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Capital Allowance: Legal Framework for Efficient Administration under the Companies Income Tax Act

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Capital Allowance: Legal Framework for Efficient Administration under the *Companies Income Tax Act* Cap.C21 Laws of the Federation of Nigeria, 2004

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ABSTRACT

There are challenges in the administration of capital allowances in company income taxation which include: language of the tax statute; lack of professionals in tax administration; lack of good record keeping; capacity and poor working conditions; tax evasion and avoidance. This paper highlights how a number of companies manipulate the several provisions of the law. Some companies write off so much in order to declare loss, while they evaluate obsolete stocks worth nothing to reduce the amount of their incomes available for inefficiencies. This creates a deficient tax system with lower revenue being generated. The paper recommends that the system of capital allowance in respect of companies should be designed to stimulate economic development in the country and for this reason generous allowances should be given to industrial building, structures, mining and agriculture, in other to increase investment and production.

KEY WORDS: Company, Capital Allowance, Taxation, Administration, Development.

1.0 INTRODUCTION

Taxation of companies started in 1912 which was followed by a series of amending Act. It was in 1961 that a comprehensive system of company taxation was introduced. The *Companies Income Tax Act (CITA)*[1] deals with the taxation of the income of all limited liability and public companies in Nigeria except those of individuals. The Act brought together the provisions of the *Income Tax Act* and the *Income*

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[1] No. 22 of 1961.

Tax Administration Act. The Act, as amended, ceases to have effect with respect to tax on income or profits of companies for all years of assessment beginning after the March 31, 1977.

The *Companies Income Tax Decree*[2] is a codification of all the Companies Income Tax enactment since 1961. This Decree has been amended by the *Finance (Miscellaneous Taxation Provisions) Decree*.[3]

It is worth noting that the *CITA* 1961, as amended by subsequent legislation remained the law on the taxation of companies until 1990 when it was consolidated with all the various amendments into *CITA*.[4] Furthermore, all the amendments to *Companies Income Decree* No. 28 of 1979 were codified into Cap. 60 of the Laws of the Federation of Nigeria and it took effect retrospectively from April 1, 1977. Cap. 60 has been amended by the *Finance (Miscellaneous Taxation Provisions) Decree*.[5]

A landmark transformation took place in 1993 when the *Finance (Miscellaneous Taxation Provisions) Decree*[6] established the Federal Inland Revenue Service (FIRS) as the operational arm of Federal Board of Inland Revenue (FBIR); the Act also created the office of the executive chairman of the Board.

The CITA[7] is a federal law administered by the FIRS. The present CITA is an act to consolidate the provisions of the *Companies Income Tax Act* 1961 and to make other provisions relating thereto. All the

[2] No 28 of 1979.

[3] Which include No. 28 of 1979; No. 4 of 1985; No. 12 of 1987; No. 31 of 1989; and No. 55 of 1989.

[4] Cap. 60, Laws of the Federation of Nigeria (LFN), 1990.

[5] No. 21 of 1999; No. 63 of 1991; No. 3 of 1993; No. 30 of 1996; No. 31 of 1996 and O. 32 of 1996.

[6] No. 3 of 1993; No. 30 of 1996; No. 31 of 1996 and No. 32 of 1996 Cap. C21 LFN, 2004 (Amended in 2007).

[7] Cap. C21, LFN, 2004 (amended to 2007); *Commissioner for Finance* v *Ukpong* [2000] 4 NWLR (Part 653) 363 CA.

amendments to *CITA* Cap. 60 were reflected in Cap. C21 - the current law and it has been updated to include the May 2007 amendment. The *FIRS (Establishment) Act*[8] repealed Part I of Cap. 60, likewise the FBIR was dissolved.

Company income tax systems generally tax the net profits of companies. These profits are those which are above what is required by companies to continue their business. Ascertaining and computation of companies and their profit for taxation involve tax administration and the deduction of certain allowances. One of such allowances comes in the nature of capital allowance. These are allowances deducted in respect of expenses made by the company in the course of its business to lessen the total tax liability of companies to stimulate development in certain sectors of the economy. This helps companies reduce their legal and financial responsibilities to sustain their businesses. It is against this background that a critical analysis of capital allowance in the administration of companies' income taxation in Nigeria is examined. This is done by examining rules for calculating profits of companies for income tax purposes, deduction allowable and not allowable, administration of company income taxation in Nigeria, critical analysis of capital allowance, conclusions and remarks.

2.0 RULES FOR CALCULATING PROFITS OF COMPANIES FOR INCOME TAX PURPOSES

Following the United Kingdom's general principles for the computation of taxable income, the taxable profits of a company are arrived at in Nigeria by allowing certain expenses to be set off against the company's receipt during the year of assessment as provided for under *Section 24 of Companies Income Tax Act* which provides that,

> save where the provisions of subsection (2) or (3) of section 14 or 16 of this Act apply, for the purpose of ascertaining the profit or loss of any company at any period, from any source chargeable with tax under this Act, there shall be deducted all

[8] The *FIRS (Establishment) Act* was passed into law on April 16, 2007.

expenses for that period by that company wholly, exclusively, necessary and reasonably incurred in the production of those profits including but without otherwise expanding or limiting the generality of the foregoing:

a. Any sum payable by way of interest on any money borrowed and employed as capital in acquiring the profits;
b. Rent for that period and premiums, the liability for which was incurred during that period in respect of land or building occupied for the purpose of acquiring the profits, subject, in the case of residential accommodation occupied by employees of the company, to a maximum of 100% of the basic salary of employees;
c. In the case of any property holding company:
    i. Expenses attributable to the maintenance of the property;
    ii. 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:
    i. Salary, wages or other remuneration paid to the senior staff and executives;
    ii. Cost to the company of any benefit or allowances provided for the senior staff and executives, which shall not exceed the limit of the amount prescribed by the collective agreement between the company and the employees and approved by the Federal Ministry of employment, labour and productivity, prices and income board as the case may be.
e. Any expenses incurred for repair of premises, plant machinery of fixtures employed in acquiring the profit or for the renewal, repair or alteration of any implement utensils, or articles so employed;
f. Bad debt incurred in the course of a trade or business proved to have become bad during the period for which the profits are being ascertained, and doubtful debts to the extent that they are respectively estimated to the satisfaction of the Board to have become bad during the said period not withstanding that such bad or doubtful amount overdue were due and payable before the commencement of the said period, provides that:

i. Where in any period a deduction under the paragraph is to be made as respect any particular debt, and a deduction has in any previous period been allowed either under *Companies Income Tax Act 1961* or this Act in respect of the same debt. The appropriate reduction shall be made in the deduction to be made for the period in question.
ii. All sums recovered during the said period on account of amounts previously written off or allowed either under the *Companies Income Tax Act* 1961 or this Act in respect of bad or doubtful debts shall for the purpose of this Act be deemed to be profits of the trade or business of that period;
iii. It is proved to the satisfaction of the Board that the debts in respect of which a deduction is claimed either were included as a receipt of the trade or business in the profits of the year within which they were incurred, or were advances not falling within the provisions of the trade or business in the profit of the year within which they were incurred or were advances not falling within the provisions of paragraph (e) of section 23 (1) of this Act made in the course of normal trading or business operations;

g. Any contribution to a person, provident or other retirement benefit fund, society or scheme approved by the Joint Tax Board under the powers conferred upon it by paragraph (g) of section 85 of the *Personal Income Tax Act,* subject to the provision of the fourth schedule to the Act and to any conditions imposed by that Board and any contribution other than a penalty made under the provisions of any enactment establishing a National Provident Fund or other retirement benefit scheme for employees throughout Nigeria.
h. In the case of the Nigeria Railway Corporation such deductions as are allowed under the provisions of the authorized deduction (Nigeria Railway Corporation) Rules, which rules shall continue in force for all purposes of this Act.
i. In the case of profits from a trade or business, any expenses or part thereof:
   i. The liability for which was incurred during that period wholly exclusively, necessarily and reasonable 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 purposes of such trade or business and which is specifically referable to the period of which the profits are being ascertained; and
iii. The expenses provide to the satisfaction of the Board to have been incurred by the company on research and development for the period including the amount of levy paid by it to the National Science and Technology Fund which is not deductible under any other provisions of this section.

j. Such other deduction as may be prescribed by the minister by any rule.

Under section 31 of the *CITA,* the income so calculated from each source is called "assessable profits". The "total profits" on which tax is charged is the sum of the assessable profits from all sources for the year of assessment less any set-off for losses, increased or decreased by any charges and allowances in respect of capital expenditure.

It has been provided under Section 30(1) (a) and (b) of the *CITA* that where it appears that for any year of assessment the business of a company produces either no assessable income or an assessable income which in the opinion of the FBIR is less than might be expected to arise from that business, the company may be charged on such fair and reasonable percentage of the turn-over of the relevant trade or business as the board may determine. If, however, the company is not a Nigerian company, then it may be assessed and charged to tax on such fair and reasonable percentage of that part of the turn-over of the trade, or business attributable to the operations carried on in Nigeria as the Board may determine. This is an anti-tax avoidance provision.

Items that determine the final figure as the taxable profits of a company are provided in Section 24 of *CITA.* In computing the profit of a company, only expenses "wholly, exclusively, necessarily and reasonable" incurred for Companies Income Tax purposes are deductible. The choice of these words as said before is presumably intended to have a narrowing effect on the deduction claimed (by qualifying the list of allowable deduction). But strictly speaking, it is doubtful whether in practice it has achieved this objective. It would appear that only expenses of a blatantly extravagant nature or expenses incurred which are unreasonable and are for the private benefit of directors and their associates that can in practice be readily disallowed. This is because there is no common standard as to what is necessary or reasonable. Moreover, it has been argued that no item of expenditure produces or earns income, as expenditure is an outgoing not an incoming item.[9] However, it appears that the purpose of such a provision under discussion is to confine deduction to direct and unavoidable outlays. Although, it may be difficult to achieve that objective in practice, it is nonetheless necessary.

3.0 ALLOWABLE AND DISALLOWABLE DEDUCTION

Section 24 of the *CITA* has listed the expenses that are allowable. However, the Act does not only enumerate deductions which are allowable, but it also mentions those which are not. Thus Section 27 of the *CITA* provides that notwithstanding any other provisions of this Act, no deductions shall be allowed for the purposes of ascertaining the profits of any company in respect of:

a. Capital repaid or withdrawn and any expenditure of a capital nature;
b. Any sum recoverable under an insurance or contract of indemnity;
c. Taxes on income or profit levied in Nigeria or elsewhere, other than tax levied outside Nigeria on profit which are also chargeable to tax in Nigeria where relief for the double taxation of those profit may not be given under any other provisions of this Act;
d. Any payment to a savings, widows and orphans, pension, provident or other retirement benefits fund, society or scheme except as permitted by paragraph (g) of section 24 of the Act;
e. The depreciation of any assets;
f. Any sum reserved out of profit, 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

[9] 1960 British Tax Review 1964 at 125 p. 126.

determination of the amount to represent the amount at any expenses deductible under the provisions of that section, the liability for which was irrevocably incurred during the period for which the income is being ascertained;

g. Any expense of any description incurred within or outside Nigeria for the purpose of earning management fees unless prior approval of an agreement giving rise to such management fee has been obtained from the minister;
h. Any expense whatsoever incurred within or outside Nigeria as management fee under any agreement entered into after the commencement of his section except to the extent as the minister may allow;
i. Any expense of any description incurred outside Nigeria for and on behalf of any company except of a nature and to the extent as the board may consider allowable.[10]

Although under the Act, there are specific allowable deductions and inadmissible deductions; these are only examples serving as guidelines to the type of expenses which cannot be deducted. This explains why the relevant statutory provisions have employed the word "include" in enumerating the list of the said allowable and disallowable deductions. This would then have adversely affected the operations of companies, as there are widely varying circumstances of different companies giving rise to various expenses, which may be necessary for earning profit or for the purposes of the grade of the companies or not but which would not necessarily be foreseen by the legislation.

Section 25 of the *CITA* provides for deductible donations. Section 26 of the Act provides for deduction for research and development while Section 28 provides for waiver or refund of liability or expenses. Therefore, if a deduction has been allowed to a company under the provision of Section 24 or 25 of this Act in respect of any liability or any expense, which is subsequently waived or released; or an expense which is refunded, the amount of the liability or expense is treated as taxable profits of the company at the date of the waiver, release or refund was made or given.

[10] Section 8 of the *Finance (Miscellaneous Taxation Provisions No. 2) Decree* No. 55 of 1989.

Section 31 of the Act provides for ascertainment of total profits from all sources. Losses incurred by a company in any trade or business during a preceding year of assessment are deductible in computing total profits of the company for income tax purposes.[11] There is however a proviso to this rule, which says that under no circumstances shall aggregate deductions from assessable profits or income in respect of the losses exceed the amount of such losses.[12] In other words, the losses to be deducted must be the actual losses incurred during the preceding year of assessment.

The proviso also states that the amount deductible for any year of assessment in respect of a loss incurred during a preceding year is limited to the amount of assessable profits included in the total profits for that year and derived from the source in connection with the loss that was incurred.[13] If the company needs it immediately, relief under this method is required. For example, where the profit of the company is dropping failing relief by this means, the loss may be carried forward for four (4) years and set off against the particular source which sustained the loss, thereby ensuring that efficiency in business is maintained. Thus, there is a strong case for preventing the set-off of losses from any source against income from another source as it has been rightly argued:[14]

> .. to allow a loss from one source to be set-off against income from other sources has the effect of encouraging the continuance of moribund or unproductive business at the expense of the revenue and ultimately of taxpayers in general. A business which is not moribund will be able to absorb its own losses incurred in a bad trading year against the profits of future year.

[11] s. 31(2)(a) *CITA.*

[12] *ibid.* s. 31(2)(a)(i).

[13] *ibid.* s. 31 (2)(a)(ii).

[14] Nicholas Kaidor, "India Tax Reform – Report of a Survey" (1956) *India Ministry of Finance,* p. 82.

Relief under the carry-forward method will be used where the profits are increasing more. So, if the rates of tax are likely to be raised, the period for carrying forward unabsorbed losses are limited to 4 years after which any unabsorbed losses are indeed desirable. This prevents perpetuation of a company and therefore brings efficiency in business.[15]

Exception to the time-limit in carrying forward losses is given under section 31(3) of the Act to companies engaged in agricultural trade or business. They can carry forward their losses indefinitely until they have been completely wiped off. As can be seen from the above, the chief advantage of the loss relief is that it has the effect of reducing assessable income of a year or future year.

4.0 ADMINISTRATION OF COMPANY INCOME TAXATION IN NIGERIA

The administration of company income taxation which involves tax assessment and tax collection from companies is under the management of the Federal Inland Revenue Service (FIRS),[16] to raise and collect tax and account for all taxes collected in the manner prescribed by the minister of finance; to deal with all claims, objections and appeals of tax payers; to assess all limited liability companies throughout Nigeria regardless of their operational basis; and to impose penalty for unpaid taxes and dispose of property taken as security in satisfaction of any such tax or penalty.[17]

In *D.S.A Agricultural Company Ltd* v *Lagos State Internal Revenue Board,*[18] it was held that only the FIRS can recover taxes under the *CITA*.

[15] *Supra,* note 13.

[16] Section 3 of the *FIRS (Establishment) Act 2007*. This function was formerly under the care of the FBIR.

[17] Bimbo Atitola, "Reflection on the *Federal Inland Revenue Service (Establishment) Act* 2007" (December 2010) Vol. 1 No. 4 *Business Law Review, Nigeria Journal of Business and Corporate Law,* p. 1.

[18] (2006) CLRN 111 at 115.

In administration of the *CITA*, FIRS does the following:

a. Determines companies liable to taxation:[19] Company income taxation affects only incorporated companies issued with a certificate of incorporation.[20] In *Victor Manyo Ndoma – Egba* v *Chukwuogor,*[21] the court stated that the legally admissible evidence by which the incorporation of a company can be proved is the certificate of incorporation. The Act also divides companies into Nigerian companies and foreign companies.[22] In Nigeria, any of these companies may be sued for tax liability in its name. In *Ritz Pampenfabrik GMBH and Co K.G* v *Tecno Continental Engineers Nigeria Limited,*[23] the appellant, a foreign company, incorporated in Germany and not registered under the laws in Nigeria claimed that it has no legal capacity in a suit brought against it. The court held that a foreign company not registered in Nigeria can sue or be sued in its name in Nigeria. According to the court, suing or being sued in Nigeria does not mean carrying on business in Nigeria for which the company must be registered in Nigeria. Also in *Bank of Baroda* v *Iyalabani Co Ltd,*[24] the court held that corporations that owe their creations to a foreign law should also by all means be granted the right to sue and be sued in Nigerian courts.

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[19] s. 105 *CITA*.

[20] Under Sections 10 and 47 of the *CITA*, Companies liable to tax are identified by their incorporation number.

[21] (2004) 6 NWLR (pt 869) 382; *NNPC* v *Latin Investment Ltd and Anor* (2006) 2 CLRN 1.

[22] Section 11(9) of the *CITA*. A foreign company is a company or corporation (other than a corporation sole) established by or under any law in force in any territory or country outside Nigeria).

[23] (1999) 4 NWLR (pt 589) 298; *Edicomsa International Incorporated and Associates* v *Citel International Estates Ltd* (2006) 2 CLRN 139.

[24] (2002) 7 SC (pt. 11) 1.

Section 13 of the *CITA* underscores this division by providing that a Nigerian company is liable to pay income tax on all its profits accruing in Nigeria wherever they have arisen and whether or not they have been brought in or received in Nigeria. For a foreign company, its profits are deemed to be derived in Nigeria and chargeable to tax if:

i. That company has a fixed base of business in Nigeria to the extent that the profit is attributable to the fixed base.[25]
ii. It does not have such a fixed base in Nigeria but habitually operates trade or business through a person in Nigeria authorized to conduct on its behalf or on behalf of some other companies controlled by it or which have controlling interest in it; or habitually maintains a stock of goods or merchandise in Nigeria from which deliveries are regularly made by a person on behalf of the company to the extent that the profit is attributable to the business or trade or activities carried on through that person.[26]

In *Halliburton West Africa Ltd* v *FBIR*,[27] the court held that *CITA* draws a distinction between a Nigerian company and a non-Nigerian company and empowers the Board to assess and charge a non-Nigerian company, which has a fixed base in Nigeria, a fair and reasonable percentage of the part of the turnover attributable to that fixed base liable to corporate tax. The issue of fixed base came up for determination in the case of *Shell International Maatschappij B* v *FBIR*.[28] The Respondent in this case assessed the tax due from the Appellant

[25] A fixed base shall not include facilities solely used for the storage or display of goods or merchandise or for the collection of information.

[26] Other prerequisites are: if that trade or business or activities involve a single contract for surveys, deliveries, installations or construction, the profit from that contract; and where the trade or business or activities is between the company and another person controlled by it or which has controlling interest in it and conditions are made or imposed between the company and such person in their commercial or financial relations which in the opinion of the Board is deemed to be artificial or fictitious, so much of the profits adjusted by the Board to reflect arm's length transaction, A.A. Ani, *Companies Income Tax and Petroleum Profit Tax* 2nd ed. (University Press Ltd: Ibadan, 1989), p. 30.

[27] (2006) 7 CLRN 18. Before now in *Aluminium Industries Aktien Gesellschaff* v *FBIR* (1971) NMLR 339, the Supreme Court held that a foreign company can escape taxation on its profits it made on investment in Nigeria.

[28] (2004) 3 NWLR (pt. 895) 46.

for the year 1993 at 10% of the Appellant's turnover. The Appellant, aggrieved with the assessment appealed to the Appeal Commissioners who upheld the respondent's assessment. Still aggrieved, the Appellant appealed to the Federal High Court where he contended that the tax imposed should be at 7½% which is a compromise arrangement existing between Shell Petroleum Development Company Nigeria Limited and the Appellant (since the Appellant is not liable to taxation in Nigeria because it is a foreign company). The Federal High Court dismissed the appeal on the ground that the Appellant though a foreign company was liable to taxation because it has a fixed base in Nigeria.

Dissatisfied, the Appellant filed an appeal at the Court of Appeal contending that it does not have a fixed base in Nigeria but only comes into the country to render services to Shell Petroleum Development Company Nigeria Limited. During such periods, it was the offices of Shell and also arranged with shell on the cost of sharing billing system. This meant that it has no fixed base so as to render its income from the services subject to tax in Nigeria. Dismissing the appeal, the court held that cost sharing billing system as a basis of determining liability to taxation is alien to Nigerian tax law, and that fixed base connotes, in the context of *CITA*, a place where a company has carried on its business over a long period of time notwithstanding that it is not the owner of the place. Since the Appellant has always used the facilities of Shell for its activities in Nigeria, in the circumstance, the Appellant has a fixed base at Shell in Nigeria.

b. Determines taxable profits which involve the following:
   i. Ascertainment of company profits.
   ii. Procedural requirements.

Section 9 of the *CITA* provides that companies are assessed to tax for each year of assessment upon its profits accruing in, derives from,[29] brought into or received in Nigeria at the rate specified in section

[29] In the case of *Commissioner of Taxation* v *Kirk* (1948) WACA 25, the words "derived from" was held to be synonymous with "accruing in" and both were meant to refer to "acquired; obtained or got". Also in *Toufic* v *Commissioner of Income Tax* (1935) 19 TC 390, the words "accruing in" and "received in" were held to appear to be a clear territorial limitation to Nigeria.

40(1). Profits of companies arise from certain categories of incomes. They include:

i. Profits from a trade or business: Consideration is usually to the nature of assets, circumstances of purchase, vocation of taxpayers, the number of like transaction, object clause of the company's memorandum, articles of association, length of time property was held by the company and the circumstances of sale.[30] Trading profits area arrived at by allowing expenses incurred in producing them to be set off against trading receipt during the year of assessment. To ascertain the quantum of profits to be assessed to tax, the documents usually considered are trading receipts, trading expenditure allowed by the statute and, where necessary, an adjustment of losses and other allowances.[31]

ii. Profits from investment income: The main items for investment income are dividends, interest, discount and annuities. In all these, taxes are chargeable in the profits or gains arising in respect thereof after the necessary deductions have been made. For dividends, it is taxed under section 18 *of CITA* at the rate of 10% and generally, the material factor is the time the dividend is paid to a shareholder.[32] Tax is payable on

[30] *Arbico Ltd* v *FBIR* (1965) NCLR 150; in *Leeming* v *Jones* (1930) 1 KB 279. The court held that unless a transaction for purchase or resale of property could be brought within the nature of trade, it could not be assessed to income tax at all.

[31] Even at this, it is still difficult to show how those items are to be treated in the ascertainment of taxable profit. A lot of times, resort is had to accounting principles and judicial pronouncements.

[32] *Section 80 CITA,* G.A Olawoyin and F. Osundahansi, "Tax Treatment of Dividends" in A. Akande and M.A Ajomo (ed). *Tax Law and Tax Administration in Nigeria* (Nigeria Institute of Advanced Legal Studies (NIALS): Lagos, 1991) p. 223.

Sometimes problems are encountered in the taxation of dividends in Nigeria as dividends are subjected to double taxation. This problem has been attributed to the inadequacies resulting from non-disclosure and poor record keeping by both taxpayers and the revenue authority. Tax exemption is made on certain dividend. Section 19 *CITA* exempts dividend of a pioneer company. This is given interest under section 78 of *CITA* at the rate of 10%. Discount ordinarily means a deduction of a sum from the value of money. The profit upon discount transaction is assessed to income tax so also is profit on annuity at 10%.[33]

Taxes are also paid in respect of profits on rents and services under section 79 *of the Companies Income Tax (Rates etc. of Tax Deducted at Source (Withholding Tax) Regulations) 1977*[34] which provides that withholding tax on management service is 10%, commission is 10%, technical service is 10%, consultancy and professional services is 10% while contract and agency arrangement and all aspect of building construction are 5%. Other categories of income are any source of annual profits or gains not falling within the preceding categories, fees, dues and allowances for services rendered and profits from acquisition and disposal of short term money instruments like Federal Government securities, treasury bills or bonds and debenture certificates.

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as a tax incentive to stimulate economic development in Nigeria. Under the *Industrial Development (Tax Relief) Act* a company with a pioneer certificate established for the purpose of an industry declared to be a pioneer industry is exempted from companies income tax for the first three years. This is applicable from the commencement of production where its qualifying capital expenditure is at least ₦50,000.00 in the case of a Nigerian company and ₦150,000.00 in the case of any other company. Also Section 18 of *CITA* grants an investment allowances of 35% for expenditure incurred on dividend, interest, rent or royalty derived from a company incorporated in Nigeria by another company from a country outside Nigeria and brought in through government approved channel such the Central Bank of Nigeria, any bank or other corporate being appointed by the minister as authorized dealer under the *Foreign Exchange (Monitoring and Miscellaneous Provisions) Acts*, section 32 *CITA*. Profits from dividends received by foreign companies shall be subject to withholding tax only. This is to prevent double taxation of such income already subjected to tax in another country this is however effective where there is a double taxation arrangement between the countries involved and Nigeria.

[33] Annuity is the result when an income is purchased with a sum of money. An annuity confers a right to receive fixed periodic payments either for life or for a term of years.

[34] In Cap. C21 LFN 2004.

Procedural requirements[35] include: basis period of assessment, assessable profits, add deductible and non-deductible allowances. The basis period of assessment is the income of the year of assessment – the previous year's income, 1st January – 31st December.[36] Every company is required to file return of income for every year of assessment. The return of income shall state the audited account, amount of profits, capital allowances, computed tax and a declaration in assessment shall be the currency in which the transaction is made.[37]

Under assessable profits, the Board may accept or refuse returns made.[38] Where the Board accepts the return, it shall proceed to compute the assessable profits of the company as follows:

a. The assessable profits of any company for the first year of assessment in which the trade or business commences is the amount of profits of that year. For the second year of assessment, the assessable profit is the amount of profits for the first twelve months of the trade or business and for the third and subsequent

[35] A violation of these procedural requirements usually elicits the sanctions of the law. In FBIR v Associated Farmers (unreported Suit No. FRC/L/74), the defendant who failed to comply with the request to deliver a true and correct statement in writing containing his profit was held to be indebted to the tune of the amount stated as tax against him. Also in FBIR v Manilla Industrial Security Services (unreported Suit No. FRC/PH/37/75) where the FBIR could not establish its case because the Board violated the procedural rules by not serving on the defendant company the necessary notices before a tax claim was raised, the Court held that the Boards action will fail since they did not comply with the provisions of the Act. I. A Ayua, *Nigeria Tax Law* (Spectrum Law Publishing: Lagos, 1996) pp. 163 – 170; O. Sholeye and D Asada "The Legal Regime of Corporate Taxation in Nigeria: An Appraisal for Management" (1996) 2 *CJLJ* 72.

[36] An accounting date can be changed where it is made up of accounts of a company up to a date other than 31st December.

[37] Sections 52 and 55 *CITA*.

[38] Where however, the Board refuses to accept the return made by any company, it shall assess the company based on its best judgment. Best judgment is also applied where a company does not file a return.

years, the assessable income is the profit of the preceding year.[39]

b. Where a company's business is discontinued, its assessable income for the year of assessment in which the cessation occurs will be the full amount of the income of that year. Any money received by the company before it ceased to carry on business which ought to be part of its profit shall be subject to tax. Where a company's business or trade cannot be easily ascertained or where however, it appears that for any year of assessment the business of the company produces no assessable income or one which in the opinion of the FIRS is less than might be expected to arise from that business, the company may be charged on such fair and reasonable percentage of the turn-over of the relevant trade or business as the FIRS may determine.[40]

c. Where there is a sale or transfer of a trade or business, section 25(9) of the *FIRS (Establishment) Act* provides that the FIRS must be satisfied that both companies are members of a recognized group of companies, and that there is no substantial difference in the nature of the business or trade and, thereafter, it may direct that the commencement and cessation provisions should not apply. This means that assets of the business will be treated as having being acquired at their written down values and that the transferee company should not be entitled to any initial allowances in respect of the assets transferred. Instead, it should be regarded as having received all the intra-group transfer of trades and business. However, the FIRS may require either company affected by such direction to guarantee or give security for payment in full of all tax due or to become due and may impose such conditions as it deems fit. However the amount

[39] The company however has an option to elect that assessment for the second and third years be adjusted to the actual profit of the year. See section 25 *CITA*.

[40] Section 26 (1*) FIRS (Establishment) Act.*

> of any loss not yet allowed, the sold company shall be deemed to be loss to the reconstituted company.[41]

5.0 CAPITAL ALLOWANCE

The basic reason for the grant of capital allowance is to encourage those who trade or do business to develop, modernize and equip their businesses and to compensate them by showing that part of the asset used in the business operation is actually used up. The Second Schedule to the *CITA* provides for deductions from the company's income in the form of capital allowances, in respect of capital expenditure incurred for the purposes of any company's business.

Accordingly, the applicable rules are contained in the 2nd Schedule to *CITA*. The rates are essentially similar if not identical to business taxation under *Personal Income Tax Decree,* 1993.

The current rates of capital allowances for Companies Tax purpose are:

TABLE I

INITIAL ALLOWANCE SCHEDULE 2

PARAGRAPH 6

[41] Such loss is deductible provided it is proven not to be as result of any damage occasioned by Military operations or connected with Civil War and a claim for such loss is made within 3 years of the reconstituted company's incorporation. Also, under section 29(2), no merger, takeover, transfer or restructuring of the trade or business of a company shall take place without the Board's Direction and payment of tax under the Capital Gains Tax Act Cap. C1 LFN 2004; see F.E Nlerum, "Reflections on Capital Allowance in the Administration of Companies Income Taxation in Nigeria" (October – December 2009) Vol. 1 No. 2, *Apogee Journal of Business Property and Constitutional Law (AJBPCL)* pp. 15 – 20.

NO	QUALIFYING EXPENDITURE IN RESPECT OF	RATE %
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 Fittings Expenditure	25

TABLE II

ANNUAL ALLOWANCE SCHEDULE 2

PARAGRAPH 7

NO	QUALIFYING EXPENDITURE IN RESPECT OF	RATE %
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 – Other	25
12.	Qualifying Research and Development	Nil

From the above table, it will be seen that the system of capital allowances in respect of companies has been designed to stimulate development in certain sectors of the economy. For this reason, generous allowances have been given for industrial buildings or structures, mining and agriculture to increase agricultural investment and production and so on.

In the past, capital allowances were computed on the written down value of the assets. As from 1985, the straight-line method of computing annual allowances has been introduced. In other words, under this method, the cost of an asset less initial allowances is written off in equal installment every year.

The importance of capital allowance to a company has been chiefly to accelerate the process of amortization of capital expenditure incurred for the purposes of the business. The effect of this is the enhancement of the cash flow position of the company, with respect to levy on dormant companies.

Capital allowance is tax relief available to companies or businesses that invest in asset such as machinery, fixtures and fittings. It is a tax allowance that takes account of the depreciation of certain types of business assets. It is reduction in the amount of company tax payable representing the depreciation charge on the asset during that period and is offered as incentive for investment in large scale project that increase a country's production capacity and stock of capital.[42]

Capital allowances include pre-production cost and come in the nature of "write off" as depreciation associated with the quality of equipment and other assets used by the company. Depreciation could be by percentage called "percentage depletion" or by number of years depreciation called "amortization". By these, all monies invested are written off as an ordinary loss against the ordinary income over the years incurred.

The percentage of the capital assets cost allowed as capital allowance must be in respect of expenses wholly, exclusively and necessarily incurred by the company in the course of its business during the accounting period in which it was purchased. Where these expenses are incurred, the amount allowed shall represent the actual amount expended by the company.[43]

To qualify for the grant of capital allowances, the capital expenditure must be incurred in the basis period of assessment, be for the purposes of the trade or business and a qualifying expenditure. Qualifying expenditure includes:

a. Qualifying Plant Expenditure – Capital expenditure on plant, machinery and fixtures;

b. Qualifying Pipeline and Storage Expenditure – Capital expenditure incurred on pipelines and storage tanks;

[42] Capital Allowance available at http://www.businssdictionary.com/definition/capital-allowance.html (accessed 31 July 2017)

[43] Capital Allowances available at http://www.ato.gov.au/business/pathway.asp?pc=001/009/021 (accessed 31 July 2017). The overall idea is to bring the allowances into line with actual expenditure.

c. Qualifying Building Expenditure – Capital expenditure incurred on the construction of buildings, structures or works of permanent nature;

d. Qualifying Expenditure must not include any expenses that have been allowed as a deduction in arriving at adjusted profits. All expenditure in the nature of tangible or intangible assets incurred before the commencement of any company's first accounting period must be capitalized as qualifying expenditure.[44]

A number of provisions have been made for calculating the decline in value of depreciating assets. The system of calculation comprises the following stages:

The first stage is an initial or first year allowance of a certain percentage of the capital expenditure. In this stage, certain categories of expenses are treated as intangible costs which are written off at certain percentage.

The second stage is writing down allowance during the life of the asset.

The third stage is a balancing allowance or charge at the end of the life of the asset.[45]

The provision for capital allowances for different assets which companies may use remains linked to the historical cost of the property and a major consideration in determining the benefits of the provisions is their timing over an investment's life.

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[44] Prior to 1971 January 1 qualifying drilling expenditure included the cost of acquisition of information relating to the existence and extent of petroleum deposit and intangible exploration drilling cost. With the promulgation of the Petroleum Profit Tax (Amendment) Act 1973 and with effect from May 1 1971, the cost of acquisition of information was no longer treated as qualifying expenditure claimed as a capital allowance deduction.

[45] Balancing allowance is made to the company where it disposes asset at a loss and where the asset produces gains the company is charged for the balance by the Federal Inland Revenue Service. This is called balancing charge.

6.0 CONCLUSION

In summary, tax computation under CITA in relation to capital allowance entails the following procedures:

i. Profits or gains are taxed while losses are allowed to be relieved against profits;

ii. Preceding year basic rule is applicable generally in taxation of companies. Exceptions are at commencement or cessation of business and also in capital gains tax computation;

iii. A company liable to tax under the Act is any company or corporation (other than a corporation sole) established by or under any law in force in Nigeria or elsewhere;

iv. A Nigerian company is any company incorporated under *Companies and Allied Matters Act* (CAMA);

v. The global profits of Nigerian companies are taxable in Nigeria irrespective of whether or not they are brought into or received in Nigeria. This is however, subject to the exemptions available under double taxation arrangements;

vi. Dividends, rents, interest or royalties subject to certain exemptions are liable to deduction of 10% withholding tax;

vii. Allowable deductions are expenses which are wholly, exclusively, necessarily and reasonably incurred in the production of the profits of the company while disallowable expenditure is that which is not allowable deduction as listed in *section 27 of CITA*;

viii. It is only carry forward loss relief that is available to a company. Current year loss relief is not available. There is no relief available for any terminal loss;

ix. A company that has been granted a pioneer certificate is exempted from tax for the first three years from its production day. The tax-free period can be extended;

x. Income tax is at the rate of 30%.

Companies' income taxation which permits capital allowance deduction recognized as a relief given to companies in respect of wastage assets that are used up or consumed in the course of carrying on business is practiced in many countries. Though various percentages exist over the years, quite a number of companies manipulate the several provisions. They write off so much in order to declare loss while they valuate obsolete stocks worth nothing to reduce the amount of their incomes available for taxation. This attitude is detrimental for the generation of revenue through taxation.

The paper therefore recommends that the system of capital allowance in respect of companies should be designed to stimulate economic development in the country and for this reason generous allowances should be given for industrial building, structures, mining and agriculture, in other to increase investment and production.