

MODULE 1

Unit 1	Historical and Legal Background of Taxation in Nigeria
Unit 2	Tax Administration in Nigeria
Unit 3	The Difference between Taxation of Income and the Taxation of Capital
Unit 4	Basis of Assessment of Profits of Businesses (Basis Period)
Unit 5	Loss Relief

**UNIT 1 HISTORICAL AND LEGAL BACKGROUND OF
TAXATION IN NIGERIA****CONTENTS**

1.0	Introduction
2.0	Objectives
3.0	Main Content
3.1	Definition of Tax and Taxation
3.2	Objectives of Taxation
3.3	Structure of the Nigerian Tax System
3.4	Canons of Taxation
3.5	Legal History of Personal Income Tax
3.5.1	Legal History of Companies Income Tax
3.6	Sources of Nigerian Tax Laws
3.7	Distinction between Taxes and Levies
4.0	Conclusion
5.0	Summary
6.0	Tutor-Marked Assignment
7.0	References/Further Reading

1.0 INTRODUCTION

Most economies of the world are based on one form of taxation or the other. Taxation has always been with man and it will continue to be with him. Countries of the world have different fiscal policies that enable them to explore various types of taxation and impose them on their citizens for the purpose of enhancing revenue and for regulation and governance of the economy. The government of Nigeria, as one of these countries, has legislative powers to impose on its citizens, any form of tax and at whatever rate it deems appropriate.

In this unit, therefore, the objectives of taxation and the basic characteristics of taxation, among other things, shall be made known to you.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- state clearly, the objectives of taxation in Nigeria
- explain the structure of the Nigerian tax system
- discuss the evolution of taxation in Nigeria
- illustrate the sources of Nigerian tax laws
- distinguish between a tax and taxation, and between taxes and levies.

3.0 MAIN CONTENT

3.1 Definition of Tax and Taxation

Tax is a compulsory extraction of money by a public authority for public purposes and taxation is a system of raising money for the purpose of governance by means of contributions from individuals or corporate bodies (Sayode & Kajola, 2006:3).

According to the Oxford Advanced Learner's Dictionary (1995:224), tax is money that has to be paid to the government. People pay tax according to their incomes and it is often paid on goods and services. Black's Law Dictionary (1997:1469) defines tax as "monetary charge imposed by the government on persons, entities or property, levied to yield public revenue".

In Ola (1985:1), taxation is defined as the demand made by the government of a country for a compulsory payment of money by the citizens of the country. For Thomas Cooley in ICAN study pack (2006:3), taxes are "enforced proportional contribution from persons and property, levied by the state, by virtue of its sovereignty, for the support of government and for all public needs".

Nightingale (1997) describes tax as a compulsory contribution imposed by the government and concludes that even though tax payers may receive nothing identifiable in return for their contributions, they nevertheless have the benefit of living in a relatively educated, healthy and safe society. According to Soyode & Kajola (2006:4), taxation is defined as "the process of levying and collection of tax from taxable persons".

(II) Progressive Tax System

This form of tax is graduated as it applies higher rates of tax as income increases. For instance, the progressive tax concept can be explained with the following illustration:

Table 1.1: Personal Income Tax Table

<i>Taxable Income</i>	<i>₦</i>	<i>Tax Rate (%)</i>
First	30, 000	5
Next	30, 000	10
Next	50, 000	15
Next	50, 000	20
Over	160, 000	25

From the illustration above, it shows that progressive tax system has a main objective of redistributing the income of the rich to that of the poor in some ways. For instance, the rich are taxed heavily to finance projects of common interest.

Advantages

1. It is based on the ability of the tax payer to pay;
2. It maximises the revenue for the government;
3. It is flexible as government can use it to get more revenue or to grant tax relief to low income earners;
4. It is equitable – this tax system is equitable because it requires proportional sacrifice on the part of taxpayers. The higher income group bears the heaviest tax burden;
5. It promotes economic stability – by reducing the tax rates during recession or depression periods, the government provides relief to the taxpayer so that they may increase their demand for goods and as a result investment is encouraged. On the other hand, tax rates can be raised during economic boom thereby reducing the purchasing power of the taxpayers and as a result, inflation is fought. Thus, this tax system helps in bringing economic stability in the economy;
6. It encourages better use of resources – the high income groups mostly indulge in conspicuous consumption and thereby waste their incomes. By taxing luxury goods and incomes of the rich heavily, the government can prevent them from wasteful expenditures and therefore, be in the position to make better use of the country's resources.

The second form of tax classification is by incidence which is given as follows.

(I) Direct Tax

This form of tax is assessable directly on the taxpayer who is required to pay tax on his property, income or profit, etc. He/she is not only advised by notification (called assessment notice), but he/she is duly receipted. The purpose of these formalities is to bring to the taxpayer's notice the incidence of such tax.

The types of tax that fall under this heading include the following:

- Personal income tax
- Companies income tax
- Capital gains tax
- Education tax, etc.

(II) Indirect Taxes

Indirect taxes are borne by persons other than the ones from whom the tax is collected. These are taxes which are imposed on commodities before reaching consumers and are paid by those from whom they ultimately fall, not as taxes, but as part of the selling price of the commodities.

The types of tax that fall under this heading include the following:

- Value Added Tax (VAT)
- Stamp duties
- Excise duties
- Customs duties, etc.

Indirect taxes may affect the cost of living, as they constitute taxation on expenditure.

SELF-ASSESSMENT EXERCISE 3

1. What structure of tax system will you recommend for a developing country like Nigeria?
2. What are the demerits of direct and indirect taxes?

3.2 Organs of Tax Administration: Federal Board of Inland Revenue (FBIR)

The administration of taxes on the profits of all incorporated companies, and income tax of the Armed Forces and residents of the Federal Capital Territory is vested in the FBIR whose operational arm is known as the Federal Inland Revenue Service (FIRS).

This is covered by section 1(1) of CITA.

3.2.1 Composition of the Board

The board consists of the following officers.

- (a) Executive chairman –to be appointed by the president.
- (b) All FIRS directors and heads of department.
- (c) The director of planning, research and statistics in the Federal ministry of finance.
- (d) A member of the board of the National revenue mobilisation allocation and fiscal commission.
- (e) An officer from NNPC not below the rank of an executive director.
- (f) A director from the National planning commission
- (g) A director from the Nigerian customs services
- (h) Registrar-general of the Corporate affairs commission; and
- (i) The legal adviser to the FIRS.
- (j) A secretary (an ex-officio member) who shall be an employee of the FIRS.

Any seven (7) members of the board shall constitute a quorum provided there is in attendance the chairman or a director of a department of FIRS.

Functions of FBIR

The functions of the board are listed below.

- (a) Administration of CITA and other tax acts as may be vested in FBIR;
- (b) Assessment and collection of companies' income tax;
- (c) Accounting for all amounts collected in a manner to be prescribed by the minister of finance;
- (d) Advising the federal government of Nigeria through the minister of finance on tax matters including amendments to tax laws; and
- (e) Issuing directives or guidelines on the interpretation of the provisions of the CITA and other tax laws.

- (c) Make recommendations, where appropriate, to the Joint Tax Board on tax policy, tax reforms, tax registration, tax treaties and exemptions as may be required from time to time;
- (d) Control the management of the *SIRS* on matters of policy, subject to the provisions of the law setting up the *SIRS*.
- (e) Appoint, promote, transfer and impose discipline on employees of the *SIRS*.

Delegation of Functions

The *SBIR* may, by notice in the gazette or in writing, authorise any person to:

- (a) perform or exercise on behalf of the board, any function, duty or power conferred on the board; and
- (b) receive any notice or other documents to be given or delivered to it or in consequence to this act or any subsidiary legislation made under it. However, the *SBIR* shall not delegate any power conferred on it under some specific sections of *PITA* (example- section 2, 6, 7, etc.) to any person. This is sequel to the abuse of tax administration experienced in some states during the military era in Nigeria.

In order to assist the *SBIR* in the performance of its duties, section 89 of *PITA* also provides for the establishment of a sub-committee of the board, known as "the technical committee".

The technical committee is to comprise the following officials.

- (a) The chairman of the *SBIR* as chairman;
- (b) The directors within *SIRS*;
- (c) The legal adviser to the *SIRS*; and
- (d) The secretary of the *SBIR*.

The committee is expected to carry out the following functions.

- (a) Exercise the powers of co-opting additional staff from within the *SIRS* in the discharge of its duties;
- (b) Treat all matters that require professional and technical expertise and make recommendations to the *SBIR*;
- (c) Advise the *SBIR* on all its powers and duties; and
- (d) Attend to such other matters as may, from time to time, be referred to it by the board.

3.2.3 Local Government Revenue Committee

This committee was established by the provisions of section 90 of *PITA*. It states that each local government in Nigeria should have Local Government Revenue Committees (LGRCs).

Composition of LGRCs

The Committee shall consist of:

- (a) the supervisory councillor for finance as chairman
- (b) three local government councillors as members; and
- (c) two other persons experienced in revenue matters to be nominated by the chairman of the local government- on their personal merits.

Functions of LGRCs

The Committee shall be responsible for the assessment and collection of all taxes, fines and rates under its jurisdiction and shall account for all monies so collected in a manner to be prescribed by the chairman of the local government.

The revenue committee shall be autonomous of the local government treasury department and shall be responsible for the day to – day administration of the department which forms its operational arm.

3.2.4 Joint Tax Board (JTB)

Section 86 of *PITA* provides for the establishment of the *JTB* which shall comprise the following.

- (a) The chairman of the *FBIR* , who should also serve as the chairman;
- (b) One member from each *SBIR*, being a person experienced in income tax matters nominated either by name or office, from time to time, by the commission charged with the responsibility of matters relating to income tax in the state in question;
- (c) The secretary, who is not a member of the board, and is appointed by the Federal Civil Service Commission (FCSC)
- (d) The legal adviser of *FIRS* acts as the legal adviser to the *JTB*.

Any seven members or their representatives shall constitute a quorum.

UNIT 3 TAXATION OF INCOME VERSUS TAXATION OF CAPITAL

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Taxation of Income
 - 3.2 Taxation of Capital
 - 3.2.1 The Structure of *CGT*
 - 3.2.2 Assets Subject to *CGT*
 - 3.2.3 Capital Taxation Versus Income Taxation
 - 3.2.4 Definition of Capital Gains
 - 3.2.5 Capital Gains Tax
 - 3.2.6 Chargeable Assets
 - 3.2.7 Allowable & Disallowable Expenditure
 - 3.2.8 Determination of Consideration
 - 3.2.9 Exemptions and Relieves
 - 3.2.10 Part Disposal of Assets
 - 3.2.11 Computation of Capital Gains
 - 3.2.12 Connected Persons
 - 3.2.13 Roll over Relief
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

1.0 INTRODUCTION

In every country, taxes are levied on profits arising from a regular business operation or from a one – off action which may not necessary involved a business activity. In Nigeria, taxes are levied on income from employment business operations and the disposal of capital goods. Legislations such as PITA, CITA and PPTA regulate taxation of income, while CGTA regulates taxation of capital. This unit explains to you, extensively, capital gains tax and draws a clear difference between it and other forms of taxes.

7.0 REFERENCES/FURTHER READING

CITN. *Nigerian Tax Guide Statutes*. (2002). Lagos: The Chartered Institute of Taxation of Nigeria.

Fasoto, F. (2007). *Nigeria Tax Company*. Lagos: Hosrtosaf Ltd.

ICAN Study Pack (2006). *Tax Management and Fiscal Policy*. Lagos: VI Publishing Limited.

ICAN Study Pack. (2006). *Taxation for Professional Examination I*. Lagos: VI Publishing Limited.

Ndupuechi, T.I.I. (2005). *Taxes and Taxation in Nigeria*. Jos: Deka Publications Nigeria.

Ola, C.S. (1985). *Nigerian Income Tax Laws and Practice*. London: Macmillan Publishers Limited.

Ologhodo, C.J. (2007). *Taxation Principles and Practice in Nigeria (A Practical Approach)*. Jos: University Press Limited.

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

Preview from Notesale.co.uk
Page 39 of 166

- (a) tax authority will neither tax a taxpayer twice nor leave a portion of the profit unassessed.
- (b) it helps the tax authority to grant capital allowances to tax-payers, as well as, carry forward any excess of such.
- (c) it helps in the set off of loss reliefs as well as lapsing of any losses without relief.

SELF-ASSESSMENT EXERCISE 1

Justify the necessity for determination of basis period by a tax authority.

3.2 Basis of Assessing a Subsisting Business

The basic principle underlying the concept of “basis of assessment” is that the assessable profits for a year of assessment shall be the business profits that are adjusted profit for its accounting year, ended in the preceding year of assessment. For instance, the profits that will be assessed to taxation in the year 2009 will be the profits of the year 2008. This is what is popularly referred to as the “Preceding Year Basis” (PYB) of assessment and the applicable rule is known as the “*normal rule*”.

Illustration 1

Nerat Ltd. is a Company which commenced business on 1st January, 1995. Its profit and loss account for the year ended December 31st 2008 showed a profit of £20million. After applying the rules of allowable expense and taxable income the company had an adjusted profit of £30million for the year ended December 31st 2008. The company's adjusted profits for the two previous years are as follows:

Year ended December 31, 2006	-	£15million
Year ended December 31, 2007	-	£22million

You are required to determine the basis of assessment and assessable profit for all relevant years of assessment.

Suggested Solution

NERAT LTD

The assessable profits on Preceding Year Basis (PYB), for all relevant years are as follows:

- (3) **Third year of assessment** – the *PYB* of assessment starts from the third year. However, where this cannot be derived, the second tax year basis period, and indeed the profit are repeated for the third year. *PITA* 1993, Section 24 (d) makes provisions for taxpayer's right of election (election rule) where he feels it will be beneficial to do so. The "actual" profits for the second and third tax years are computed having given notice in writing to the relevant tax authority. The notice should be given within two years after the end of the second tax year, to request that the assessable profits both for the second and third years shall be the profits of the respective years of assessment.

Illustration 2

Mr. Goodness is a dealer in motor spare parts in Jos. He started this business on 1st February, 2003. The following results relate to his business activities.

	31 March	Profits ₦
13 months ended	2004	390,000
Year ended	2005	420,000
Year ended	2006	600,000
Year ended	2007	550,000

Mr. Goodness had exercised the election rule available under *PITA* 1993 Section 24(d).

Required- determine the assessable profits that will be made based on the above information.

Suggested solution

Mr. Goodness

Computation of Assessment Profits

Normal Basis-

Year of Assessment (Tax Year)	Basis Period	Assessable Profit ₦
2003 (Date of commencement to 31 st Dec.)	1/2/03-31/12/03 (390,000 x 11/13)	330,000
2004 (The 1 st twelve months)	1/2/03-31/1/04 (390,000 x 12/13)	360,000
2005 (<i>PYB</i>)	1/4/03-31/3/04 (390000x11/13+420,000x1/12)	365,000

Ola, C.S. (1985). *Nigerian Income Tax Laws and Practice*. London: Macmillan Publishers Limited.

Ologhodo, C.J. (2007). *Taxation Principles and Practice in Nigeria (A Practical Approach)*. Jos: University Press Limited.

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

Preview from Notesale.co.uk
Page 51 of 166

Ola, C.S. (1985). *Nigerian Income Tax Laws and Practice*. London: Macmillan Publishers Limited.

Ologhodo, C.J. (2007). *Taxation Principles and Practice in Nigeria (A Practical Approach)*. Jos: University Press Limited.

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

Preview from Notesale.co.uk
Page 58 of 166

6.0 TUTOR-MARKED ASSIGNMENT

1. Rejoice Ltd. is a company engaged in the fashion business. It commenced business on 1st September, 2006 and made up accounts as follows:

9 Months ended 30/6/2005
Year ended 30/6/2006

Required- determine any overlapping /gap in basis period for assessing a company, assuming election rule is used.

2. Maigari (Nig.) Ltd. normally makes up its annual accounts on acquired assets as follows:

Date	Assets Purchased	N'Million
31/12/2005	Freehold Premises	15
15/5/2006	Delivery Van	9
30/7/2007	Plant & Machinery (P & M)	6
13/3/2007	Furniture and Fixtures (F&F)	4.5

Required- determine the basis period and compute the capital allowances for all the relevant years.

7.0 REFERENCE/FURTHER READING

CITV Nigerian Tax Guide Statutes. (2002). Lagos: The Chartered Institute of Taxation of Nigeria.

Fasoto, F. (2007). *Nigeria Tax Company*. Lagos: Hosrtosaf Limited.

ICAN Study Pack (2006). *Taxation for Professional Examination I*. Lagos: VI Publishing Limited.

Ndupuechi, T.I.I. (2005). *Taxes and Taxation in Nigeria*. Jos: Dekka Publications Nigeria.

Ola, C.S. (1985). *Nigerian Income Tax Laws and Practice*. London: Macmillan Publishers Limited.

Ologhodo, C.J. (2007). *Taxation Principles and Practice in Nigeria (A Practical Approach)*. Jos: University Press Limited.

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

UNIT 2 TAXATION OF EMPLOYEES AND SOLE TRADERS

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Personal Income Chargeable to Tax
 - 3.1.1 Earned and Unearned Incomes
 - 3.1.2 Determination of Profits or Gains
 - 3.2 Allowable and Non-allowable Deductions
 - 3.2.1 Allowable Deductions
 - 3.2.2 Deductions not Allowed
 - 3.2.2.1 What is Wholly, Reasonably exclusively and necessarily?
 - 3.3 Personal Income Tax Payable
 - 3.3.1 Personal Income Tax Rates
 - 3.3.2 Personal Income Tax Reliefs/Allowances
 - 3.3.3 Other Allowable Deductions
 - 3.4 Methods of Assessing Personal Income-Pay-As-You-Earn (PAYE) System
 - 3.4.1 Residence
 - 3.4.2 Operation of PAYE System
 - 3.4.3 Direct Assessment of Tax
 - 3.5 Minimum Tax and Income
 - 3.5.1 Tax Clearance Certificate
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

1.0 INTRODUCTION

The taxation of employees and sole traders is covered by ITMA and PITA. It falls under the personal income tax system of Nigeria. The collection of personal income tax is vested in the State Board of Internal Revenue (SBIR) of the principal place of residence of self – employed individual and principal place of business of employed individuals. Each SBIR is assisted by its operational arm- the State Internal Revenue Service (IRS), in carrying out its primary duties which include assessment and collection of taxes from individuals resident or working in a state.

This unit, therefore, exposes you to the Pay-As-You-Earn (PAYE) system, earned and unearned incomes of a sole proprietorship business

SELF-ASSESSMENT EXERCISE 3

What do you think is the reason for abolishing wife allowance in 1992?

3.4 Methods of Assessing Personal Income-Pay-As-You-Earn (PAYE) System

P.A.Y.E. as an abbreviation relates to how an employee is assessed to taxation. The assessment is on actual year basis, but operates on monthly basis throughout the year. It can simply be defined as a scheme whereby tax on employees' income is deducted at source by the employer and remitted to the relevant tax authority within 14 days after the end of the month.

3.4.1 Residence

A place of residence means somewhere available to an individual for his/her domestic use in Nigeria, on a relevant day (1st January), which excludes a hotel, rest house or other places at which he is temporarily lodging unless there is no other place available for his use on that day. The definition is contained in schedule 1 of PITA, 1993. Further, it may be necessary to determine a principal place of residence- where an individual resides in more than one place. Principal place of residence (not being both within the same territory) means:

- (a) for an individual whose only earned income is pension- the place where he usually resides;
- (b) for an individual with earned income other than pension- the place nearest to his place of work;
- (c) for an individual with unearned income- the place where he usually resides.

3.4.2 Operation of PAYE System

Employers can apply in writing to a tax authority signifying its intention to operate the scheme. On the other hand, local tax officials- in the course of the existence of a business in an area can bring the issue to the notice of the owners of the business. The relevant tax authority will then issue a notice authorising the employer to deduct tax (from source) from the employees' salaries. Information normally demanded from the employer before registering the company as an operator of PAYE scheme includes the following:

- (a) Name of the company/firm and its certificate of incorporation;
- (b) Number of employees and their names including other relevant information about them;

- (d) Application for foreign exchange or exchange control permission to remit funds outside Nigeria;
- (e) Application for Certificate of Occupancy (C of O);
- (f) Application for award of contracts by government, its agencies and registered companies;
- (g) Application for approval of building plans;
- (h) Application for trade/business license;
- (i) Application for import and export license;
- (j) Application for license as agent;
- (k) Application for pool and gaming license;
- (l) Application for registration as a contractor;
- (m) Application for distributorship;
- (n) Confirmation of appointment by government as chairman or member of public board;
- (o) Stamping of guarantor's form for the Nigerian passport;
- (p) Application for registration of a limited liability company;
- (q) Application for allocation of market or stalls;
- (r) Appointment or election into public office.

Illustration

Alhaji Othman Ahmed is a resident of Lagos State. For tax purposes, the following information is given about him for use in the 2008 tax year:

- he is married with eight children; of which, two have graduated from high school, while the remaining six are still in school;
- he has an aged mother fully under his care; he pays an annual premium of ₦4,000 on a life policy for himself at a capital sum of ₦30,000;
- he is a full-time executive director at Omar Computers Ltd., and therefore declared the following-

I. Rent Received:

		₦
Year ended	31/12/2006	160,000
Year ended	31/12/2007	300,000
Year ended	31/12/2008	440,000

II. Remuneration as a Director:

			₦
Year ended	31/12/2006	160,000 (tax deducted ₦40,000)	
Year ended	31/12/2007	140,000 (tax deducted ₦50,000)	
Year ended	31/12/2008	180,000 (tax deducted ₦60,000)	

UNIT 3 TAXATION OF PARTNERSHIP

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Formation of Partnership
 - 3.2 Computation of Partnership Income
 - 3.2.1 Income of a Partner
 - 3.2.2 Capital Allowances
 - 3.2.3 Resident & Responsible Tax Authority
 - 3.2.4 Loss Relief
 - 3.3 Registration of Partnership Agreement
 - 3.4 Treatment of Changes in Partnership Structure
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

1.0 INTRODUCTION

A partnership is a business organisation where two or more persons pool their resources together with a view to making profit. The business is usually conducted in accordance with certain terms and conditions as agreed to by all the partners. However, where no fixed terms are agreed upon for the period of partnership, then the association is a partnership at will.

According to Soyode & Kajola (2006:229), partnership is a relationship subsisting between two or more persons agreeing to carry on business in common with a view to making profit under some arrangement, for the sharing of the resultant profit or loss for tax purposes. Partnership income is computed in the same way as that of sole trader and company income so as to ascertain the taxable profit for a given year of assessment. In computing the adjusted profit of a partnership, allowable income and deductions according to section 20 of *PITA*, and disallowable income and deductions according to section 2 are all taking into consideration.

In this unit therefore, you will be exposed to admission, retirement/resignation and succession of partnership- so as to understand how to bring out the differences between this form of business and the other forms of businesses.

UNIT 4 COMPANIES INCOME TAX

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Profits Subject to Tax
 - 3.1.1 Taxable or Chargeable Profits
 - 3.1.2 Profits Exempted from Tax
 - 3.1.3 Exemption of Company Profit from Tax by the Federal Executive Council
 - 3.2 The Process of Ascertaining Profits
 - 3.2.1 Allowable Deductions
 - 3.2.2 Non-Allowable Deductions
 - 3.3 Taxable Persons
 - 3.3.1 Powers of the Board (FBIR) to Appoint Agents
 - 3.4 Format for the Computation of Adjusted and Taxable Profits
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

1.0 INTRODUCTION

Company income tax has been distinguished from personal income tax by enacting separate legislation to cater for it. The legislation is known as Company Income Tax Act 1979 (CITA) as amended. The act defines a company, under section 84, as a corporation established by or under any law (such as the Companies and Allied Matters Act (CAMA) 1990) in force in Nigeria-for instance, or elsewhere.

A Nigerian company is distinguished from a foreign company; the former is liable to company income tax on all its profits wherever they arise, whether or not they have been brought into or received in Nigeria. The profits of the latter, on the other hand, shall be deemed to be derived from Nigeria to the extent to which such profits are not attributable to any part of the operations of the company carried on outside Nigeria.

In other words, the profits of a foreign company are taxed to the extent that they are derived from sources within Nigeria. Therefore, this unit shall expose you to the profits that are subjected to tax, ways of ascertaining such profits and persons chargeable to tax.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- describe taxable incomes and profits as specified in the companies income tax act
- itemise allowable and non-allowable deductions in determining adjusted profits for tax purposes
- explain the differences between taxable and non – taxable persons
- discuss the power of the Federal Board of Inland Revenue (FBIR) to appoint an agent for a company who may be asked to pay any tax.

3.0 MAIN CONTENT

3.1 Profits Subject to Tax

Profit can be defined as the surplus of the receipts from the trade or business, over and above the expenditure/expenses necessary for the purpose of earning those receipts. Unless and until you have ascertained that there is such a balance, nothing exists to which the name profit can properly be applied.

In determining whether a particular activity is a trading transaction that gives rise to trading profits, the following factors are given by Arbico/FBIR (1963) in Soyode and Kojola (2006: 284):

- (a) Nature of assets;
- (b) Circumstances of purchase;
- (c) Vocation of taxpayer;
- (d) Number of like transactions;
- (e) The object clause of memorandum and article of association;
- (f) Length of time property was held by the company;
- (g) Circumstance of sale.

3.1.1 Taxable or Chargeable Profits

Section 8 of CITA imposes tax on the profits of any company accruing in, derived from, brought into or received in Nigeria. The taxable profits under this section are those in respect of the following:

- (a) Any
- (b) its gains arising from acquiring or trade or business for whatever period of time such trade or business may have been carried on;
- (c) Dividends, interests, discounts, royalties, charges or annuities;

4.0 CONCLUSION

In this unit, it has been pointed out to you that the taxation of companies as legislated by CITA 1979 prepares tax assessment of incorporated companies. This is done by taking into consideration allowable incomes and expenses and disallowable incomes and expenses on the other hand, so as to ascertain the right profits to be used for tax purposes. Therefore, it is pertinent that you study and understand those allowable and non-allowable items to be able to calculate the correct tax liability for a company- given the appropriate prevailing corporation tax rate for the period.

5.0 SUMMARY

- Factors such as nature of business, circumstances of purchase, vocation of taxpayer, etc. are taken into consideration in determining trading profits
- Profits that are accruing in, derived from, brought into or received in Nigeria are subject to tax assessment in Nigeria
- Profits of registered friendly societies, cooperative societies, ecclesiastical, etc are exempted from tax in Nigeria
- The federal executive council, in formulating of fiscal policies, can exempt any company from all or any of the provisions of the Act
- The process of ascertaining profits of a company starts with the preparation of financial statements followed by the computation of adjusted profit
- Depreciation, general expenses, general donations, general provisions/ reserves are non-allowable deductions in computing adjusted profits
- Computation of adjusted profits can be done by either following the same pattern in which the financial statements are prepared and be eliminating or including some items that are allowed or not allowed (direct method) or adjusting the net profit from that financial statements by adding back the non-allowable expenses and deducting non-allowable incomes and allowable expenses not treated as such.

6.0 TUTOR-MARKED ASSIGNMENT

1. When will it become necessary for the Federal Board of Inland Revenue (FBIR) to appoint an agent for a company?
2. Persuasion (Nig.) Ltd. is a private limited liability company, which has been in business successfully for many years.

UNIT 5 TAXATION OF INCOME FROM TRUSTS, SETTLEMENTS AND ESTATES

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Definition of Terms
 - 3.2 Preparation of Accounts
 - 3.2.1 Responsibility for Preparation of Accounts
 - 3.3 Computation of Income of Trust, Settlement and Estate
 - 3.3.1 Special Deductions for a Trust, Settlement and Estate
 - 3.3.2 Apportionment of Computed Income
 - 3.4 Basis of Tax Assessment
 - 3.4.1 Where Aggregate Apportionment Exceeds Computed Income
 - 3.4.2 Double Taxation Relief
 - 3.4.3 Appeals
 - 3.4.4 Loss Relief and Capital Allowances
 - 3.4.5 Format for Computing Distributable Income
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

1.0 INTRODUCTION

Settlements, trust and estate administrations have given rise to issues of accounting and taxation. Usually, the administrators of deceased properties are expected to give detailed account of his stewardship to all the beneficiaries and tax authorities to their satisfaction. Hence, tax authorities use these accounts to assess the income of the deceased person arising from either the disposal or valuation of the property or assets.

In carrying out the tax assessment, individual beneficiaries pay tax according to their benefits (in terms of the property/assets) and not collectively from the entire property. This unit demonstrates to you the preparation of accounts of this nature and the apportionment of computed income arising there-from.

Fees	<u>40,000</u>	<u>100,000</u>
Amount due to beneficiaries		810,000
Less executor's discretionary payments		<u>90,000</u>
Net computed income to be shared		<u>720,000</u>

(2) Distribution of computed income

	Wife	1 st son	2 nd son	3 rd son	Daughter
	£	£	£	£	£
Discretionary payment	-	30,000	30,000	30,000	-
Share of computed income	<u>108,000</u>	<u>180,000</u>	<u>180,000</u>	<u>180,000</u>	<u>72,000</u>
(1.5: 2.5: 2.5: 2.5:1)					
Amount to be taxed	<u>108,000</u>	<u>210,000</u>	<u>210,000</u>	<u>210,000</u>	<u>72,000</u>
(Using Graduated Tax Rate in 2010)					

SELF-ASSESSMENT EXERCISE 3

Critically explain the basis of tax assessment for a settlement.

4.0 CONCLUSION

In this unit, you have learnt that taxation of income of trusts, settlements and estates is covered by *PITA* 1993 and the taxing system is similar to that of individual employees and business persons. Income accruing to beneficiaries is added to their other individual incomes less personal reliefs and allowances. Therefore, any net amount is taxed using graduated tax rates.

For the executor, trustee or administrator, any residue left in his/her hands after meeting all the requirements of any will and other basic expenses will be taxed using graduated tax rates but without deducting any personal relief or allowance. Therefore, tax assessment of this nature should be studied along side with taxation of individuals and partnerships besides executorships and trust law and accounts as the three intertwined.

5.0 SUMMARY

In this unit, you have been taught the following:

- The concepts trust, settlement and estate refer to some kind of benefits which are arranged, kept or left by a person for the benefit of some other person(s)
- A trustee or an executor is expected to prepare annual or terminal accounts for the consumption of all beneficiaries and the relevant tax authorities
- In trust, settlement and estates, income assessment, expenses of the trustee or executor plus any annuity of fixed annual amount

are deducted from the income in addition to other allowable deductions as specified for individual taxpayers

- A trustee or executor has discretion to make any payment that is not captured in the will as he/she may deem necessary
- Tax liability is paid by individual beneficiaries on the income accruing to them
- A trustee or executor must pay tax on any balance of money left with him/her after all necessary payments, net balance can be re-distributed.

6.0 TUTOR-MARKED ASSIGNMENT

1. A trustee has discretion to make any payment that is not captured in the will as he/she deems necessary. Explain this statement.
2. Tunde lived in Ogun State for many years and died in 2007. He was survived by a widow and three children – two sons and one daughter.

Tunde left a will appointing Dele Tola as his executor to administer his estate. Dele obtained the necessary powers under the will and has, since 2007, been administering the estate.

The executor's account showed the following income and expenses during the year ended 2008:

Income:		₦
Rent income received from properties		1,500, 000
Dividends paid by Foodlinks Ltd. (gross)		750, 000
Expenses:		
Rates and ground rents		170, 000
Commission on rent collected		75,000
Repairs and upkeep of properties		185,000
Wages of staff		120, 000
Executor's professional fees		80, 000

Under the will Dele has discretion to make an ex-gratia payment in case of need to any of the beneficiaries, but should not exceed ₦400, 000 in any one year. During the year ended 31 December 2008, Dele paid ₦180, 000 to each of the two sons, in equal amounts in this connection. The beneficiaries' share of the estate is determined by the will to be in the following ratios:

Wife	2
1 st son	3
2 nd son	3
Daughter	<u>2</u>
	<u>10</u>

Payment Period (Including Moratorium)	Grace Period	Proportion of Interest Exempted from Tax
Above 7 Years	Not less than 2 years	100%
5 – 7 Years	Not less than 18 Months	70%
2 – 4 Years	Not less than 12 Months	40%
Below 2 Years	Nil	Nil

3.2.1 Details to be Disclosed by Banks for Agricultural Loans

Section 7 (A), Part II of CITA, LFN 1998 No. 18 states that “where a bank grants a loan to a company, it shall disclose to the board the following information:

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

Until a bank fulfils these requirements, it shall not be entitled to tax free interest received on agricultural loans.

SELF-ASSESSMENT EXERCISE 2

What is the rationale behind exempting interest on agricultural loans from tax in Nigeria?

3.3 Format for Computing Excess Profit

	N	N
Taxable profit		xx
Less normal profit:		
40% of Paid-up share capital	xx	
20% of Statutory reserve	xx	
20% of General reserve	xx	
20% of Long-term liabilities	<u>xx</u>	<u>xx</u>
Excess profit		<u>xx</u>

With effect from 1989 year of assessment, excess profit tax became applicable to all the companies operating in Nigeria. Apart from the fact that the rate was changed, there was the introduction of a minimum normal profit of N6 million. Thus, the format became as follows:

5.0 SUMMARY

In this unit you have been exposed to the following:

- The meaning and essence of double taxation relief;
- The two reliefs available in the Nigerian context are the Commonwealth income tax relief and the double taxation agreement;
- Under the Commonwealth income tax relief, computation of *CR* and *NR* is undertaken; and usually, $\frac{1}{2}$ *NR* is compared to *Cr*, whichever is lower is accepted for the relief
- Under the DTA, the relief covers any personal income tax, companies income tax that has been paid by any Nigerian taxpayer to a foreign country in which this agreement has been made with;
- Nigeria has commonwealth income tax relief agreement with all Commonwealth countries.

6.0 TUTOR-MARKED ASSIGNMENT

1. Goodness Kim, a resident of *USA* had the following income in 2005.

	Income N	Tax N
Income (Nigeria)	50,000	4,000
Nigeria (USA)	80,000	7,500

You are required to calculate his double taxation relief in the relevant tax year.

2. Mr. Pam Bwos is an employee of a Canadian company based in Toronto; in an attempt to widen its market scope, the company decided to second Mr. Bwos to Nigeria in January 2008- to open the Lagos office on the following terms.
 - (a) He is entitled to receive an equivalent amount of ~~N~~560, 000 and this is subjected to Nigerian income tax;
 - (b) The tax paid on his income in Canada amounted to ~~N~~120, 000; and
 - (c) He has four children and two dependents staying with him in Nigeria.

You are required to compute the credit to be given to Mr. Bwos on his income made in Canada assuming a double taxation agreement between Nigeria and Canada.

7.0 REFERENCES/FURTHER READING

CITN Nigerian Tax Guide Statutes (2002). Lagos: The Chartered Institute of Taxation of Nigeria.

Fasoto, F. (2007). *Nigeria Tax Company*. Lagos: Hosrtosaf Limited.

ICAN Study Pack (2006). *Taxation for Professional Examination I*. Lagos: VI Publishing Limited.

Jhingan, M. L. (2004). *Public Finance and International Trade* (2nd Ed.). Delhi: Vrinda Publications Ltd.

Ndupuechi, T.I.I. (2005). *Taxes and Taxation in Nigeria*. Jos: Decca Publications Nigeria.

Ola, C.S. (1985). *Nigerian Income Tax Laws and Practice*. London: Macmillan Publishers Limited.

Ologhodo, C.J. (2007). *Taxation Principles and Practice in Nigeria* (A Practical Approach). Jos: University Press Limited.

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

Preview from Notesale.co.uk
Page 166 of 166