied, or discharged, shall be charged with the same duty as a similar security for the payment of the sum of money so lent, advanced or paid.

- (3) A transfer of a duly stamped security, and a security by way of further charge for money or stock, added to money or stock previously secured by a duly stamped instrument, shall not be charged with any duty by reason of its containing any further or additional security for the money or stock transferred or previously secured, or the interest or dividends thereof, or any new covenant, proviso, power, stipulation, or agreement in relation thereto, or any further assurance of the property comprised in the transferred or previous security.
- (4) An instrument chargeable with *ad valorem* duty as a mortgage shall not be charged with any further duty by reason of the equity of redemption in the mortgaged property being thereby conveyed or limited in any other manner than to a purchaser, or in trust for, or according to the direction of, a purchaser.

82. Security for future advances, how to be charged

- (1) A security for the payment or repayment of money to be lent, advanced, or paid, or which may become due upon an account current, either with or without money previously, due, shall be charged, where the total amount secured or to be ultimately recoverable is in any way limited, with the same duty as a security for the amount so limited.
- (2) Where such total amount is unlimited, the security shall be available for such an amount only as the *ad valorem* duty impressed thereon extends to cover, but where any advance or loan is made in excess of the amount covered by that duty, the security shall, for the purposes of stamp duty, be deemed to be a new and separate instrument, bearing date on the day on which the advance or loan is made:

Provided that no money to be advanced for the insurance of any property comprised in the security against damage by fire, or for keeping up any policy of life insurance comprised in the security, or for effecting in lieu thereof any new policy, or for the renewal of any grant or lease of any property comprised in the security upon the dropping of any life wherein the property is held, shall be reckoned as forming part of the amount in respect whereof the security is chargeable with *ad valorem* duty.

Notarial acts

83. Duty on notarial acts may be denoted by adhesive stamps

The duty upon a notarial act and upon the protest by a notary public of a bill of exchange or promissory note may be denoted by an adhesive stamp which shall be cancelled by the notary.

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Policies of insurance

84. Interpretation

For the purposes of this Act, unless the context otherwise requires-

“policy of insurance” includes every writing other than cover notes, slips or other instruments usually made in anticipation of the issue of formal policy of marine insurance, and instruments embodying alterations of the terms or conditions of any formal policy of marine insurance whereby any contract of insurance is made or agreed to be made, or is evidenced, and the expression **“insurance”** includes assurance;
[1961 No. 65.]

“policy of life insurance” means a policy of insurance upon any life or lives or upon any event or contingency relating to or depending upon any life or lives except a policy of insurance against accident;

“policy of insurance against accident” means a policy of insurance for any payment agreed to be made upon the death of any person only from accident or violence or otherwise than from a natural cause, or as compensation for personal injury, and includes any notice or advertisement in a newspaper or other publication which purports to insure the payment of money upon the death of or injury to the holder or bearer of the newspaper or publication containing the notice only from accident or violence, or otherwise than from a natural cause; and also includes policies of insurance or indemnity against liability incurred by employers in consequence of claims made upon them by workmen who have sustained personal injury where the annual premium on such policies does not exceed four naira;

“policy of insurance for any payment agreed to be made during the sickness of any person or his incapacity from personal injury” includes any notice or advertisement in a newspaper or other publication which purports to insure such payment;

“policy of insurance for any payment agreed to be made by way of indemnity against loss or damage of or to any property” includes any notice or advertisement in a newspaper or other publication which purports to insure such payment;

“policy of marine insurance” means any formal contract whereby an insurer under takes to indemnify an assured against losses incident to marine adventure, and includes any contract relating to insurance of a ship or the machinery or fittings belonging to the ship whilst under construction or repair or on trial.

85. Stamp on policy of insurance against accident and sickness

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A policy of insurance against accident is not to be charged with any further duty than six kobo by reason of the same extending to any payment to be made during sickness or incapacity from personal injury.

[28 of 1941.]

86. Duty on policy of marine insurance

A policy of marine insurance shall be charged with the duty prescribed in the Schedule to this Act.

87. Penalty for not making out policy of insurance or making any policy not stamped

Any person who-

- (a) receives or takes credit for, any premium or consideration for any insurance and does not within one month after receiving, or taking credit for, the premium or consideration, make out and execute a duly stamped policy of insurance; or
- (b) makes, executes or delivers out, or pays or allows in account, or agrees to pay or allow in account, any money upon or in respect of any policy of insurance which is not duly stamped,

shall be guilty of an offence and liable on conviction to a fine of forty naira.

88. Assignment of policy of life assurance to be stamped before payment of money assured

- (1) No assignment of a policy of life assurance shall confer on the assignee therein named, his executors, administrators, or assigns, any right to sue for the money assured or secured thereby, or to give a valid discharge for the same, or any part thereof, unless the assignment is duly stamped, and no payment shall be made to any person claiming under any such assignment unless the same is duly stamped.
- (2) If any payment is made in contravention of this section the duty not paid upon the assignment together with the penalty payable on stamping the same, shall be a debt due to the Government of the Federation from the person by whom the payment is made.

Receipts

89. Provisions as to duty upon receipts

- (1) For the purposes of this Act, the expression “**receipt**” includes any note, memorandum, or writing whereby any money amounting to four naira or upwards, or any bill of

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exchange or promissory note for the money amounting to four naira or upwards, is acknowledged or expressed to have been received or deposited or paid, or whereby any debt or demand, or any part of a debt or demand, of the amount of four naira or upwards, is acknowledged to have been settled, satisfied, or discharged, or which signifies or imports any such acknowledgement, and whether the same is or is not signed with the name of any person.

- (2) The duty upon a receipt may be denoted by an adhesive stamp which is to be cancelled by the person by whom the receipt is given before he delivers it out of his hands.

90. Certain forms of receipts not dutiable

Neither the name of a banker (whether accompanied by words of receipt or not) written in the ordinary course of his business as a banker upon a bill of exchange or promissory note duly stamped, nor the name of a payee written upon a draft or order, if payable to order, shall constitute a receipt chargeable with duty.

91. Terms upon which receipts may be stamped after execution and used in evidence unstamped

- (1) A receipt given without being stamped may be stamped with an impressed stamp on the following terms-

[28 of 1941.]

- (a) within 28 days after it has been given, on payment of the duty and a penalty of four naira;
- (b) after 28 days, but within 56 days, on payment of the duty and a penalty of twenty naira,

and shall not in any other case be stamped with an impressed stamp.

- (2) The payment of the penalty under subsection (1) of this section shall be certified on the face of the receipt under the hand of a commissioner.
- (3) Where in any legal proceedings or before any arbitrator or referee a receipt is inadmissible by reason of it not being duly stamped, the officer presiding over the court, the arbitrator or referee may, having regard to the illiteracy and ignorance of the party tendering the receipt in evidence, admit the receipt upon payment of a penalty of four naira and the officer presiding over the court, the arbitrator or referee, as the case may be, shall note the payment of the penalty upon the face of the receipt so admitted and a receipt shall be given for the same.

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- (4) A receipt so admitted in evidence shall not be deemed to be duly stamped but shall be available for the purposes of the suit in which it is tendered in evidence and for that purpose only.
- (5) Where a person has been permitted under this subsection to tender a receipt not duly stamped upon payment of the penalty of four naira, such person may recover the said sum of four naira from the person whose duty it was to stamp the receipt at the time when it was first issued.
- (6) Nothing contained in this section shall relieve any person from any other penalty incurred by him in relation to such receipt.

92. Penalty for offences in reference to receipts

If any person-

- (a) gives a receipt liable to duty and not duly stamped; or
- (b) in any case where a receipt would be liable to duty, refuses to give a receipt duly stamped; or
- (c) upon a payment to the amount of four naira or upwards, gives a receipt for a sum not amounting to four naira, or separates or divides the amount paid with the intent to evade the duty,

he shall be guilty of an offence and liable on conviction to a fine of twenty naira.

Settlements

93. Provisions as to settlement of policy or security

Where any money which may become due or payable upon any policy of life insurance, or upon any security not being a marketable security, is settled or agreed to be settled, the instrument whereby the settlement is made or agreed to be made shall be charged with *ad valorem* duty in respect of that money:

Provided that

- (a) where, in the case of a policy, no provision is made for keeping up the policy, the *ad valorem* duty shall be charged only on the value of the policy at the date of the instrument;

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- (b) if in any such case, the instrument contains a statement of the said value, and is stamped in accordance with the statement, it shall, so far as regards the policy, be deemed duly stamped, unless or until it is shown that the statement is untrue, and that the instrument is in fact insufficiently stamped.

94. Settlements; when not to be charged as securities

An instrument chargeable with *ad valorem* duty as a settlement in respect of any money, stock, or security shall not be charged with any further duty by reason of containing provision for the payment or transfer of the money, stock, or security, or by reason of containing, where the money, stock, or security is in reversion or is not paid or transferred upon the execution of the instrument, provision for the payment by the person entitled in possession to the interest or dividends of the money, stock, or security, during the continuance of such possession, of any annuity or yearly sum not exceeding interest at the rate of eight per cent *per annum* upon the amount or value of the money, stock or security.

95. Where several instruments, one only to be charged with *ad valorem* duty

- (1) Where several instruments are executed for effecting the settlement of the same property, and the *ad valorem* duty chargeable in respect of the settlement of the property exceeds one naira, only one of the instruments shall be charged with the *ad valorem* duty.
- (2) Where a settlement is made in pursuance of a previous agreement upon which *ad valorem* settlement duty exceeding one naira has been paid in respect of any property, the settlement shall not be charged with *ad valorem* duty in respect of the same property.
- (3) In each of the aforesaid cases the instruments not chargeable with *ad valorem* duty shall be charged with the duty of one naira.

Share warrants

96. Penalty for issuing share warrant not duly stamped

If a share warrant or any instrument to bearer issued by or on behalf of any company or body of persons formed or established in Nigeria and having a like effect as a share warrant or any stock certificate to bearer is issued without being duly stamped, the company issuing the same, and also every person who, at the time when it is issued, is the managing director or secretary or other principal officer of the company, shall be guilty of an offence and liable on conviction to a fine of one hundred naira.

Stock certificates to bearer

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97. Meaning of stock certificate to bearer

For the purposes of this Act, the expression “**stock certificate to bearer**” includes every stock certificate to bearer issued after the coming into operation of this Act, under the provisions of the Companies and Allied Matters Act, or of any other enactment authorising the creation of debenture stock, corporation stock, municipal stock or funded debt, by whatever name known, and also includes any instrument to bearer issued by or on behalf of any company or body of persons formed or established in Nigeria and having a like effect as such a stock certificate to bearer.

[Cap. C20.]

98. Penalty for neglecting to cancel stock certificate upon registration

- (1) Where the holder of a stock certificate to bearer or an instrument to bearer chargeable as a stock certificate to bearer has been entered on the register of any local authority or corporation or company or body of persons formed or established in Nigeria, as owner of the share of stock described in the certificate, the certificate shall be forthwith cancelled so as to be incapable of being reissued to any person.
- (2) Every person by whom a stock certificate to bearer or an instrument to bearer chargeable as a stock certificate to bearer is issued without being duly stamped, shall be guilty of an offence and liable on conviction to a fine of one hundred naira.

Warrant for goods

99. Meaning and provisions as to warrants for goods

- (1) For the purposes of this Act, the expression "warrant for goods" means any document or writing, being evidence of the title of any person therein named, or his assigns, or the holder thereof, to the property in any goods, wares of merchandise lying in any warehouse or dock, or upon any wharf, and signed or certified by or on behalf of the person having the custody of the goods, wares or merchandise.
- (2) The duty upon a warrant for goods may be denoted by an adhesive stamp, which shall be cancelled by the person by whom the instrument is made, executed or issued.
- (3) Every person who makes, executes or issues, or receives, or takes by way of security or indemnity, any warrant for goods not being duly stamped, shall be guilty of an offence and liable on conviction to a fine of forty naira.

PART III

Supplemental

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Duty on capital of companies

100. Charge of duty on capital of limited liability companies

- (1) A statement of the amount which shall form the nominal share capital of any company to be registered with limited liability and a statement of the amount of any increase of registered capital of any company, shall be delivered to the Corporate Affairs Commission established under the Companies and Allied Matters Act.

[L.N. 112 of 1964. Cap. C20.]

- (2) The statements referred to in subsection (1) of this section shall be charged with an *ad valorem* duty of one naira for every two hundred naira and any fraction of two hundred naira over any multiple of two hundred naira of the amount of such capital or increase of capital, as the case may be.
- (3) The statement of the amount of any increase of registered capital which is required to be delivered to the Corporate Affairs Commission under subsection (1) of this section shall be delivered duly stamped with the duty charged thereon within fifteen days after the passing of the resolution by which the registered capital is increased, and, in default of that delivery, the duty, with interest thereon at the rate of five per cent *per annum* from the passing of the resolution, shall be a debt to the Government of the Federation recoverable from the company.

101. Charge of duty on capital of companies with limited liability otherwise than under Cap. C20

- (1) Where, by virtue of any letters patent or by any Act or Law or by any other lawful authority, the liability of holders of shares in the capital of any corporation or company is limited otherwise than by registration with limited liability under the law in that behalf, a statement of the amount of nominal share capital of the corporation or company shall be delivered by the corporation or the company to the Corporate Affairs Commission within one month after the date of the letters patent or the passing of the Act or Law or the granting of the authority; and in case of any increase of the amount of the nominal share capital of any corporation or company being authorised by any letters patent, Act or Law or other authority, a statement of the amount of such increase shall be delivered by the corporation or company to the Corporate Affairs Commission within the like period.

[L.N. 131 of 1954.]

- (2) The statements referred to in subsection (1) of this section shall be charged with an *ad valorem* duty of one naira for every two hundred naira and any fraction of two hundred

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naira over any multiple of two hundred naira of the amount of such capital or increase of capital, as the case may be.

- (3) The statements to be delivered in accordance with subsection (1) of this section shall be delivered with the duty charged thereon duly paid and in default of that delivery, the corporation or company shall pay to the Minister or Governor, as the case may be, a sum equal to ten per cent *per annum* upon the amount of duty payable, and a like penalty for every month after the first month during which the default shall continue.

102. Duty on loan capital

- (1) Where any corporation, company or body of persons formed or established in Nigeria propose to issue any loan capital, they shall, before the issue thereof, deliver to the Corporate Affairs Commission a statement of the amount proposed to be secured by the issue.

[L.N. 112 of 1964.]

- (2) Subject to the provisions of this section, every such statement shall be charged with *ad valorem* duty of 25 kobo for every 200 naira and any fraction of 200 naira over any multiple of 200 naira of the amount proposed to be secured by the issue, and the amount of the duty shall be a debt due to the Government of the Federation.
- (3) The duty under this section shall not be charged to the extent to which it is shown to the satisfaction of the Corporate Affairs Commission that the duty in respect of a mortgage or marketable security has been paid on any trust deed or other document securing the loan capital proposed to be issued.
- (4) If any corporation, company or body of persons neglect to deliver a statement, or fails to pay the duty in compliance with the provisions of this section, that corporation, company or body of persons shall be liable to pay the Government of the Federation, in addition to the duty, a sum equal to ten per cent upon the amount of the duty, and a like sum for every month after the first month during which the neglect or failure continues.

“Definition of “loan capital”

- (5) In this Act and in section 102 of this Act, **“loan capital”** means any debenture stock, other stock or funded debt by whatever name known or any capital raised by any corporation, company or body of persons formed or established in Nigeria, which is borrowed, or has the character of borrowed money, whether it is in the form of stock or in any other form, but does not include any overdraft at the bank or other loan raised for a merely temporary purpose for a period not exceeding twelve months.

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103.Reduction of duty on loan capital issued for the purpose of the conversion or consolidation of existing capital

- (1) Where it is shown to the satisfaction of the Corporate Affairs Commission that the loan capital issued by any corporation, company or body of persons, in respect of which a statement is required to be issued under section 102 of this Act, has been wholly or in part applied for the conversion or consolidation of then existing loan capital, that corporation, company or body of persons, *as* the case may be, shall be entitled to repayment in respect of the duty charged on the statement so delivered at the rate of twenty kobo for every 200 naira of the capital to which the statement relates which is so shown to have been applied for the purpose of the conversion or consolidation of the then existing loan capital; but this section shall not apply to any duty payable in respect of a mortgage or marketable security which has been paid on any trust deed or other document securing the loan capital which has been issued.

- (2) If it is represented to the Corporate Affairs Commission by such corporation, company or body of persons that loan capital about to be issued by them is to be applied, in whole or in part, for the purpose of the conversion or consolidation of existing loan capital, the Corporate Affairs Commission may postpone the time or the delivery of the statement and the payment of duty under section 102 of this Act until the capital has been issued or until such other time as the Corporate Affairs Commission may think fit for the purpose of enabling the payment and repayment of the duty to take place as far as practicable as one transaction.

- (3) The repayment shall be made by the Accountant-General upon receipt from the Corporate Affairs Commission of such particulars as the Minister may generally or in any particular case require to be given.

104.Relief from capital and transfer duty in case of reconstructions or amalgamation of companies

- (1) If in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any companies it is shown to the satisfaction of a commissioner that there exist the following conditions, that is to say-

[LN. 131 of 1954. LN. 112 of 1964.]

- (a) that a company with limited liability is to be registered, or that since the commencement of this Act a company has been incorporated by letters patent, Act or Law, or the nominal share capital of a company has been increased;

- (b) that the company (in this section referred to as —the transferee company) is to be registered or has been incorporated or has increased its capital with a view to the

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acquisition either of the undertaking of, or of not less than ninety per cent of the issued capital of, any particular existing company;

- (c) that the consideration for the acquisition (except such part thereof as consists in the transfer to or discharge by the transferee company of liabilities of the existing company) consists as to not less than ninety per cent thereof-
- (i) where an undertaking is to be acquired, in the issue of shares in the transferee company to the existing company or to holders of shares in the existing company;
or
 - (ii) where shares are to be acquired, in the issue of shares in the transferee company to the holders of shares in the existing company in exchange for the shares held by them in the existing company,

then, subject to the provisions of this section, the provisions of subsections (2) and (3) of this section shall have effect with respect to the relief from capital and transfer duty as a result of the reconstruction or amalgamation of the company or companies, as the case may be.

- (2) The nominal share capital of the transferee company, or the amount by which the capital of the transferee company has been increased, as the case may be, shall, for the purpose of computing the duty chargeable in respect of that capital, be treated as being reduced by either-
- (a) an amount equal to the amount of the share capital of the existing company or, in the case of the acquisition of a part of an undertaking, equal to such proportion of the said share capital as the value of that part of the undertaking bears to the whole value of the undertaking; or
 - (b) the amount to be credited as paid up on the shares to be issued as such consideration as aforesaid and on the shares (if any) to be issued to creditors of the existing company in consideration of the release of debts (whether secured or unsecured) due or accruing due to them from the existing company or of the assignment of such debts to the transferee company,

whichever amount is the less.

- (3) Duty under the heading —CONVEYANCE OR TRANSFER SALE in the Schedule to this Act shall not be chargeable on any instruments made for the purposes of or in connection with the transfer of the undertaking or shares or on any instrument made for the purposes of or in connection with the assignment to the transferee company of any debts, secured or unsecured, of the existing company, nor shall any such duty be chargeable

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under section 62 of this Act on a copy of any Act or Law or on any instrument vesting, or relating to the vesting of, the undertaking or shares in the transferee company-

Provided that-

- (a) no such instrument shall be deemed to be duly stamped unless either it is stamped with the duty to which it would but for this section be liable or it has, in accordance with the provisions of section 16 of this Act, been certified by the commissioner either that it is not chargeable with any duty or that it is duly stamped; and
- (b) in the case of an instrument made for the purposes of or in connection with a transfer to a company within the meaning of the Companies and Allied Matters Act, the provisions of this subsection shall not apply unless the instrument is either-

[Cap. C20.]

- (i) executed within a period of twelve months from the date of the registration of the transferee company or the date of the resolution for the increase of the nominal share capital of the transferee company, as the case may be; or
 - (ii) made for the purposes of effecting a conveyance or transfer in pursuance of an agreement which has been filed, or particulars of which, have been filed with the Corporate Affairs Commission within the said period of twelve months; and
 - (c) the foregoing provision with respect to the release and assignment of debts of the existing company shall not, except in the case of debts due to banks or to trade creditors, apply to debts which were incurred less than two years before the proper time for making a claim for exemption under this section.
- (4) For the purposes of a claim for exemption under subsection (3) of this section, a company which has, in connection with a scheme of reconstruction or amalgamation, issued any unissued share capital shall be treated as if it had increased its nominal share capital.
- (5) A company shall not be deemed to be a particular existing company within the meaning of this section unless it is provided by the memorandum of association of, or the letters patent, Act or Law incorporating the transferee company that one of the objects for which the company is established is the acquisition of the undertaking of, or shares in, the existing company or unless it appears from the resolution, Act or Law or other authority for the increase of the capital of the transferee company that the increase is authorised for the purpose of acquiring the undertaking of, or share in, the existing company.
- (6) In a case where the undertakings of or shares in two or more companies are to be acquired, the amount of the reduction to be allowed under this section, in respect of the

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duty chargeable in respect of the nominal share capital or the increase of the capital of a company, shall be computed separately in relation to each of those companies.

- (7) Where a claim is made for exemption under this section, the commissioner may require the delivery to him of a statutory declaration in such form as he may direct, made in Nigeria by a legal practitioner, and of such further evidence (if any) as the commissioner may reasonably require.
- (8) If-
- (a) where any claim for exemption from duty under this section has been allowed, it is subsequently found that any declaration or other evidence furnished in support of the claim was untrue in any material particular, or that the conditions specified in subsection (1) of this section are not fulfilled in the reconstruction or amalgamation as actually carried out; or
 - (b) where shares in the transferee company have been issued to the existing company in consideration of the acquisition, the existing company within a period of two years from the date, as the case may be, of the registration or incorporation, or of the authority for the increase of the capital, of the transferee company ceases, otherwise than in consequence of reconstruction, amalgamation or liquidation, to be the beneficial owner of the shares so issued to it; or
 - (c) where any such exemption has been allowed in connection with the acquisition by the transferee company of shares in another company, the transferee company within a period of two years from the date of its registration or incorporation or of the authority for the increase of its capital, as the case may be, ceases, otherwise than in consequence of reconstruction, amalgamation or liquidation, to be the beneficial owner of the shares so acquired,

the exemption shall be deemed not to have been allowed, and an amount equal to the duty remitted shall become payable forthwith, and shall be recoverable from the transferee company as a debt due to the Government of the Federation, together with interest thereon at the rate of five per cent *per annum* in the case of duty remitted under subsection (2) of this section from the date of the registration or incorporation of the transferee company or the increase of its capital, as the case maybe, and in the case of duty remitted under subsection (3) of this section of the said subsection from the date on which it would have become chargeable if this section had not been passed.

- (9) If in the case of any scheme of reconstruction or amalgamation, a commissioner is satisfied that at the proper time for making a claim for exemption from duty under subsection (2) and (3) of this section there were in existence all the necessary conditions

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for such exemption other than the condition that not less than ninety percent of the issued share capital of the existing company would be acquired by the transferee company, the commissioner may, if it is proved to his satisfaction that not less than ninety percent of the issued capital of the existing company has under the scheme been acquired within a period of six months from the earlier of the two following dates, that is to say-

- (a) the last day of the period of one month after the first allotment of shares made for the purposes of the acquisition; or
- (b) the date on which an invitation was issued to the shareholders of the existing company to accept shares in the transferee company,

and on production of the instrument on which the duty paid has been paid, direct repayment to be made of such an amount of duty as would have been remitted if the said conditions had been originally fulfilled.

Definitions

- (10) In this section, unless the context otherwise requires-
 - (a) references to the undertaking of an existing company include references to a part of the undertaking of an existing company; and
 - (b) the expression “**shares**” includes stock.

105. Relief from transfer duty in the case of transfer of property as between associated companies

- (1) Duty under the heading —CONVEYANCE OR TRANSFER ON SALE in the Schedule to this Act shall not be chargeable on an instrument to which this section applies:

[28 of 1941]

Provided that no such instrument shall be deemed to be duly stamped unless either it is stamped with the duty to which it would but for this section be liable, or it has in accordance with the provisions of section 15 been certified by a commissioner either that it is not chargeable with any duty or that it is duly stamped.

- (2) This section applies to any instrument as respects which it is shown to the satisfaction of the commissioner that the instrument was not executed in pursuance of or in connection with an arrangement whereunder-

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- (a) the consideration for the transfer or conveyance was to be provided directly or indirectly by a person other than a company which at the time of the execution of the instrument was associated with either the transferor or the transferee; or
 - (b) the beneficial interest in the property was previously conveyed or transferred directly or indirectly by such person as aforesaid.
- (3) For the purpose of this section, a company shall be deemed to be associated with another company if, but not unless, both are companies with limited liability, and either-
- (a) one of them is the beneficial owner of not less than ninety per cent of the issued share capital of the other; or
 - (b) not less than ninety per cent of the issued share capital of each of them is in the beneficial ownership of a third company with limited liability.

Miscellaneous

106. Innocent person suffering loss may recover against guilty person

Where any person, by the production of an unstamped or insufficiently stamped instrument or otherwise, renders himself subject to a fine, penalty or forfeiture and is made thereby to suffer any fine, penalty or forfeiture but is not the person whose duty it was by law originally to provide for the stamping of the document, such first mentioned person shall upon proof to the satisfaction of a court that he was not the person originally responsible for having the document stamped and that he has thereby suffered a fine, penalty or forfeiture, be entitled to obtain judgment for the amount to which he has been penalised, together with costs, against the person whose duty it originally was to have the document stamped.

107. Power to make regulations for compounding duty

Where the collection of duty or the stamping of instruments according to the provisions of this Act is impracticable or inexpedient, or where such collection or stamping causes undue inconvenience to trade or business or where the exercise of the power conferred by this section is in the interest of Nigeria or of a State thereof, the President or Governor, as the case may be, may make regulations-

[L.N. 131 of 1954.]

- (a) for compounding any duty; or
- (b) for delivery of accounts by, and collecting duty from, the persons making or issuing the instruments upon which the duty is charged.

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108. Conditions and agreements as to duty void

Every condition of sale framed with the view of precluding objection or requisition upon the ground of absence or insufficiency of stamp upon any instrument executed after the commencement of this Act, and every contract, arrangement, or undertaking for assuming the liability on account of absence or insufficiency of stamp upon any such instrument or indemnifying against such liability, absence or insufficiency, shall be void.

109. Provision for remission of duty in certain cases

Where it is shown to the satisfaction of the President or Governor that duty has been paid on an instrument in Nigeria in addition to stamp duty already paid elsewhere, the President or Governor, as the case may be, may, if he considers it advisable in the interest of Nigeria or of the State, as the case may be, to do so, authorise a refund of the duty paid in Nigeria, or such portion thereof as may to him seem fit.

[L.N. 131 of 1954.]

110. Duty and debts recoverable with fines and penalties

Proceedings for the recovery of any duty imposed by this Act or for the recovery of any debt due to the Government of the Federation under this Act may be included in any proceedings for the recovery of a fine or penalty under this Act.

111. Duties and fines may be recovered summarily

All duties, fines, penalties and debts due to the Government of the Federation imposed by this Act shall be recoverable in a summary manner in the name of the Attorney General of the Federation or of the State.

[L.N. 131 of 1954, L.N, 112 of 1964.]

112. Fixed penalties

The amount to which any person is declared to be liable in respect of any fine or penalty and the amount due as a debt to the Government of the Federation under this Act shall not, except as hereinafter provided, be subject to any mitigation.

[L.N, 112 of 1964.]

113. Power to mitigate fines and stay proceedings

(1) The President or Governor, as the case may be, may in his discretion mitigate any fine or penalty or debt due to the Government of the Federation under this Act or stay or

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compound any proceedings for recovery thereof and may also after judgment further mitigate or entirely remit any such line, penalty or debt.

[L.N. 131 of 1954.]

- (2) The decision of the President or Governor, as the case may be, to stay or compound any proceedings which have been commenced, may be intimated to the court by a law officer or State counsel or some person on behalf of a law officer or State counsel.

114. Fines and penalties recoverable within five years

All proceedings for the recovery of any duty, line, penalty and debt due to the Government of the Federation imposed by this Act, may be commenced or prosecuted at any time within five years after the offence committed by reason whereof such duty, fine, penalty or debt shall be incurred.

[L.N. 112 of 1964.]

115. Power to make regulations relating to stamp duties

In addition to the powers conferred on him by sections 15 and 105 of this Act, the President and the Governor of a State may make regulations relating-

- (a) to the custody of the dies to be used under this Act;
- (b) to the circumstances in which allowance shall be made for spoiled stamps;
- (c) to the accounting for the revenue derived from stamp duties;
- (d) to the substitution of adhesive stamps for impressed stamps, or of impressed stamps for adhesive stamps, or of revenue stamps for postage and revenue stamps;
- (e) to the manner in which and the persons by whom impressed stamps shall be affixed to documents; and
- (f) to the further and better carrying into effect of the objects and purposes of this Act.

116. Schedule may be varied by resolution and order

- (1) The National Assembly may by resolution increase, diminish or repeal the duty chargeable under any of the heads specified in the Schedule to this Act in respect of the documents regarding which the Government of the Federation is competent to make laws, and in respect of any other matter within such competence may add new duties or otherwise add to, vary or revoke the Schedule.

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[L.N. 131 of 1954.]

- (2) The House of Assembly of a State may by resolution increase, diminish or repeal the duty chargeable under any of the heads specified in the Schedule in respect of documents regarding which the Government of a State is exclusively competent to make laws, and in respect of any other matter within such exclusive competence may add new duties or otherwise add to, vary or revoke the Schedule.

117. Certain temporary occupation licences not liable to duty under Cap. 126 of the 1923 edition

Whereas doubts have arisen as to whether or not a temporary occupation, licence granted under the Land Use Act previous to the coming into force of this Act is liable to stamp duty under the Stamp Act, it is hereby declared that all such instruments which have not previously been stamped shall be deemed not to have been liable to stamp duty under the said Act.

[Cap. L5. Cap. 126 of 1923 Edition.]

118. Repeal of Cap. 126 of 1923 edition and amending Act

The Stamp Act, the Stamp (Amendment) Act, 1928, the Stamp (Amendment) Act, 1931; all Orders in Council made under section 4 of the Stamp Act, all regulations and all appointments made under the Stamp Act are hereby respectively repealed, revoked and cancelled:

[Cap. 126 of 1923 Edition.]

Provided that where an instrument has been first executed before the coming into operation of this Act such instrument shall be stamped in accordance with the provisions of the Act hereby repealed.

SCHEDULE

[Section 3, etc.]
[L.N 49 of 1961.]

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ADMISSION as a barrister or solicitor.....	50
00	

Exemptions: Admission as a military advocate under the provisions of the Military Advocates Rules, 1942. (Added by Resolution and Order 2 of 1942).

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[Rules of Court 5 of 1952.]

N k

As a notary public20
00

See Licence and sections 25 and 27

AFFIDAVIT, AFFIRMATION AND STATUTORY DECLARATION

Except where express provision is made as to the manner in which it is to be taken.....45

Exemptions:

- (1) Affidavit or affirmation made for the immediate purpose of being filed, read, or used in any court in Nigeria, or before any judge or officer of any such court.
- (2) Affidavit, affirmation or declaration made upon a requisition of a commissioner under this Act, or a commissioner of any public board of revenue in Nigeria or any of the officers acting under them, or required by any law of Nigeria.
- (3) Affidavit, affirmation or declaration which may be required by the Central Bank of Nigeria to prove the death of any proprietor of any stock transferable there, or to identify the person of any such proprietor, or to remove any other impediment to the transfer of any such stock.

AGREEMENT OR CONTRACT, accompanied with a deposit. *See Mortgage and sections 29 and 80.*

AGREEMENT for a lease or for any letting. *See Lease and section 68.*

AGREEMENT for Sale of Property. *See Conveyance on Sale and section 58.*

AGREEMENT or any MEMORANDUM of an AGREEMENT under hand only and not otherwise specifically charged with any duty, whether the same be only evidence of a contract or obligatory upon the parties from its being a written instrument.....15

Exemptions:

- (1) Agreement or Memorandum the matter whereof is not of the value of N10.

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(2) Agreement or Memorandum for the hire of any labourer, artificer, manufacturer or menial servant.

(3) Agreement, Letter or Memorandum made for or relating to the sale or any goods, wares, or merchandise.

See sections 28, 29 and 30

N k

AGREEMENT, HIRE PURCHASE

ADMISSION as a barrister or solicitor	50	00
If under hand only	15	—
If under seal	3	00
<i>See section 30</i>		

ALLOTMENT. *See* Letter of Allotment

ANNUITY, conveyance in consideration of. *See* Conveyance on Sale, and section 54.
Purchase of. *See* Conveyance on Sale, and section 60.

Creation of, by way of security. *See* Mortgage, and section 81.

Instruments relating to, upon any other occasion, *See* Bond, Covenant, or Instrument of any kind whatsoever.

APPOINTMENT of a new trustee, and APPOINTMENT in execution of a power of any property, or of any use, share, or interest in any property, by any instrument not being a will.....150
See section 65

APPOINTMENT of commissioner for taking affidavits and declarations under any Act or Law and of a justice of the peace under the provisions of any Act or Law relating to magistrates' courts900
[Substituted by L.N. 47 of 1955.]

APPRAISEMENT or VALUATION of any property, or of any interest therein, or of the annual value thereof, or of any dilapidations, or of any repairs wanted, or of the materials and labour used or to be used in any building, or of any artificers' work whatsoever.

Where the amount of the appraisement or valuation:

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- does not exceed N200, for every N 50 or fractional part thereof	39
-exceeds N200, for every N200 or fractional part thereof	300

Exemptions:

- (1) Appraisalment or valuation made for, and for the information of, one party only, and not being in any manner obligatory as between parties either by agreement or operation of any law of Nigeria.

- (2) Appraisalment or valuation made in pursuance of the order of a court in the exercise of its Admiralty jurisdiction.

[Amended by L.N. 47 of 1955.]

Nk

- (3) Appraisalment or valuation of property of a deceased person made for the information of an executor or other person required to deliver an affidavit of the estate of such deceased person.

- (4) Appraisalment or valuation of any property of a deceased person made for the purpose of ascertaining any duty payable thereon.

- (5) Appraisalment or valuation made by or on behalf of a local authority and in connection with the raising of the revenues of a local authority.

APPRENTICESHIP, instrument of.....	39
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See section 33

ASSIGNMENT

By way of security, or of any security. *See* Mortgage.

Upon a sale, or otherwise. *See* Conveyance.

ASSURANCE. *See* Policy.

ATTORNEY, LETTER or POWER of. *See* Letter of Attorney.

WARRANT of. *See* Warrant of Attorney.

AWARD.

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- (1) Where the amount or value of the matter in dispute does not exceed N200, for every N50 or fractional part of N50 thereof.....39
- (2) Where the amount or value exceeds N200, for every N200 or fractional part of N200 thereof300

BILL OF EXCHANGE

BILL OF EXCHANGE payable on demand or at sight or on presentation or within three days after date or sight.....02

BILL OF EXCHANGE of any other kind whatsoever (except a bank note) and PROMISSORY NOTE of any kind whatsoever (except a bank note) drawn, or expressed to be payable, or actually paid, or endorsed, or in any manner negotiated in Nigeria.

Where the amount or value of the money for which the bill or note is drawn or made does not exceed N2002

 exceeds N20 but does not exceed N5005

N k

 exceeds N50 but does not exceed N10010

 exceeds N100 but does not exceed N15015

 exceed N50 but does not exceed N20020

 exceeds N200, for every N50 and also for any fractional part of N50 of such amount or value05

BILL OF EXCHANGE of any other kind whatsoever (except a bank note) drawn and expressed to be payable out of Nigeria when paid, or endorsed, or in any manner negotiated in Nigeria.

Where the amount or value of the money for which the bill or note is drawn or made does not exceed N2002

 exceeds N20 but does not exceed N5005

 exceeds N50 but does not exceed N20020

 exceeds N200, for every N50 and also for any fractional part of N50 of such amount or value05

Exemptions:

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- (1) Letter of credit granted in Nigeria authorising drafts to be drawn in Nigeria for payment out of Nigeria.
- (2) Bill or note issued by the Central Bank of Nigeria.
- (3) Letter written by a firm carrying on the business of banking in Nigeria to any other such person directing the payment of any sum of money, the same not being payable to bearer or to order, and such letter not being sent or delivered to the person to whom payment is to be made or to any person on his behalf.
- (4) Coupon or warrant for interest attached to and issued with any security, or with an agreement or memorandum for the renewal or extension of time for payment of a security, or issued in a sheet, either with the security or subsequently.

See sections 36-38 and 40-43

- (5) An order for the payment of money weekly, monthly or at any other stated periods to the Nigerian Red Cross Society.

[(5) added by 2 of 1945.]

BILL OF LADING of or for any goods, merchandise, or effect to be exported.....09
See section 44

Exemptions:

N k

The master's copy.

BILL OF SALE.

Absolute. *See* Conveyance on sale.

By way of security. *See* Mortgage. *See* section 45.

BONDS.

BOND for securing the payment or repayment of money or the transfer or re-transfer of stock. *See* Mortgage, and Marketable Security.

BOND in relation to any annuity upon the original creation and sale thereof. *See* Conveyance on Sale and section 60.

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BOND, COVENANT, OR INSTRUMENT of any kind whatsoever.

- (1) Being the only or principal or primary security for any annuity (except upon the original creation thereof by way of sale or security, and except a superannuation annuity), or for any sum or sums of money at stated periods, not being interest for any principal sum secured by a duly stamped instrument, nor rent reserved by a lease.

For a definite and certain period so that the total amount to be ultimately payable can be ascertained. {The same *ad valorem* duty as mortgage or a bond for such total amount.

For the time of life or any other indefinite period-

For every N10 and also for any fractional part N10 of the annuity or sum periodically payable75

- (2) Being a collateral or auxiliary or additional or substituted security for any of the above-mentioned purposes where the principal or primary instrument is duly stamped.

Where the total amount to be ultimately payable can be ascertained {The *ad valorem* duty as mortgage or bond of the same kind for such total amount. same *ad*

In any other case-

For every N10, and also for any fractional part of N10, of the annuity or sum periodically payable15

- (3) Being a grant or contract for payment of a superannuation annuity, that is to say a deferred life annuity granted or secured to any person in consideration of annual premiums payable until he attains a specified age and so as to commence on his attaining that age.

Nk

For every N10 and also for any fractional part of N10 of the annuity.....15

BOND given pursuant to the directions of any Act or of a commissioner, or of the Accountant-General, or any of their officers, for or in respect of any of the duties or revenue of Nigeria or for preventing frauds or evasions thereof, or for any other matter or thing relating thereto. —

Where the penalty of the bond does not exceed N200.....75

In any other case.....1 50

[Substituted by Resolution and Order 1 of 1951.]

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Exemptions:

BOND given as aforesaid upon, or in relation to, the receiving, or obtaining, or for entitling any person, to receive or obtain, any drawback of any duty or revenue for or in respect of any goods, wares or merchandise exported from Nigeria and bonds given in respect of the removal transshipment, exportation or shipment as stores of any goods.

BOND on obtaining letters of administration or on the sealing of a probate or letters of administration under the Probates (Re-sealing) Act75
[Cap. P31.]

Exemptions:

BOND given by any person where the estate to be administered does not exceed N200 in value.

BOND of any kind whatsoever not specifically charged with any duty.

Where the amount limited to be recoverable does not exceed N600. {The same *ad valorem* duty as a mortgage or bond for the amount limited.

In any other case3 00

BOND accompanied with a deposit of title deeds, for making a mortgage or other security on any estate or property therein comprised. *See* Mortgage and section 80.

BOND, DECLARATION, or other DEED or WRITING for making redeemable any disposition apparently absolute, but intended only as a security. *See* Mortgage, and sections 29 and 80.

CAPITAL DUTY.

On the nominal share capital or any increase thereof-

Nk

Limited liability companies registered under the Companies and Allied Matters Act, and corporations or companies with limited liability otherwise than under the Companies and Allied Matters Act-

For every N200, and also for any fractional part of N200 of such nominal share capital.....150

See section 100, 101, 104 and 105

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On loan capital-

For every N200, and also for any fractional part of N200 of the amount proposed to be secured39

See sections 102-105

CERTIFICATE from the Minister or other officer to the effect that there is no consular representative of any particular country or nation mentioned in the certificate.....150

CERTIFICATE from a commissioner-

For denoting under section 15, or that the full and proper duty has been paid upon the original of any document under section 66.....39

That an instrument is not chargeable with duty, or that it is duly stamped or the amount of duty with which it is chargeable in pursuance of sections 16, 104 or 105.....75

Exemptions:

Any certificates relating to any instruments the subject of general exemption (3) or (4)
[Added by No. 28 of 1941.]

See section 58

CHARTER-PARTY, or any agreement for or relating to the freight or conveyance of any goods or effects on board a ship09

CHEQUE, *See* Bill of Exchange.

CONTRACT. *See* Agreement.

CONTRACT NOTES.

CONTRACT NOTE for or relating to the sale or purchase of any stock or marketable security-

Where the value of the stock or marketable security is less than N 10.....03

Nk
Where the value of the stock or marketable security is N 10 and does not exceed N20.....16

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exceeds N200, for every N200 or part thereof16

See sections 49, 50, 51

CONTINUATION NOTES. *See section 49(2).*

OPTION NOTES. *See section 51(I).* — —

CONTRACT NOTE following a duly stamped Option Note.

See section 51(2)

CONVEYANCE OR TRANSFER ON SALE, of any property.

For every N50, and also for every fractional part of N50, of the amount or value of the
consideration for the sale.....75

See sections 52-64

CONVEYANCE or Transfer by way of security of any property or of any security. *See Mortgage and sections 2 and 76-78.* — —

CONVEYANCE or Transfers operating as voluntary dispositions *inter vivos*. *See section 23 and 63.*

CONVEYANCE or Transfer of any kind not hereinbefore described.....3

00

See section 65

COUNTERPART. *See Duplicate.*

COVENANT for securing the payment or repayment of money, or the transfer or retransfer of stock. *See Mortgage.*

COVENANT in relation to any annuity upon the original creation and sale thereof. *See Conveyance on Sale, and section 60.*

COVENANT in relation to any annuity (except upon the original creation and sale thereof) or to other periodical payments. *See Bond, Covenant.*

COVENANT. Any separate deed of covenant (not being an instrument chargeable with *ad valorem* duty as a conveyance on sale or mortgage) made on the sale or mortgage of any property, and relating solely to the conveyance or enjoyment of, or the title to, the property sold

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Nk

or mortgaged, or to the production of the muniments of title relating thereto, or to all or any of the matters aforesaid-

Where the *ad valorem* duty in respect of the consideration or mortgage money does not exceed N2{A duty equal to the amount of such *ad valorem* duty

In any other case3 00

DEBENTURE for securing the payment or repayment of money or the transfer or retransfer of stock. *See* Mortgage, and Marketable Security.

DECLARATION of any use of trust of or concerning any property by any writing, not being a will, or an instrument chargeable with *ad valorem* duty as a settlement.....300

DECLARATION (Statutory). *See* Affidavit.

DEED of any kind whatsoever, not described in this Schedule.....3 00

DEFEASANCE. Instrument of defeasance of any conveyance, transfer apparently absolute but intended only as a security for money or stock. *See* Mortgage and section 80.

In respect of Marketable Securities under hand only, *see* Agreement and section 29.

DEMISE. *See* Lease.

DEPOSIT of title deeds. *See* Mortgage and section 80.

DRAFT for money. *See* Bill of Exchange.

DUPLICATE OR COUNTERPART of any instrument chargeable with any duty-

Where such duty does not amount to 75k {The same duty as the original instrument

In any other case.....3 00

[Amended by 28 of 1941.]

FIDELITY BOND. Where the amount limited to be recoverable does not exceed N600{ The same *ad valorem* duty as a bond for the amount limited

In any other case300

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FURTHER CHARGE OF FURTHER SECURITY, *See* Mortgage and section 80.

GUARANTEE. Other than a Fidelity Bond, *see* Agreement and Bond.

N k

HIRE PURCHASE AGREEMENT. *See* Agreement, Hire Purchase and section 30.

INSURANCE. *See* Policy.

LEASE. —

(1) For any definite term less than a year-

- (a) where the rent does not exceed the rate of N50 a year.....09
- (b) where the rent exceeds the rate of N50 a year.....39

(2) For any other definite term or for any indefinite terms-

(a) for every N50 and also for every fractional part of N50 of the rent for the year.

- (i) If the term is definite and does not exceed seven years.....39
- exceeds seven years and does not exceed twenty-one years.....150
- exceeds twenty-one years.....300

(ii) if the term is indefinite.....3 00

(iii) where the consideration, or any part of the consideration, moving either to the lessor or to any other person, consists of any money, stock or security:

in respect of such consideration { The same duty as a conveyance on a sale for the same consideration

(3) Of any other kind whatsoever not hereinbefore described.....3 00

(4) A lease by the Government of State lands shall be assessed as if there was no revision clause and the initial rent was the rent payable throughout the term.

See also sections 68-71

LETTER OF ALLOTMENT and LETTER OF RENUNCIATION, or any other document having the effect of a letter of allotment-

(1) Of any share or any fractional part thereof of any company or proposed company.

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- (2) In respect of any loan raised or proposed to be raised, by any company or proposed company, or by any municipal body or corporation.
- (3) Issued or delivered in Nigeria, of any share or any fractional part thereof of any imperial, foreign or colonial company or proposed company.

If the amount allotted or to which the letter of renunciation relates-

	N	k
is less than N10.....	03	
is N10 or over.....	16	

AND SCRIP CERTIFICATE, SCRIP, or other document-

- (1) entitling any person to become the proprietor of any share or any fractional part thereof of any company or proposed company.....03
- (2) issued or delivered in Nigeria, and entitling any person to become the proprietor of any share or any fractional part thereof of any foreign or Common wealth company or proposed company.....03
- (3) denoting, or intended to denote, the right of any person as a subscriber in respect of any loan raised or proposed to be raised by any company or proposed company, or by any municipal body or corporation.....03
See sections 72 and 73

LETTER OF CREDIT, *see* Bill of Exchange.

LETTER or POWER OF ATTORNEY, and COMMISSION, FACTORY, MANDATE, or other instrument in the nature thereof-

- (1) For the sole purpose of appointing or authorising a proxy to vote at any one meeting at which votes may be given by proxy, whether the number of persons named in such instrument be one or more03
- (2) by any petty officer, seaman, marine, or soldier, serving as a marine, or his representatives, for receiving prize money or wages.....30

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(3) For the receipt or the dividends or interest of any stock

Where made for the receipt of one payment only

In any other case1 50

(4) For the receipt of any sum of money. or any bill of exchange or promissory note for any sum of money, not exceeding N40, or any periodical payments not exceeding the annual sum of N20 (not being hereinbefore charged)150

(5) Of any kind whatsoever not hereinbefore described3 00

Exemptions: —

—

Nk

(1) Letter or power of attorney for the receipt of dividends of any definite and certain share of the Government or funds producing a yearly dividend less than N6.

(2) Letter or power of attorney or proxy filed in a High Court in Connection with PROBATE jurisdiction of the Court.

[Amended by L.N. 47 of 1955.]

(3) Order, request, or direction under hand only from the proprietor of any stock to any company or to any officer of any company or to any banker to pay the dividends or interest arising from the stock to any person therein named.

(4) Letter or power of attorney for the sale, transfer or acceptance of any of the Government stocks or funds.

(5) Power of attorney given exclusively for the purpose authorising the receipt of money payable on the redemption of Government stock.

(6) Power of attorney or authority given to any person to receive from the Treasury any monies payable to any person in the service of the Government.

See sections 74 and 75

(a) Letter of Hypothecation.....39

(b) Letter of Trust.....39

[Inserted by Resolution and Order 4 of 1939.]

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LICENCE to act temporarily as a Solicitor, and on every renewal of licence.....10 such
50

LICENCE coupled with a grant. *See* section 64.

LICENCE under the Piers Act.....75

MARKETABLE SECURITY-

(1) Marketable Security being a security not transferable by delivery-

For or in respect of the money thereby secured { The same *ad valorem* duty to the nature of the security as upon a mortgage

(2) Marketable Security being a security transferable by delivery-

For every N20, and also for any fractional part of N20 of the money thereby secured.....45

Nk

(3) Marketable Security being such security as last aforesaid given in substitution for a like security duly stamped in conformity with the law in force when it became subject to duty-

For every N40, and also for any fractional part of N40 of the money thereby secured.....09 =

(4) Transfer, Assignment or Disposition of a marketable security of any description-

Upon a sale thereof. *See* Conveyance or Transfer on Sale.

=

Upon a mortgage thereof. *See* Mortgage of Stock or Marketable Security.

In other case than a sale or Mortgage.....1 50

See sections 2 and 76-78

[Amended by 28 of 1941 and 17 of 1942.]

MORTGAGE, BOND, DEBENTURE, COVENANT (except a marketable security, otherwise specially charged with duty), and WARRANT OF ATTORNEY to confess and enter up judgment.

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(1) Being the only or principal or primary security (other than an Equitable mortgage) for the payment or repayment or money, for every N200, and also for every fractional part of N200, of the amount secured75

(2) Being a collateral, or auxiliary, or additional or substituted security, or by way of further assurance for the above-mentioned purpose, where the principal or primary security is duly stamped: for every N200, and also for every fractional part of N200, of the amount secured.....15

(3) Being an equitable mortgage, for every N200, and also for every fractional part of N200 of the amount secured.....30

(4) TRANSFER, ASSIGNMENT or DISPOSITION of any mortgage, bond, debenture, or covenant (except a marketable security) or of any money or stock secured by any such instrument, or by any warrant of attorney to enter up judgment, or by any judgment-

For every N200, and also for any fractional part of N200 of the amount transferred, assigned, or disposed, exclusive of interest which is not in arrear.....15

And also when any further money is added to the money already secured. {The same duty as a Principal security for such further money

(5) RECONVEYANCE, RELEASE, DISCHARGE, SURRENDER, RESURRENDER, WARRANT TO VACATE, or RENUNCIATION of any such security as aforesaid, or of the benefit thereof, or of the money thereby secured-

For every N200, and also for any fractional part of N200, of the total amount or value of the money at any time secured.....15

See sections 80-82

MORTGAGE OF STOCK or Marketable Security-

Under hand only. *See* Agreement and section 29.

By deed. *See* Mortgage, and section 80.

MUTUAL DISPOSITION. *See* Exchange.

NOTARIAL ACT of any kind whatsoever (except a protest of a bill of exchange or promissory note)15

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See Protest and section 83

NOTARY PUBLIC, on being sworn5 00

ORDER for the payment of money. *See* Bill of Exchange.

PARTITION or DIVISION, Instruments effecting-

In the case specified in section 67. *See* that section

In any other case.....3 00

POLICY OF INSURANCE-

Policy of Life Insurance-

Where the sum insured does not exceed N1000; for every N100, and also for any fractional part of N100, of the amount insured.....09

Exceeds N1000 but does not exceed N2000; for every N200 and also for any fractional part of N200, of the amount insured.....15

Exceeds N2000, for every N2000 and also for any fractional part of N2000, of the amount insured.....150

See sections 84, 87 and 88

Policy of Marine Insurance. *See* sections 84-87.....05

Nk

Policy of Insurance against Accident and Policy of Insurance for any payment agreed to be made during the sickness of any person, or his incapacity or damage of or to any property.....09

See section 84-87

[1961 No. 55.]

Policy of Insurance of any kind not hereinbefore specifically mentioned:

Provided that cover notes, slips, or other instruments made in the anticipation of the issue of a formal policy of marine insurance shall not be taken for the purposes of this subhead to be policies of insurance.

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The same *ad valorem* duty as is payable under the heading —Policy of Life Insurance in this Schedule.

Exemption:

Policies of Insurance on baggage or personal or household effects only, if made or executed out of Nigeria.

POWER OF ATTORNEY. *See* Letter of Attorney.

PROCURATION, deed or other instrument of.....1 50

PROTEST of any bill of exchange or promissory notes:-

Where the duty on the bill or note does not exceed 10K. {The same duty as the bill or note

In any other case.....15

See section 83

PROMISSORY NOTE. *See* Bill of Exchange.

[Amended by 28 of 1941.]

RECEIPT given for or upon the payment of money amounting to N4 or upwards.....02

Exemptions:

- (1) Receipt given by any person or his representative for or on account of any salary, pay or wages or for or on account of any other like payment made to or for the account or benefit of any person being the holder of any office or an employee, in respect of his office or employment, or for or on account of money paid in respect of any pension, superannuation allowance, compassionate allowance or other like allowance.

N k

- (2) Receipt endorsed or otherwise written upon or contained in any instrument liable to stamp duty and duly stamped, acknowledging the receipt of the consideration money therein expressed, or the receipt of any principal money, interest or annuity thereby secured or therein mentioned.

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- (3) Acknowledgment by any banker of the receipt of any bill of exchange or promissory note for the purpose of being presented for acceptance or payment.
- (4) Receipt given for money deposited in any bank, or with any banker, to be accounted for and expressed to be received of the person to whom the same is to be accounted for, or for money withdrawn from a savings bank account.
- (5) Receipt given by the payee of a money order.
- (6) Receipt given for or upon the payment of any Government duties or taxes or of money to or for the use of the Government.
- (7) The duplicate of any receipt required by Government to be given in duplicate, the original receipt being duly stamped.
- (8) Receipt given by an officer of a public department of the Government of Nigeria or a State for money paid by way of imprest or advance, or in adjustment of account, where he derives no personal benefit therefrom, or for the refund of out-of-pocket expenses due from Government.
[Amended by Ordinance 2 of 1953.]
- (9) Receipt given for drawback or bounty upon the exportation of any goods or merchandise.
- (10) Receipt given for the return of any duties of customs upon certificates of over-entry, or upon reimportation certificates.
- (11) Receipt given for the refund of any sums deposited with the Treasury under the provisions of the Minerals Act.
- (12) Receipt given for the return of any monies over-collected by Government.
- (13) Receipt given by a prisoner on discharge, for money placed on deposit in the Treasury, or otherwise retained, during the term of his imprisonment.
- (14) Receipt given by an accused person for money or other property taken from him on his arrest. .
- (15) Receipt given for money given or subscribed to the Nigerian Red Cross Society.
[(15) added by 2 of 1945.]

N k

See sections 89-92

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RECONVEYANCE, RELEASE or RENUNCIATION of any security. *See* Mortgage.

RELEASE OR RENUNCIATION of any property, or of any right or interest in any property:-

Upon a sale. *See* Conveyance on Sale.

By way of security. *See* Mortgage.

In any other case3 00

RENUNCIATION. *See* Reconveyance and Release.

RENUNCIATION, LETTER OF. *See* Letter of Allotment.

REVOCATION of any use or trust of any property by any writing, not being a will.....1 50

SCRIP CERTIFICATE or SCRIP. *See* Letter of Allotment.

SETTLEMENT. Any instrument whether, voluntary or upon any good or valuable consideration other than a *bona fide* pecuniary consideration whereby any definite and certain principal sum of money (whether charged or chargeable on land or other hereditaments or not, or to be laid out in the purchase of lands or other hereditaments or not) or any definite and certain amount of stock, or any security is settled or agreed to be settled in any manner whatsoever-

For every N200, and also for any fractional part of N200 of the amount or value of the property settled or agreed to be settled.....75

Exemption:

Instrument of appointment relating to any property in favour of persons specially named or described as the object of a power of appointment, where duty has been duly paid in respect of the same property upon the settlement creating the power or the grant of representation of any will or testamentary instrument creating the power. *See* sections 93-95.

SHARE WARRANT OR STOCK CERTIFICATE BEARER-

- (i) Issued under the provisions of the Companies and Allied Matters Act or any instrument to bearer issued by or on behalf of any company or body of persons formed or established in Nigeria and having a like effect as a share warrant and stock certificate to bearer. { A duty of an amount equal to three times the amount of the *ad valorem* duty which would be chargeable on deed transferring the share or shares specified in warrant or certificate if the consideration for the transfer were the normal value of such share or shares or stock.

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Nk

- (ii) Issued by any company or body of persons formed or established out of Nigeria, for every N20 or fraction thereof of the nominal value of the share or stock to which the warrant or certificate relates.....16

See sections 77, 96, 97 and 98

[Substituted by 28 of 1941.]

SUPERANNUATION ANNUITY. *See* Bond, Covenant.

SURRENDER-

Of any kind whatsoever not chargeable with duty as a conveyance on sale or a mortgage and not being a surrender of a certificate of occupancy under the Land Use Act, or of a mining lease or water right under the Minerals and Mining Act

.....150

[Cap. L5. Cap. M12.]

[Amended by 17 of 1942.]

TRANSFER. *See* conveyance or Transfer.

VOTING PAPER. Any instrument for the purpose of voting by any person entitled to vote at any meeting of anybody exercising a public trust, or of the shareholders, or members, or contributors to the funds of any company, society or institution03

See section 74

WARRANT OF ATTORNEY to confess and enter up a judgment given as a security for the payment or repayment of money, or for the transfer or re-transfer of stock. *See* Mortgage.

WARRANT OF ATTORNEY of any other kind.....3

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WARRANT FOR GOODS.....09

Exemptions:

- (1) Any document or writing given by an inland carrier acknowledging the receipt of goods conveyed by such carrier.

- (2) A weight note issued together with a duly stamped warrant, and relating solely to the same goods, wares, or merchandise.

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See section 99

GENERAL EXEMPTIONS FROM ALL STAMP DUTIES:

- (1) Transfer of shares in the Government or legislative stocks or funds of Nigeria.
- (2) Instruments for the sale, transfer or other disposition, either absolutely, or by way of mortgage, Of otherwise, of any ship or vessel or any part, interest, share or property of or in any ship or vessel.
- (3) All instruments on which the duty would be payable by Government.
- (4) All instruments on which the duty would be payable locally by Government in Nigeria or any of the departments thereof.
[Inserted as (3A) by 28 of 1941.]
- (5) Agreements made with the Nigerian Railway Corporation relating to the receipt and carriage of passengers, goods or animals.
- (6) Indemnity bonds given to the Nigerian Railway Corporation by consignees (when the railway receipt is not produced) in respect of the delivery of consignments of fresh fish, fruit and vegetables, and other perishable articles.
- (7) An instrument of apprenticeship to which the Government is a party.
- (8) Bond given by public officer for the execution of his duties.
- (9) All instruments in which the duty would be payable by any consular officer arising out of his official functions where the foreign government he represents grants the like exemption to Nigerian consular officers.
[38 of 1950.]
- (10) Instruments relating to the alienation of land or any interest therein which are approved by local authorities of the Southern States of Nigeria in accordance with rules made by them under the Local Government Laws.
[Resolution 6 of 1951.]
- (11) All instruments relating to the alienation of land or any interest therein which are approved by any local government council under any by-law made under either the Eastern States Local Government Laws or the Western States Local Government Laws, 1953.

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[L.N. 64 of 1954.16 of 1950.1 of 1953.]

- (12) All instruments regarding which the Government of the Federation is competent to make laws executed by or on behalf of any co-operative society registered under any Act or law or by any officer or member of such a society relating to the business of such society.

[L.N. 90 of 1956.]

- (13) All documents relating to the transfer of stocks and shares.

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CHAPTER T2

TAXES AND LEVIES (APPROVED LIST FOR COLLECTION) ACT

ARRANGEMENT OF SECTIONS

SECTION

1. Responsibility for collecting certain taxes and levies, etc.
2. Assessment and collection of taxes
3. Offences
4. Interpretation
5. Citation

CHAPTER T2 TAXES AND LEVIES (APPROVED LIST FOR COLLECTION) ACT [1998 No. 21]

[Commencement]

[30th September, 1998]

1. Responsibility for collecting certain taxes, and levies, etc.

- (1) Notwithstanding anything contained in the Constitution of the Federal Republic of Nigeria 1979, as amended, or in any other enactment or law, the Federal Government, State Government and local government shall be responsible for collecting the taxes and levies listed in Part I, Part II and Part III of the Schedule to this Act, respectively.
- (2) The Minister of Finance may, on the advice of the Joint Tax Board and by Order published in the Gazette, amend the Schedule to this Act.

2. Assessment and collection of taxes

- (1) Notwithstanding anything contained in the Constitution of the Federal Republic of Nigeria 1979, as amended, or in any other enactment or law, no person, other than the appropriate tax authority, shall assess or collect, on behalf of the Government any tax or levy listed in the Schedule to this Act, and members of the Nigeria Police Force shall only be used in accordance with the provisions of the tax laws.

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- (2) No person, including a tax authority, shall mount a road block in any part of the Federation for the purpose of collecting any tax or levy

3. Offences

A person who-

(a) collects or levies any tax or levy; or

(b) mounts a road block or causes a road block to be mounted for the purpose of collecting any tax or levy,

in contravention of section 2 of this Act, is guilty of an offence and liable on conviction to a fine of N50,000 or imprisonment for three years or to both such fine and imprisonment.

4. Interpretation

In this Act, unless the context otherwise requires-

“**Government**” means the Federal, State or local government;

“**Joint Tax Board**” means the Joint Tax Board established under the provisions of the Personal Income Tax Act 1993;
[1993 No. 104]

“**levy**” includes any fee and charge;

“**tax authority**” means-

(a) the Federal Board of Inland Revenue, the State Board of Internal Revenue or the Local Government Revenue Committee; or

(b) a Ministry, Government department or any other Government body charged with responsibility for assessing or collecting the particular tax.

5. Citation

This Act may be cited as the Taxes and Levies (Approved List for Collection) Act.

SCHEDULE

[Section 1]

PART I

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Taxes to be collected by the Federal Government

1. Companies income tax
2. Withholding tax on companies, residents of the Federal Capital Territory, Abuja and non-resident individuals
3. Petroleum profits tax
4. Value added tax
5. Education tax
6. Capital gains tax on residents of the Federal Capital Territory, Abuja, bodies corporate and non-resident individual
7. Stamp duties on bodies corporate and residents of the Federal Capital Territory, Abuja
8. Personal income tax in respect of-
 - (a) members of the armed forces of the Federation;
 - (b) members of the Nigeria Police Force;
 - (c) Residents of the Federal Capital Territory, Abuja; and
 - (d) staff of the Ministry of Foreign Affairs and non-resident individuals.

PART II

Taxes and levies to be collected by the State Government

1. Personal income tax in respect of-
 - (a) Pay-As- You-Earn (PAYE); and
 - (b) direct taxation (self-assessment)
2. Withholding tax (individuals only)
3. Capital gains tax (individuals only)

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4. Stamp duties on instruments executed by individuals
5. Pools betting and lotteries, gaming and casino taxes
6. Road taxes
7. Business premises registration fee in respect of-
 - (a) urban areas as defined by each State, maximum of-
 - (i) N10,000 for registration; and
 - (ii) N5,000 per annum for renewal of registration; and
 - (b) rural areas-
 - (i) N2,000 for registration; and
 - (ii) N1,000 per annum for renewal of registration
8. Development levy (individuals only) not more than N100 per annum will on all taxable individuals
9. Naming of street registration fees in the State Capital
10. Right of Occupancy fees on lands owned by the State Government in urban areas of the State
11. Market taxes and levies where State finance is involved

PART III

Taxes and levies to be collected by the local government

1. Shops and kiosks rates
2. Tenement rates
3. On and off liquor license fees
4. Slaughter slab fees

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5. Marriage, birth and death registration fees
6. Naming of street registration fee, excluding any street in the State Capital
7. Right of Occupancy fees on lands in rural areas, excluding those collectable by the Federal and State Governments
8. Market taxes and levies excluding any market where State finance is involved
9. Motor park levies
10. Domestic animal license fees
11. Bicycle, truck, canoe, wheelbarrow and cart fees, other than a mechanically propelled truck
12. Cattle tax payable by cattle farmers only
13. Merriment and road closure levy
14. Radio and television licence fees (other than radio and television transmitter)
15. Vehicle radio licence fees (to be imposed by the local government of the State in which the car is registered)
16. Wrong parking charges
17. Public convenience, sewage and refuse disposal fees
18. Customary burial ground permit fees
19. Religious places establishment permit fees
20. Signboard and advertisement permit fees

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Tertiary Education Trust Fund (Establishment, etc) Act, 2011

Explanatory Memorandum

This Act repeals the Education Tax Act Cap. E4, Laws of the Federation of Nigeria, 2004 and Education Tax Fund Act No. 17, 2003 and establishes the Tertiary Education Trust Fund charged with the responsibility for imposing, managing and disbursing the tax to public tertiary institutions in Nigeria.

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Tertiary Education Trust Fund (Establishment, etc) Act, 2011

Arrangement of Sections

Section:

1. Imposition of tertiary education tax.
2. Assessment and collection of tax.
3. Establishment of the Tertiary Education Trust Fund.
4. Establishment of the Board of Trustees.
5. Cessation of membership.
6. Functions of the Board of Trustees.
7. Management and administration of the Fund.
8. Appointment of the Executive Secretary and other staff of the Fund.
9. Pension.
10. Offences.
11. Penalties.
12. Jurisdiction.

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13. Limitation of suits against the Fund, etc.
14. Service of documents.
15. Restriction on execution against property of the Fund.
16. Indemnity of officers.
17. Regulations.
18. Repeal.
19. Savings.
20. Interpretation.
21. Citation.

Schedule

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TERTIARY EDUCATION TRUST FUND (ESTABLISHMENT, ETC) ACT, 2011

A BILL FOR

An Act to repeal the Education Tax Act Cap. E4 Laws of the Federation of Nigeria, 2004 and Education Tax Fund (Amendment) Act No. 17, 2003 and establish the Tertiary Education Trust Fund charged with the responsibility for imposing, managing and disbursing The Education Tax to public tertiary education institutions in Nigeria; and for related matters.

ENACTED by the National Assembly of the Federal Republic of Nigeria-

1.

- (1) As from the commencement of this Act, there shall be charged and payable an annual tertiary education tax which shall be assessed, collected and administered in accordance with the provisions of this Act.
- (2) The tax at the rate of 2 percent shall be charged on the assessable profit of a company registered in Nigeria (in this Act referred to as "a company").
- (3) The assessable profit of a company shall be ascertained in the manner specified in the Companies Income Tax Act or the Petroleum Profits Tax Act (in this Act referred to as "the Act") as the case may be.
- (4) Without prejudice to the provision of subsection (3) of this section, section 60 of the Petroleum Profit Tax Act shall not apply to the assessment, collection and payment of tertiary education tax and all companies chargeable to tax under the Petroleum Profit Tax Act shall be liable to pay the full extent of the tax imposed under this Act.

2.

- (1) The Federal Inland Revenue Service (in this Act referred to as "the Service") shall assess and

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collect from a company the tax imposed by this Act and accordingly-

(a) shall, when assessing a company, for companies income tax or petroleum profit tax for an accounting period of the company, also proceed to assess the company for the tax due under this Act; and

(b) the provisions of the Act relating to the collection of companies income tax or petroleum profit tax shall, subject to this Act, apply to the tax due under this Act.

(2) The tax imposed by this Act shall be due and payable within 60 days after the Service has served notice of the assessment on a company.

(3) The Service may, for the purpose of assessment and collecting the tax imposed by this Act, devise such forms as it may deem necessary.

3.

(1) There is established the Tertiary Education Trust Fund (in this Act referred to as "the Fund") for the rehabilitation, restoration and consolidation of tertiary education in Nigeria which shall be managed by the Board of Trustees established under section 4 of this Act.

(2) The Fund-

(a) shall be a body corporate with perpetual succession and a common seal; and

(b) may sue and be sued in its corporate name.

(3) The Service shall pay the tax collected under this Act into the Fund and shall, when doing so, submit to the Fund, in such form as the Board of Trustees shall approve, a return showing-

(a) the name of the company making the payment;

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- (b) the amount collected;
 - (c) the assessable profit of the company for the accounting period; and
 - (d) such other information as may be required by the Fund for the proper administration of the tax.
- (4) The Fund shall, before disbursement of the amount in the Fund, set aside in each year, an amount not exceeding 5 per cent of the total monies accruing to the Fund in the preceding year which shall be applied-
- (a) for the cost of administration and management of the Fund;
 - (b) for the maintenance of any property acquired by or vested in the Fund and generally to pay for services rendered to the Fund;
 - (c) for project monitoring;
 - (d) to meet all the needs of the Fund necessary for the due administration and implementation of the purpose of this Act.

4.

- (1) There is established for the Fund, a Board of Trustees (in this Act referred to as "the Board of Trustees") which shall consist of-
- (a) a chairman who shall-
 - (i) be a person with good knowledge in finance and administrative matters;
 - (ii) have qualifications and experiences as are required to perform the functions of that office under this Act.
 - (b) 6 persons, each representing a geopolitical zone in the country;

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- (c) a representative each of the following Federal Ministries, who shall not be below the rank of a Director-
 - (i) Education; and
 - (ii) Finance;
 - (d) a representative each from the Universities, Polytechnics and Colleges of Education; and
 - (e) the Executive Secretary, who shall be the Secretary to the Board of Trustees.
- (2) The membership of the Board of Trustees shall reflect the six geo-political zones of the Federation.
- (3) The members Board of Trustees shall-
- (a) Be persons with
considerable experience from both the public and private sectors to represent the business, financial and education sectors;
 - (b) be appointed by the President on the recommendation of the Minister;
 - (c) other than the ex-officio members, each hold office for a term of 4 years in the first instance and may be eligible for reappointment for a further term of 4 years and no more;
 - (d) be paid such remuneration and allowances as the President may, from time to time, determine.
- (4) The Board of Trustees shall meet for the conduct of its ordinary meetings 4 times in a calendar year.
- (5) Notwithstanding subsection (4) of this section, the Board of Trustees may meet to conduct such as other business as exigency demands.

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(6) The supplementary provisions contained in the Schedule to this Act shall have effect with respect to the proceedings of the Board of Trustees and other matters contained therein.

5.

(1) A member of the Board of Trustees shall cease to hold office if he-

- (a) becomes of unsound mind;
- (b) becomes bankrupt or makes a compromise with his creditors;
- (c) is convicted of a felony or any offence involving dishonesty; or
- (d) is guilty of serious misconduct in relation to his duties.

(2) A member of the Board of Trustees may be removed from office by the President if he is satisfied that it is not in the interest of the Fund or public that the member should continue in that office.

(3) A member of the Board of Trustees, other than an ex-officio, may resign his appointment by a notice in writing under his hand, addressed to the President.

(4) Where a vacancy occurs in the membership of the Board of Trustees, it shall be filled by the appointment of a successor to hold office for the remainder of the term of office of his predecessor, so that the successor shall represent the same interest and shall be appointed by the President.

6. The Board of Trustees shall-

- (a) monitor and ensure collection of education tax by the Service and ensure transfer of same to the Fund;
- (b) manage and disburse the tax imposed by this Act;
- (c) liaise with the appropriate ministries or bodies responsible for collection or safe keeping of the tax;

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- (d) receive requests and approve admissible projects after due consideration;
- (e) ensure disbursement of funds to various public tertiary educational institutions in Nigeria;
- (f) monitor and evaluate execution of the projects;
- (g) invest funds in appropriate and safe securities;
- (h) update the Federal Government on its activities and progress through annual and audited reports;
- (i) review progress and suggest improvement within the provisions of this Act;
- (j) do such other things as are necessary or incidental to the objects of the Fund under this Act or as may be assigned by the Federal Government;
- (k) make and issue guidelines, from time to time, to all beneficiaries on disbursement from the Fund on the use of monies received from the Fund; and
- (l) generally to regulate the administration, application and disbursement of monies from the Fund under this Act.

7.

- (1) The Board of Trustees shall administer the tax imposed by this Act and disburse the amount in the Fund to Federal and State tertiary educational institutions specifically for the provision or maintenance of-
 - (a) essential physical infrastructure for teaching and learning;
 - (b) instructional material and equipment;
 - (c) research and publication;

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- (d) academic staff training and development; and
 - (e) any other need which, in the opinion of the Board of Trustees, is critical and essential for the improvement of quality and maintenance of standards in the higher educational institutions.
- (2) The Board of Trustees shall administer, manage and disburse the tax imposed by this Act on the basis of-
- (a) funding of all public tertiary educational institutions;
 - (b) equality among the 6 geo-political zones of the Federation in the case of special intervention; and
 - (c) equality among the States of the Federation in the case of regular intervention;
- (3) The distribution of funds shall be in the ratio of 2: 1: 1 as between Universities, Polytechnics and Colleges of Education.
- (4) The Board of Trustees shall have power to give due consideration to the peculiarities of each geopolitical zone in the disbursement and management of the tax imposed by this Act between the various levels of tertiary education.
- (5) The Minister shall, on the recommendation of the Board of Trustees and subject to approval by the President, make guidelines for disbursement of funds under this Act.
- 8.
- (1) There shall be for the Fund an Executive Secretary who shall-
- (a) be appointed by the President on the recommendation of the Minister;

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- (b) be the Chief Executive and Accounting Officer of the Fund;
 - (c) be a person with good knowledge and cognate academic and administrative experience in tertiary education;
 - (d) have qualifications and experience as are appropriate for a person required to perform the functions of that office under this Act; and
 - (e) hold office for a period of 5 years in the first instance and may be eligible for reappointment for a further term of 4 years only and on such terms and conditions as to emoluments, and conditions of service as may be specified in his letter of appointment.
- (2) The Executive Secretary shall, subject to the general direction of the Board of Trustees, be responsible for-
- (a) the day-to-day administration of the Fund;
 - (b) Keeping the books and proper records of the proceedings of the Board of Trustees;
 - (c) the administration of the secretariat of the Board of Trustees; and
 - (d) the general direction and control of all other employees of the Fund.
- (3) The Board of Trustees shall have power to-
- (a) employ either directly or on transfer or secondment from any civil or public service in the Federation such number of employees as may, in the opinion of the Board, be required to assist the Board of Trustees and the Executive Secretary in the discharge of their functions under this Act; and
 - (b) pay to persons so employed such remuneration (including allowances) as the Board of Trustees may, with the approval of the National Salaries, Incomes and Wages Commission, determine

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9.

- (1) Service in the Fund shall be approved service for purposes of pension.
- (2) Employees of the Fund shall be entitled to pension, gratuity and other retirement benefits as are enjoyed by persons holding equivalent grades in the Civil Service of the Federation.
- (3) Notwithstanding in subsection (1) or (2) of this section, nothing in this Act shall prevent the appointment of a person to any office on terms which preclude the grant of pension and gratuity in respect of that office.
- (4) For the purpose of the application of the provisions of the Pension Reform Act, any power exercisable by a Minister or other authority of the Government of the Federation, other than the power to make regulations under section 23 thereof, is vested in and shall be exercisable by the Board of Trustees

10.

- (1) A person who contravenes or fails to comply with provisions of this Act is guilty of an offence under this Act
- (2) Subject to the provisions of subsection (3) of this section-
 - (a) if a tax due under section 2 of this Act is not paid within the time specified in that section, the Service shall serve on the company, a demand note for the unpaid tax plus a sum which is equal to 5 per cent of the tax; and
 - (b) if a sum demanded under paragraph (a) of this subsection is not paid within 2 months of the demand, the company is guilty of an offence under this Act; and
- (3) Notwithstanding any other provision in this Act, it shall be the duty and responsibility of every company liable to pay education tax to ensure that its annual returns are filed with the Service for the purpose of assessment of education tax.

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- (4) The Board of Trustees shall, remit in whole or in part a sum added to the unpaid tax under subsection (2) (a) of this section.
- (5) Where an offence under this Act is committed by a body corporate or firm or other association of individuals-
- (a) every director, manager, secretary or other similar officer of the body corporate;
 - (b) every partner or officer of the firm;
 - (c) every person concerned in the management of the affairs of the association; or
 - (d) every person who was purporting to act in that capacity is severally guilty of that offence and liable to be proceeded against and punished for the offence in like manner as if he had himself committed the offence, unless he proves that the act or omission constituting the offence took place without his knowledge, consent or connivance.

11.

- (1) Except as otherwise provided in this Act, a person guilty of an offence under this Act shall, on conviction, be liable-
- (a) for a first offence, to imprisonment for a term of 6 months or to a fine of up to N1,000,000.00 or both; and
 - (b) for a second and subsequent offence to imprisonment for a term of 12 months or to a fine of up to N2,000,000.00 or both.
- (2) The institution of proceedings or imposition of a penalty under this Act shall not relieve a company from liability to pay to the Service a tax which is or may become due under this Act.
- (3) Notwithstanding subsection (1) (a) and (b) of this section, where any company or corporate body liable to file an education tax return under this Act fails in any year to file such return,

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the Service, if it is of the opinion that such a company or corporate body is liable to pay education tax, may, according to the best of its judgment, determine the amount of assessable profit of such company and make an assessment of education tax in accordance with the provisions of this Act.

12. The Federal High Court shall have jurisdiction to try offenders under this Act.

13.

(1) Subject to the provisions of this Act, the provisions of the Public Officers Protection Act shall apply in relation to any suit instituted against any officer or employee of the Fund.

(2) Notwithstanding anything contained in any other law or enactment, no suit against any member of the Board of Trustees, the Executive Secretary or any other officer or employee of the Fund for any act done in pursuance or execution of the Act or any other law or enactment, or of any public duty or authority or in respect of any alleged neglect or default in the execution of this Act or such law or enactment, duty or authority, shall lie or be instituted in any court unless-

(a) it is commenced within 3 months next after the act, neglect or default complained of; or

(b) in the case of a continuation of damage or injury, within 6 months next after the ceasing thereof.

(3) No suit shall be commenced against a member of the Board of Trustees, the Executive Secretary, officer or employee of the Fund before the expiration of a period of one month after written notice of intention to commence the suit shall have been served upon the Fund by the intending plaintiff or his agent.

(4) The notice referred to in subsection (3) of this section shall clearly and explicitly state the cause of action, the particulars of the claim, the name and place of abode of the intending plaintiff and the relief which he claims.

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14. A notice, summons or other document required or authorized to be served upon the Fund under the provisions of this Act or any other law or enactment may be served by delivering it to the Executive Secretary or by sending it by registered post and addressed to the Executive Secretary at the principal office of the Fund.

15.

(1) In any action or suit against the Fund, no execution or attachment of process in the nature thereof shall be issued against the Fund.

(2) Any sum of money which may, by the judgment of any court, be awarded against the Fund shall, subject to any direction given by the court where notice of appeal of the said judgment has been given, be paid from the general reserve fund of the Fund.

A member of the Board of Trustees, the Executive Secretary, any officer or employee of the Fund shall be indemnified out of the assets of the Fund against any proceeding, whether civil or criminal, in which judgment is given in his favour, or in which he is acquitted, if any such proceeding is brought against him in his capacity as a member of the Board of Trustees, the Executive Secretary, officer or employee of the Fund.

The Minister may, on the recommendation of the Board of Trustees and subject to the approval of the President, make regulations generally for the purposes of this Act and the due administration thereof.

The Education Tax Act, CAP E4, Laws of the Federation of Nigeria, 2004 and the Education Tax Fund (Amendment) Act No. 17, 2003 are repealed.

19.

(1) Without prejudice to section 6 of the Interpretation Act, the repeal of the enactment specified in section 18 of this Act shall not affect anything done under or pursuant to that enactment.

(2) The rights, interests, obligations and liabilities of the Fund existing before the commencement of

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this Act under any contract or instrument, or in law or in equity, apart from any contract or instrument, shall, by virtue of this Act, be assigned to and vested in the Fund established by this Act.

- (3) Any such contract or instrument as is mentioned in subsection (2) of this section shall be of the same force and effect against or in favour of the Fund established by this Act and shall be enforceable as fully and effectively, as if the Fund established by this Act has been named therein or had been a party thereto.
- (4) The Fund established by this Act shall be subject to all the obligations and liabilities to which the Fund established under the repealed Acts was subject immediately before the commencement of this Act and all other persons shall have the same rights, powers and remedies against the Fund established by this Act, as they had against the Fund established under the repealed Act immediately before the commencement of this Act.
- (5) Any proceeding or cause of action pending or existing immediately before the commencement of this Act by or against the Fund established by the repealed Act in respect of any right, interest, obligation or liability of the former Fund may be continued or as the case may be, commenced and any determination of a court of law, tribunal or other authority or person may be enforced by or against the Fund established by this Act, to the same extent that such proceeding, cause of action or determination might have been continued, commenced or enforced by or against the former Fund as if this Act had not been made.
- (6) All assets, funds, resources and other movable property which immediately before the commencement of this Act were vested in the former Fund shall, by virtue of this Act and without further assurance, be vested in the Fund established by this Act.
- (7) Persons who immediately before the coming into force of this Act were holders of offices in the repealed Education Trust Fund shall-

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- (a) continue in office;
- (b) have their previous service in the repealed Education Trust Fund counted as service for the purposes of pension payable under the Pension Reform Act; and
- (c) be deemed to have been appointed to the offices by the statutory body established by this Act.

20.

(1) In this Act-

"Act" means the Companies Income Tax Act or the Petroleum Profits Tax Act, as the case may be;

"Board of Trustees" means the Board of Trustees established under section 4 of this Act;

"company" means a company registered in Nigeria;

"Fund" means the Tertiary Education Trust Fund established under section 3 of this Act;

"Minister" means the Minister charged with responsibility for matters relating to education;

"the Service" means the Federal Inland Revenue Service established under the Federal Inland Revenue Service (Establishment) Act, 2007;

"tertiary educational institution" means a University, a Polytechnic or a College of Education;

(2) Where no provision is made in this Act for a matter relating to the assessment and collection of the tax imposed by this Act, the provisions of the Acts relating to the assessment and collection of companies income tax or petroleum profit tax, as the case may be, shall apply *mutatis mutandis* to that matter.

21. This Act may be cited as the Tertiary Education Trust Fund (Establishment, Etc.) Act, 2011.

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SCHEDULE

Supplementary Provisions Relating to the Board of Trustees

Proceedings of the Board of Trustees

1.

- (1) Subject to this Act and section 27 of the Interpretation Act, the Board of Trustees may make standing orders regulating its proceedings or those of any of its committees.
- (2) The quorum of the Board of Trustees shall be 5 members and the quorum of any committee of the Board of Trustees shall be determined by the Board of Trustees.

2.

- (1) The Board of Trustees shall meet not less than 4 times in each year and subject thereto, the Board of Trustees shall meet whenever it is summoned by the Chairman, and if the Chairman is required to do so by notice given to him by not less than 3 other members, he shall summon a meeting of the Board of Trustees to be held within 14 days from the date on which the notice is given.
- (2) At any meeting of the Board of Trustees, the Chairman shall preside but if he is absent, the members present at the meeting shall appoint one of them to preside at that meeting.
- (3) Where the Board of Trustees desires to obtain the advice of any person on a particular matter, the Board of Trustees may co-opt him to the Board of Trustees for such period as it thinks fit; but a person who is in attendance by virtue of this sub-paragraph shall not be entitled to vote at any meeting of the Board and shall not count towards a quorum.

Committees

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3.

- (1) The Board of Trustees may appoint one or more committees to carry out, on behalf of the Board of Trustees, such of its functions as the Board of Trustees may determine.
- (2) A committee appointed under this paragraph shall consist of such number of persons (not necessarily members of the Board of Trustees) as may be determined by the Board of Trustees; and a person other than a member of the Board of Trustees shall hold office on the committee in accordance with the terms of his appointment.
- (3) A decision of a Committee of the Board of Trustees shall be of no effect until it is confirmed by the Board of Trustees.

Miscellaneous

4.

- (1) The fixing of the seal of the Fund shall be authenticated by the signature of the Chairman and any other person authorized generally or specially to act for that purpose by the Board of Trustees.
- (2) Any contract or instrument which, if made or executed by a person not being a body corporate, would not be required to be under seal may be made or executed on behalf of the Fund by the Executive Secretary or any person generally or specially authorized to act for that purpose by the Board of Trustees
- (3) Any document purporting to be a document duly executed under the seal of the Fund shall be received in evidence and shall, unless and until the contrary is proved, be presumed to be so executed.

5. The validity of any proceeding of the Board of Trustees or of a committee thereof shall not be adversely affected by any vacancy in the membership of the Board of Trustees or committee, or by any defect in the appointment of a member of the Board of Trustees or of a committee,

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or by reason that a person not entitled to do so took part in the proceedings of the Board of Trustees or committee.

I certify, in accordance with section 2 (1) of the Acts Authentication Act, Cap. A2, Laws of the Federation of Nigeria 2004, that this is a true copy of the bill passed by both Houses of the National Assembly.

Salisu Abubakar Maikasuwa, mni

Clerk to National Assembly

2nd Day of June, 2011

Schedule to Tertiary Education Trust Fund (Establishment, Etc) Act, 2011

Short title of the bill	Long title of the bill	Summary of the contents of bill	Date passed by the Senate	Date passed by the House of Representatives
Tertiary Education Trust Fund (Establishment, Etc) Act, 2011	An Act to repeal the Education Tax Act Cap. E4 Laws of the Federation of Nigeria, 2004 and establish the Tertiary Education Trust Fund Charged (Amendment) Act No. 17, 2003	This Act repeals the Education Tax Act Cap. E4, Laws of the Federation of Nigeria, 2004 and Education Tax Fund Act No. 17, 2003 and	26 th May, 2011	25 th May, 2011

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with the responsibility for imposing, managing and disbursing The Education Tax to public tertiary education institutions in Nigeria; and for related matters.	establishes the Tertiary Education Trust Fund charged with the responsibility for imposing, managing and disbursing the tax to public tertiary institutions in Nigeria.	
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I certify that this Bill has been carefully compared by me with the decision reached by the National Assembly and found by me to be true and correct decision of the Houses and is in accordance with the provisions of the Acts Authentication Act Cap A2,

Laws of the Federation of Nigeria, 2004

Salius Abubakar Maikasuwa, mni

Clerk to the National Assembly

2nd Day of June, 2011

Dr. Goodluck Ebele Jonathan, GCFR

President of the Federal Republic of Nigeria

3rd Day of June, 2011

I assent

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CHAPTER V1

VALUE ADDED TAX ACT CAP V1 LAWS OF THE FEDERATION OF NIGERIA 2004

CHAPTER V1

VALUE ADDED TAX ACT

ARRANGEMENT OF SECTIONS

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Imposition, etc., of Value Added Tax

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3. Goods and services exempt.
4. Rate of tax.
5. Value of taxable goods and services.
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Administration

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8. Registration.
9. Registration by Government Ministries, etc., as agents of the Board.
10. Registration by non-resident companies.
11. Records and accounts.

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13. Remission of tax collected by Government Ministries, etc.
- 13A. Tax invoice.
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FIRST SCHEDULE

Goods and services exempt

CHAPTER VI

VALUE ADDED TAX ACT

An Act to impose and charge Value Added Tax on certain goods and services and to provide for the administration of the tax and matters related thereto.

[1993 No. 102, 2007 No. 53]

[Commencement]

[1st December, 1993]

PART I

1. Imposition, etc., of Value Added Tax

There is hereby imposed and charged a tax to be known as the Value Added Tax (in this Act referred to as —the tax) which shall be administered in accordance with the provisions of this Act.

2. Taxable goods and services

The tax shall be charged and payable on the supply of all goods and services (in this Act referred to as "taxable goods and services") other than those goods and services, listed in the First Schedule to this Act.

[1996 No. 31.]

3. Goods and services exempt

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There shall be exempt from the tax the goods and services listed in the First Schedule to this Act.

[1996 No.31 First Schedule.]

4. Rate of tax

The tax shall be computed at the rate of 5 percent on the value of all goods and services as determined under sections 5 and 6 of this Act, except that goods and services listed under Part III of the First Schedule to this Act shall be taxed at zero rate.

[1996 No. 31, 2007 No. 53, s. 3]

5. Value of taxable goods and services

- (1) For the purpose of this Act, the value of taxable goods and services shall be determined as follows, that is:
 - (a) if the supply is for a money consideration, its value shall be deemed to be an amount which with the addition of the tax chargeable is equal to the consideration;
 - (b) if the supply is for a consideration not consisting of money the value of the supply shall be deemed to be its market value.
- (2) Where the supply of taxable goods or services is not the only matter to which a consideration in money relates, the supply shall be deemed to be such part of the consideration as is properly attributed to it.
- (3) For the purpose of this Act, the open market value of supply of taxable goods or services shall be taken to be the amount that would fall to be taken as its value under subsection (1) (b) of this section if the supply were for such consideration in money as could be payable by a person in a transaction at arm's length,

6. Value of imported goods

The value of imported taxable goods for the purposes of this Act shall be the amount which is equal to the price of the goods so imported and shall include:

- (a) all taxes, duties and other charges levied either outside or by reason of importation into Nigeria, other than the tax imposed by this Act;

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- (b) all costs by way of commission, parking, transport and insurance up to the port or place of importation,

PART II

Administration

7. Administration of the tax

- (1) The tax shall be administered and managed by the Federal Board of Inland Revenue (in this Act referred to as "the Board").
- (2) The Board may do such things as it may deem necessary and expedient for the assessment and collection of the tax and shall account for all amounts so collected in accordance with the provisions of this Act.

8. Registration

- (1) A taxable person shall, within six months of the commencement of the Act or within six months of the commencement of business, whichever is earlier, register with the Board for the purpose of the tax.

[1996 No. 30.]

- (2) Without prejudice to the provisions of section 32 of this Act, a taxable person who fails or refuses to register with the Board within the time specified in subsection (1) of this section shall be liable to pay as penalty an amount of-

- (a) N 10,000 in the first month in which the failure occurs; and

- (b) N5,000 for each subsequent month in which the failure continues.

[1996 No. 30.]

9. Registration by Government Ministries, etc., as agents of the Board

- (1) Every Government Ministry, statutory body and other agency of Government shall register as agents of the Board for the purpose of collection of tax under this Act.

[1996 No. 31.]

- (2) Every contractor transacting business with a Government Ministry, statutory body and other agency of the Federal, State or local government shall produce evidence of registration with the Board as a condition for obtaining a contract.

[1996 No. 31.]

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10. Registration by non-resident companies

- (1) For the purpose of this Act, a non-resident company that carries on business in Nigeria shall register for the tax with the Board, using the address of the person with whom it has a subsisting contract, as its address for purposes of correspondence relating to the tax.
[1996 No. 31.]

- (2) A non-resident company shall include the tax in its invoice and the person to whom the goods or services are supplied in Nigeria shall remit the tax in the currency of the transaction.

[1996 No. 31]

11. Records and accounts

A person who is registered under section 8 of this Act (in this Act referred to as "a registered person") shall keep such records and books of all transactions, operations, imports and other activities relating to taxable goods and services as are sufficient to determine the correct amount of tax due under this Act.

PART III

Returns, remittances, recovery and refund of tax

12. Payment of tax by taxable person

- (1) A taxable person shall pay to the supplier the tax on taxable goods and services purchased by or supplied to the person.
[2007 No. 53, s. 4]

- (2) The tax paid by a taxable person under subsection (1) of this section shall be known as input tax.

13. Remission of tax collected by Government Ministries, etc

- (1) Every Ministry, statutory body or other agency of Government shall, at the time of making payment to a contractor, remit the tax charged on the contract to the nearest local Value Added Tax office.
[1996 No. 31]

- (2) The Service may, by notice, determine and direct the companies operating in the oil and gas sector which shall deduct V AT at source and remit same to the Service.
[2007 No. 53, s.5 (a)]

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- (3) The remission shall be accompanied with a schedule showing the name and address of the contractor, invoice number, gross amount of invoice, amount of tax and month of return.
[1996 No. 31. Subsection (3), previously subsection (2), renumbered by 2007 No. 53, s. 5 (b)]

13A. Tax invoice

- (1) A taxable person who makes a taxable supply shall, in respect of that supply, furnish the purchaser with a tax invoice containing, *inter alia*, the following-
- (a) tax payers identification number;
 - (b) name and address;
 - (c) VAT registration number;
 - (d) the date of supply;
 - (e) name of purchaser or client;
 - (f) gross amount of transaction; and
 - (g) tax charged and rate supplied.
- (2) A tax invoice shall be issued on supply whether or not payment is made at the time of supply.
[2007 No. 53. s. 6]

14. Collection of tax by taxable person

- (1) A taxable person shall on supplying taxable goods or services to his accredited distributor, agent, client or consumer, as the case may be, collect the tax on those goods or services at the rate specified in section 2 of this Act.
- (2) The tax collected by a taxable person under subsection (1) of this section shall be known as output tax.

15. Taxable person to render returns

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- (1) A taxable person shall render to the Board, on or before the 21st day of the month following that in which the purchase or supply was made, a return of all taxable goods and services purchased or supplied by him during the preceding month in such manner as the Board may, from time to time, determine.

[1996 No.31, 2007 No. 53, s. 7 (a)]

- (2) A person who imports taxable goods into Nigeria shall render to the Board returns on all the taxable goods imported by him into Nigeria.

- (3) In this regard, any payment made to duly authorised Government agents shall be deemed to have been made to the Federal Inland Revenue Service.

[2007 No. 53, s. 7 (b).]

16. Remission of tax

- (1) A taxable person shall, on rendering a return under subsection (1) of section 15 of this Act-

(a) if the output tax exceeds the input tax, remit the excess to the Board; or

(b) if the input tax exceeds the output tax, be entitled to a refund of the excess tax from the Board on production of such documents as the Board may, from time to time, require.

- (2) An importer of taxable goods shall, before clearing those goods, pay to the Board the tax on those goods.

17. Allowable input tax, etc.

- (1) For purposes of section 13 (1) of this Act, the input tax to be allowed as a deduction from output tax shall be limited to the tax on goods purchased or imported directly for resale and goods which form the stock-in-trade used for the direct production of any new product on which the output tax is charged

[1998 No. 18.]

- (2) Input tax-

(a) on any overhead, service, and general administration of any business which otherwise can be expended through the income statement (profit and loss accounts); and

[1998 No. 18.]

(b) on any capital item and asset which is to be capitalized along with cost of the capital item and asset,

shall not be allowed as a deduction from output tax.

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18. Effect of failure to render returns

Where a taxable person fails to render returns or renders an incomplete or inaccurate returns, the Board shall assess, to the best of its judgement, the amount of tax due on the taxable goods and services purchased or supplied by the taxable person.

19. Effect of non-remittance of tax

- (1) If a taxable person does not remit the tax within the time specified in section 15 of this Act, a sum equal to five per cent per annum (plus interest at the commercial rate) of the amount of tax remittable shall be added to the tax and the provisions of this Act relating to collection and recovery of unremitted tax, penalty and interest shall apply.
- (2) The Board should notify the taxable person or his agent of the tax due together with the penalty and interest and if payment is not made within thirty days of such notification, the Board may proceed to enforce payment as provided in section 15 of this Act.
[2007 No. 53, s. 9.]

20. Recovery of tax

- (1) Any tax, penalty or interest which remains unpaid after the period specified for payment may be recovered by the Board through proceedings in the Value Added Tax Tribunal.
[1996 No. 32.]
- (2) A taxable person who is aggrieved by an assessment made on the person may file an objection to the Federal Inland Revenue Service.
[1996 No. 32, 2007 No. 53, s. 10 (1).]
- (3) An appeal before the Federal Inland Revenue Service shall be determined within 30 days.
[1996 No. 32, 2007 No. 53, s. 10 (1).]
- (4) Appeal from the decisions of the Federal Inland Revenue Service shall be made to the Tax Appeal Tribunal.
[2007 No. 53, s. 10(2).]
- (5) An appeal from the Tax Appeal Tribunal shall be made to the Federal High Court.
[2007 No 53, s.10 (2).]

PART IV

FIRS – TAX LAW COMPENDIUM

Value Added Tax Technical Committee

21. Establishment and composition of the Value Added Tax Technical Committee

There is hereby established a committee to be known as the Value Added Tax Technical Committee (in this Act referred to as "the Technical Committee") which shall comprise-

- (a) a chairman who shall be the chairman of the Federal Board of Inland Revenue;
- (b) all directors in the Federal Inland Revenue Service;
- (c) the legal adviser to the Federal Inland Revenue Service;
[1996 No. 31.]
- (d) a director in the Nigerian Customs Service; and
- (e) three representatives of the State Governments who shall be members of the Joint Tax Board.

22. Functions

The functions of the Technical Committee shall be to-

- (a) consider all the tax matters that require professional and technical expertise and make recommendations to the Board;
- (b) advise the Board on the duties specified in section 7 of this Act; and
- (c) attend to such other matters as the Board may, from time to time, refer to it.

23. Proceedings

Subject to such directions as the Board may, from time to time, give, the Technical Committee shall determine its quorum and otherwise regulate its own procedure.

24. Staff

The Federal Inland Revenue Service may post to the Technical Committee such staff as the Technical Committee may require for the discharge of its functions.

PART V

FIRS – TAX LAW COMPENDIUM

Offences and penalties

25. Furnishing of false document, etc.

A person who-

(a) produces, furnishes or sends for the purpose of this Act or otherwise makes use for that purpose of a document which is false in any material particular; or
[1996 No. 30.]

(b) in furnishing an information to the Board, makes a statement which is false in any material particular,

is guilty of an offence and liable on conviction to a fine of twice the amount under-declared.

[1996 No. 30.]

26. Evasion of tax

A person who-

(a) participates in; or
[1996 No. 30]

(b) takes steps with a view to make evasion of the tax by him or any other person, is guilty of an offence and liable on conviction to a fine of N30,000 or two times the amount of the tax being evaded, whichever is greater, or to imprisonment for a term not exceeding three years.

[1996 No. 30.]

27. Failure to make attribution

A person required to make an attribution, who-

(a) fails to do so; or
[1996 No. 30.]

(b) having done so, fails to notify the Board,

is liable to pay a penalty of N5,000.

[1996 No. 30.]

28. Failure to notify change of address

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A person who fails to notify the Board of any change of address within one month of such change, is liable to pay a penalty of N5,000.

29. Failure to issue tax invoice

A person who fails to issue a tax invoice for goods sold or services rendered, is guilty of an offence and liable on conviction to a fine of N50% of the cost of the goods or services for which the invoice was not issued.

30. Resisting, etc., an authorised officer

A person who-

- (a) resists, hinders or obstructs or attempts to resist or hinder an authorised officer acting under section 39 of this Act; or

- (b) fails to comply fully with any requirement made under section 39 of this Act; or

- (c) makes any statement in response to a requirement made under section 5 of this Act which is false or incomplete; or
[1996 No. 30.]

- (d) procures or attempts to procure by any means any other person to act as afore said,

is guilty of an offence and liable on conviction to a fine of N10,000 or imprisonment for a term of six months or to both such fine and imprisonment.

31. Issuing of tax invoice by an unauthorised person

A person who, other than-

- (a) a person registered under this Act; or

- (b) a person authorised to do so under this Act,

issues an invoice purporting to be attributable to tax, is guilty of an offence and is liable on conviction to a fine of N10,000 or imprisonment for a term of six months.

32. Failure to register

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A taxable person who fails to register under this Act, is guilty of an offence and liable on conviction to a fine of N5,000 and, if after one month, the person is not registered, the premises where the business is carried on shall be liable to be sealed up.

[1996 No. 30.]

33. Failure to keep proper records and accounts

A taxable person who fails to keep records and accounts of his business transactions to allow for the correct ascertainment of tax and filing of returns is liable to pay a penalty of N2,000 for every month in which the failure continues.

34. Failure to collect tax

A taxable person who fails to collect tax under this Act, is liable to pay as penalty 150% of the amount not collected, plus 5% interest above the Central Bank of Nigeria rediscount rate.

35. Failure to submit returns

A taxable person who fails to submit returns to the Board, is liable to a fine of N5,000 for every month in which the failure continues.

36. Aiding and abetting commission of offence, etc.

- (1) An officer of the Board or any other person who aids or abets the commission of any of the offences under this Act, is guilty of an offence and is liable on conviction to a fine of N50,000 or to imprisonment for a term of five years.

- (2) Where a person's conduct during any specified period has involved the commission or omission by him of anyone or more of the foregoing offences under this Act, then whether or not the particulars of the offences are known, he shall, by virtue of this section, be guilty of an offence and liable to pay a fine of N10,000 or four times the amount of any tax that was, or was intended to be evaded by his conduct, whichever is greater, or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

37. Offence by body corporate, etc.

Where an offence under this Act is committed by a body corporate or firm or other association of individuals-

- (a) every director, manager, secretary or other similar officer of the body corporate;
or

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- (b) every partner or officer of the firm; or
- (c) every person concerned in the management of the affairs of the association; or
- (d) every person who was purporting to act in any capacity as aforesaid,

is severally guilty of that offence and liable to be proceeded against and punished for the offence in like manner as if he had himself committed the offence, unless he proves that the act or omission constituting the offence took place without his knowledge, consent or connivance.

PART VI

Miscellaneous

38. Powers of Minister to vary Schedules

The Minister may by order published in the *Gazette*-

- (a) amend the rate of tax chargeable; and
[First Schedule.]

- (b) amend, vary or modify the list set out in the First Schedule to this Act.
[1996 No.31]

39. Power of inspection

- (1) An authorised officer may at any time enter without warrant any premises upon which he has reasonable grounds to believe that a person is carrying on business in order to ascertain whether this Act is being complied with (whether on the part of the occupier of the premises or any other person), and on entry he may carry out such inspections and make such requirements as may be specified by the Board.
- (2) Where an authorised officer enters any premises in exercise of the power conferred on him by subsection (1) of this section, he may take with him such persons as he considers necessary for carrying out his functions under this Act.

40. Distribution of revenue

Notwithstanding any formula that may be prescribed by any other law, the revenue accruing by virtue of the operation of this Act shall be distributed as follows-

- (a) 15% to the Federal Government;
- (b) 50% to the State Governments and the Federal Capital Territory, Abuja; and

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(c) 35% to the Local Governments:

Provided that the principle of derivation of not less than 20% shall be reflected in the distribution of the allocation amongst States and Local Governments as specified in paragraphs (b) and (c) of this section.

[1999 No. 30, 2007 No. 53, s. 11]

41. Appointment of agent for manufacturer or importer

- (1) The Board may, by notice in writing, appoint any person to be the agent of any manufacturer or importer and the person so appointed shall be the agent of the manufacturer or importer for the purposes of this Act.
- (2) An agent may be required to pay any tax which is or may become payable by the manufacturer or importer from any money which may be held by him for, or due by or to become due by him to the manufacturer or importer, as the case may be, and in default of such payment, the tax shall be recoverable from him.
- (3) For the purpose of this section, the Board may require a person to give information as to any money, fund or other assets which may be held by him for, or of any money due from him to a manufacturer or an importer.

42. Signification

Anything required to be done by the Board under this Act may be signified under the hand of the chairman or any other senior officer assigned to do so by him.

43. Forms

The Board may, from time to time, specify the forms, statements and notices to be used under this Act.

44. Regulations

The Board may, with the approval of the Minister, make regulations for giving effect to the provisions of this Act.

45. Repeal

Subject to section 6 of the Interpretation Act, the Sales Tax Act is hereby repealed
[Cap. 123]

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46. Interpretation

In this Act, unless the context otherwise requires-

“agency of Government” includes a Ministry, department, statutory body, public authority and an institution of the Federal, State and Local Government;

[1996 No.31, 1998 No. 18]

“authorised officer” means an officer who has been authorised by the Board to perform any function under or in pursuance of this Act;

“Board” means the Federal Board of Inland Revenue;

“building” means any house, including any garage, dwelling apartment, hospital and institutional building, factory, warehouse, theatre, cinema, store, mill building and similarly roofed structure affording protection and shelter, radio and television masts, transmission line, tower, vehicle and other similar structure but excludes mobile homes, caravans and trailers;

“business” includes any trade, commerce or manufacture or any concern in the nature of trade, commerce or manufacture;

“chairman” means the chairman of the Federal Board of Inland Revenue;

“company” means a company as defined under the Companies and Allied Matters Act and a corporate body that may be formed under any other written law and includes any association, whether incorporated in or outside Nigeria;

[Cap. C20.]

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“entertainment” includes any exhibition and performance in which admission of people is subject to payment by such persons but does not include the following, that is-

- (a) play on stage and performance which are carried out by educational institutions, approved by the Minister for the time being responsible for education as part of learning;
- (b) sport, game or other cultural performance conducted under the superintendence of the Ministry charged with the responsibility for culture and social welfare;
- (c) entertainment of a charitable, educational, medical, scientific or cultural nature as may be approved in writing by the Board prior to the date of the entertainment for the benefit of the public; and
- (d) entertainment organised by a non-profit making, charitable, educational, medical, scientific or cultural society registered under the law where the entertainment is in furtherance of the objectives of the society as may be approved in writing by the Board to the date of the entertainment;

“exported service” means service performed by a Nigerian resident or a Nigerian company to a person outside Nigeria;

[2007 No. 53, s. 12.]

“import” means bringing in or carrying to be brought in goods and services from another country or from an export processing zone;

“imported service” means service rendered in Nigeria by a non-resident person to a person inside Nigeria;

[2007 No 53, s. 12.]

“importer” means any person who imports taxable goods;

“input tax” has the meaning assigned to it in section 12 of this Act;

“invoice” means any document issued as an evidence of demand for payment;

“manufacturer” means any person who engages in the manufacture of goods and includes a person who has manufactured for him or on his behalf by others, goods made to his specification or design;

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“manufacturing” means the process by which a commodity is finally produced, including assembling, bottling, repacking, mixing, blending, grinding, cutting, bending, twisting and joining or any other similar activity;

“Minister” means the Minister responsible for matters relating to Finance;

“motel” means premises on which accommodation, flats, service apartments, beach cottages, holiday cottages, game lodges are provided but excludes the following, that is-

- (a) premises run by a charitable or religious organisation registered under the relevant law for charitable or religious purposes;
- (b) premises operated by a medical institution approved by the Minister for the time being responsible for health for the use of the staff of that institution
- (c) premises whose supply is under a lease or licence of not less than one month, unless by prior arrangement, the occupier may without penalty, terminate that lease or licence on less than one month's notice;

“output tax” has the meaning assigned to it in section 11 of this Act;

“owner” means in respect of any goods, aircraft, vessel, vehicle, plant or any other goods, a person, other than an officer acting officially, who holds out himself to be the owner, manufacturer, agent or the person in possession of or beneficially interested in, or having control of or power of disposition over the goods, aircraft, vessel, vehicle, plant or other goods;

“registered person” means any person registered under section 8 of the Act;

“restaurant” means any establishment carrying out the business of restaurant services, and includes cafeterias, fast-food outlets, snacks bars, food stalls at exhibitions or sports arenas and similar establishments but excludes-

- (a) an establishment operated for charitable or religious purposes;
- (b) an establishment run by an educational or training institution approved by the Minister for the use of the staff and students of those institutions; and
- (c) an establishment run by a medical institution approved by the Minister for the time being responsible for health for the use of the staff and students of the institution;

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“restaurant service” means the supply of foods or beverages prepared for immediate consumption, whether or not such consumption is on the premises of the restaurant and including outside catering;

“supplies” means any transaction, whether it is the sale of goods or the performances of a service for a consideration, that is, for money or money's worth;

“supply of goods” means any transaction where the whole property in the goods is transferred or where the agreement expressly contemplates that this will happen and in particular includes the sale and delivery of taxable goods or services used outside the business, the letting out of taxable goods on hire or leasing, and any disposal of taxable goods;

“supply of services” means any service provided for a consideration;

“tax” means the Value Added Tax imposed and charged under section 1 of this Act;

“tax period” means one calendar month commencing from the beginning of the month to the end of that month;

“taxable goods and services” means the goods and services not listed in the First Schedule to this Act;

[1996 No. 31]

“taxable person” includes an individual or body of individuals, family, corporations sole, trustee or executor or a person who carries out in a place an economic activity, a person exploiting tangible or intangible property for the purpose of obtaining income therefrom by way of trade or business or a person or agency of Government acting in that capacity;

[1996 No. 30, 1996 No. 31, 2007 No. 53, s. 12.]

“transaction at arm's length” means a transaction on normal open market commercial terms;

“vehicle” includes for the purpose of this Act every description of conveyance for the transportation by land of human beings or goods;

“vessel” means a mode of transportation or conveyance by water of human beings or goods;

“wholesaler” means a person who obtains his stock predominantly from the manufacturers and sells in bulk to the retailers.

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47. Short title

This Act may be cited as the Value Added Tax Act.

SCHEDULES

FIRST SCHEDULE

Goods and services exempt
[Sections 2 and 3]
[1996 No.31, 1998 No.18, 2007 No.53, s.13]

PART I

Goods exempt

1. All medical and pharmaceutical products.
2. Basic food items.
3. Books and educational materials.
[1998 No. 18]
4. Baby products.
5. Fertilizer, locally produced agricultural and veterinary medicine, farming machinery and farming transportation equipment.
6. All exports.
[1996 No. 31.]
7. Plant, machinery and goods imported for use in the export processing zone or free trade zone:
Provided that 100 percent production of such company is for export otherwise tax shall accrue proportionately on the profits of the company.
[2007 No. 53, s. 13 (a).]

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8. Plant, machinery and equipment purchased for utilisation of gas in down-stream petroleum operations.
9. Tractors, ploughs and agricultural equipment and implements purchased for agricultural purposes.

PART II

Services exempt

1. Medical services.
2. Services rendered by Community Banks, People's Bank and mortgage Institutions.
3. Plays and performances conducted by educational institutions as part of learning.
4. All exported services.

[1996 No. 31.]

PART III

Zero-rated goods and services

[2007 No. 53, s.13 (b).]

1. Non-oil exports.
2. Goods and services purchased by diplomats.
3. Goods purchased for use in humanitarian donor funded projects.

“humanitarian donor funded projects” includes projects undertaken by Non-Governmental Organisations and religious and social clubs or societies recognised by law whose activity is not for profit and in the public interest.

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CHAPTER V2

VENTURE CAPITAL (INCENTIVES) ACT

ARRANGEMENT OF SECTIONS

SECTION

1. Qualification and participation in the National Risk Fund.
2. Venture projects.
3. Qualifying investment by a venture capital company.
4. Qualifying venture incentives.
5. Accreditation of a venture project company, etc.
6. Interpretation.
7. Short title.

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CHAPTER V2

VENTURE CAPITAL (INCENTIVES) ACT

An Act to provide for the grant of tax relief and other incentives on personal investments in the National Risk Fund, venture capital companies and venture capital projects and other matters related thereto.

[1993 No. 89.]

[Commencement.]

[25th August, 1993]

1. Qualification and participation in the National Risk Fund

(1) For the purposes of this Act, a venture capital company shall qualify as an investor under the National Risk Fund (in this Act referred to as —the Risk Fund

(2) For the purposes of this Act, a venture investment shall-

(a) be an investment in a venture capital company; and

(b) qualify for the incentives granted under this Act.

[1999 No. 45.]

2. Venture projects

For the purposes of the incentives specified in this Act, the Federal Inland Revenue Service shall certify that a venture capital project fulfils or is capable of fulfilling one or more of the objectives set out in this Act, that is-

(a) the acceleration of industrialisation by nurturing innovative ideas, projects and techniques to fruition; or

(b) the commercialisation of research findings with high potential for far reaching forward or backward linkages; or

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- (c) the promotion of self-reliance through the establishment of resource based and strategic industries through the provision of risk guarantee and insurance; or

- (d) the encouragement of indigenous processes and technologies; or

- (e) the promotion of the growth of small and medium scale enterprises with emphasis on local raw materials development and utilisation; or

- (f) such other objectives as may, from time to time, be specified by the Federal Inland Revenue Service.

3. Qualifying investment by a venture capital company

For a venture capital company to qualify for the incentives specified in section 4 of this Act its investment in the venture project shall not be less than 25 per cent of the total capital required for the venture project.

4. Qualifying venture incentives

The following shall accrue to venture investments-

- (a) an equity investment by a venture capital company in a venture project company shall, for the purposes of capital allowance under the Companies Income Tax Act, be treated as follows-

[Cap. C21.]

- (i) for the first year deduct 30 per cent;
- (ii) for the second year deduct 30 per cent;
- (iii) for the third year deduct 20 per cent;
- (iv) for the fourth year deduct 10 per cent;
- (v) for the fifth year deduct 10 per cent;

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- (b) the amount of capital gains accruing to a venture capital company from a disposal of its equity interest in a venture project company shall be exempted from capital gains tax as follows:
 - (i) for the disposal of capital within five years of investment, 100 per cent;
 - (ii) for the disposal of capital between six and ten years of investment, 75 per cent;
 - (iii) for the disposal of capital between eleven and fifteen years of investment, 25 per cent;
 - (iv) for the disposal of capital after fifteen years of investment, 0 per cent;
- (c) the withholding tax payable on dividend declared by the Federal Inland Revenue Service in a venture project company shall be reduced by 50 per cent of the prevailing rate of withholding tax in respect of dividend received by a participant in the Risk Fund and venture project company within the first five years;
- (d) the provisions of the Industrial Development (Income Tax Relief) Act, shall apply to a venture project company; and
[Cap. I7.]
- (e) the provisions of the Export (Incentives and Miscellaneous Provisions) Act shall apply to a venture project company to the extent of the involvement of the venture project company in the exportation of its products.
[Cap. E19]

5. Accreditation of a venture project company, etc.

- (1) The Federal Inland Revenue Service shall, from time to time, determine for purposes of this Act, a person as a venture capital company or venture project company.
- (2) In furtherance of the provisions of subsection (1) of this section, the decision of the Federal Inland Revenue Service shall be based on the realisation of one or more of the objectives set out in section 2 of this Act.
- (3) Investments in duly accredited venture capital companies shall qualify as security in which trustees may invest, accordingly the provisions of the Trustee Investments Act shall apply *mutatis mutandis* to such venture capital investments.

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[Cap. T22.]

6. Interpretation

In this Act, unless the context otherwise requires-

“body corporate” includes a venture company;

“Federal Inland Revenue Service” means the Federal Inland Revenue Service;

“participant” means a body corporate or individual who is an equity investor in a Risk Fund or venture investment;

“venture capital company” means a body corporate incorporated for the purposes of one or more of the objectives set out in section 2 of this Act;

“venture project company” means a body corporate established for the realisation of one more of the objectives set out in section 2 of this Act;

“venture project” means a project in the commercialisation of an innovative idea and process and includes capital expenditure in the development of a local resource base.

7. Short title

This Act may be cited as the Venture Capital (Incentives) Act.

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