

## **TAX ASCERTAINMENT AND COMPUTATION OF CORPORATE INCOME TAX IN NIGERIA**

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### **Abstract**

In Nigeria, taxation of businesses is a crucial issue that needs to be thoroughly examined as a source of funding for the government. This article's purpose is to examine how tax assessment and computation of corporate income tax in Nigeria are done. The paper employed a doctrinal and qualitative approach to explore: taxation and profit charges to business; relief for pioneer enterprises; and the calculation of taxes and earnings. The study discovered that the tax computation and ascertainment laws need to be criticized for being unsatisfactory, muddled, and challenging. It therefore recommends that, in order to arrive at the proper tax regime in the computation and ascertainment of corporate taxes in Nigeria, the paper thus offers improvements, particularly in the method of record keeping and compilation of accounting statements.

**Keywords:** Tax, Computation, Ascertainment, Imposition, Company

### **Introduction**

The taxation of businesses in Nigeria is a crucial issue that needs to be carefully considered as a source of funding for the government.<sup>1</sup> A company is a type of commercial entity. Law refers to corporations as "juristic individuals" with the same rights and freedoms as natural persons. As such, they are able to conduct business in support of the goals for which they were formed.<sup>2</sup> As part of the requirements of the law where a company operates or carry on business, the company is subject to tax in accordance with the laws of the land or an existing treaty which the home government of the company has entered into with any other governments in foreign territories. Companies, therefore, carrying on business or trade in a given country will be subject to the taxes imposed by the laws of the state.<sup>3</sup>

Tax ascertainment and computation of corporate income tax in Nigeria will be discussed in this article against this backdrop. After this introduction which constitutes the first section the paper is broken into five parts. Section 2 examines taxation and profit charges to businesses. It contends that all businesses functioning in the nation, with the exception of those specifically exempted under the Act, must pay corporate income tax on their income. Section 3 addresses the relief for pioneer enterprises. According to the allegation, the relief is provided as a tax incentive to boost industry investment and so drive economic growth in Nigeria. The main subject of Section 4 is the calculation of taxes and earnings. It contends that the revenue from the year before to the year of assessment, or the previous year of income, is the basis for calculating assessable profits under Section 29 of the Companies Income Tax Act.<sup>4</sup> The paper offers suggestions for further reading in its fifth part.

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<sup>1</sup> Ayom A. R. and Madaki A.M. "Challenges in Taxation of Companies in Nigeria" (2013) 6 (1) Ahmadu Bello University Journal of Commercial Law, 36.

<sup>2</sup> Oniemola P.K. "Legal Perspective of Ascertainment and Computation of Companies Income Tax in Nigeria" in Olatunbosun A., *Law and Policy Thoughts in Nigeria* (Faculty of Law University of Ibadan, 2018) 123.

<sup>3</sup> Whether a Nigerian or foreign company, see Orojo J.O, *Company Tax Law in Nigeria* (Sweet and Maxwell, 1979) 160.

<sup>4</sup> Cap C21 Laws of the Federation of Nigeria (LFN) 2004.

### **Taxation and Profit Charges to Businesses**

All businesses functioning in the nation must pay Companies Income Tax on their income unless they are specifically exempted by law. Companies are subject to income tax on:

- a. Whether or not they are imported into or received in Nigeria, Nigerian companies' global profits nonetheless belong to Nigeria.
- b. The percentage of non-Nigerian corporations' profits that are sourced from their operations in Nigeria.
- c. Dividends, interest, or royalties owed to non-Nigerian corporations that are solely liable for the net amount are imposed at withholding tax rate of 10% on the gross amount owing.

When profits are obtained from, brought into, or received in Nigeria, they are subject to income tax assessment under Section 9 of the Companies Income Tax Act, regardless of where they were made. No matter if all or any portion of such gains were brought into or received in Nigeria, they will be considered to have accrued there and will be taxed as a result.

The charging provisions in Section 9 of the Act, which are written in plain and simple language, must be emphasized as being a notable improvement over the fragmented approach of the United Kingdom Income and Corporation Taxes Act of 1970, which imposes tax through a variety of schedules with different Rules for each schedule, creating inconsistencies and injustices that are built into the system.

For the purpose of calculating a company's taxable income, the following income categories have been provided.

- i. Earnings or gains through a business or trade;
- ii. Property-related rates or premiums;
- iii. A dividend, an interest, a discount, a fee, or an annuity;
- iv. Any annual profit or gain source that does not come under one of the aforementioned categories;
- v. Any sum that is determined to be income or profit under this Act's provisions or in relation to any benefit received under the Personal Income Tax Act's pension or provident fund provisions;
- vi. Fees, obligations, and reimbursements (whenever paid) for services done;
- vii. Any profits or gains from the purchase and sale of short-term financial instruments like Treasury Bills, Federal Government Securities, Savings Certificates, Debentures, Certificates of Deposit, or Treasury Bonds.

A firm can only avoid taxation under the Act by demonstrating that none of the aforementioned kinds of income include any profit or gain "accruing in or derived from Nigeria". According to Section 10 of the Act, a company's incorporation number, to which the provisions of Section 8 apply, serves as the company's identification number and must be displayed by the company in all business dealings with other companies and individuals as well as on all documents, statements, returns, audited accounts, and correspondence with revenue authorities, including the FIRS, Ministries, and all Government Agencies.

No matter where the contract is made or where the interest is paid, under Section 9(2) of the Act, tax is due on interest earned on investments made in Nigeria.<sup>5</sup>

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<sup>5</sup> *Aluminium Industries Aktien Gesell Chaff v FBIR* (1971) NMLR 339.

According to Section 78 of the Act, any firm that pays interest for royalties to another company or to a person to whom the Personal Income Tax Act applies may deduct taxes from the interest. The company making the payment must deduct the appropriate amount from tax at the rate specified in Subsection (2) of this section on the date of the payment or credit, whichever comes first, and then turn over the money thus deducted to the FIRS. The rate at which tax is to be deducted in this section shall be 10%. Subsection (5) of this section provides that in accounting for the tax so deducted to the FIRS, the company shall state in writing the following particulars i.e.

- a. The annual gross amount of rent due;
- b. The name, address, and time frame for which the rent payment or credit was made.
- c. The owner's property's address and a detailed description;
- d. The sum of taxes being reported.

Similar to this, every business is now required to deduct tax at a rate of 10% from any rent payments.<sup>6</sup>

For services given in Nigeria that are taxable income, failing to deduct tax, profit in respect of fees, dues, and allowances is punishable under Section 82 of the Act. According to the judiciary, this category of taxable income is very broad and all-encompassing, and it gives revenue authorities almost limitless authority to tax any company's profit that is earned or derived from Nigeria, regardless of where in the world those profits are paid for services that may be provided in Nigeria.

According to Section 13 of the Act, a Nigerian company's profits are considered to have accrued in Nigeria regardless of where they were generated or whether they were transported into or received in Nigeria. Any trade or business earnings made by a company other than a Nigerian corporation are judged to have originated in Nigeria:

- a. If the company operates from a fixed base in Nigeria to the degree that the gain is due to the fixed base;
- b. If it does not have a fixed base in Nigeria but regularly conducts business there through a person who is authorized to act on its behalf or that of other businesses it controls or in which it holds a controlling interest, or regularly keeps a stock of products or services from which it holds a controlling interest;
- c. Whenever the profit is attributed to the business, trade, or activities conducted via that individual, that person frequently makes deliveries on behalf of the company;
- d. The profit from a single survey, delivery, installation, or building contract if the trade, business, or activities involves them;
- e. When a company engages in trade or business with another person that it controls or that holds a controlling interest in, and when the company imposes conditions on that person in their commercial or financial relations that the FIRS deems to be fictitious or artificial, a portion of the profit is adjusted by the FIRS to reflect the arms-length transaction.

Facilities used just for the following are not considered fixed bases for the purposes of this section's Subsection (2) (a):

- a. keeping merchandise or products in storage or display;
- b. Information gathering.

A company's trading earnings are taxable income if they are a component of the company's operations as defined by its memorandum of association.<sup>7</sup> The following considerations appear to

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<sup>6</sup> Section 79(2) Companies Income Tax Act, Ibid.

<sup>7</sup> *Arbi Co Ltd v FBIR* (1968) NCLR at pp 100 – 151.

be taken into account when deciding whether a certain activity qualifies as a trading transaction for Companies Income Tax purposes:

- i. Kind of asset;
- ii. Conditions of purchase;
- iii. Career as a tax payer;
- iv. How many active transactions there are;
- v. The Memorandum and Articles of Association's object clause;
- vi. The period of time the corporation owned the land;
- vii. The sale's conditions.

From the aforementioned, it can be observed that Nigerian courts generally take a similar stance to English courts on the subject of commerce and trading profits for the purposes of company taxation. The only apparent distinction appears to be that our Act has a far wider scope of application than its English counterparts, and our courts have shown some willingness to deviate from U.K. rulings.<sup>8</sup>

The aforementioned are the types of income that are subject to companies income tax. Section 23 of the Act, however, exempts certain types of income, such as the following: profits of any company that is a statutory or registered friendly society insofar as those profits are not derived from a trade or business carried on by such society; profits of any company that is a co-operative society registered under any law relating to co-operative societies insofar as those profits are not derived 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; Profits from any company involved in religious, charitable, or educational endeavors of a public nature, provided that such profits are not derived from the company's trade or business operations; Profits from any company established to promote sports activities; Profits from any company that is a trade union registered under the Trade Unions Act, provided that such profits are not derived from the trade or business operations of such trade union; dividend paid out by a unit trust; profit of any company that is a body corporate, profit of anybody corporate that is a purchasing authority, profit of any company or cooperation that was founded by state law with the intention of promoting that state's economic development; profit from a non-Nigerian corporation that, but for this sentence, would be subject to tax on account of its mere arrival in or receipt in Nigeria; dividend interest, rent, or royalties that a company receives from a nation outside of Nigeria and brings into Nigeria through government-approved channels; interest on the deposit accounts of a foreign non-resident company; interest on foreign currency domiciliary accounts in Nigeria accruing on or after 1 July 1990; dividend received from small manufacturing companies in their first five years of operation; dividends from investments in entirely expert-oriented businesses, profits of any Nigerian company with regard to goods exported from Nigeria, and profits of a company whose supplies are solely used in the production of goods for export, provided that the exporters provide a certificate of purchase of the exportable goods to the seller of the supplies.

It is important to note that the Act's Section 11 expands the list of exempted profits. It would seem that the exemption has two main goals, namely:

- a. to promote the formation of public-spirited businesses like nonprofits or mutual fund companies; and
- b. to provide tax incentives with the goal of promoting national economic growth, by luring investment to Nigeria.

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<sup>8</sup> *Lemming v Jones* (1930) 1 KB 279 15 JC 333.

Note A unit trust scheme is authorized under Section 17 of the Act, artificial transactions are covered by Section 22, and certain unadmitted earnings may be recognized as dispersed under Section 21 of the Act.<sup>9</sup>

### **Relief for Pioneer Enterprises**

This tax break is provided to encourage increased investment in sectors, which will help to boost economic growth in Nigeria. The Industrial Development (Income Tax Relief) Act,<sup>10</sup> which was recently passed into law, outlines tax relief options for a number of industries that may receive pioneer certificates from the minister as well as other related issues. The start date was April 1st, 1970. There are 26 chapters in the Act. Notes that its related law is:

- a. Help for innovative industries.<sup>11</sup>
- b. Industrial Development: Notification (list of forerunner industry).<sup>12</sup> According to the Act, the Federal Government may publish a list of pioneer industries and products if it is satisfied that:
  - i. Currently, the industry is not being run in Nigeria on a scale that is appropriate for the country's economic development; or
  - ii. Possibilities for further development of these industries in Nigeria are favorable; or
  - iii. It is in the best interest of the general public to promote the growth or establishment of these industries in Nigeria.

The Industrial Development (Income Tax Relief) Act's Section 1 specifies the requirements for pioneer status, the publication of a list of pioneering businesses and products, and the issuance of a pioneer certificate. For the first three years after production starts, a firm's income is excluded from corporate income tax under the pioneer company reliefs. Depending on the investment amount, the rate of materialization expansion, the effectiveness, and the use of raw materials, the time may be extended for a maximum of five years. A pioneer company is likewise exempt from paying dividends to the extent that those dividends are paid from income that is exempt from taxation under the main Act.<sup>13</sup> It is noteworthy that the Companies Income Tax Act's Section 40 specifies tax rates, whereas Section 44 of the Act offers relief with regard to Commonwealth income tax.<sup>14</sup>

### **Computation and Ascertainment of Profits**

In accordance with Section 29 of the Companies Income Tax Act, assessable profits are computed using this methodology. The income from the year before the assessment year, or the year before, serves as the basis for the assessment. The calendar year that ends on December 31 is the assessment year. Therefore, income tax is calculated and assessed separately for each assessment year, which runs from January 1 through December 31 of the same year, on the income of businesses. However, to prevent excessive delays in tax collection when a firm changes its accounting date, when a company's business begins, and when a company's business terminates. The aforementioned generalization is not always true. The revenue authorities may make assessments for the assessment year in which a change in accounting date occurs as well as for the two subsequent assessment years on such a basis as the FIRS in its discretion may decide, according to Section 29 (2) of the Act.

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<sup>9</sup> Ayua I. A., *The Nigeria Tax Law* (Spectrum Law Series, 1986); Ariwodola A.J., *Companies Taxation in Nigeria Including Petroleum Profit Tax* (J.A.A. Nigeria Ltd, 2005) 21 – 35.

<sup>10</sup> Cap 117 Laws of the Federation of Nigeria (LFN) 2004.

<sup>11</sup> (No. 1 Order) (Commencement 9th January, 1958) and (No. 2 Order) (Commencement 6th March 1958).

<sup>12</sup> Commencement 29th April 1982.

<sup>13</sup> Section 10, 16, and 17 of the Industrial Development (Income Tax Relief) Act, *Ibid.*

<sup>14</sup> Ayua, *supra* note 9: 174.

In accordance with Section 29(3),(4),(5),(6),(7),(8),(9) of the Act, the assessable profit of any company from any trade or business for the year of assessment in which it began 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 began to carry on such trade or business in Nigeria) and for the two following years of assessment (which years are respectively referred to in this subsection).

- a. The gains from the first year that are subject to assessment are those profits;
- b. The amount of the profit made one year after the trade or business began, as calculated for the purposes of paragraph (a) of this subsection, must be the assessable profits for the second year, unless such notice as hereinafter indicated is given;
- c. Unless such notification as is subsequently indicated is given, the assessable profits for the third year shall be computed in accordance with paragraph 1 of this section;
- d. A firm has the right to demand that the assessable earnings for the second and third years (and not just one or the other of those years) be the profits of the corresponding years of assessment by sending written notification to the FIRS within two years of the end of the second year. However, if the basic period for the second or third year is nine months, the assessable earnings for both years would be computed as if the first notice had never been given. The company may withdraw the notice by giving written notification to the FIRS within twelve months of the end of the third year. The profits made during the basic period of 1 April to 31 December 1980 must be grossed up as though they were made over the course of a full year.
- e. When the aforementioned notice has been given or revoked, the necessary additional assessments, reductions in assessments, or repayments of tax must be made in order to give effect to paragraph (d) of this subsection; however, if the company is unable to reach an agreement with the FIRS regarding the amount of any reduction in assessments or repayments of tax, the FIRS must notify the company that it will not accept the reduction or repayment and the provisions of Part XI of the Income Tax Act will apply.

When a business permanently loses the benefits of a trade or business (or in the case of a company other than a Nigerian company, permanently cease to carry on a trade or business in Nigeria). Its taxable profits from those operations shall be:

- a. Regarding the assessment year in which the stoppage occurs, the amount of that year's profit;
- b. Regarding the assessment year that comes before the one in which the cessation occurs, the amount of profits computed in accordance with the aforementioned subsections; or the amount of profits of such year, whichever is greater;
- c. With the exception that profits made over the nine-month period from 1 April to 31 December 1980 will be grossed up as if they were made over a full year; and
- d. For the assessment year that comes after the year the trade or business ceases, the company shall not be considered to have derived assessable earnings from such trade or business. Any reductions in assessment or repayment of tax that may be required to give effect to these provisions must be made where the requirements of Subsection (1) of this section apply, on an extra assessment, or in response to a written claim submitted for this reason by the firm. With the caveat that, if the company refuses to agree with the FIRS as to the amount of any reduction of an assessment or repayment of tax, the FIRS shall notify the company of its 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 notices were assessments. When it is necessary, in the case of any trade or business, to allocate or apportion to a specific period the profits or losses of any period for which accounts

have been made up, or to aggregate any such profits or losses, or apportioned parts thereof, it shall be legal to make such an allocation, apportionment, or aggregation, and any apportionment under this section shall be made in proportion to the profits or losses of the relevant period. If a company, its receivers, or its liquidators receive or pay any sum that would have been included in or subtracted from the profits of a trade or business after the date on which the company has permanently caused to carry on that trade or business (as determined for the purposes of Subsection (4) of this section), the company, its receivers, or its liquidators are liable. When a company is engaged in a trade or business, the amount is considered, for all purposes of this Act, to have been received or paid by the company on the final day before the cessation occurred, if it had been done so previous to that day. This trade or business conducted by Nigeria in partnership with any other person shall be deemed to be a separate source of profits, and the assessable profit of the company from such source shall be determined in accordance with the provisions of the Personal Income Tax Act in the same manner as the assessment income of any individual partner in such partnership, provided, however, that, If, under the provisions of the fifth schedule to that Act, any annual initial or balancing allowance or charge with respect to any asset of such partnership was to fail to be given to or imposed upon the company for any year, such allowance or charge shall be given or imposed as though due under the provisions of the Second Schedule and in lieu of any other allowance or charge arising thereunder with respect to the same asset.

If a company sells or transfers any assets used in a trade or business to a Nigerian company in order to better organize that trade or business, transfer management to Nigeria, or any combination of these, and the FIRS is satisfied that one company has control over the other, both are controlled by another person, or both are members of a recognized group of companies, the FIRS may, in its discrete discretion, impose a tax on the sale or transfer of those assets:

- a. Such a trade or enterprise shall not be subject to the provisions of Subsections (3) and (4) of this Section; and
- b. For the purposes of the second schedule to this Act, each of these assets will be regarded to have been sold on the day following such sale or transfer for an amount equivalent to the balance of the qualifying expenditure thereon; and
- c. The company acquiring each of these assets shall not be entitled to any initial allowance with respect to that asset under the said schedule or any allowances deemed reached by the vendor company pursuant to the provisions of this paragraph; however, the FIRS may, in its discretion, require either company directly affected by any such direction that the FIRS is considering to guarantee or provide security to the satisfaction of the FIRS, guaranteeing full payment of all taxes owed or subsequently becoming owed by the firm selling or transferring such trade or activity; and may impose conditions on either or both of the immediately affected companies if either fails to carry out or execute such a guarantee or condition. For the purposes of this paragraph, references to a trade or business shall include references to any part thereof. The FIRS may revoke the instruction and make any additional assessments or repayments of tax that may be required in order to give effect to such revocation.

However, the taxpayer company has the option to choose, in accordance with Section 29(3) of the Act, to have the assessment for the second and third years of assessment adjusted to reflect the actual profits of these years upon giving notice to the revenue within two years following the end of the second year. This option is only helpful if a corporation has the ability to use it when doing so would be favourable.

The fundamental goal of Section 29(9) of this Act is to make intra-group trades and business transfers easier. Similar to the prior year basis for calculating trading or business profit as income, which has previously been challenged, this foundation must also be attacked as being unsatisfactory. The CITA provisions have become more enigmatic and complex as a result.

### **Rules for Calculating Profits for Income Tax Purposes**

According to Section 23 of the Companies Income Tax Act, which states that where the requirements of Subsection (2) or (3) of Section 14 or 16 of this Act apply, the taxable profits of a company are determined in Nigeria by allowing certain expenses to be set off against the company's receipt during the year of assessment. This is done to follow the general principles of the United Kingdom for the computation of taxation income. For the purpose of calculating the profit or loss of any organization at any time from any source subject to tax under this Act, all expenses incurred by that company for that period that were wholly, exclusively, necessary, and reasonable in generating those profits must be subtracted, including but not limited to the following:

- a. The amount payable as interest on any loaned funds used as capital to generate the profits;
- b. Rent for that time period and any charges that were due for land or buildings that were used to generate profits during that time period, up to a maximum of 100 percent of the employee base pay in the case of residential housing used by firm employees;
- c. Whenever a real estate holding firm is involved:
  - i. costs associated with keeping up the property;
  - ii. Directors' compensation, which must not exceed N10,000 per director every year, with a maximum of three directors receiving such compensation;
- d. Any expenditure or costs incurred throughout the year in relation to:
  - i. Senior employees and executives receive salary, pay, or other forms of compensation;
  - ii. Any benefit or allowance paid to senior staff or executives at the company's expense shall not be greater than the maximum permitted by the collective bargaining agreement between the employer and the employees, as approved by the Federal Ministry of Employment, Labour, and Productivity, Prices and Income Board as may be necessary;
- e. the costs required for the upkeep of any equipment, machinery, or fixtures used to generate profit, as well as for the replacement, repair, or modification of any tools, equipment, or articles so used;
- f. Bad debt that occur in the course of a trade or business that was shown to have become bad during the period for which the revenues are being calculated, as well as doubtful debts to the extent that they are each estimated to have become bad during the said period to the satisfaction of the FIRS, despite the fact that the bad or doubtful amount overdue was due and payable before the start of the said period, provided that:
  - i. When a deduction under this paragraph is required for a period and a deduction for the same debt was authorized under this Act or the Companies Income Tax Act of 1961 in a prior period, the applicable reduction shall be made to the deduction required for the relevant period;
  - ii. For the purposes of this Act, all sums recovered during the specified time on account of sums previously written off or authorized under the CITA 1961 or this Act in respect of bad or questionable debts must be deemed to constitute profits of the trade or business during the specified period.



- iii. If it is demonstrated to the FIRS' satisfaction that the debts for which a deduction is requested were either included as a receipt of the trade or business in the profits of the year in which they were incurred, or were advances falling under the provisions of the trade or business in the profits of the year in which they were incurred, or were advances not falling under the provisions of paragraph E of Section 23(1) of this Act made in the course of no trade or business,
- g. Any contribution made to a person, provident or other retirement benefits fund, society, or plan that has been approved by the Joint Tax Board under the authority granted to it by paragraph (g) of Section 85 of the Personal Income Tax Act is subject to the provisions of the Fourth Schedule to the Act and to any conditions imposed by the FIRS. Contributions made under the terms of any legislation establishing a National Provident Fund or other retirement benefits fund, other than penalties;
- h. For the purposes of this Act, the Nigeria Railway Corporation may deduct only those expenses that are permitted by the permissible deduction (Nigeria Railway Corporation) rules; in the case of profits from a trade or company, any expenses or a portion thereof:
  - i. incurred during that time period alone, reasonably, and required for the purposes of that trade or business, without explicit reference to any other time period or periods; or
  - ii. liability that explicitly relates to the time period for which the profits are being calculated and was incurred during any prior period solely, completely, necessarily, and within reason for the purposes of such trade or business;
  - iii. liability that specifically corresponds to the time period for which profits are being determined and was incurred in any earlier period wholly, completely, necessarily, and within reasonable bounds for the operations of such trade or business;
- g. Any additional deductions that the minister may specify in a rule.

The income from each source as determined by Section 31 of the Act is referred to as "assessable profit." The sum of the assessable profits from all sources for the assessment year less any losses that may be offset, raised or diminished by any charges and allowances related to capital expenditures, is the "total profit" that is subject to taxation.

A company may be assessed a fair and reasonable percentage of the turn-over of the relevant trade or business, as determined by the FIRS, if it appears that for any year of assessment the business of the company produces either no assessable income or an assessable income that, in the FIRS's opinion, is less than might be expected to result from that business. This provision is found in Section 30(1)(a) and (b) of the Act. However, if the corporation is not a Nigerian company, it may be assessed and taxed on a fair and reasonable portion of the portion of the trade or business's revenue that is attributable to the operations conducted in Nigeria, as determined by the FIRS. The final amount is determined by this anti-tax evasion clause because Section 24 of the Act specifies how to calculate a company's taxable profits.

### **Computation of the Profit of a Company**

Only expenses "wholly, exclusively, necessarily and fairly" incurred for the company's income tax purposes are deducted for calculating a company's profit. As previously stated, it is presumed that the selection of these terms is meant to have a restricting effect on the deduction claimed (by qualifying the list of eligible deductions), although strictly speaking, it is questionable if this goal has been accomplished in practice. It would seem that the only expenses that may actually be

easily rejected in practice are those that are plainly exorbitant in nature or those incurred that are willfully inappropriate and are for the personal or selfish benefits of directors and their associates. This is true since there is no accepted definition of what is required or appropriate. Furthermore, it has been maintained that since spending is an outgoing rather than an incoming item, no expenditure item produces or earns money.<sup>15</sup> Though it could be challenging to accomplish that goal in practice, it is nonetheless required. In my opinion, the purpose of a provision like the one under consideration is to limit deductions to direct and unavoidable spending.

However, Section 24 of the Act has a list of expenses that are acceptable. But in addition to listing permitted deductions, the CITA also lists those that are not. In light of this, Section 27 of the Act states that despite any other provisions of the Act, no deductions must be permitted for the purposes of determining the profits of any corporation with relation to

- a. Capital reimbursed or withdrawn, as well as any capital-related expenses;
- b. Any amount recoverable under an indemnity or insurance contract;
- c. Taxes on income or profits imposed in Nigeria or elsewhere, aside from taxes imposed abroad on profits subject to double taxation in Nigeria and for which no other provisions of this Act permit relief from such double taxation;
- d. Any payment to a pension, provident, or other retirement benefits fund, society, or plan, excluding those permitted by Section 24(g) of this Act;
- e. The diminishing value of any asset;
- f. Any money set aside from profits, with the exception of amounts allowed by section 24 or 25 of this Act's paragraph (f) or amounts that may be estimated to the satisfaction of the FIRS while the amount to be used to represent any expenses that are eligible for deduction under that section and for which the liability was irrevocably incurred during the period for which the income is being calculated is being determined;
- g. Any expense of any kind incurred inside or outside of Nigeria with the intention of generating a management fee, barring prior ministerial approval of an arrangement giving rise to such a management fee;
- h. Save to the degree the minister may permit, any expense of any kind incurred inside or outside of Nigeria as management fee under any arrangement entered into after the effective date of this section;
- i. Any expenditure of any kind made outside of Nigeria on behalf of a corporation, unless it falls within a category that the FIRS deems acceptable.<sup>16</sup>

Although there are particular permissible deductions and inadmissible deductions under the CITA 2004, they are merely examples that serve as general guidance for the kinds of expenses that cannot be written off. This explains why the word "include" was used in the relevant statutory sections to enumerate the list of the aforementioned permitted and disallowable deductions. However, if our statutory provisions had stated that the list of permitted and disallowable deductions was exhaustive, this would have had a negative impact on the operations of organizations as there are widely varying situations of distinct organizations giving rise to various expenses, some of which may be required for earning profit or for the objectives of the grade of the companies or not, but which would not necessarily be anticipated by the legislation.

Without affecting Section 27 of this Act, it is hereby declared that the provisions of Sub-section (1) of this Section shall apply in order to avoid any doubt. Section 25 of the Act provides for

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<sup>15</sup> 1960 British Tax Review 1964 at 125 p. 126.

<sup>16</sup> Section 8 of the Finance Act (miscellaneous Taxation Provisions No. 2) Decree No. 55 of 1989 now Finance Act 2022.

deductible donations, which means that for the purposes of determining the profit or loss of any company for any period, the amount of any donation made for that period by that company to any fund, body, or institution in Nigeria to whom this section applies shall be deducted.

Any deduction under subsection (1) of this section that is granted to a company for any year of assessment may not exceed an amount equal to ten percent of the company's total profit for that year as determined prior to any deduction made under this section, with the possible exception of any other direction the president may give by order published in the Federal Gazette. Any expenses and outgoings that are deductible under Section 24 of this Act are excluded from the amount allowed as a deduction under this section. This clause will apply to:

- a. The general fund;
- b. The institutions and statutory entities;
- c. The institutions that are listed in this Act's fifth schedule and are religious, philanthropic, benevolent, educational, and scientific organizations that have been created in Nigeria.

A deduction for research and development is allowed by Section 26 of the Act, however it cannot be more than 10% of the company's annual total earnings as determined prior to any deductions made under this section and Section 25 of the Act. It should be noted that businesses and other organizations conducting research and development for commercialization will be entitled to a 200 percent investment tax credit on their qualified expenses.

While Section 31 of the Act provides for total profit from all sources, Section 28 of the Act deals with obligation waiver or refunds. For income tax reasons, a company's losses in any trade or business suffered during the year before the assessment are deducted when calculating the company's overall profits. A proviso to this regulation states, however, that cumulative deductions from assessable profits or income for losses may never exceed the total amount of such losses.<sup>17</sup> In other words, the losses to be written off must be the real losses suffered in the assessment year prior. This should have been very obvious, right?

The proviso further stipulates that the amount of assessable profits that are deductible for any year must be sourced from the same source and be included in the year's overall profits.<sup>18</sup> If the business requires relief right away, as can be the case when profits are declining, this option must be used. If this method of relief is unsuccessful, the loss may be carried forward for four years and offset against the specific source that sustained the loss, ensuring that company efficiency is preserved. Therefore, there is a compelling argument against allowing losses from one source to be offset against income from another source.<sup>19</sup>

Where profits are increasing more than expenses, relief under the carry-forward technique will be applied. Because it stops a loss firm from continuing to operate and increases business efficiency, the time for carrying forward unabsorbed losses, which is only four years long, is actually favorable if tax rates are projected to increase.<sup>20</sup>

According to Section 31(3) of the Act, businesses involved in agriculture are exempt from the time restriction on carrying losses forward. They are allowed to carry over their losses until they are entirely erased. As can be seen from the aforementioned, the primary benefit of the loss relief is

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<sup>17</sup> Section 31 (2) (a) (i) Companies Income Tax Act, Ibid.

<sup>18</sup> Section 31(2) (a) (ii) Companies Income Tax Act, Ibid.

<sup>19</sup> Nicholas K. "India Tax Reform – Report of a Survey", (1956) India Ministry of Finance New Delhi, 82.

<sup>20</sup> Section 31(2) (a) (iii) of the Companies Income Tax Act, Ibid.

that it has the effect of significantly lowering the assessable income for a year or future years, resulting in a corresponding reduction in the tax payable, which has significant cash flow implications for the company.

The second schedule of the Companies Income Tax Act allows capital allowances related to capital expenditures incurred for any company's operations to be deducted from the company's income. In light of this, the second schedule of CITA 2004 contains the relevant rules. The regulations largely follow the business taxation provisions of the Personal Income Tax Decree of 1993, if not exactly the same ones.

**Table I: Initial Allowance Schedule 2 Paragraph 6**

	<b>Qualifying Expenditure in respect of</b>	<b>Rate Percent</b>
1.	Building expenditure	15
2.	Industrial building expenditure	15
3.	Mining expenditure	95
4.	Plant expenditure (excluding furniture and fittings)	50
5.	Manufacturing industrial plant expenditure	50
6.	Construction plant expenditure (excluding furniture and fittings)	50
7.	Public transportation motor vehicle	95
8.	Ranching and plantation expenditure	30
9.	Plantation equipment expenditure	95
10.	Research and development expenditure	95
11.	Motor vehicle expenditure	50
12.	Agricultural plant expenditure	95
13.	Housing estate expenditure	50
14.	Furniture and fitting expenditure	25

**Table Ii: Annual Allowance Schedule 2 Paragraph 7**

	<b>Qualifying Expenditure in respect of</b>	<b>Rate Percent</b>
1.	Qualifying agricultural production	Nil
2.	Qualifying building expenditure	10
3.	Qualifying furniture and fittings	20
4.	Qualifying industrial building expenditure	10
5.	Qualifying mining expenditure	Nil
6.	Qualifying plant expenditure	25
7.	Qualifying plantation equipment expenditure	Nil
8.	Qualifying ranching and plantation expenditure	50
9.	Qualifying housing estate expenditure	25
10.	Qualifying public transportation (inter-city new mass transit couch expenditure)	Nil
11.	Qualifying motor vehicle – others	25
12.	Qualifying research and development	Nil

As can be seen from the above table, general allowances have been given for "industrial buildings" or constructions, mining, and agriculture to encourage investment and production in these sectors, among others, as part of the system of capital allowances for firms.

Capital allowances used to be calculated based on the assets' written-down values. In order to calculate annual allowances, the straight line approach was adopted in 1985. In other words, this strategy writes off the cost of an asset less the original allowances in equal annual installments.

Until the asset is officially sold, the sum of N10.00 must be kept on file. Additionally, the capital allowance provided is now limited to 66<sup>2</sup>/<sub>3</sub> percent in all other circumstances and to 75 percent of the total assessable earnings in a year of assessment for manufacturing enterprises.<sup>21</sup> However, this exception does not apply to businesses operating in the Agro-Allied sector as that term is defined in Section 11(8) of the Act. The primary function of a capital allowance for a firm has been to quicken the process of amortizing capital expenditures incurred for business purposes. The result of this is an improvement in the company's cash-flow condition. A company that has not started doing business after at least six months of incorporation must pay the following levy for each year it receives a tax clearance certificate under the terms of Section 40(4) of the Act:

- a. ₦500 for the first year; and
- b. ₦400, for every subsequent year, before a tax clearance certificate is issued.

The idea behind this is to prevent businesses from being started purely for the pleasure of starting them, with no real purpose.<sup>22</sup>

### **Conclusion**

The Nigeria Companies Income Tax Act's tax computation and ascertainment procedures have been examined in this article. Companies that are residents of Nigeria or, in some cases, conduct business there are required to deposit their company income tax into the government's coffers via the FIRS. The established tax regulations set forth in the legislation must be followed while paying taxes. This amount will be determined after deducting the expenses, donations, relief, and allowances permitted under the Act. Because the Act's provisions are quite cryptic and complex, the study discovered that the clause on tax computation and ascertainment must be contested as being unsatisfactory.

In order to arrive at the proper tax regime in the computation and ascertainment of firms taxes in Nigeria, the paper thus offers improvements, particularly in the method of record keeping and compilation of accounting statements.

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<sup>21</sup> Section 36 Finance (Miscellaneous Taxation Provisions) Decree No. 4 1985.

<sup>22</sup> Ayua I. A., supra note 1: 174 – 186; Ariwodola A.J., supra note 9: 36 – 63. *Niger Lock Nigeria Plc F2E v FIRS* Appeal No TAT/L2/CIT/006/2015;