

## The Legal Framework For Company Income Tax In Nigeria

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### Abstract:

*Taxation as a topic is in itself both simple and complex. It is simple in the sense that tax is a relatable everyday issue and, almost on daily basis, we are subjected to one form of tax or the other either by the public (Government) or private sector. On the other hand, taxation is a complex topic because oftentimes, the issues relating to tax itself, the object and subject of the tax, type of tax applicable, the taxing agency/authority and the taxable items, are usually flouted by the government and private sector operatives either because they aren't well abreast of and enlightened on issues in relation to taxation or they choose not to comply with already existing tax laws and regulations. Company Income Tax is an area of Taxation where, although there are in existence several tax legislations regulating it, its administration has proved problematic. Taxable items under it are usually overlooked, under-taxed and over-taxed. This paper examines the purport of legal framework which regulates company income tax in Nigeria. The paper adopted a theoretical framework by looking at other literature and legislations on the subject as basis for our findings and recommendations. Our findings reveal that the main reason for the problem of enforce-ability and compliance lies in the poor administration and laughable consequence for breach of payment of company income tax in Nigeria as provided by the major company income tax legislation, the Company Income Tax Act (CITA). It is therefore our recommendation that the penalty sections of the tax legislation, which serves as a major impediment to effective compliance, should, as a matter of urgency, be amended in line with the present economic realities of the country to actually serve as deterrence for the breach of the provisions of the Company Income Tax Act.*

**Keywords:** Tax, Taxation, Company Income Tax, Company Income Tax Act.

**Introduction:**

Every taxable person is liable to pay tax in Nigeria. Taxes may be direct or indirect and may be imposed on individuals' incomes, corporate entities' incomes, assets and transactions. In reality, we all pay taxes whether directly (for example personal income tax, company income tax, capital gains e.t.c) or indirectly (for example Value-Added Tax, Stamp Duty e.t.c). Every taxable person or persons, whether an employer, employee or self-employed, whether natural or corporate person, whether resident in Nigeria or not, or persons who derive their income from Nigeria are all liable to pay tax. These taxes levied on income are called Personal Income Tax and Company Income Tax.

**Overview of Company Income Tax:**

Income subjected to taxation can either be Personal Income or Company Income. However, for the purpose of this paper, focus is on taxation of corporate persons. Corporate persons, who are not exempted from paying tax, are expected to pay taxes on their income. It is worthy of note that Company Income Tax is not levied or imposed personally on individual shareholders or corporate bodies. Rather, taxes are levied on the incomes and transactions of these corporate bodies.

Corporate tax or Company income tax is a levy imposed on all companies carrying out their business in Nigeria (resident companies) and those outside Nigeria (non-resident companies). Companies are taxed on the basis of certain expenditure in determining whether they are incurred wholly, exclusively, necessarily or reasonably in earning the income. The principle associated with company tax is that resident and non-resident companies are taxed except those wholly exempted under Company Income Tax Act (CITA) in the respective countries.

In Nigeria, Company Income Tax is regulated by much legislation, which includes but not limited to, the Company Income Tax Act<sup>[i]</sup>, the Petroleum Profit Tax Act<sup>[ii]</sup>, Federal Inland Revenue (Establishment) Act<sup>[iii]</sup>, Companies Income Tax (Amendment) Act, 2007<sup>[iv]</sup>, the Finance Act<sup>[v]</sup> and Companies and Allied Matters Act (CAMA)<sup>[vi]</sup>. However, the main legislation for the enforcement and regulation of the company income tax is the Companies Income Tax Act. The relevant tax authority responsible under the law to administer this type of tax is the Federal Inland Revenue Service (FIRS). The Company Income Tax Act (Cita) made several provisions on various issues relating to company income tax administration in Nigeria, for example,

Charge of tax<sup>[vii]</sup>, Identification of a company<sup>[viii]</sup>, Profits exempted<sup>[ix]</sup> and Deductions allowed<sup>[x]</sup>. The Act also makes provision for ascertainment of assessable profits<sup>[xi]</sup>.

### **Taxation of corporate income:**

Although corporate tax is a tax imposed on a company, it is important to establish who is liable to pay tax in line with the concept of “corporate personality” as enunciated in the locus classicus case of *Salomon vs. Salomon & co. Ltd*<sup>[xii]</sup>. The crux of the concept is that corporation is a legal person distinct from its members. What this means is that while companies are liable to pay tax on their retained profits<sup>[xiii]</sup>, their distributed profits are charged to tax in the hands of the shareholders<sup>[xiv]</sup>. A company is liable to pay corporation tax on its profits while a shareholder is liable to pay income tax in respect of any income distribution by the company.

Where there is a charge to tax of both company and shareholder, it will amount to a clear case of imposition of two taxes on one corporate profit which implies that corporate profits are taxed twice. This may exert untold hardship on the company thereby making it detestable. This is because the idea of levying tax on companies as juristic persons may lead to either juridical or economic double taxation.

### **Defining a company for taxation purpose**

The Companies and Allied Matters Act (CAMA) defined a company as any company formed and registered under the Act (CAMA) and thus recognizes such as a company in Nigeria<sup>[xv]</sup>. Similarly, CAMA defines a foreign company to mean a company incorporated elsewhere than in Nigeria. The Act does not recognize its existence in Nigeria for business activities. The CAMA merely defined a foreign company for the sole purpose of identifying it to comply with the mandatory incorporation processes before carrying on business in Nigeria and to benefit from exemption from registration<sup>[xvi]</sup>.

The Companies Income Tax Act (CITA) defines “company” in its Section 105 as “any company or corporation (other than corporation sole) established by or under any law in force in Nigeria or elsewhere”<sup>[xvii]</sup>. This definition of “company” under CITA broadly covers other statutory or registered friendly

corporations apart from the ones registered under CAMA; such as cooperative societies. The CITA exempts the profits of cooperative societies from tax. However, if the profit is from trade or business outside cooperative activities solely carried out with its members, it is taxable<sup>[xviii]</sup>. Also, a comprehensive reading of CITA shows that companies yet to commence business, a profit-making company, a company facing liquidation, a reconstituted company and a holding company are all contemplated by the Companies Income Tax Act<sup>[xix]</sup>. One may wonder the role CAMA plays in taxation as it relates to company since the CITA is already in existence to handle issues as they relate to corporate tax. The reason is simple, whereas these enactments are both Acts of the National Assembly made to serve economic and fiscal purposes, they both serve distinct functions. The CAMA regulates incorporation, control and management of companies, while the CITA is charged with the responsibility of taxing the profits of these companies. Before CITA can be effective, there must be existence of companies brought into being by CAMA.

### **Company Income Tax Administration**

Tax administration is simply defined as the implementation of the various tax laws in a country in order to achieve its objective. In Nigeria, tax administration is carried out by the three tiers of Government through the machineries set up by Law. In this discourse, tax administration will be analyzed looking at the various tax legislations guiding Company Income Tax and taxing authority charged with the responsibility of enforcing company income tax in Nigeria.

#### **A. Tax legislations regulating Company Income Tax in Nigeria.**

As has been stated above, there are several legislations which made specific and general legislations as it relates to taxation of companies' income in Nigeria. However, for the purpose of this paper, the major legislation for regulation of Company income tax in Nigeria which is the Companies Income Tax Act (CITA) will be deeply analyzed while a skeletal analysis of other legislations will be made.

#### **1) The Companies and Allied Matters Act (CAMA):**

The Companies and Allied Matters Act is the principal legislation regulating



incorporation and management of companies in Nigeria. Under the provisions of the Act, it recognizes only companies incorporated under it as being fit to be clothed with legal personality. CAMA prohibits the existence of a foreign company in Nigeria for any purpose unless assimilated as a Nigerian entity by incorporating it as a Nigerian company.

The above position of CAMA, as it regards what can be regarded as a company in Nigeria, has a serious tax consequence because it is not all companies that are locally floated. Some companies, especially those in shipping and air transportation, operate globally and render their returns on global basis. Nigerian tax system cannot afford to overlook profits accruing from their on-shore operations.

## **2) The Companies Income Tax Act (CITA):**

The Company Income Tax Act governs the taxation of profits of companies or corporations other than those operating in the upstream sector of the oil industry. The Act treats Nigerian companies and foreign companies differently for tax purposes. This distinction is to enable the Federal Inland Revenue Service to ascertain where the profits of the companies are derived from and the extent of its taxation liability in Nigeria. By Section 106 CITA, a Nigerian company is one which is incorporated under the CAMA or any enactment replaced by the Act while a foreign company on the other hand is the one incorporated under any law in force in any territory or country outside Nigeria<sup>[xx]</sup>.

### **Classification of Companies under CITA:**

For the purpose of taxation, tax is levied on the global income of a Nigerian company, while CITA sub-categorizes foreign companies in terms of their trading activities and patterns of business as follows:

- a. Companies engaged in shipping or air transport: for companies under this category, the taxable profits or loss is the full profits or loss arising from the carriage of passengers, mails, livestock or goods shipped or loaded into aircraft in Nigeria<sup>[xxi]</sup>.
- b. Companies engaged in cable and wireless undertakings: for companies which fall under this category, the liability to pay tax is the same with and on

principles similar to shipping and air transport companies<sup>[xxii]</sup>.

For the above listed companies under category a and b, either the profit or loss is chargeable to tax

c. Companies engaged in insurance business: The CITA recognizes Life Insurance companies and Non-Life Insurance companies as the two basic types of insurance companies. However, for the purpose of taxing, it classifies insurance operation into four categories<sup>[xxiii]</sup> as follows:

i. Life Assurance by Non-Resident: under this category, the profit for tax purpose is the investment income less the management expenses and commissions<sup>[xxiv]</sup>. Where the profit accrues partly in Nigeria and partly outside Nigeria, the taxable profit shall be the proportion that the total premium bears to the total premiums receivable less the agency expenses<sup>[xxv]</sup>.

ii. Non-Life Insurance company by Non-Resident: for insurance companies under this category, where the profit is partly derived from Nigeria and partly from outside Nigeria, the taxable profit consists of the gross premiums received in Nigeria, the interest received in Nigeria and other incomes received in Nigeria; less any premiums returned, premiums paid on re-insurance, unexpired risks, actual losses in Nigeria, Nigeria agency expenses and a fair proportion of head office expenses<sup>[xxvi]</sup>.

iii. Nigerian Life and Non-Life Insurance Companies: for Nigerian insurance companies, their profits that are chargeable to tax are similar to those of non-residents mentioned above but the whole investments and premiums income are treated as if received in Nigeria and all expenses and other outgoings incurred in Nigeria<sup>[xxvii]</sup>.

### **Chargeable Income under CITA:**

Under the CITA, dividend, interest or royalties due to non-Nigerian companies which are assessed at 10% on the net profit (withholding tax rate) is payable to the respective companies. For indigenous companies, Section 9 of the CITA makes provisions for designated sources from which profits of any company accruing to, derived from, brought into or received in Nigeria.

Section 9 of CITA provides that,

“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<sup>[xxviii]</sup> 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;
- (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;
- (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”.

In a nutshell, the following under-listed items, which can either be in the form of profits accruing to, derived from, brought into or received in Nigeria by a company can be assessed for tax. These include:

- a) trade or business;
- b) rent or premium;
- c) dividends, interests, discounts, amenities, etc;
- d) omnibus profits ;
- e) deemed profits;
- f) service fees, dues and allowances; and
- g) profits from dealings in securities.

It follows, therefore, that the combined effect of Sections 9 and 40 of the CITA is that tax is charged on the profits of any company accruing to, derived from, brought into, or received in Nigeria. Notwithstanding this, the Act in its Section 30 equally empowers Federal Inland Revenue Service to assess and charge to tax turnover of trade or business of a company if it appears to it that the trade or business of the company produces no assessable profits or the assessable profit is less than expectation, or same cannot be ascertained<sup>[xxix]</sup>.

It should be noted that Section 12, 13 and 14 CITA are exceptions to the general provisions in Section 11 of CITA. CITA made other provisions such as deduction of tax from interest and rent<sup>[xxx]</sup>, incomes exempted from tax<sup>[xxxi]</sup>, computation of company's profit<sup>[xxxii]</sup>, allowable deductions<sup>[xxxiii]</sup>, loss deductible for income tax purpose<sup>[xxxiv]</sup>, taxation of dormant companies<sup>[xxxv]</sup> etc. These exemptions are those established by CITA.

Simply put, the extent to which taxes are levied on companies is premised on whether the company is resident or non-resident and the bases for which taxes are charged on company incomes involve the following:

- a) For a non-resident company, the portion of profits obtainable from such company's operations in Nigeria is chargeable to tax.
- b) The global profits of resident companies are liable to tax irrespective of whether or not they are brought into or received in Nigeria. However, for a resident company, dividend income is considered as Franked Investment income on which no income tax is payable.
- c) For a non-resident company, dividends, interests or royalties are assessed at 10% on the gross amount due (i.e. withholding tax rate) and only the net is payable to the relevant company.

#### **Payable Company Income Tax rates:**

The rates payable by companies as tax is categorized under 3, as follows:

- a. The Company Income Tax rate is 30% for large companies with gross turnover greater than 100 million naira, assessed on the preceding year basis.
- b. The Company Income Tax rate is 20% for companies with gross turnover greater than 25 million naira but less than 100 million naira.
- c. The Company Income Tax rate is 0% for companies with gross turnover of 25 million Naira or less. This is in line with the provisions of the Finance Act 2019. Additionally, non-resident companies with a fixed base or permanent establishment (PE) in Nigeria are subject to taxation on profits attributable to that base, requiring registration for CIT and filing of tax returns

#### **Classification of Companies Income Tax:**

For ease of administration and assessment, Companies Income Tax are classified into segments namely, assessment of tax, official assessment, the currency of assessment and minimum tax<sup>[xxxvi]</sup>.

- a. Assessment of companies' income tax under the Act: companies'

assessment for taxation purpose is categorized under two: Self assessment and Government assessment, as follows:

i. Self Assessment of Tax Payable: This is the system of assessing where a company is allowed or permitted by the relevant tax authority to pay estimated company's chargeable income tax in that year of assessment by installment. Statutorily, this method of assessment is provided for under Companies Income Tax Act, to wit. 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, in the return, compute the tax payable by the company for the year assessment and forward with tax return, evidence of direct payment of the whole or part of tax due into a bank designated for the payment of tax. This is as provided for under Section 53 CITA. The foregoing presupposes that each company operating in Nigeria must, for the purposes of payment of the company's income tax, file its return, which should cover all the transactions carried out by the company during the year of assessment. The said return ought to compute the amount of tax payable by the company from its profits and evidence of compliance<sup>[xxxvii]</sup>.

ii. Government Assessment: This is further sub-categorized into two viz;

a) Official Assessment (Section 58 of CITA): Here, the FIRS assesses the company's tax liability based on its records, information, and investigations. The company is notified of the assessment and has the right to object or appeal.

b) Best-of-Judgment Assessment: In situations where a company fails to maintain financial records or submit tax returns, the relevant tax authority may employ the Best of Judgment approach to assess tax liability. This method is also applied when a company's financial records are deemed unreliable. The FIRS makes an estimate of the company's tax liability based on available information, such as industry benchmarks or comparable

companies. This is used when the company fails to file returns, provide necessary information, or cooperate with the FIRS. It is worthy of note that where a company rejects the estimated tax levied on it by the FIRS, it has 30days to refuse and reject same and must officially notify the FIRS of such rejection.

- b. The Currency of Assessment: This makes provision for the currency of assessment of tax payable by a company. The Act reiterates that, notwithstanding anything to the contrary in any law, an income tax assessment under Sections 52, 53 or 55 of this Act shall be made in the currency in which the transaction giving rise to the assessment was effected.

(Note 59) The implication is that company's income tax assessment from where the amount payable by the percentage stipulated by law is determined must be calculated in the currency used for the transaction giving rise to the income tax<sup>[xxxviii]</sup>.

- c. The Minimum Tax: This is tax payable and calculated as 0.5 percent of the gross turnover less franked investment income. Statutorily, minimum tax is provided under the Act, to wit, notwithstanding any other provisions in this Act where any year 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 minimum tax, there shall be levied and paid by the company the minimum tax as prescribed by subsection 2 of this section<sup>[xxxix]</sup>.

#### Allowable Deductions under Company Income Tax Act

It is not all profits that are assessed and taxed under the CITA. There are certain deductions that are allowable. Section 24 of CITA made provisions for the deductions allowable in determining the taxable profits of the company. It provided thus:

“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 deduction all expenses for that period by that company wholly, exclusive, necessarily and reasonable incurred in the production of those profits.”

The following categories of deductions were included under Section 24:

- (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 accommodation occupied by employees of the company.
- (c) in the case of any property-holding company expenses attributable to the maintenance of the property, directors' remuneration, which shall not exceed N10,000 per annum in respect of each director, and the number of directors to be so remunerated shall, in no case, exceed three;
- (d) any outlay or expenses incurred during the year in respect of salary, wages, or other remuneration paid to the senior staff and executives 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.
- (e) Any expenses incurred for repair of premises, plant, machinery or fixtures employed in acquiring the profits.
- (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.
- (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.
- (h) In the case of profits from a trade or business, any expense 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;

Sections 25 and 25A of CITAs provided for deductions of donations made to fund, body or institutions in Nigeria for the purpose of ascertaining the profits while Section 26 of the Act permits a deduction for the purpose of research and development, provided such a deduction does not exceed 10% of the profit ascertained before any deductions.

### **Deductions Not Allowed:**

By virtue of the provisions of Section 27 of CITA, there are deductions not allowed in ascertaining a company's profits. It provided thus:

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; Any sum recoverable under an insurance or contract of indemnity;
- b. 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,
- c. 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;
- d. The depreciation of any asset; 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;

- e. 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;
- f. 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;
- g. 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.

**Time within which tax is to be paid:**

Section 77(1) of CITA provides that 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 30 days after service of such notice upon the company:

Provided that—

- (a) if such period of 30 days expires after 14 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;
- (b) (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 30 days after the end of the approved period, but if such period of two months expires after 14 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.

**Breach and Penalty:**

The CITA made express provisions for penalties for the breach of the provisions of the Act. Part XIII of CITA, precisely Sections 92-99, outlines

numerous offences, with non-compliance attracts different penalties. These include:

(1) By the provisions of 92,

“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 thereunder for which no other penalty is specifically provided, shall be liable on conviction to a fine of N20,000.00, 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 N 2,000.00 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 the conviction, or from such day thereafter as the court may order”<sup>[xi]</sup>.

(2) Section 92 CITA further provides that,

Any person who- (a) fails to comply with the requirements of a notice to pay his tax 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<sup>[xii]</sup>.

(3) by the provisions of Section 92(4),

“where a company fails to comply with the requirements of any notice given by the Service 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 Service may, in lieu of the institution of proceedings under subsection (2) of this

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;
- (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 Service 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 authorized by the Service 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 Service may remit the whole or any part of such penalty, before judgment, for any reason which appears to it to be adequate.

4. Similarly, Section 94 CITA states as follows:

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 any profits on which tax is payable under this Act; or (iii) unlawfully to refuse or neglect to pay tax, 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.

The Act further made provisions in its Sections 95 (offences by authorised and unauthorised persons), 96 and 97 for further penalties for breach and its incidentals.

Section 86 of the Companies Income Tax Act 2007 conferred on the Federal Inland Revenue Service the power to seize and sell defaulting taxpayers' goods, chattels as well as their premises in extreme cases in order to recover the amount of tax owed by such taxpayers. The provisions of the Act do not also affect independent criminal proceedings under any other law against the offenders<sup>[xliii]</sup> With respect to offences committed under sections 93, 94 or 95 of the Act, no proceedings may be commenced without the sanction or at the instance of the Board<sup>45</sup>.

### **3) Petroleum Profits Tax Act (PPTA):**

The Act governs the profits of companies engaged in petroleum operations in the upstream sector of the oil industry in Nigeria. Prior to the enacting of the Finance Act of 2021, the Act was the sole regulator of companies engaged in petroleum operations. However, the Finance Act made some changes to the Petroleum Profits Tax Act (PPTA) under the Act, some of which seek to align the PPTA with the provisions of the Petroleum Industry Act 2021 (PIA).

Interestingly, the petroleum industry currently operates two legal regimes, viz, Holders of the Oil Mining Lease (OML) and Oil Prospecting License (OPL), who are subject to the PPTA and are liable to pay tax at the rate of 85% or 65.75% of the chargeable profits<sup>[xliii]</sup>, 50% (PSCs), 65.75% and 85% (Sole Risks & JVs) respectively.

The petroleum profit tax Act deals with the taxation of companies solely on Petroleum Profit Tax and covers only Upstream Sector of the Oil and Gas Industry.

Also, under the Act, allowable deductions are not guided by the reasonability test. Revised Estimate on Budget is taxable under the Act. The Act provides for appeals to be addressed to the Appeal Commissioners<sup>[xliv]</sup>. The cost of Gas Reinjection is treated under Petroleum Profit Tax, while the revenue is taxed under the CITA.

#### **4) Petroleum Industry Act (PIA):**

The Petroleum Industry Act covers Upstream, Midstream and Downstream Sectors of the Oil and Gas Industry and deals with Hydrocarbon Tax<sup>[xlv]</sup> (HCT) and Companies Income Tax (CIT) and the companies it regulates must file NHT returns and CIT returns under the Act and late filing attracts a penalty of N10 million for the first day and N2 million every other day.

Under the PIA, the holders of the new Petroleum Prospecting License (PPL) and Petroleum Mining Lease (PML) are liable to pay Hydrocarbon tax, which applies to crude oil, field condensates and natural gas liquids derived from associated gas and produced in the field upstream of measurement points at the rate of:

- a. 30% of profits from crude oil for a PML<sup>[xlvi]</sup> in onshore and shallow water areas; and
- b. 15% of profits from crude oil for a PPL<sup>[xlvii]</sup> in onshore and shallow water areas.
- c. HCT (15% (PPL) to 30% (PML) depending on the terrain) and
- d. CIT (30%) (Offshore rate omitted)

The Act allows the conversion from OPL to PPL and from OML to PML<sup>[xlviii]</sup> and upon conversion, the holders of PPL or PML will benefit from the new fiscal provisions and tax rates under the Act<sup>[xlix]</sup>.

Under the Act, Allowable deductibles is guided by reasonability test and items like interest on loan, bank charges, hydro carbon tax etc., are not allowable deductions. By the provisions of the Act appeals from the Act shall

be referred to the Tax Appeal Tribunal (TAT)<sup>[i]</sup>.

### **5) The Tertiary Education Trust Fund (Establishment, Etc.) Act 2011:**

By the provisions of this Act, any company registered in Nigeria is obligated to pay tertiary education tax at the rate of 3% of the assessable profit. Section 1(2) of the Act was amended by the Finance Act to increase the tertiary education tax rate from 2.5% to 3%). Non-resident companies, small companies (companies with an annual turnover of 25 Million Naira and below) and unincorporated businesses such as sole proprietorship are exempted from tertiary education tax. An eligible company will complete a tertiary education tax return containing details such as assessable profit, rate of tax and amount payable.

TET is not an allowable deduction in calculating the taxable income for companies, including upstream petroleum companies. Under the Petroleum Industry Act, TET is no more a tax deductible for upstream petroleum operations. A company may have a TET payable when the assessable profit is positive and there is a taxable loss.

### **6) The Finance Act:**

The Finance Act 2023 has made salient amendments to the Companies Income Tax Act through the following provisions:

#### **a. Filing of Income Tax Returns by Non-resident Shipping and Airline Companies:**

The Act has eased the burden of filing separate financial statements by non-resident shipping and airline companies in respect of their Nigerian operations. It now permits non-resident shipping and airline companies that are unable to provide a separate financial statement of their operations in Nigeria, for the purpose of filing tax returns to submit, in the alternative, detailed gross revenue statements of their Nigerian operations showing the amount of full sums earned during the period and supported with all invoices issued to the relevant customers<sup>[ii]</sup>. The gross revenue statements must be certified by one of the company's directors and external auditor.

b. Additional Requirements for Regulatory Approvals: Regulators in the airline and shipping industry are now mandated to request taxable

companies to present evidence of income tax filings for the preceding tax year of assessment and tax clearance certificates for taxes paid for the three preceding tax years in order to enable them to continue to carry on their business or to obtain relevant approvals and permits<sup>[iii]</sup>.

c. Deletion of Reconstruction Investment Allowance and Rural Investment Allowance:

Before now, companies enjoyed an investment allowance at the rate of 10% on qualifying capital expenditures on plants and equipment<sup>[iii]</sup>. The Act has deleted the provisions of Section 13 of CITA. However, any company, which has incurred expenditure on plants and equipment on or before the Effective Date, shall continue to enjoy the allowance until it is fully utilized. The implication is that companies can no longer claim investment allowance on the expenses they incur on plants and equipment after the Effective Date. Section 13 of CITA grants a rural investment allowance on capital expenditures incurred on the provisions of facilities for the purpose of a trade or business located in rural areas, at least 20 kilometres away from such available facilities provided by the government. The Act has also deleted Section 34 of CITA. However, where a company has incurred capital expenditures on such facilities before the Effective Date, the company shall continue to enjoy the allowance until it is fully utilized.

d. Deletion of Tax Exemption for Reserved Funds for Tourism Development:

Prior to the Act, Section 37 of CITA exempts from income tax, twenty-five per cent (25%) of incomes in convertible currencies derived by companies from tourists, provided such incomes are deposited in a reserve fund to be utilized within five years for the purpose of tourism development in Nigeria. The Act has now deleted Section 37 of CITA. However, a company that has already set aside reserved funds prior to the enactment of the Act, shall continue to enjoy the tax exemption on the twenty-five per cent (25%) of the income derived until the reserved funds are fully utilized or until the effluxion of the five (5)-year limit, whichever occurs first.



e. Paragraph 24 (7) of the 2<sup>nd</sup> schedule has been redefined such that companies engaged in upstream and midstream petroleum operations are excluded from the sixty-six and two thirds' percent (662/3) of assessable profits restriction placed on deductible capital allowances in any year of assessment. Consequently, these companies can claim capital allowance above the maximum allowable percentage.

f. For the purpose of capital allowances, the 2<sup>nd</sup> schedule has been amended such that the value of any asset on which capital allowance is to be claimed shall be reduced by the investment allowance claimable.

Similarly, under the TET payable from the assessable profit of companies registered in Nigeria was reviewed upwards from 2% (which was originally provided for in the Tertiary Education Trust Fund (Establishment, Etc.) Act, 2011) to 2.5% by the Finance Act, 2021. However, this was further increased to 3% by the Finance Act of 2023.

Under the Finance Act 2021, the tertiary education tax is payable within 90 days of assessment notice from the Federal Inland Revenue Eervice (FIRS). However, in practice, many companies pay TET on self assessment basis together with their companies' income tax (CIT).

#### b. Company Income Taxing Authority:

The obligation of collection of Company Income Tax is vested in the Federal Inland Revenue Service (FIRS) through various large tax offices and incorporated tax offices, in carrying out its primary duties which include assessment and collection of taxes from companies.

The FIRS was established by the Federal Inland Revenue Service (Establishment) Act, 2007. It is established to administer the various Federal taxes as recognized by the relevant laws. This power includes power to assess, collect and account for revenues accruing to the Government of the Federation. Under Section (8) (1)(a)(b) and (c) of the Act the principal functions of the FIRS are;

- (a) assess persons including companies, enterprises chargeable with tax;
- (b) assess, collect, account and enforce payment of taxes as maybe due to the Government or any of its agencies;

- (c) collect, recover and pay to the designated account any tax under any provision of this Act

The FIRS is an autonomous body vested with the power to control and administer taxes and laws specified under the Act to be made from time to time by the national assembly and to account for all taxes collected. The Tax Appeal Tribunal was also established by the Act<sup>[liv]</sup>.

\*it is worthy of note that the Federal High Court has the exclusive jurisdiction over any matter/dispute arising out of the administration of the CITA.

### Conclusion:

Company Income Tax (CIT) is an important factor in the economic development of any nation. Thus, in a developing economy such as Nigeria, the relevance of Company Income Tax (CIT) is a very important source whereby government generates revenue for the economic and wholesome development of the Country. The importance of Company Income Tax in the development of the Nigerian economy cannot be over emphasized. Notwithstanding this fact, poor tax administration and unwholesome practices such as tax evasion by some companies often jeopardizes the development of a country.

However, with the granting of financial and administrative autonomy to the Federal Inland Revenue Service (FIRS) through the passage of the Federal Inland Revenue Service (establishment) Act 2007, one could only but hope for an improved and functional tax administration in Nigeria. In the course of research work, which precluded the writing of this article, we realized that the major impediment to the effective taxation of companies in Nigeria lies in the fact that the penalty to contravention of certain provisions of CITA as provided in the Act is archaic and redundant. In the real sense of it, penalty ought to serve as a deterrence to any breach of the provisions of the legislation

CITA also established the body of appeal commissioners as the first port of call in the resolution of disputes between tax payers and the board concerning assessment and collection of taxes. However, the exclusive jurisdiction over all matters arising out of, or relating to companies, whether under the CITA or otherwise lies with the Federal High Court.

Based on the major findings from this research work, the following recommendations are made:

- a. The penalty to contravention of certain provisions of CITA as provided in the Act ought to be amended, especially as it relates to payment of fines, in line with the current economic realities of Nigeria.
- b. The companies with gross turnover of 25 million Naira or less should not be totally exempted from paying tax.
- c. Company Income Tax (CIT) in the country should be properly structured in such a way that it will encourage both indigenous and foreign firms to engage in business operations.
- d. The amendments made by the Finance Act should, as a matter of urgency, be implemented and enforced.
- e. Provisions should be made for a single legislative body to oversee the affairs arising out of the administration of company income tax in Nigeria.

[i] CAP C21, LFN 2004

[ii] CAP P13, LFN 2004

[iii] Federal Inland

Revenue (Establishment)

Act 2007.

[iv] Cap C21 LFN 2004

[v] Cap F26, LFN 2004

[vi] Cap C20 LFN 2004

[vii] Section 9 of Company Income Tax Act

[viii] Section 10 of Company Income Tax Act

[ix] Section 23 of Company Income Tax Act

[x] Section 24 of Company Income Tax Act

[xi] Chapter IV of Company Income Tax Act

[xii] (1897) A.C. 22

[xiii] Section 9, Companies Income Tax Act

[xiv] *ibid*, Section 19.

[xv] Section 54 CAMA

[xvi] Sections 56 and 59 CAMA

[xvii] This is at par with the definition of a company under Section 2 of the Petroleum Profits Tax Act

[xviii] Section 23(b) Company Income Tax Act.

[xix] Sections 40 (4), 47, 29 (10) Company Income Tax Act.

[xx] Sections 11, 29 (10) and 106 Company Income Tax Act

[xxi] Section 14 (1) Company Income Tax Act

[xxii] Section 15 Company Income Tax Act

[xxiii] Section 16(1) Company Income Tax Act

[xxiv] Section 16(1)(b) Company Income Tax Act

[xxv] Proviso to Section 16 (1)(b) Company Income Tax Act

[xxvi] Section 16(1)(a) Company Income Tax Act

[xxvii] Section 16(1)(c) Company Income Tax Act

[xxviii] Section 40 of Company Income Tax Act expressly provided for the tax rates of small

company, medium sized company and large companies

[xxix] H.R. John, An Appraisal of the Legal Framework for the Taxation of Companies Income in Nigeria

[xxx] Section 60 Company Income Tax Act, 2007

[xxxi] Section 19 Company Income Tax Act, 2007

[xxxii] Section 25 Company Income Tax Act, 2007