

TAX AND COMPLIANCE MATTERS FOR COMPANIES AND OTHER SMALL & MEDIUM SCALE ENTERPRISES IN NIGERIA

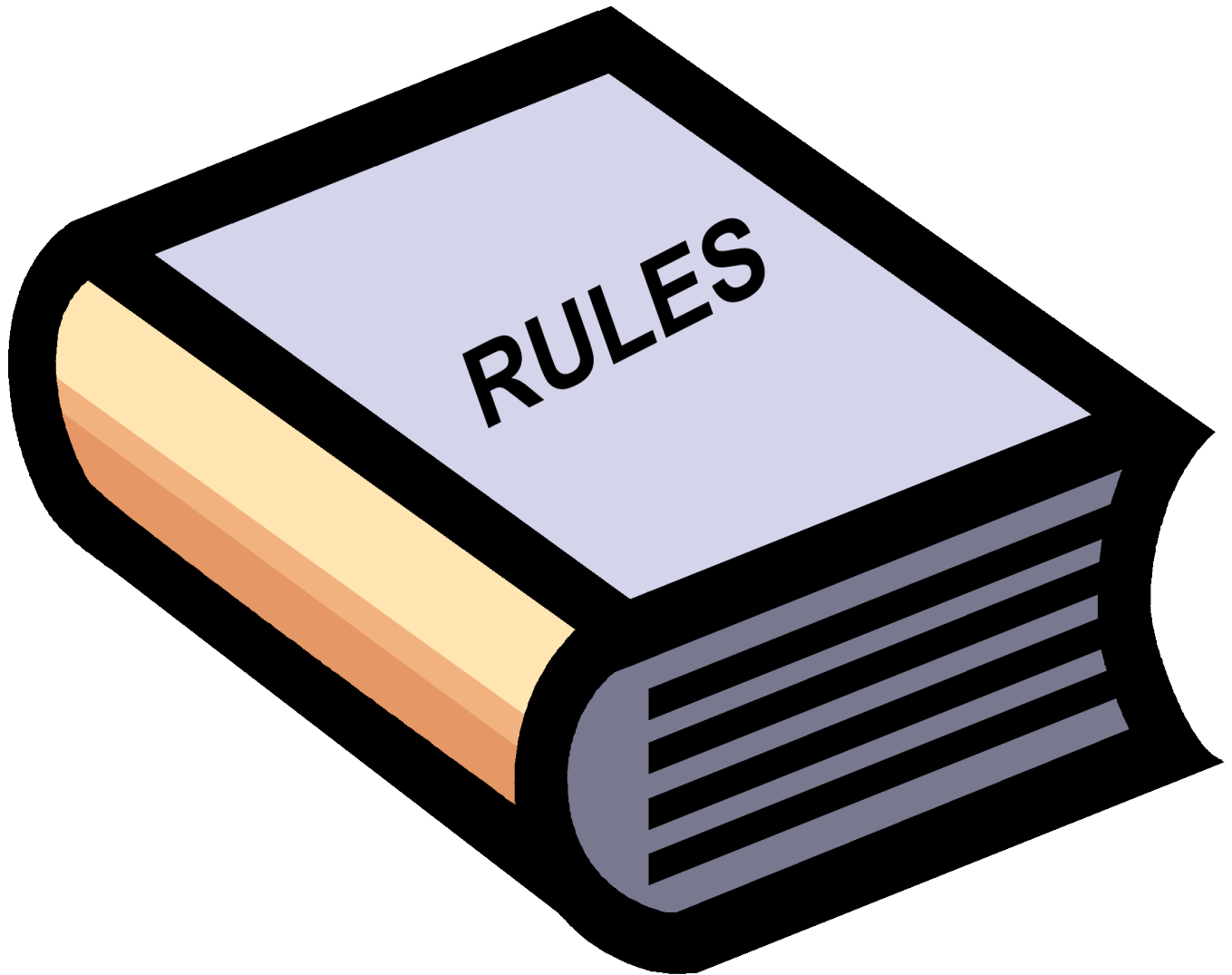


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TAX LAWS

Tax legislation is the act or process of enacting tax laws and the body of laws that provide for the levying of taxes and tax administration.

The following are the existing tax legislation in Nigeria, as at 2016:

- Associated Gas Re-Injection Act
- Capital Gains Tax Act
- Companies Income Tax Act
- Deep Offshore and Inland Basin Production Sharing Contracts Act
- Tertiary Education Trust Fund Act
- Federal Inland Revenue Service (Establishment) Act
- Income Tax (Authorised Communications) Act
- Industrial Development (Income Tax Relief) Act
- Industrial Inspectorate Act
- National Information Technology Development Act
- Nigerian Export Processing Zones Act
- Nigeria LNG (Fiscal Incentive Guarantees and Assurances) Act
- Oil and Gas Export Free Zones Act
- Personal Income Tax Act
- Petroleum Profits Tax Act
- Value Added Tax Act
- Stamp Duties Act
- Taxes and Levies (Approved List for Collection) Act
- Casino Act

Reviews, amendments and modifications to tax legislations are continuous, evolving with global best practices and in keeping with the local socio-economic realities. The review and amendment of tax legislation is in keeping with the formal tax amendment process as provided for in the Nigerian constitution.

As a result of the need to continuously review and amend tax legislation, the following tax laws were amended in the respective years indicated hereunder:

- Companies Income Tax Act - 2007
- Value Added Tax Act- 2007
- Personal Income Tax Act – 2011

The Petroleum Industry Bill (PIB) is presently before the National Assembly and when passed into law will replace the Petroleum Profits Tax Act. In addition, there is an on-going process to overhaul all existing tax laws and the Service has consequently initiated the Tax Law Redrafting Project to achieve this.

The Public will be notified as soon as any further change to any or all of the tax laws is concluded.

TAXES AND LEVIES COLLECTED BY THE FEDERAL INLAND REVENUE SERVICES (FIRS)

- Petroleum Profits Tax (PPT)
- Companies Income Tax (CIT)
- Value Added Tax (VAT)
- Personal Income Tax (PIT):
for non-residents, members of Armed Forces, Police and Officers of Nigerian Foreign Service
- Withholding Tax (WHT) Tertiary Education Tax (EDT)
- Capital Gains Tax (CGT)
- National Information Technology Development Levy (NITDL)
- Stamp Duties (SD)
- Pre-operation Levy (POL)
- Small Company Rates
- Minimum Tax
- Consequences of Non-Compliance with the Tax Laws

HIGHLIGHTS OF PETROLEUM PROFITS TAX (PPT)

- Petroleum Profits Tax is imposed on income of companies in petroleum operations (Upstream)
- The tax is governed by the Petroleum Profits Tax Act, Cap P13 LFN 2004 (as amended)
- Companies liable to PPT are not liable to Companies Income Tax (CIT) on the same income
- Rates of the Tax
 - ✓ For Joint Venture and Sole Risk Companies in their first five years of operation, the rate of tax is 65.75% of chargeable profit
 - ✓ For Joint Venture and Sole Risk Companies in operation for more than five years, the rate of tax is 85% of chargeable profit
 - ✓ For a Company under Production Sharing Contract, the rate of the tax is 50% of chargeable profit
- Education Tax is a deductible expense in computation of assessable profits of petroleum companies
- Returns of estimated tax for each accounting period are to be submitted not later than two months after the commencement of the accounting period
- Final returns for each accounting period shall be filed within five months after the expiration of the accounting period
- The penalty for late submission of a return is a penalty of N10,000 and a further sum of N2,000 for each and every day the failure continues
- Any instalment of tax not paid on the due date shall attract a penalty of ten percent (10%) and interest at prevailing minimum rediscount rate of the CBN and if payment is not made within one month, enforcement shall take place.

HIGHLIGHTS OF COMPANIES INCOME TAX (CIT)

CIT is governed by Companies Income Tax Act (CITA), Cap C21, LFN 2004 (as amended)

- CIT is a tax imposed on profit of a company from all sources
- The rate of tax is 30% of total profit of a company
- Some profits are exempted from CIT provided they are not derived from trade or business activities carried out by the company e.g. Cooperative society
- Every company shall pay provisional tax not later than three (3) months from the beginning of each year of assessment which is an amount equal to the tax paid in the previous year of assessment. This is a payment on account of the year's income tax assessment
- The due date for filing returns:
 - ✓ For newly incorporated companies, within eighteen (18) months from the date of incorporation or not later than six (6) months after the end of its accounting period, whichever is earlier
 - ✓ For existing companies, within six (6) months from the end of the accounting year.
- A self- assessment filer may (by application) commence payment of instalment before due date but such instalment cannot extend beyond two months after the due date
- Companies in operation for more than four (4) years are liable to minimum tax except those specifically exempted by the tax law Minimum Tax under CITA arises where:
 - ✓ A company makes a loss
 - ✓ A company has no tax payable
 - ✓ Tax payable is less than minimum tax
- Withholding Tax (WHT) is a method used to collect Income Tax in advance
- WHT is deducted at varying rates ranging from 5% to 10% depending on the transaction
- The due date for filing WHT returns is 21st day of every succeeding month
- Penalty for late filing of returns is ₦25, 000 for the first month it occurs and ₦5, 000 for each subsequent month the failure continues

HIGHLIGHTS OF PERSONAL INCOME TAX (PIT)

- Personal Income Tax is guided by the Personal Income Tax Act Cap P8 LFN 2004 (as amended)
- The tax is imposed on income of Individuals, Corporate sole or body of individuals, Communities, Families and Trustees or Executors of any settlement
- An individual is entitled to a Consolidated Relief Allowance of N200,000 or 1% of gross income whichever is higher plus 20% of gross income
- The rate of the tax ranges from 7% to 24%, depending on the amount of chargeable income
- Individuals are subject to minimum tax of 1% of gross income where the income is less than N300,000 per annum
- The tax is administered by FCT/States Internal Revenue Service (IRS) in respect of their residents
- The tax is also administered by FIRS on non-residents, members of the Armed Forces, Police, Officers of Nigerian Foreign Service
- The due date for filing returns of the tax is 31st March of every year
- The due date for remittance of PAYE is 10th day of every succeeding month
- An employer shall file return of emoluments and tax deducted from the employees in the preceding year not later than 31st January of every year

A person who fails to file a return shall be liable on conviction to a fine of N5,000 and a further sum of N100 for every day during which the failure continues or imprisonment of six (6) months or both Any employer who fails to file a return, shall be liable on conviction to a penalty of N500,000 for body corporate and N50,000 in the case of individual

HIGHLIGHTS OF VALUE ADDED TAX (VAT)

VAT is governed by Value Added Tax Act Cap V1, LFN 2004 (as amended)

- VAT is a consumption tax paid when goods are purchased and services rendered
- It is a multi-stage tax
- VAT is borne by the final consumer
- All goods and services (produced within or imported into the country) are taxable **except** those specifically **exempted** by the VAT Act
- VAT is charged at a rate of 5%
- Some goods and services such as non-oil exports are zero rated
- All taxable persons are required to file VAT monthly returns not later than 21st day following the month of transaction
- All MDAs and Oil & Gas Companies serve dual roles as taxpayers and agents of VAT collection and are also required to file monthly returns not later than 21st day following the month of transaction
- Offences include:
 - ✓ Failure to register
 - ✓ Failure to charge VAT
 - ✓ Failure to issue tax invoice
 - ✓ Failure to remit VAT charged
 - ✓ Failure to file returns

HIGHLIGHTS OF TERTIARY EDUCATION TAX (EDT)

It is now governed by Tertiary Education Trust Fund (Establishment, Etc) Act 2011

- Imposed on all companies registered in Nigeria
- The rate of the tax is 2% of assessable profit
- The due date for filing returns is the same as that of CIT and PPT
- The tax is an allowable deduction in computing the assessable profits of companies engaged in petroleum operations(Upstream)
- Funds derived from the tax are used for rehabilitation, restoration and consolidation of tertiary education in Nigeria by the Tertiary Education Trust Fund (TETFUND)
- The amount in the Fund is distributed between Universities, Polytechnics and Colleges of Education in the ratio 2:1:1 respectively
- First offence against the Act is liable on conviction to a fine of ₦1, 000,000 or a term of 6 months imprisonment or both. Second and subsequent offences attract a fine of ₦2, 000,000 or a term of 12 months or both

HIGHLIGHTS OF STAMP DUTIES (SD)

It is governed by Stamp Duties Act, CAP S8, LFN 2004 (as amended)

- It is administered on written documents only
- It is administered by both FIRS, FCT and respective States Internal Revenue Service (IRS)
- FIRS assesses and collects duties on documents executed between a company and an individual, group or body of individuals
- FCT and States Internal Revenue Service (IRS) assess and collect duties on documents executed between persons or individuals
- A Commissioner of Stamp Duties adjudicates on the amount of duty payable on instrument (Adjudication is the process of determining the correct amount of duty payable on an instrument) Forms of Stamp Duties
- ✓ Fixed Duties- duties that do not vary with consideration, e.g. duties on payment receipt, proxy forms, guarantor forms, etc.
- ✓ Ad-valorem- Duties that vary with consideration, e.g. duties on Share Capital, Deed of Assignment, Debenture, Bills of Exchange, etc.
- Methods of stamping: Embossing with die, Affixing adhesive stamp and Affixing postage stamp in lieu of adhesive stamp
- Duties are paid before documents are executed

HIGHLIGHTS OF CAPITAL GAINS TAX (CGT)

It is governed by Capital Gains Tax Act, Cap C1 LFN 2004 (as amended)

- Capital Gains Tax is charged at a flat rate of 10% of chargeable gains
- All chargeable assets are subject to Capital Gains Tax when disposed at a gain, except those specifically exempted by the Act
- Chargeable assets include all forms of property whether or not situated in Nigeria
- The due date for filing return and payment of the tax is the same as in Companies Income Tax
- Allowable expenditure for the purpose of CGT includes fees, commissions or remunerations paid for professional services and cost of transfer
- Gains exempted from CGT include those arising from disposal of decorations awarded for valour and gallant conduct, life insurance policy, Nigerian government securities, stock and shares etc.
- Gains shall not be chargeable if it accrues to some organizations provided the gain is not derived from any disposal of any asset acquired in connection with any trade carried on by the organization, e.g.
 - ✓ An ecclesiastical, charitable or educational institution of a public character
 - ✓ Statutory registered friendly society
 - ✓ Cooperative society registered under Cooperative Societies Law of any State
 - ✓ Trade union registered under the Trade Unions Act

HIGHLIGHTS OF NATIONAL INFORMATION TECHNOLOGY DEVELOPMENT LEVY (NITDL)

The Levy is governed by National Information Technology Development Agency Act, CAP N156 LFN 2004 (as amended)

- The Levy is charged at the rate of 1% of Profit before tax
- The Levy is charged on specified companies with turnover of ₦100 million and above
- Companies liable to pay the Levy are:
 - ✓ GSM Service Providers and all Telecommunication Companies
 - ✓ Cyber Companies and Internet Providers
 - ✓ Pension Managers and Pension Related Companies
 - ✓ Banks and other Financial Institutions and
 - ✓ Insurance Companies
- The due date for filing return and payment of the Levy is the same as in Companies Income Tax
- Failure to pay the Levy at due date shall attract a penalty of ten per cent (10%) and interest at prevailing minimum rediscount rate of the CBN and if payment is not made within one month, enforcement shall take place.

HIGHLIGHTS OF PRE-OPERATION LEVY

- A company that is yet to commence business after six months of its incorporation but desires to obtain a Tax Clearance Certificate (TCC) shall pay the levy as follows:
 - ₦20,000 for the first year and
 - ₦25,000 for each subsequent year

HIGHLIGHTS OF SMALL COMPANY RATES

- For small companies in the manufacturing industry and wholly export-oriented companies with turnover not exceeding NGN 1 million, the CIT rate is reduced to 20% in the first five calendar years of operation.

MINIMUM TAX

- Minimum tax is payable by companies having no taxable profits for the year or where the tax on profits is below the minimum tax. However, companies in the first four calendar years of business, companies engaged in the agriculture business, or companies that have foreign equity capital of at least 25% are exempt from minimum tax.
- Minimum tax payable is calculated as follows:
 - * Where the turnover of the company is NGN 500,000 or below, minimum tax is the highest of:
 - * 0.5% of gross profits
 - * 0.5% of net assets
 - * 0.25% of paid-up capital, or
 - * 0.25% of turnover of the company for the year.
 - * Where the turnover is higher than NGN 500,000, minimum tax is the highest of the calculations listed above plus 0.125% of turnover in excess of NGN 500,000.

CONSEQUENCES OF NON-COMPLIANCE WITH TAX LAWS

Include:

- Administrative tax assessments
- Denial of Tax Clearance Certificate (TCC)
- Imposition of fines, penalties, interest and/or imprisonment
- Recovery of tax through appointed agents
- Sealing of business premises
- Search and Seizure
- Distrain
- Prosecution
- Loss of trust and confidence by Tax Authority
- Increased compliance cost
- Increased administration cost

TAXES/LEVIES COLLECTED BY STATE INLAND REVENUE SERVICES (SIRS)

- Personal Income Tax (for taxpayers who reside in various states of federation)
- Capital Gains Tax (Individuals only at state level)
- Stamp Duties (individuals at state level)
- Business Premises levy
- Hotel Occupancy and Restaurant Consumption Tax
- Withholding Taxes (individuals only at state levels)
- Unincorporated businesses and business names paid their income taxes to the SIRS

LEVIES COLLECTED BY LOCAL GOVERNMENT

- Shops and Kiosks rate
- Domestic Animal license fees
- Tenement rates
- On and Off liquor licence
- Slaughter slab fees
- Marriage, birth and death registration fees
- Market taxes and levies excluding any market where the state finance is involved
- Motor Park Levies
- Cattle tax payable by farmers
- Naming of street registration fee excluding those in the State capital
- Wrong Parking Charges
- Bicycle, Truck , Canoe , Wheel barrow and Cart fee other than mechanically propelled trucks
- Merriment and Road Closure levy
- Custom Burial Ground permit fees
- Religious places establishment permit fees
- Signboard and Advertisement permit fees
- Signboard and Advertisement permit fees
- Public Convenience, Sewage and effuse disposal fees.

COMPLIANCE WITH PENSION REFORM ACT 2014

- Section 2 (3) Every employees of an organisations with 3 or less than employees as well as self-employed persons shall be entitled to participate under the scheme (contributory pension scheme) in accordance with guidelines issued by the Commission.
- Section 4 (1) the rates of monthly contribution shall be in the following percent (%)
 - ✓ a minimum of 10% by the employer
 - ✓ a minimum of 8% by the employee
 - ✓ the remittance of the contributions shall not be later than 7 working days from the day the employee is paid is her/salary.
- In addition to Section 4 (1) , every employer have shall maintain a Group Life Insurance Policy in favour of each employee for a minimum of three times the annual total emolument of the employee and the premium shall be paid not later the date of commencement of the cover.
- Every employee to whom this Act applies shall maintain an account referred to as “Retirement Savings Account” (RSA) in his/her name with any Pension Fund Administrator (PFA) of his/her choice. (Section 11 [1]).

COMPLIANCE WITH THE INDUSTRIAL TRAINING FUND (ITF)

LIABILITY TO CONTRIBUTE TO INDUSTRIAL TRAINING FUND

- ITF ACT SECTION 6 (1 – 3)
- **1.** Every employer having either 5 or more employees in its establishment, or having less than 5 employees but with a Turnover of N50m and above per annum, shall, in respect of each calendar year and or the prescribed date, contribute to the Fund one per centum of its total annual payroll.
- **2.** Any Supplier, contractor or consultant bidding or soliciting contracts, businesses, goods and services from any Federal Government Ministry, Department, Agency, commercial, industrial and private entity shall fulfil the statutory obligations of its employees with respect to payment of Training Contribution to the Fund.
- **3.** Any liable organization, public or private including companies situate in the Free Trade Zone requiring approval for expatriate quota and/or utilizing custom services in matters of export and import, must show proof of compliance with this Act in respect of payment of training contribution of its employees and all regulatory agencies of the Federal Government shall ensure compliance with Section 6(1) – (3) of this Act.

COMPLIANCE WITH BUREAU OF PUBLIC PROCUREMENT (BPP)

- All Federal Government Contractors, Consultants and Service Providers are required to registered with the National Database of Federal Contractor, Consultant, and Service Provider website of BPP. Once registered, such contractor/consultant/service provider will be issued a copy of Interim Registration Report (IRR) as evidence of compliance with the requirement.
- Some state governments in Nigeria have their public procurement laws.

COMPLIANCE WITH NIGERIA SOCIAL INSURANCE TRUST FUND (NSITF)

The NSITF is the body saddled with the responsibilities of implementing the Employee's Compensation Act (ECA) 2010.

- **The Employee's Compensation Act 2010 ("The Act")** -which repeals the Workmen's Compensation Act Cap W6 Laws of the Federation of Nigeria, 2004 -is designed for an open and fair system of guaranteed and adequate comprehensive provisions for payment of compensation to employees who suffer from occupational diseases or sustain injuries arising from accident at workplace or in the course of employment.

- **Scope and Application:** The Act is applicable to all employers and employees in the public and private sectors in the Federal Republic of Nigeria. [Section 2 (1)]. It however excludes any member of the armed forces of the Federal Republic of Nigeria [Section 2 (3)].

- **The Nigeria Social Insurance Trust Fund Management Board** ("The Board ") shall have the power to implement the Act and Employee' Compensation Fund ("the Fund") established under Section 56 of the Act. 2.3

- There shall be credited into the "Fund" all moneys, funds or contributions by employers for adequate compensation to employees or their dependants for any death, injury, disability or disease arising out of or in the course of employment [Section 56 (1)]. 2.4 The Nigeria Social Insurance Trust Fund (NSTIF) which has the power to implement the Act is a parastatal/ agency in the Federal Ministry of Labour and Productivity.

- **Employers' Contribution to the Fund:** *Every employer shall, within the first 2 years of the commencement of the Act, make a minimum monthly contribution of 1.0 per cent (1%) of its total monthly payroll [Section 33 (1)]. The "Board" shall also from time to time by regulations prescribe the categorization of the risk factors of each class or sub-class of industry , sector or work place to which an employer belongs and the amount of contributions to be made into the "Fund" [Section 33 (2)].*

Sources: compiled and written by Finite Risk Advisors Limited with additional sources from FIRS; ITF, PENCOM, NSITF

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