

PERSONAL INCOME TAX ACT, NO. 104, 1993

• Laws • Subsidiary Legislation •

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CHAPTER P8

PERSONAL INCOME TAX ACT

An Act to impose income tax on individuals, communities and families and on executors and trustees; and to provide for the assessment and collection and administration of the tax.

[1993 No. 104.]

[25th August, 1993]

[Commencement.]

PART I

Imposition of tax and income chargeable

1. Imposition of tax

There is hereby imposed a tax on the income—

- (a) of individuals, communities and families; and
- (b) arising or due to a trustee or estate,

which shall be determined under and be subject to the provisions of this Act.

[1996 No. 30.]

2. Persons on whom tax is to be imposed

(1) Tax of an amount to be determined from the Table set out in the Sixth Schedule (in this Act referred to as “income tax”) shall be payable for each year of assessment on the total income of—

[Sixth Schedule.]

(a) every individual other than persons covered under paragraph (b) of this subsection or corporation sole or body of individuals deemed to be resident for that year in the relevant State under the provisions of this Act; and

(b) the following other persons, that is—

(i) persons employed in the Nigerian Army, the Nigerian Navy, the Nigerian Air Force, the Nigerian Police Force other than in a civilian capacity;

(ii) officers of the Nigerian Foreign Service;

(iii) every resident of the Federal Capital Territory, Abuja; and

(iv) a person resident outside Nigeria who derives income or profit from Nigeria.

Individuals

(2) In the case of an individual, other than an itinerant worker and persons covered under paragraph (b) of subsection (1) of this section, tax for any year of assessment may be imposed only by the State in which the individual is deemed to be resident for that year under the provisions of the First Schedule to this Act and in the case of persons referred to in subsection (1) (b) of this section, tax shall be imposed by the Federal Board of Inland Revenue. [First Schedule.]

Itinerant workers

(3) In the case of an itinerant worker, tax may be imposed for any year by any State in which the itinerant worker is found during the year:

Provided that—

(a) in an assessment for any year upon an itinerant worker credit shall be given against the tax payable, but not exceeding the amount thereof, for any income tax already paid by him to any other tax authority for the same year; and

(b) collection of so much of any tax imposed in a territory on an itinerant worker for a year of assessment as remains unpaid on the itinerant worker leaving that territory during that year shall remain in abeyance during his absence from that territory, and if he returns to that territory having during his absence paid tax in some other territory for that year, credit shall be given against any unpaid tax in the first-mentioned territory, but not exceeding that unpaid amount, for the tax paid in that other territory.

Communities

(4) In the case of a village or other indigenous communities, tax may be imposed for any year only by the law of the territory in which that community is to be found and the tax may be charged on—

(a) the estimated total income of all its members;

(b) the estimated total income of those of its members whose income it is impracticable in the opinion of the relevant tax authority to assess individually; or

(c) the amount of any communal income which, in the opinion of the relevant tax authority in relation to such community, it is impracticable to apportion with certainty between its members.

Families

(5) In the case of income of a family recognised under any law or custom in Nigeria as families income, in which the several interests of individual members of the family are indeterminate or uncertain, tax may be imposed only by the territory in which the member of that family who customarily receives that income in the first instance in Nigeria usually resides.

Trustees

(6) In the case of income arising to a trustee of any settlements or trusts, or estates or to an executor of any estate of a deceased person, tax may only be imposed by the territory of which the tax authority is the relevant tax authority in relation to such settlement, trust or estate and to the extent provided in the Second Schedule to this Act. [Second Schedule.]

(7) Nothing in this section shall be construed as imposing liability to tax on the personal emoluments of any person serving as other rank and accordingly any other enactment or law imposing tax on the income of individuals shall not apply:

Provided that where any other income accrues to a person serving as other rank (not being income by way of personal emoluments) that income shall be liable to tax under this Act or under any relevant enactment or law.

(8) In this section—

“other rank” has the meaning assigned thereto by the Armed Forces Pensions Act; and [Cap. A23.]

“personal emoluments” means wages or salaries and includes allowances, gratuities, superannuation or pension schemes and any other income derived solely by reason of employment as other rank.

3. Income chargeable

(1) Subject to the provisions of this Act, tax shall be payable for each year of assessment on the aggregate amounts each of which is the income of every taxable person, for the year, from a source inside or outside Nigeria, including, without restricting the generality of the foregoing—

(a) gain or profit from any trade, business, profession or vocation, for whatever period of time such trade, business, profession or vocation may have been carried on or exercised;

(b) any salary, wage, fee, allowance or other gain or profit from employment including compensations, bonuses, premiums, benefits or other perquisites allowed, given or granted by any person to an employee other than—

(i) so much of any such sums as may be admitted by the relevant tax authority to represent reimbursement to the employee or expenses incurred by him in the performance of his duties, and from which it is not intended that the employee should make any profit or gain;

(ii) medical or dental expenses incurred by the employee;

(iii) the cost of any passage to or from Nigeria incurred by the employee;

(iv) any sum paid in respect of the maintenance or education of a child if any provision of this Act provides that any sum received by the employee during a year of assessment shall be deducted from the personal reliefs to be granted to him for the next following year;

(v) so much of any amount of rent the employee is treated as being in receipt equal to the annual amount deemed to be incurred by the employer under section 4 of this Act;

(vi) so much of any amount of rent the employee is treated as having received under the provisions of section 5 of this Act;

(vii) so much of the amount of rent subsidy or rent allowance paid by the employer, to or on account, for the employee not exceeding N100,000 per annum; [1999 No. 30.]

(viii) the amount not exceeding N15,000 per annum paid to an employee as transport allowance; [1999 No. 30.]

(ix) meal subsidy or meal allowance, subject to a maximum of N5,000 per annum; [1999 No. 30.]

(x) utility allowance of N10,000 per annum; [1999 No. 30.]

(xi) entertainment allowance of N6,000 per annum;

(xii) leave grant, subject to a maximum of ten per cent of annual basic salary; [1999 No. 30.]

(c) gain or profit including any premiums arising from a right granted to any other person for the use or occupation of any property;

(d) dividend, interest or discount;

- (e) any pension, charge or annuity;
- (f) any profit, gain or other payment not falling within paragraphs (a) to (e) inclusive of this subsection.

(2) For the purpose of this section—

- (a) “allowance” includes any sum paid or payable in respect of expenses and any sum put by an employer at the disposal of an employee and paid away by the employee;
- (b) “income” includes any amount deemed to be income under this Act;
- (c) the gains or profits arising from a right granted to any other person for the use or occupation of property under any lease or assignment thereof, being rent paid or expressed to be paid in advance, shall be deemed to accrue to the recipient from day to day over the period for which such rent has been paid:

Provided that where the period exceeds five years, the whole of the rent so paid or expressed to be paid in advance shall be treated as accruing evenly from day to day over the five years commencing on the first day of that said period;

- (d) “employment” includes any service rendered by any person in return for any gains or profits;
- (e) “dividend” means—
 - (i) in relation to a company not being in the process of being wound up or liquidated, any profits distributed, whether such profits are of a capital nature or not, including an amount equal to the nominal value of bonus shares, debentures or securities awarded to the shareholder; and
 - (ii) in relation to a company that is being wound up or liquidated, any profits distributed, whether in money or money’s worth or otherwise, other than those of a capital nature earned before or during the winding up or liquidation.

4. General provisions as to valuation of benefits

(1) Where an employer incurs any expense in the provision of any benefit or perquisite in accordance with section 3 (1) (b) (vi) of this Act, other than the provision of living accommodation to which section 5 of this Act relates, the following provisions shall apply—

- (a) in any case where any assets which continue to belong to an employer is used wholly or partly in the making of such provisions, he shall be deemed to incur annual expenses in connection therewith of an amount equal to five per cent of the amount expended by him in acquiring the asset, but if that amount cannot be so ascertained, five per cent of the market value of the asset at the time of the acquisition, as determined by the relevant tax authority;
- (b) in a case where any sum by way of rent or hire is payable by the employer in respect of any such asset, he shall be deemed to incur an annual expense in connection with the making of such provisions equal to the annual amount of the rent or hire expended by him on the asset; and
- (c) in any case, the employer shall be deemed to incur annual expense in connection with the making of such provisions equal to the annual amount expended thereon by him.

(2) The employee shall be treated as being in receipt (in addition to any other emolument) of emolument equal to the annual amount so deemed to be incurred by the employer under subsection (1) of this section reduced by so much (if any) of the annual expense as is made good to the employer by the employee.

(3) The provisions of subsections (1) and (2) of this section shall not apply to any expenses incurred by an employer—

(a) in connection with the provision of meals in any canteen in which meals are provided for the staff generally or of luncheon vouchers for his employees if those vouchers are not assignable by an employee to whom they are issued;

(b) in the provision of any uniform, overall or other protective clothing;

(c) where those expenses are reasonable removal expenses which may or may not include a temporary subsistence allowance incurred by the employer by reason of a change of the employee's employment which requires such employee to change his place of residence, and the employee shall not be treated as being in receipt of any remuneration in respect of the allowance.

(4) A reference in this section to expenses incurred in connection with any matter includes a reference to a proper proportion of any expenses incurred partly in connection with the matter.

(5) A reference in this section to anything provided for an employee shall, unless the reference is expressly to something provided for the employee himself, be construed as including a reference to anything provided for the spouse, family, servant, dependant or guest of that employee by the employer.

5. Valuation as to living accommodation

(1) Where any premises in Nigeria are made available to the occupier by reason of his or his wife's holding an office or employment and—

(a) the occupier pays no rent for the premises; or

(b) the rent which the occupier pays for the premises is less than the annual value of the premises,

the employee shall be treated as being in receipt (in addition to any other emoluments) of emoluments at an annual rate equal to the annual value of the premises, as determined under subsection (3) of this section, reduced by the annual amount of rent which the occupier pays for the premises.

(2) Subsection (1) of this section shall apply to an occupier being a woman as it applies to an occupier being a man with the substitution of "her husband" for "his wife" and that subsection shall accordingly be so construed.

(3) In this section, "the annual value of the premises" means—

(a) in relation to premises subject to any law governing assessment of local rates, the annual value of the premises as determined for purposes of local rates under that law;

(b) in any other case, the annual value as determined by the relevant tax authority, and a reference in this section to annual value shall include a reference (where applicable) to such proper proportion of the annual value—

(i) in relation to a period of occupation within a year; or

(ii) in relation to the part of the premises occupied; or

(iii) in relation to both a period of occupation within a year and the part of the premises occupied,

as may be determined by the relevant tax authority.

6. Business or trade only partially carried on or deemed to be carried on in Nigeria

Where an individual, an executor, or a trustee, outside Nigeria carries on a trade or business of which only part of the operations are carried out in Nigeria, the gains or profits of the trade or business shall be deemed to be derived from Nigeria to the extent to which such gains or profits are not attributable to that part of the operations carried on outside Nigeria:

Provided that—

(a) the individual, executor or trustee does not have a fixed base in Nigeria from which he carries on such trade or business;

(b) the individual, executor or trustee does not habitually operate a trade or business through a person in Nigeria authorised to conclude contracts on his behalf or on behalf of some other persons related to him or both of whom are controlled by some other person or does not habitually maintain a stock of goods or merchandise in Nigeria from which deliveries are regularly made on his behalf;

(c) the trade or business in Nigeria does not involve a single contract for surveys, deliveries, installations or construction;

(d) the trade or business is not between persons both of whom are controlled by some other person and such that conditions are made or imposed between such persons in their commercial or financial relations which in the opinion of the relevant tax authority is deemed to be artificial or fictitious.

7. Relevant tax authority may assess and charge tax on the turnover of a business, etc.

(1) Where, in respect of any business carried on by a person it appears to the relevant tax authority that for any year of assessment, the business produces either no assessable income or an assessable income which in the opinion of the relevant tax authority is less than might be expected to arise from that business or, as the case may be, the true amount of the assessable income of that person from the business cannot be readily ascertained, the relevant tax authority may for that year of assessment, in respect of that business, and notwithstanding any other provision of this Act—

(a) if the whole of the operations of the business are carried on in Nigeria, assess and charge the person carrying on the business on such fair and reasonable percentage of the turnover of the business, as the relevant tax authority may determine;

(b) if that person is a non-resident who—

(i) has a fixed base from where he carried on such business, assess and charge that person on such a fair and reasonable percentage of the turnover attributable to that fixed base;

(ii) operates a business through a person authorised to conclude contracts on his behalf or on behalf of some person related to him or both of whom are controlled by some other person or operates a business through a person who regularly makes deliveries from a stock of goods or merchandise habitually held in Nigeria on his behalf, assess and charge that person on a fair and reasonable percentage of the turnover of the business carried on through that person;

(iii) operates a business in Nigeria which involves a single contract for surveys, deliveries, installation or construction, assess and charge that person on a fair and reasonable percentage of the contract.

(2) The provisions of this Act as to notice of assessment, additional assessment, appeal and other proceedings shall apply to an assessment or additional assessment made under this section.

(3) In this section—

(a) “business” includes a trade, profession or vocation;

(b) “person” in relation to the carrying on of a business, has the meaning assigned to it by section 108 of this Act but does not include a company.

8. Partnership

(1) The gains or profits from a partnership of a partner therein shall be the sum of—

(a) any remuneration, interest on capital, or the cost of passages to or from Nigeria wholly or mainly undertaken for the purpose of leave or recreation, which is charged in the partnership accounts in respect of that partner; and

(b) his share in the income of the partnership, computed in accordance with the provisions of this Act after the deduction of charges to which paragraph (a) of this subsection applies in respect of all the partners but before the deduction of any other expenses of the partnership referable to a partner which would have been private or domestic expenditure within the meaning of subsection (1) (a) of section 21 of this Act if incurred directly by that partner.

(2) When the income computed under paragraph (a) of this subsection results in a loss, the partner’s share therein shall be deducted from his gains or profits ascertained under the provisions of subsection (1) (b) of this section and he shall be deemed to have incurred a loss in the trade or business of partnership to the extent, if any, by which the deductible share exceeds those gains or profits.

(3) For the purpose of subsection (1) of this section, the share of a partner in the computed income of a partnership shall be such proportion of that computed income as would accrue to him under the provisions of the partnership agreement if that computed income were wholly apportionable between the partners within the terms of the agreement, or where the computed income results in a loss, such proportion of that loss as would be chargeable to him if that loss falls to be allocated between the partners in the terms of the agreement.

(4) The amount of the gains or profits or loss of a partner, ascertained under the foregoing provisions of this section, of any period, shall be deemed for all purposes of this Act to be his ascertained income or loss of that period from a trade, business, profession or vocation carried on by him during that period, and the provisions of Part III of this Act, other than paragraph (g) of section 21 of this Act, shall not apply to that partner with respect to the income or loss.

(5) The determination of the income or loss from a partnership or a partner therein shall be made by the relevant tax authority in relation to that partnership, and where any partner is taxable for a year of assessment in the territory of some other authority, the relevant tax authority shall supply to that other authority particulars of that determination.

(6) An appeal against an assessment by any individual in so far as it relates to any partnership income or loss, shall lie only to the body of Appeal Commissioners or court specified for income tax purpose in a law of the territory of which the tax authority is the relevant authority in relation to that partnership.

(7) For the purposes of paragraph 6 of the First Schedule to this Act, the income of a partner from a partnership in Nigeria shall be deemed to be derived from the territory of the relevant tax authority in relation to that partnership. [First Schedule.]

(8) The partnership, employee or agent in charge of the principal office or place of business of a partnership in Nigeria shall without notice or demand thereof register or cause to be registered with the relevant tax authority, a certified copy of the partnership deed or, where no written deed is in existence, particulars of any written or oral agreement under which the partnership is currently established and where any such particulars have been so registered, notice of any subsequent change therein agreed between the partners shall be similarly registered with that tax authority within thirty days of the agreement.

(9) Where the particulars of any partnership have been registered under the provisions of subsection (8) of this section, the computation under this section of the gains or profits of a partner therein may be made by the relevant tax authority on the basis of those particulars as they apply at any relevant time and in the event of failure by a partnership to comply with any demand made under the foregoing subsection, notwithstanding the provisions of subsection (3) of this section, tax may be assessed and charged by the relevant tax authority as though the whole gains or profits of such partnership accrued to any individual partner therein or were divisible between any partner therein as may appear just and reasonable to the tax authority.

9. Agricultural, etc., profit

The gain or profit of an individual from any land used by him for agricultural purposes or from livestock shall, unless the relevant tax authority is satisfied to the contrary, be deemed to be the gain or profit which would be realised by him if the land were cultivated or used or the livestock were dealt with, as the case may be, in the manner and up to the average standard of cultivation, use or practice relating to the use of the land or the dealing with livestock prevailing in the neighbourhood.

10. Employment

(1) The gain or profit from an employment shall be deemed to be derived from Nigeria if—

(a) the duties of the employment are wholly or partly performed in Nigeria, unless—

(i) the duties are performed on behalf of an employer who is in a country other than Nigeria; and

(ii) the employee is not in Nigeria for a period or periods amounting to 183 days or more in any twelve month period commencing in a calendar year and ending either within that same year or the following year; and

(iii) the remuneration of the employee is liable to tax in that other country;

(b) the employer is in Nigeria, unless the duties of the employment are wholly performed, and the remuneration paid, in a country other than Nigeria except during a temporary visit to or leave in Nigeria.

(2) Notwithstanding the provisions of paragraph (b) of subsection (1) of this section, the gains or profits from an employment by a Government in Nigeria shall be deemed to be derived from Nigeria wherever the remuneration is paid if the employee performs the duties of that employment in a country other than Nigeria which country under an agreement or diplomatic usage exempts the employee from tax on those gains or profits.

(3) The gain or profit from any employment exercised in Nigeria shall be deemed to be derived from Nigeria whether the gains or profits from the employment are received in Nigeria or not.

(4) The gains or profits from any employment, the duties of which are wholly or mainly performed in Nigeria, shall be deemed to be derived from Nigeria during any period of leave of the employee from the employment, and any period of his temporary absence on duty from Nigeria.

(5) Subject to the foregoing provisions of this section, the gain or profit from any employment, the duties of which are mainly performed outside Nigeria, shall be deemed to be derived from Nigeria to the extent that those duties are performed in Nigeria.

(6) Notwithstanding any provision of this section, the gains or profits of an individual from any employment as a seafarer, other than any such employment in the Nigerian Navy or the Nigerian Ports Authority, shall be deemed to be derived from Nigeria only during any period in which the individual is serving under articles which he had signed in Nigeria or is performing stand-by duty on board a ship preparatory to his signing articles in Nigeria.

11. Tax credit allowable against tax payable on income derived from outside Nigeria

Notwithstanding the provisions of section 3 (1) of this Act, where a resident derives income from a source outside Nigeria and the income is brought into Nigeria through Government approved channels, he shall be allowed a tax credit against the tax payable by him but the tax credit shall not exceed the proportion of his total tax for the year of assessment which that income derived from outside and brought into Nigeria bears to his aggregate income chargeable to tax in Nigeria.

12. Nigerian dividends

(1) The income from a dividend distributed by a Nigerian company shall be deemed to be derived from Nigeria, and shall be the gross amount of that dividend before deduction of any tax which the company is required to deduct on payment thereof under the provisions of any law in force in Nigeria at the relevant time imposing taxation on the profits of companies.

(2) Any amount of the undistributed profit of a Nigerian company which is treated as distributed under the provisions of any law in force in Nigeria imposing tax on the profits of companies shall, for the purpose of this Act, be deemed to be income from a dividend accruing to any person who is a shareholder in the company in proportion to his share in the ordinary capital thereof at the relevant time, and the income from the dividend to be taken for assessment in his hands shall be his due proportion thereof increased by such amount as may be specified by the relevant tax authority in respect of tax deemed to be deducted at source.

(3) The income from a dividend distributed by a Nigerian company shall be deemed to arise on the day on which payment of that dividend becomes due.

13. Foreign income

The income from a dividend paid by a company other than a Nigerian company, or from any other source outside Nigeria, shall be the amount of that income brought into or received in Nigeria, provided that, if the income arose in a country to which section 39 of this Act applies, the amount of that income to be taken for assessment shall be the amount computed under subsection (5) of section 39 of this Act.

14. Interest

The income from any interest on money lent by an individual, or an executor, or a trustee, outside Nigeria to a person in Nigeria (including a person who is resident or present in Nigeria at the time of the loan) shall be deemed to be derived from Nigeria if—

(a) there is liability to payment in Nigeria of the interest regardless of what form the payment takes and wherever the payment is made;

(b) the interest accrues in Nigeria to a foreign company or person regardless of what form the payment takes and wherever the payment is made.

15. Territory in which dividend or interest paid by a Nigerian company arises

Where a dividend or interest is distributed or paid by a Nigerian company, the dividend or interest, as the case may be, whenever necessary for the purpose of the First Schedule to the Act, shall be deemed to be derived from the territory in which the recipient of the dividend or interest resides or, where the recipient is not resident in Nigeria, the person shall be deemed to be a person to whom section 2 (1) (b) (iv) applies. [First Schedule.]

16. Settlement, trusts and estates

The income of an individual or of a trustee or executor from a settlement, trust, or estate of a deceased person, made, created or administered in Nigeria, or in the case of a settlement or trust made, created or administered in Nigeria, shall be ascertained in accordance with the provisions of the Second Schedule to this Act. [Second Schedule.]

17. Artificial transactions

(1) Where a tax authority is of opinion that any disposition is not in fact given effect to, or that any transaction which reduces or would reduce the amount of any tax payable is artificial or fictitious, the tax authority may disregard the disposition or direct that such adjustments shall be made as respects the income of an individual, an executor or a trustee, as the tax authority considers appropriate so as to

counteract the reduction of liability to tax effected, or reduction which would otherwise be effected by the transaction.

(2) Where it appears that the interests of more than one tax authority are affected thereby, the exercise of any power conferred on a tax authority by subsection (1) of this section shall be performed by the relevant tax authority alone and any decision or direction of the relevant tax authority under this section shall be binding on all tax authorities.

(3) For the purposes of this section—

(a) “disposition” includes any trust, grant, covenant, agreement or arrangement;

(b) transactions between persons one of whom either has control over the other or in case of individuals who are related to each other or between persons both of whom are controlled by some other person, shall be deemed to be artificial or fictitious if in the opinion of the tax authority those transactions have not been made on terms which might fairly have been expected to have been made by independent persons engaged in the same or similar activities dealing with one another at arm’s length.

18. Certain appeals

An appeal with respect to assessment of income arising from any decision or direction of the relevant tax authority under subsection (2) of section 17 of this Act, shall lie only to the Federal High Court at the instance of the person in whose hand that income is assessed to tax, and no shareholder shall have any right of appeal with respect to any amount deemed to be his income under the provisions of subsection (2) of section 12 of this Act.

19. Income exempted

(1) There shall be exempt from the tax all that income specified in the Third Schedule to this Act.

(2) The Minister may by notice include in the Third Schedule to this Act all or any person or class of persons chargeable to tax by virtue of this Act, so as to exempt the income of that person or class of persons from tax in pursuance of—

[Third Schedule.]

(a) any treaty, convention or agreement between the Federal Government of Nigeria and any other country or any arrangement with or decision of an international organisation of which the Federal Government of Nigeria is a member; or

(b) any arrangement in that behalf subsisting between the Government of the Federation and the Government of each State.

(3) Nothing in this section or the Third Schedule to this Act shall be construed so as to—

(a) exempt in the hands of the recipients any interest, bonuses, salaries or wages paid wholly or in part out of income exempted thereby; or

(b) authorise a State Government, a company or any person or agency of government, a company or any person, whether resident or not in Nigeria, to provide tax exemption clauses in an agreement or arrangement without seeking approval first from the Minister of Finance and thereafter from the President.

PART II

Ascertainment of income

20. Deduction allowed

(1) For the purpose of ascertaining the income or loss of an individual for any period from any source chargeable with tax under this Act there shall be deducted all outgoing and expenses, or any part thereof, wholly, exclusively, necessarily and reasonably incurred during that period and ultimately borne by that individual in the production of the income, including—

- (a) a sum payable by way of interest on money borrowed and employed as capital in acquiring the income;
- (b) interest on loans for developing an owner-occupied residential house;
- (c) rent for that period, and premiums the liability for which was incurred during that period, payable in respect of land or buildings occupied for the purpose of acquiring the income; and
- (d) any expense incurred for repair of premises, plant, machinery or fixtures employed in acquiring the income, or for the renewal, repair or alteration of any implement, utensil or article so employed:

Provided that if the premises, plant, machinery, fixtures, implement, utensil or article are used in part for domestic or private purposes, so much of the expense as relates to such use shall not be so deducted;

- (e) bad debts incurred in any trade, business, profession or vocation, proved to have become bad during the period for which the income is being ascertained, and doubtful debts to the extent that they are respectively estimated to have become bad during the said period and notwithstanding that such bad or doubtful debts were due and payable prior to the commencement of the said period:

Provided that—

- (i) where in any period a deduction under this paragraph is to be made as respect any particular debt, and a deduction has in any previous period been allowed in respect of the same debt, the appropriate reduction shall be made in the deduction to be made in the period in question;
- (ii) all sums recovered during the said period on account of amounts previously written off or allowed in respect of bad or doubtful debts shall for the purposes of this Act be deemed to be income of the trade, business, profession or vocation of that period;
- (iii) it is proved that the debts in respect of which a deduction is claimed either were included as a receipt of the trade, business, profession or vocation in the income of the year within which they were incurred, or were advances not falling within the provisions of subsection (b) of section 21 of this Act made in the course of normal trading, business, professional or vocational operations;
- (f) a contribution or an abatement deducted from the salary or pension of a public officer under the Pensions Act or under any approved scheme within the meaning of that Act, and any

contribution, other than a penalty, made under the provisions of any Act establishing the Nigeria Social Insurance Trust Fund or other retirement benefits scheme for employees throughout Nigeria; [Cap. P4.]

(g) a contribution to a pension, provident or other retirement benefits fund, society or scheme approved by the Board, subject to the provisions of the Fourth Schedule to this Act and such conditions as the Board in its absolute discretion may prescribe: [Fourth Schedule.]

Provided that where the instruments establishing in Nigeria any such fund, society or scheme contain inter alia a general power or duty of the trustees or managers thereof to invest the moneys of the fund, society or scheme, and on the first day of any year of assessment commencing after the thirty-first day of March, 1962—

(i) in the case of a fund, society or scheme deemed to have been approved under the provisions of this Act, less than thirty-three and one third per centum of all moneys which are so invested is invested in securities issued by or under the authority of any Government in Nigeria; or

(ii) in the case of a fund, society or scheme approved under the provisions of this section, less than 50% of all moneys which are so invested is invested in securities issued by or under the authority of any Government in Nigeria,

the deemed approval or approval of such fund, society or scheme shall have no effect for any purpose of this Act for that year of assessment;

(h) in the case of income from a trade, business, profession or vocation, any expenses or part thereof incurred for that period (whether the liability was met during that or any previous period) wholly and exclusively for the purpose of the trade, business, profession or vocation unless those expenses are or the same part thereof is deductible for that or any other period under the foregoing provisions of this section, and for the purpose of this paragraph an expense incurred during a period shall be treated as having been incurred for that period to the extent that it is not specifically referable to the income of any other period;

(i) any expenses which are proved to the satisfaction of the relevant tax authority to have been incurred by the individual on research for the period including the amount of levy paid by him under the National Agency for Science and Engineering Infrastructure Act. [Cap. N3.]

(2) Where the income is chargeable solely by reason of it being brought into or received in Nigeria, nothing in this section shall confer a right to any deduction from the amount of that income so brought into or received in Nigeria.

21. Deductions not allowed

Subject to the express provisions of this Act, no deduction shall be allowed for the purpose of ascertaining the income of any individual in respect of—

- (a) domestic or private expense;
- (b) capital withdrawn from a trade, business, profession or vocation and any expenditure of a capital nature;
- (c) any loss or expense recoverable under an insurance or contract of indemnity;

(d) rent of or cost of repairs to any premises or part of premises not incurred for the purpose of producing the income;

(e) taxes on income or profits levied in Nigeria or elsewhere except as provided in section 13 of this Act;

(f) any payment to a pension, provident, savings or widows' and orphans' society, fund or scheme, except as permitted by paragraphs (f) and (g) of subsection (1) of section 20 of this Act;

(g) the depreciation of any asset;

(h) any sum reserved out of profits, except as permitted by paragraph (e) of subsection (1) of section 20 of this Act or as may be estimated by the relevant tax authority, pending determination of the amount, to represent the amount of any expense deductible under the provisions of that section, the liability for which was irrevocably incurred during the period for which the income is being ascertained;

(i) any expenses 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 fees has been obtained from the Minister;

(j) any expense whatsoever incurred within or outside Nigeria as management fees under any agreement entered into after the commencement of this paragraph except to the extent as the Minister may allow.

22. Waiver of refund of liability or expense

Where a deduction has been allowed under the provisions of section 20 of this Act in respect of any liability or any expense incurred and the liability is waived or released or such expense is refunded in whole or in part, the amount of that liability or expense which is waived, released or refunded, as the case may be, shall be deemed to be income on the day on which such waiver, release or refund was made or given.

PART III

Ascertainment of assessable income

23. Basis for computing assessable income

(1) Except as provided in this section, the income of any individual for each year of assessment from each source of his income (hereinafter referred to as "assessable income") shall be the amount of the income of the year immediately preceding the year of assessment from each such source, notwithstanding that he may have ceased to possess that source or that the source may have ceased to produce income.

(2) Where the relevant tax authority is satisfied that an individual makes, or intends to make up the accounts of a trade, business, profession or vocation carried on by him to some day other than the thirty-first day of December, it shall direct that the assessable income from that source be computed on the amount of the gains or profits of the year ending on that day in the year preceding the year of assessment.

(3) Where the assessable income of an individual from a trade, business, profession or vocation has been computed by reference to an account made up to a certain day, and that individual fails to make up an account to the corresponding day in the year following, the assessable income from that source both for the year of assessment in which the failure occurs and for the two years of assessment next following shall be computed on such basis as the relevant tax authority in its discretion thinks fit.

(4) Any basis adopted by a relevant tax authority under this section shall be subject to confirmation or amendment by the Board, with or without retrospective effect, if the individual is deemed to be resident in more than one territory for those three years of assessment, and such additional assessments, reductions or repayments shall be made so as to give effect to any determination of the Board under this subsection.

24. New trades

The assessable income of an individual from a trade, business, profession or vocation carried on by him in Nigeria for the year of assessment in which he commenced to carry on the trade, business, profession or vocation in Nigeria and for the two following years of assessment (which years are in this subsection respectively referred to as “the first year”, “the second year”, and “the third year”) shall be ascertained in accordance with the following provision:

- (a) for the first year the assessable income shall be the amount of the income of that year;
- (b) for the second year the assessable income shall, unless such notice as hereinafter mentioned is given, be the amount of the income of one year from the date of the commencement in Nigeria of the trade, business, profession or vocation;
- (c) for the third year the assessable income shall, unless such notice as is hereinafter mentioned be given, be computed in accordance with the provisions of section 23 (1) of this Act;
- (d) the individual carrying on the trade, business, profession or vocation shall be entitled, on giving notice in writing to the relevant tax authority within two years after the end of the second year, to require that the assessable income both for the second year and the third year (but not for one or other only of those years) shall be the income of the respective years of assessment:

Provided that he may, by notice in writing given to the relevant tax authority within twelve months after the end of the third year, revoke the notice, and in such case the assessable income both for the second year and the third year shall be computed as if the first notice had never been given;

- (e) where such a notice as aforesaid has been given or revoked, such additional assessment, or, on a claim being made for the purpose in writing, such reductions of assessments or repayments of tax shall be made as may be necessary to give effect to paragraph (d) of this subsection.

25. Cessation of trades, etc.

Where an individual permanently ceases to carry on a trade, business, profession or vocation in Nigeria, his assessable income therefrom shall be—

- (a) as regards the year of assessment in which the cessation occurs, the amount of the income of that year;

(b) as regards the year of assessment preceding that in which the cessation occurs, the amount of the income as computed in accordance with the provisions of section 24 of this Act, or the amount of the income of such year, whichever is the greater, and he shall not be deemed to derive assessable income from such trade, business, profession or vocation for the year of assessment following that in which the cessation occurs.

26. Employment and pensions

(1) With respect to income from an employment or pension which is derived, or deemed to be derived, from Nigeria, the assessable income of an individual shall be the amount of the income of the year of assessment.

(2) For the purpose of subsection (1) of this section, income from an employment shall be deemed to arise from day to day except to the extent that it is derived from any bonus, commission or allowance payable on one occasion only or at intervals exceeding one month, and to that extent it shall be deemed to be income—

(a) of the day on which it is paid; or

(b) if it is paid after the cessation of the employment, of the last day of the employment including any terminal leave arising therefrom.

27. Trusts and estates

Notwithstanding the foregoing provisions of this Part of this Act, the assessable income of a trustee, or of an executor of the estate of a deceased individual, or of a beneficiary of a trust or estate for any year of assessment shall be the income of that person as determined under the provisions of the Second Schedule to this Act of the year preceding that year. [Second Schedule.]

28. Itinerant workers

The assessable income for any year of assessment of an itinerant worker shall be determined either under the provisions of sections 23, 24, 25, 26 and 27 of this Act or be the income of the year ending on the thirty-first day of December within the year of assessment.

29. Continuity of trades, etc.

An individual carrying on a trade, business, profession or vocation, shall not be treated as having commenced or ceased so to do solely by reason of a change in the territory in which he is deemed to be resident from one year to another, or by reason of his becoming or ceasing to be a partner in a partnership if the nature of the trade carried on by that partnership is the same as that carried on by him before or after he became or ceased to be a partner therein, as the case may be.

30. Apportionment of income

Where in the case of a trade, business, profession or vocation it is necessary in order to arrive at the income of any year of assessment or other period to allocate or apportion to specific periods the income or loss of any period for which accounts have been made up, or to aggregate any such income or loss or any apportioned parts thereof, it shall be lawful to make such allocation, apportionment or aggregation, and any apportionment under this section shall be made in proportion to the number of days in the respective periods.

31. Receipts and payment after cessation of trade, etc.

Where after the date on which an individual has ceased to carry on a trade, business, profession or vocation in Nigeria, he or, after his death, his personal representative receives or pays any sum which would have been included in or deducted from his gain or profit from that trade, business, profession or vocation if it had been received or paid prior to that date, that sum shall be deemed for all purposes of this Act to have been received or paid by him, as the case may be, on the last day on which he carried on that trade, business, profession or vocation.

32. Ascertainment of chargeable income

Where income tax is payable for any year of assessment on the chargeable income of an individual, other than a corporation sole or body of individuals, the amount of that chargeable income shall, notwithstanding anything to the contrary in any other enactment or law relating to the ascertainment of chargeable income, be the amount of the total income of that individual for that year, ascertained under the provisions of this Act, after any income exempted has been excluded therefrom and the deductions allowed by this Part of this Act have been made.

33. Personal relief and relief for children, dependants

(1) There shall be allowed as personal relief in the case of every individual, a deduction of N5,000 plus 20% of earned income. [1998 No. 19.]

(2) In the case of an individual (other than a person to whom paragraph (b) (iv) of section 2 (1) of this Act relates) who ordinarily resides in Nigeria, or who at any time during the year of assessment—

(a) becomes ordinarily resident in Nigeria in connection with any trade, business, profession or vocation carried on by him; or

(b) exercises any employment, the whole gains or profits of which are deemed under the provisions of section 12 of this Act to be derived from Nigeria,

there shall also be allowed the deduction specified in subsection (3) of this section.

(3) The deduction allowed under subsection (2) of this section shall be—

(a) a deduction of the amount of any alimony not exceeding N300 paid to a former spouse under an order of a court of competent jurisdiction in the case of an individual whose marriage has been dissolved;

(b) a deduction of N2,500 in respect of each unmarried child who was maintained by the individual during the year preceding the year of assessment and who, on the first day of that preceding year, had either not attained sixteen years of age, or was receiving full-time instruction in a recognised educational establishment, or was under articles or indentures in a trade or profession: [1999 No. 19.]

Provided that—

(i) no deduction under this paragraph shall be allowed to any individual in respect of more than four children and for the purpose of applying this restriction, a husband and his wife or wives not separated from him by deed or an order of any court shall be treated as one and the same individual;

(ii) no additional deduction shall be allowed in respect of the costs incurred in connection with the education of any child in respect of whom he is entitled to a deduction under this paragraph;

(iii) where the cost of maintaining a child is shared between two or more persons, the relevant tax authority may apportion the sum of N500 as may seem to it to be equitable between those persons, and the deduction to be allowed under this paragraph to any individual in respect of that child shall be his apportioned share of that sum;

(iv) a widow who remarries shall be allowed a deduction of N500 for every child (up to a maximum of four children) in respect of the children born by her to her deceased husband;

(c) a deduction of the costs incurred by the individual during the year preceding the year of assessment in maintaining or assisting to maintain a close relative of the individual or of the individual's spouse who was either incapacitated by old age or infirmity from maintaining himself or is the widowed mother (whether so incapacitated or not) of the individual's spouse:

Provided that—

(i) no deduction shall be allowed in respect of any relative whose income of the year preceding the year of assessment exceeded N1,000; [1991 No. 31.]

(ii) the aggregate of all deductions to be allowed to two or more individuals for any year in respect of any one relative subject to a maximum of two relatives, shall not exceed N2,000 and, if the total of the costs incurred by them in respect of the same relative exceeds that sum, then the amount of the deduction to be allowed to any such individual shall be that same proportion of that sum and the cost so incurred; [1998 No. 19.]

(iii) the aggregate of all deductions to be made under this paragraph in ascertaining the chargeable income of any one individual for any year, shall not exceed N4,000; [1996 No. 30.]

(d) a deduction of the annual amount of any premium paid by the individual during the year preceding the year of assessment to an insurance company in respect of insurance on his life or the life of his spouse, or of a contract for a deferred annuity on his own life or the life of his spouse;

(e) a deduction of additional N3,000 or 20 per cent of the earned income, whichever is higher, in the case of a disabled person who uses special equipment or the services of an attendant in the course of a paid employment: [1998 No. 19.]

Provided that the amount of deduction under this paragraph shall not exceed 10% of the earned income of the person for that year.

(4) A deduction to be allowed to an individual for a year of assessment under the provisions of this section, other than paragraph (a) of subsection (3) of this section, may—

(a) be claimed by and allowed to that individual or the spouse of that individual not separated from him by deed or an order of a court on the first day of such year; or

(b) be partly claimed by and allowed to each spouse,

but in no case shall the aggregate of the deduction allowed to any husband and his wife or wives exceed the amount which would be allowed if such individuals were treated as one and the same individual.

(5) Where a deduction is claimed in respect of any one child under paragraph (b), or any one dependant under paragraph (c) or any one annual premium under paragraph (d) of subsection (3) of this section, for the same year of assessment, by both husband and wife and the aggregate amount of the deductions so claimed exceeds the amount to be allowed, then in that case the relevant tax authority shall apportion the amount to be allowed as it sees fit for deduction in ascertaining the separate chargeable income of each such husband or wife.

(6) Where pursuant to a direction of the relevant tax authority a deduction is allowed under this section to a husband or wife and the deduction has not been claimed, it shall be allowed to the husband or wife, or to be apportioned between them as the relevant tax authority in its absolute discretion may decide.

34. Deductions to be claimed

Unless the relevant tax authority otherwise directs, no deduction under this Part of this Act shall be allowed to any person for a year of assessment unless claimed by him in writing in such form as the relevant tax authority may prescribe.

35. Proof of claims

(1) The relevant tax authority may require a claimant to a deduction under section 33 of this Act to produce such documentary evidence as may be available in support of any claim and in the absence of that evidence or if that evidence is, in the opinion of the relevant tax authority inadequate, the relevant tax authority may refuse to allow the deduction or allow such part only of the amount claimed as the relevant tax authority may decide.

(2) Notwithstanding any provision of this Act—

(a) where a person has failed to produce documentary evidence in support of a claim to a deduction under section 33 of this Act, no objection to an assessment or, if the person is an employee, to any rate at which tax is required to be deducted from his remuneration under the provisions of this Act shall be valid on the grounds that the deduction, or the full amount thereof, has not been allowed or taken into account by the relevant tax authority; and

(b) where an individual claims a deduction under this Act for a year of assessment, or produces evidence in support of a claim previously made and not admitted or not admitted in full by the relevant tax authority within two years after the end of such year, such repayment or set-off of tax, or reduction in any assessment shall be made so as to give effect to any amount or additional amount of the deduction which the relevant tax authority is satisfied should properly be allowed.

PART IV

Ascertainment of total income

36. Total income from all sources

(1) The total income of an individual for any year of assessment shall be the amount of his total assessable income from all sources for that year, together with any addition thereto to be made in accordance with the provisions of the Fifth Schedule to this Act, less any deductions to be made or allowed in accordance with the provisions of subsection (2) of this section and of that Schedule. [Fifth Schedule.]

Loss in trade, business, profession or vocation

(2) There shall be deducted from the total assessable income of an individual—

(a) the amount of a loss incurred by him during the year of assessment in the trade, business, profession or vocation:

Provided that no such deduction shall be made unless it is claimed in writing within twelve months after the end of the year of assessment;

(b) the amount of a loss which the relevant tax authority is satisfied has been incurred by him in the trade, business, provision or vocation during any year preceding the year of assessment which has not been allowed against his assessable income of a preceding year:

Provided that—

(i) in no circumstances shall the aggregate deduction from assessable income in respect of the loss, exceed the amount of the loss;

(ii) a deduction under this paragraph for any year of assessment shall not exceed the amount, if any, of the assessable income included in the total income for that year of assessment, from the trade, business, profession or vocation in which the loss was incurred and shall be made as far as possible from such amount of such assessable income of the first year of assessment after that in which the loss was incurred, and, so far as it cannot be so made then from such amount of such assessable income of the next year of assessment, and so on;

(iii) when land or buildings are let by an individual for the purposes of producing income and during any year of assessment the expenses deductible under the provisions of section 20 of this Act in ascertaining the gains or profits from that income exceed the amount of that income, the excess shall be treated as if it were a loss incurred by the individual in a trade or business carried on by him; and

(iv) the period for carrying forward of any loss shall be limited to four years after which period any such loss shall lapse.

(3) The amount of loss incurred by a person engaged in an agricultural trade or business shall be deducted as far as possible from the assessable profits of the first year of assessment after that in which the loss was incurred and so far as it cannot be so made, then from such amount of such assessable profits of the next year of assessment, and so on (without limit as to time) until the loss has been completely set off against the person's subsequent assessable profits.

(4) For the purpose of subsection (2) of this section, the loss incurred during any year of assessment shall be computed by reference to the year ending on a day in that year of assessment which would have been adopted under subsection (2) of section 23 of this Act for the computation of assessable income of the following year of assessment if a profit had arisen.

(5) Where under the provisions of section 30 of this Act for the purpose of computing the income of a period from a source chargeable with tax under this Act, being a period the income of which is assessable income from that source for any year, it has been necessary to allocate or apportion to specific periods which fall within that whole period both gains or profits and losses, then no deduction shall be made under the provisions of subsection (2) of this section in respect of the loss or apportioned

part thereof referable to that specific period, except to the extent that the loss or part thereof exceeded the aggregate gains or profits apportioned to the remaining specific period or periods within that whole period.

PART V

Rate of tax and double taxation

37. Charge of income tax

Subject to the provisions of this Act, the income tax that may be payable on the chargeable income of an individual ascertained in accordance with the provisions of this Act shall, in respect of each year of assessment, be assessed at the rate or rates specified in the Sixth Schedule to this Act so however that where after all deductions allowable under this Act the individual has no chargeable income or where the tax payable on the chargeable income of that individual is less than 0.5 per cent of the total income of that individual, the individual shall be charged to tax at the rate of 0.5 per cent of his total income.

[Sixth Schedule.]

38. Double taxation arrangement

(1) If the Minister by order declares that arrangements specified in the order have been made with the government of any country outside Nigeria with a view to affording relief from double taxation in relation to tax imposed on income charged by this Act and any tax of a similar character imposed by the laws of that country, and that it is expedient that those arrangements should have effect, the arrangements shall have effect notwithstanding anything in any enactment.

(2) Where arrangements have effect by virtue of this section, any obligation as to secrecy in this Act or in any law of a territory subject to or incorporating the provisions of this Act shall not prevent the disclosure to an authorised officer of the government with which the arrangements are made of such information as is required to be disclosed under the arrangements.

(3) The Minister may make rules for carrying out the provisions of arrangements having effect under this section.

(4) An order made under the provisions of subsection (1) of this section may include provisions for relief from tax for periods commencing or terminating before the making of the order and provisions as to income which is not itself liable to double taxation.

(5) For the purpose of affording relief in Nigeria from double taxation, the arrangements specified in the Seventh Schedule shall be deemed to have been made under the provisions of this section and to apply throughout Nigeria with effect from the year of assessment on the first day of January 1989 in the case of the United Kingdom and, in the case of any other country, on such date as is specified in the agreement with that country.

[Seventh Schedule.]

39. Method of calculating relief to be allowed for double taxation

(1) The provisions of this section shall have effect where, under arrangements having effect under section 38 of this Act, foreign tax payable in respect of an income in the country with whom the

arrangements are made is to be allowed as a credit against tax payable in respect of that income in Nigeria, and in this section, "foreign tax" means any tax payable in that country which under the arrangements is to be so allowed.

(2) The amount of the tax chargeable in respect of the income which is liable to both tax and foreign tax shall be reduced by the amount of the credit admissible under the terms of the arrangement:

Provided that credit shall not be allowed against tax for any year of assessment unless the person entitled to the income is resident in Nigeria in that year.

(3) The credit shall not exceed the amount which would be produced by computing, in accordance with the provisions of this Act, the amount of the income which is liable to both tax and foreign tax, and then charging it to tax at a rate ascertained by dividing the tax chargeable (before the deduction of any relief granted by this Part of this Act) on the total income of the individual entitled to the income by the amount of his total income.

(4) Without prejudice to the provisions of subsection (3) of this section, the total credit to be allowed to an individual for any year of assessment for foreign tax under arrangements having effect under section 38 of this Act, shall not exceed the total tax payable by him for that year of assessment.

(5) In computing the amount of the income—

(a) no deduction shall be allowed in respect of foreign tax (whether in respect of the same or any other income);

(b) where the tax chargeable depends on the amount received in Nigeria, that amount shall be increased by the appropriate amount of the foreign tax in respect of the income; and

(c) where the income includes a dividend, and under the arrangements foreign tax not chargeable directly or by deduction in respect of the dividend is to be taken into account in considering whether any, and if so what, credit is to be given against tax in respect of the dividend, the amount of the income shall be increased by the amount of the foreign tax not so chargeable which falls to be taken into account in computing the amount of the credit.

(6) Notwithstanding the provisions of subsection (5) of this section, a deduction shall be allowed of any amount by which the foreign tax in respect of the income exceeds any credit given under the arrangements.

(7) Paragraphs (a) and (b) of subsection (5) of this section shall apply to the computation of total income for the purposes of determining the rate mentioned in subsection (3) of this section, and shall apply thereto in relation to all income in respect of which credit falls to be given for foreign tax under arrangements for the time being in force under section 38 of this Act.

(8) Credit shall not be allowed under the arrangements against tax chargeable in respect of the income of an individual for a year of assessment if he elects that credit shall not be allowed in the case of his income for that year.

(9) A claim for an allowance by way of credit shall be made not later than two years after the end of the year of assessment, and in the event of dispute as to the amount allowable, the claim shall be subject to objection and appeal in like manner as an assessment.

(10) Where the amount of a credit given under the arrangements is rendered excessive or insufficient by reason of any adjustment of the amount of any tax payable either in Nigeria or elsewhere, nothing in this Act or in any law of a territory, limiting the time for the making of assessments or claims for relief, shall apply to any assessment or claim to which the adjustment gives rise, being an assessment or claim made not later than two years from the time when all such assessments, adjustments and other determinations have been made, whether in Nigeria or elsewhere, as are material in determining whether any, and if so what, credit falls to be given.

PART VI

Persons chargeable and returns

40. Persons chargeable and returns

(1) A taxable person shall be chargeable to the tax—

- (a) in his own name; or
- (b) in the name of—
 - (i) a receiver, trustee, guardian, curator or committee having the direction, control or management of property or concern on his behalf; or
 - (ii) a person treated as his agent under section 4 of this Act or declared to be his agent under section 50 (1) of this Act,

in like manner and to the like amount as the taxable person would be chargeable.

(2) A person in whose name a taxable person is chargeable to tax shall be answerable for all matters within his competence which are required to be done by virtue of this section for the assessment of the income of the taxable person and payment of any tax charged thereon.

(3) Where two or more persons act in the capacity of trustees they may be charged jointly or severally with the tax to which they are chargeable in that capacity and shall be jointly and severally liable for payment of the tax.

41. Returns by taxable person

(1) For each year of assessment, a taxable person shall, without notice or demand therefor, file a return of income in the prescribed form and containing the prescribed information with the tax authority of the State in which the taxable person is deemed to be a resident together with a true and correct statement in writing containing—

- (a) the amount of income from every source of the year preceding the year of assessment computed in accordance with the provisions of this Act and rules or regulations made thereunder; and
- (b) such particulars as by the return may be required for the purpose of this Act and rules or regulations made thereunder with respect to any such income, allowance, relief, deduction or otherwise as may be material for that purpose.

(2) The form of return shall contain a declaration which shall be by or on behalf of the taxable person that the return contains a true and correct statement of the income computed in accordance with the

provisions of this Act and rules or regulations made thereunder or that particulars given in the return are true and complete.

(3) A taxable person shall file with the relevant tax authority the returns as stipulated in this section within 90 days from the commencement of every year of assessment.

(4) A written return, statement or an information affecting the liability to tax of an individual for a year of assessment made or given by a person to a tax authority may be treated as having been given to another tax authority in the territory of which that individual is deemed to be resident for that year and, if an error or omission in the return, statement or an information constitutes an offence under the income tax law of that other tax authority, proceedings may be taken by that other tax authority in respect of that offence as though the return, statement or information had been made or given to that other tax authority in the first instance.

42. Place of an offence

Where failure to comply with a requirement lawfully made by a tax authority of a territory under a provision of this Act constitutes an offence by virtue of the provision of an enactment of that territory, then the offence shall be deemed to have been committed at the place from which the notice of that requirement was issued by that tax authority, or at the place where the person charged with the offence resides or at such other place as that tax authority may decide.

43. Returns not to be filed where income is N30,000 or less

Notwithstanding that a tax authority requires a taxable person to file a return containing the amount of his income for each year of assessment, no return of income shall be filed by a person whose only source of income in any year of assessment is employment in which he earns N30,000 or less from that source.

[1998 No. 19.]

44. Self-assessment by individual

A taxable person required by this Act to file a return of income shall in the return calculate the amount of tax payable.

45. Bonus for early filing of self-assessment return

A person who files a return under sections 41 and 44 of this Act within the time specified for filing of the return shall, if there is no default in the payment arrangement, be granted a bonus of 1% of the tax payable.

[1996 No. 31.]

46. Power to call for further returns

The relevant authority may give notice in writing to a person when and as often as it thinks necessary requiring him to deliver within a reasonable time limited by such notice fuller or further returns respecting any matter as to which a return is required or prescribed by this Act.

47. Power to call for returns, books, documents and information

(1) For the purpose of obtaining full information in respect of the income or gain of a person, the relevant tax authority may give notice to the person requiring him, within the time limited by the notice, to—

- (a) complete and deliver to the relevant tax authority, any return specified in the notice;
- (b) attend personally before an officer of the relevant tax authority for examination with respect to any matter relating to such income gains;
- (c) produce or cause to be produced for examination at the place and time stated in the notice which time may be from day-to-day for such period as the relevant tax authority may consider necessary, for the purpose of the examination of any book, document, account and return which the relevant tax authority may deem necessary; or
- (d) give orally or in writing any other information including a name and address specified in the notice:

Provided that a person engaged in banking, including a person charged with the administration of the FSB International Plc, shall not be required to disclose any information unless a disclosure is required in a letter signed by the chairman of the relevant tax authority.

(2) For the purpose of paragraphs (a) to (d) of subsection (1) of this section, the time limited by a notice shall not be less than seven days from the date of service of the notice, so however that an officer of the relevant tax authority not below the rank of a Chief Inspector of Taxes may act in any of the cases stipulated in subsection (1) (c) or (d) of this section, without giving any of the required notices set out in this section.

(3) A person engaged in banking in Nigeria who contravenes the provisions of this section is, in respect of each offence, liable on conviction to a fine of N5,000 in the case of a body corporate, and a fine of N500 in the case of an individual.

(4) Nothing in the foregoing provisions of this section or in any other provisions of this Act shall be construed as precluding the relevant tax authority from verifying by tax audit any matter relating to the income or gains of a person or any matter relating to entries in any book, document, account or return as the relevant tax authority may from time to time specify in any guideline by the relevant tax authority.

48. Disclosure and procurement of information

(1) Where a tax authority is in possession of any information, document or record relating to an individual which in the interest of the public revenue in Nigeria should be disclosed or transferred to the Board, that information, document or record shall be disclosed or transferred notwithstanding any provision as to secrecy contained in any income tax law of a territory.

(2) A member of the relevant tax authority, its secretary and any person employed in the offices of the relevant tax authority shall not disclose any information relating to the income, tax or personal circumstances of any person which has come into his possession in the course of his duties except as may be expedient—

- (a) in any legal proceeding arising from this Act; or
- (b) to any tax authority; or
- (c) in accordance with any provision of an arrangement, with respect to taxes, made with any other country.

(3) Any information disclosed to a tax authority pursuant to subsection (2) of this section shall thereafter be subject to the provisions of that subsection and to any secrecy provisions of the income tax law administered by that authority.

(4) Subject to the provisions of subsections (1), (2) and (3) of this section, a tax authority may, for the purpose of obtaining information in respect of the income or personal circumstances of an individual, give notice to any person to deliver the information including a name and an address specified therein within the time limited by the notice.

49. Information to be delivered by bankers

(1) Without prejudice to section 48 of this Act, a person engaged in banking, including a person charged with the administration of the FSB International Plc, shall prepare a return at the end of each month specifying the names and addresses of new customers of the bank and shall not later than the seventh day of the next following month deliver the return to a tax authority of the area where the bank operates, or where such customer is a company, to the Federal Board of Inland Revenue.

(2) Subject to subsection (1) of this section, the relevant tax authority may, for the purpose of obtaining information relative to taxation, give notice to a person, including a person engaged in banking business in Nigeria and a person charged with the administration of the FSB International Plc, to provide within the time stipulated in the notice, information including the name and address of any person specified in the notice:

Provided that a person engaged in banking business in Nigeria, including any person charged with the administration of the FSB International Plc, shall not be required to disclose any further information under this section unless the disclosure is required by a notice signed by the chairman of the relevant tax authority.

(3) A person engaged in banking in Nigeria who contravenes the provisions of this section is, in respect of each offence, liable on conviction to a fine of N5,000 in the case of a body corporate, and a fine of N500 in the case of an individual.

(4) Nothing in the foregoing provisions of this section or in any other provision of this Act shall preclude the relevant tax authority from verifying by tax audit any matter relating to the profits of a company or any matter relating to entries in any book, document, account or return as the relevant tax authority may, from time to time, specify in its guidelines.

50. Power to appoint agent

(1) The relevant tax authority may by notice in writing appoint a person to be the agent of another person and the person so declared as agent shall be the agent of that person for the purposes of this Act, and may be required to pay tax which is or will be payable by the person from any money which may be held by him for, or due by or to or become due by him to the person whose agent he has been declared to be, and in default of that payment the tax shall be recoverable from him.

(2) For the purposes of this section, the relevant tax authority may require any person to give information as to any money, fund or other asset which may be held by him for, or of any money due from him to any person.

(3) The provisions of this Act with respect to objections and appeals shall apply to any notice given under this section as though that notice were an assessment.

51. Returns to be deemed to be furnished with due authority

A return, statement or form purporting to be furnished under this Part of this Act by or on behalf of any person shall for all purposes be deemed to have been furnished by that person or by his authority, as the case may be, unless the contrary is proved, and any person signing any such return, statement or form shall be deemed to be cognisant of all matters therein.

52. Books of account

(1) If a taxable person fails or refuses to keep books of accounts which, in the opinion of the relevant tax authority, are adequate for the purposes of the tax, the relevant tax authority may by notice in writing direct the person to keep such records, books and accounts as the relevant tax authority considers to be adequate in such form and in such language as may be specified in the notice and, subject to the provisions of subsection (2) of this section, the person shall keep the records, books and accounts as so directed.

(2) A direction of the relevant tax authority made under this paragraph shall be subject to objection and appeal in like manner as an assessment, except that any decision of the Appeal Commissioners may confirm or modify such direction.

53. Power to enter and search premises, etc.

(1) Where in respect of a trade, vocation, profession or business carried on in Nigeria by an individual (whether or not part of the operations is carried on outside Nigeria), the relevant tax authority—

(a) is satisfied that there is reasonable ground for suspecting that an offence involving any form of total or partial non-disclosure of information, or any irregularity or an offence in connection with or in relation to tax has been committed; and [Eighth Schedule.]

(b) is of the opinion that evidence of the offence or irregularity is to be found in the premises, the registered office, or any other office or place of management of the trade, vocation, profession or business or in the residence of the principal officer, factor, agent or representative of the individual, the relevant tax authority may authorise any of its officers to enter, if necessary by force, the premises, registered office or the place of management or the residence of the individual, factor, agent or representative of the individual, at any time from the date of the authorisation and conduct a search.

(2) An authority to enter the premises, registered office, place of management or residence of an individual, factor or agent of the individual, to conduct a search, shall be in the form contained in the Eighth Schedule to this Act, and the authority shall be sufficient warrant to search, seize and remove any records and documents found on such premises, office or place of management or residence of the individual, his factor or agent whether or not, belonging to that individual, factor, agent or the business.

(3) On entering a premises with a warrant under this section, the officer may seize and remove anything whatsoever found therein which he has reasonable cause to believe may be required for the purposes of arriving at a fair and correct tax chargeable on the individual or as evidence for the purposes of a proceeding in respect of such an offence as is mentioned in subsection (1) of this section.

(4) For the purposes of this section, an officer authorised by the relevant tax authority to execute a warrant of search under this section may call to his assistance a police officer, and it shall be the duty of the police officer when so required to aid and assist in the execution of a warrant for the purpose of obtaining an information on the tax charged or to be charged on the individual or of the proceeding in respect of an offence referred to in subsection (1) of this section.

(5) Where an entry to a premises has been made with a warrant under this section and the officer making the entry has seized anything under the authority of the warrant, he shall, immediately before the seizure, if required by any person appearing to be the custodian of those things seized, provide that person with the list of items seized or surrendered.

(6) An individual on whom a warrant under this section is served shall—

(a) co-operate fully with any person authorised to conduct a search by allowing him easy access to the premises to be searched and to the items or documents that may be required for the investigation;

(b) answer all questions and queries put to him in the course of the search;

(c) facilitate the removal of all items that may be required to assist the investigation.

(7) A person on whom a warrant of search is served and who refuses to co-operate with the person or persons or engages in an act or acts resulting in abuse, physical assault or similar behaviour is guilty of an offence and liable on conviction to a fine of N5,000 or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

(8) A person may, before, during or after a warrant of search is or has been executed on him, be called upon to attend an interview before an officer of the relevant tax authority, in connection with the activities of the trade or business of the person as would enable the relevant tax authority to arrive at a fair and correct tax liability of the person.

(9) In this section, “warrant” means the warrant as is mentioned under subsection (2) of this section.

PART VII

Assessments

54. Assessment of income tax

(1) The relevant tax authority shall proceed to assess every taxable person chargeable with income tax as soon as may be after the expiration of the time allowed to the person for the delivery of the return provided for in section 41 of this Act, or otherwise as it appears to the relevant tax authority practicable so to do.

(2) Where a taxable person has delivered a return, the relevant tax authority may—

(a) accept the return and make an assessment accordingly; or

(b) refuse to accept the return and, to the best of its judgement, determine the amount of the assessable, total or chargeable income of that person and make an assessment accordingly.

(3) Where a taxable person has not delivered a return within the time allowed and the relevant tax authority is of opinion that tax is chargeable on that person, the relevant tax authority may, according to the best of its judgement, determine the amount of the assessable, total or chargeable income and make an assessment accordingly, but that assessment shall not affect any liability otherwise incurred by such person by reason of his failure or neglect to deliver a return.

(4) Nothing in this section shall prevent the relevant tax authority from making assessment on a taxable person before the expiration of the time within which the person is required to deliver a return or give notice of his income under the provisions of section 41 of this Act, if any officer of the relevant tax authority considers the assessment to be necessary for any reason of urgency.

(5) Notwithstanding the provisions of this section, no assessment to income tax for a year of assessment shall be made by the relevant tax authority on an employee with respect to his emolument or other income if that tax is recoverable by deduction under the provisions of section 81 of this Act unless, within six years after the end of that year—

(a) he applies to the relevant tax authority so to be assessed, whether in connection with any claim to repayment of tax or otherwise; or

(b) the relevant tax authority considers the assessment to be necessary or expedient so as to arrive at the correct amount of the income tax to be charged on or to be payable by the employee for that year.

55. Additional assessment

(1) If the relevant tax authority discovers or is of opinion at any time that a taxable person liable to income tax has not been assessed or has been assessed at a less amount than that which ought to have been charged, the relevant tax authority may, within the year of assessment or within six years after the expiration thereof and as often as may be necessary, assess the taxable person at such amount or additional amount as ought to have been charged, and the provisions of this Act as to notice of assessment, appeal and other proceedings shall apply to that assessment or additional assessment and to the tax thereunder.

(2) For the purpose of computing under subsection (1) of this section the amount or the additional amount which ought to have been charged, all relevant facts consistent with paragraph (b) of the proviso to section 66 (2) of this Act shall be taken into account whether or not known when a previous assessment or an additional assessment on the same taxable person for the same year was being made or could have been made:

Provided that where any form of fraud, wilful default or neglect has been committed by or on behalf of a taxable person in connection with any tax imposed under this Act, the relevant tax authority may at any time and as often as may be necessary assess that taxable person at such amount or additional amount as may be necessary for the purpose of making good any loss of tax attributable to the fraud, wilful default or neglect.

56. List of persons assessed, etc.

(1) The relevant tax authority shall as soon as possible prepare a list of taxable persons assessed to income tax under this Act.

(2) The list (in this Act referred to as “the assessment list”) shall contain the names and addresses of the taxable persons assessed to income tax, the name and address of any person in whose name the taxable person is chargeable, the amount of the assessable, total or chargeable income on which, as the case may be, the tax is computed, the amount of the income tax charged, and such other particulars as may be prescribed by the relevant tax authority.

(3) Where complete copies of all notices of assessment and of all notices amending assessments are filed in the offices of the relevant tax authority, they shall constitute the assessment lists for the purposes of this Act.

(4) In the case of an employee from whom tax is recoverable by deduction from his emoluments under the provisions of section 81 of this Act, the relevant tax authority may, from time to time, prescribe—

(a) the form in which a record of his assessable and chargeable income, and of the tax so recovered from him, shall be maintained in the offices of the relevant tax authority;

(b) the form in which his employer shall maintain a like record; and

(c) the form in which his employer shall account to the relevant tax authority for the tax so deducted.

(5) The employer shall produce the record maintained by him pursuant to subsection (4) of this section for examination by the relevant tax authority within 21 days of notice given to that effect by the relevant tax authority, and allow a duly authorised officer of the relevant tax authority access to the record and to accounts or vouchers relating thereto in the premises of the employer at all reasonable times.

(6) For the purpose of this section, a notice may be addressed in writing to the employer and served on him, or be given in respect of an employer or class of employers by publication in the relevant Gazette.

57. Service of notice of assessment

The relevant tax authority shall cause to be served on or sent by registered post to each taxable person, or person in whose name a taxable person is chargeable, whose name appears in the assessment lists, a notice stating the amount of any assessable, total or chargeable income, the tax charged, the place at which payment should be made, and setting out the rights of that person as contained in sections 58 and 59 of this Act.

58. Revision in case of objection

(1) If a person disputes an assessment he may apply to the relevant tax authority by notice of objection in writing, to review and to revise the assessment, and the application shall state precisely the grounds of objection to the assessment and shall be made within thirty days from the date of service of the notice of the assessment.

(2) On receipt of a notice of objection, the relevant tax authority may require the person giving that notice to furnish such particulars and to produce such books or other documents as the relevant tax authority may deem necessary, and may summon any person who may be able to give information which is material to the determination of the objection to attend for examination by an officer of the relevant tax authority on oath or otherwise.

(3) If a person who has objected to an assessment agrees with the relevant tax authority as to the correct amount of the tax chargeable, the assessment shall be amended accordingly and notice of the tax chargeable shall be served on the person:

Provided that, if an applicant for revision under the provision of this subsection fails to agree with the relevant tax authority on the amount of the tax chargeable, the relevant tax authority shall give notice of refusal to amend the assessment as desired by that person and may revise the assessment to such amount as the relevant tax authority may, according to the best of its judgement, determine and give notice of the revised assessment and of the tax payable together with notice of refusal to amend the revised assessment and, where requisite, any reference in this Act to an assessment or to an additional assessment shall be treated as revised under the provisions of this proviso.

(4) If an employee from whom tax is recovered by deduction from his emoluments under the provisions of section 81 of this Act claims that inadequate relief under Part III of this Act has been taken into account in determining the rate or rates at which the deduction have been or is to be made—

(a) a determination of the relevant tax authority on the claim shall be conclusive with respect to those rates for the year of assessment concerned; and

(b) if the employee is aggrieved by that determination he may apply to the relevant tax authority to be assessed to income tax as soon as may be after his assessable income for that year can be finally ascertained, and the assessment shall be subject to the provisions of this Act with respect to objections and appeals.

59. Errors and defects in assessment and notice

(1) No assessment, warrant or other proceeding purporting to be made in accordance with the provisions of this Act shall be quashed, or deemed to be void or voidable, for want of form, or be affected by reason of a mistake, defect or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of this Act and if the person assessed or intended to be assessed or affected thereby is designated therein to common intent and understanding.

(2) An assessment shall not be impeached or affected—

(a) by reason of a mistake therein as to—

(i) the name of a taxable person or of a person whose name a taxable person is chargeable;

or

(ii) the description of income; or

(iii) the amount of any income tax charged or shown to be payable;

(b) by reason of any variance between the assessment and the notice thereof:

Provided that in the case of an assessment the notice thereof shall be duly served on the taxable person intended to be charged or the person in whose name the taxable person is chargeable and the notice shall contain, in substance and effect, the particulars on which the assessment is made.

PART VIII

Appeals

60. Establishment of Body of Appeal Commissioners

(1) The State Commissioner may, by notice in the State Gazette, establish a body of Appeal Commissioners.

(2) An Appeal Commissioner—

(a) shall be appointed by the State Commissioner, by notice in the State Gazette, from among persons appearing to him to have had experience and shown capacity in the management of a substantial trade or business or the exercise of a profession of law, accountancy or taxation in Nigeria;

(b) shall, subject to the provisions of this subsection, hold office for a period of three years from the date of his appointment;

(c) may at any time resign as an Appeal Commissioner by notice in writing addressed to the State Commissioner, except that on the request of the State Commissioner he may continue to act as an Appeal Commissioner after the date of his resignation and sit at any further hearing in a case in which he has already sat before that date to hear an appeal, until a final decision has been given with respect to that appeal;

(d) shall cease to be an Appeal Commissioner if the State Commissioner determines that his office be vacant and on notice of the determination being published in the State Gazette or on his acceptance of a political appointment.

(3) The State Commissioner shall designate a public officer to be the secretary to the body of Appeal Commissioners and the official address of the secretary shall be published in the State Gazette.

(4) Subject to this section, the body of Appeal Commissioners shall remain in office until a new body is sworn in.

61. Time limit for appeal

A taxable person being aggrieved by an assessment to income tax made upon him, having failed to agree with the relevant tax authority in the manner provided in subsection (3) of section 58 of this Act, may appeal against the assessment on giving notice as provided in section 62 of this Act within thirty days after the date of service of notice of the refusal of the relevant tax authority to amend the assessment as desired.

62. Notice to be given to relevant tax authority

(1) A notice of appeal to be given under the provisions of section 61 of this Act shall be given in writing to the relevant tax authority and shall set out—

(a) the name and address of the applicant;

(b) the official number and the date of the relevant notice of assessment;

- (c) the amount of the assessable, total or chargeable income and of the tax charged as shown by that notice and the year of assessment concerned;
- (d) the precise grounds of appeal against the assessment;
- (e) the address for service of any notice or other documents to be given to the applicant;
- (f) the date on which the applicant was served with notice of refusal by the relevant tax authority to amend the assessment as desired.

(2) As soon as may be after receipt of a notice of appeal, the secretary to the Appeal Commissioners shall, having regard to the grounds of appeal therein disclosed and to any relevant provisions of this Act, deliver a copy thereof to the relevant tax authority and the appeal shall thereupon be listed by the secretary for hearing accordingly.

(3) A notice or other document to be given to the Appeal Commissioners shall be addressed to the secretary and be delivered at or sent by registered post to his official address.

(4) A taxpayer may discontinue an appeal by him under this section on giving notice to the secretary to the Appeal Commissioners in writing at any time before the hearing of the appeal.

(5) Notwithstanding that notice of appeal against an assessment has been given by a taxpayer under this section the relevant tax authority may revise the assessment in agreement with the taxpayer, and on notice of the agreement being given in writing by the relevant tax authority to the secretary to the Appeal Commissioners at any time before the hearing of the appeal, the appeal shall be treated as being discontinued.

(6) On the discontinuance of an appeal under the provisions of this section, the amount or revised amount of the assessment, as the case may be, shall be deemed to have been agreed between the tax authority and the taxpayer under the provisions of subsection (3) of section 58 of this Act.

63. Procedure before Appeal Commissioners

(1) The Appeal Commissioners shall, as often as may be necessary, meet to hear appeals in any town in which is situated an office of the relevant tax authority and, subject to the provisions of the next following subsection, at any such meeting—

- (a) any three or more Appeal Commissioners may hear and decide an appeal; and
- (b) the Appeal Commissioners present shall elect one of their number to be the chairman for the meeting.

(2) An Appeal Commissioner who has a direct or indirect financial interest in a taxpayer or being a relative of a person having such an interest, and having knowledge thereof, shall, when any appeal by such taxpayer is pending before the body of Appeal Commissioners, declare such interest to the other Appeal Commissioners and give notice to the relevant tax authority in writing of such interest or relationship and interest, and he shall not sit at any meeting for the hearing of that Appeal.

(3) The provisions of subsection (2) of this section shall also apply where an Appeal Commissioner is a legal practitioner or an accountant, and the taxpayer is or has been a client of that Appeal Commissioner.

(4) The secretary to the Appeal Commissioners shall give seven clear days' notice to the relevant tax authority and to the applicant of the date and place fixed for the hearing of an appeal except in respect of an adjourned hearing for which the Appeal Commissioners have fixed a date at their previous hearing.

(5) All notices, precepts and documents, other than decisions of the Appeal Commissioners may be signified under the hand of the secretary.

(6) All appeals before the Appeal Commissioners shall be held in camera.

(7) A taxpayer who appeals against an assessment shall be entitled to be represented at the hearing of the appeal:

Provided that, if the person intended by the taxpayer to be its representative in an appeal is unable for good cause to attend the hearing thereof, the Appeal Commissioners may adjourn the hearing for such reasonable time as they think fit, or admit the appeal to be made by some other person or by way of written statement.

(8) The onus of proving that the assessment complained of is excessive shall be on the appellant.

(9) At the hearing of an appeal, if the representative of the relevant tax authority proves to the satisfaction of the Appeal Commissioners or the court hearing the appeal in the first instance that—

(a) the appellant has, contrary to subsection (1) of section 41 of this Act, for the year of assessment concerned, failed to prepare and deliver to the relevant tax authority the statement mentioned in that subsection; or

(b) the appeal is frivolous or vexatious or is an abuse of the appeal process; or

(c) it is expedient to require the appellant to pay an amount as security for processing the appeal,

the Appeal Commissioners or, as the case may be, the court may adjourn the hearing of the appeal to any subsequent day and order the appellant to deposit with the relevant tax authority before the day of the adjourned hearing an amount, on account of the tax charged by the assessment under appeal, equal to the tax charged on the appellant for the preceding year of assessment, or one half of the tax charged by the assessment under appeal, whichever is the lesser.

(10) If the appellant fails to comply with an order under subsection (9) of this section, the assessment against which he has appealed shall be confirmed and the appellant shall have no further right of appeal whatsoever with respect to that assessment.

(11) The Appeal Commissioners may confirm, reduce, increase or annul the assessment or make such order thereon as they see fit.

(12) A decision of the Appeal Commissioners shall be recorded in writing by their chairman and a certified copy of the decision shall be supplied to the appellant or the relevant tax authority by the secretary, on a request made within three months of the decision.

(13) Where, on the hearing of an appeal—

(a) no accounts, books or records relating to profits were produced by or on behalf of the appellant; or

(b) those accounts, books or records were so produced but the Appeal Commissioners rejected the same on the ground that it has been shown to their satisfaction that they were incomplete or unsatisfactory; or

(c) the appellant or his representative, at the hearing of the appeal, has neglected or refused to comply with a precept delivered or sent to him by the secretary to the Appeal Commissioners without showing any reasonable excuse; or

(d) the appellant or a person employed, whether confidentially or otherwise, by the appellant or his agent (other than his legal practitioner or accountant acting for him in connection with his liability to tax) has refused to answer any question put to him by the Appeal Commissioners, without showing any reasonable cause,

the chairman of the Appeal Commissioners shall record particulars of the same in his written decision.

(14) The State Commissioner may make rules prescribing the procedure to be followed in the conduct of appeal before the Appeal Commissioners.

64. Procedure of allowing decision of Appeal Commissioners

(1) Notice of the amount of the tax chargeable under the assessment as determined by the Appeal Commissioners shall be served by the relevant tax authority on the taxpayer or on the person in whose name the taxpayer is chargeable.

(2) Where the tax chargeable on a taxpayer for a year of assessment in accordance with a decision of the Appeal Commissioners does not exceed N200 no further appeal by the taxpayer shall lie from that decision except with the consent of the Board.

(3) Notwithstanding that a further appeal is pending, tax shall be paid in accordance with the decision of the Appeal Commissioners within one month of notification of the amount of the tax payable pursuant to subsection (1) of this section, and if it is not so paid, with or without applying the provisions of section 56 of this Act as the relevant tax authority thinks fit, proceedings may be taken for its recovery in accordance with section 55 of this Act.

65. Appeal to court

(1) Subject to the provisions of subsection (2) of section 64 of this Act a taxpayer who, having appealed against an assessment made on him to the Appeal Commissioners under the provisions of section 61 of this Act is aggrieved by the decision of the Appeal Commissioners, may appeal against the assessment and the decision to the High Court of the State on giving notice in writing to the relevant tax authority within thirty days after the date on which the decision was given.

(2) Where no body of Appeal Commissioners has been appointed with jurisdiction to hear an appeal against an assessment made on a taxpayer, the taxpayer who is aggrieved by the assessment and has failed to agree with the relevant tax authority in the manner provided in subsection (3) of section 58 of this Act, may appeal against the assessment to the High Court of the State on giving notice in writing to the relevant tax authority within thirty days after the date of service of notice of the refusal by the relevant tax authority to amend the assessment as desired.

(3) If the relevant tax authority is dissatisfied with a decision of the Appeal Commissioners, it may appeal against that decision to the High Court of the State on giving notice in writing to the other party to the appeal within thirty days after the date on which the decision was given.

(4) Seven clear days' notice of the date fixed for the hearing of the appeal shall, unless rules made hereunder otherwise provide, be given to all parties thereto.

(5) The provisions of subsections (7), (8) and (9) of section 63 of this Act and of subsection (1) of section 64 of this Act shall apply to an appeal under this section with any necessary modifications.

(6) All appeals shall be heard in camera unless the judge shall, on the application of the taxpayer, otherwise direct.

(7) If on the hearing of an appeal from a decision of the Appeal Commissioners given under the provisions of section 63 of this Act a certified copy of that decision is produced before the High Court and the decision contains a record by reference to—

(a) paragraph (a) of subsection (13) of section 63 of this Act, the High Court shall dismiss the appeal; or

(b) paragraph (b) of subsection (13) of section 63 of this Act, the High Court may dismiss the appeal on prima facie evidence, with respect to the accounts, books or records having been incomplete or unsatisfactory, as the Court may seem sufficient; or

(c) paragraph (c) or (d) of subsection (13) of section 63 of this Act, the High Court shall dismiss the appeal unless it considers that the cause of the neglect or refusal was reasonable.

(8) Notwithstanding anything contained in section 68 of this Act, if in a particular case the judge, from information given at the hearing of the appeal, is of the opinion that the tax may not be recovered, he may, on application being made by or on behalf of the relevant tax authority, require the appellant to furnish within such time as may be specified security for payment of the tax and if the security is not given within the time specified the tax assessed shall become payable and recoverable forthwith.

(9) The costs of the appeal shall be in the discretion of the judge hearing the appeal and shall be a sum fixed by the judge.

(10) The Chief Judge of the State may make rules providing for the method of tendering evidence before a judge on appeal, the conduct of the appeals and the procedure to be followed by a judge.

(11) An appeal against the decision of a judge shall lie to the Court of Appeal and thereafter to the Supreme Court—

(a) at the instance of the taxpayer, where the decision of the judge is to the effect that the tax chargeable on the taxpayer for the relevant year of assessment exceeds N400; and

(b) at the instance of or with the consent of the relevant tax authority, in any other case:

Provided that no costs shall be awarded against the taxpayer in an appeal instituted by the relevant tax authority under this subsection unless the decision of the judge was to the effect mentioned in paragraph (a) of this subsection.

66. Assessment to be final and conclusive

(1) Where no valid objection or appeal has been lodged within the time limited by section 58 or 61 of this Act or where due notice has not been given of a further appeal against a decision of the Appeal Commissioners or a judge, as the case may be, an assessment as made, or agreed to under the provisions of subsection (3) of section 58 of this Act determined under the proviso to that subsection or on appeal, as the case may be, shall be final and conclusive for all purposes of the Act as regards the amounts of the assessable, total or chargeable income and the tax charged thereby.

(2) If the full amount of the tax charged by a final and conclusive assessment is not paid within the appropriate period or periods prescribed by this Act, the provisions thereof relating to the recovery of tax, and to any penalty under section 76 of this Act, shall apply to the collection and recovery of the tax or penalty subject only to the set-off of the amount of any tax repayable under any claim made under a provision of this Act which has been agreed to by the relevant tax authority or determined on an appeal against a refusal to admit that claim:

Provided that—

(a) where an assessment has become final and conclusive, any tax overpaid, including any amount deposited with the relevant tax authority on account of the tax charged by the assessment, shall be paid;

(b) nothing in section 56 of this Act shall prevent the relevant tax authority from making an assessment or additional assessment for any year which does not involve reopening any issue, on the same facts, which has been determined for that year of assessment under subsection (3) of that section or on appeal.

67. Appeal provisions of Companies Income Tax Act to apply with certain exemptions

Subject to the foregoing provisions of this Part of this Act, the provisions of sections 51, 53 and 54 of the Companies Income Tax Act and of any rules made or deemed to have been made thereunder shall, with any necessary modifications, apply in the case of a person to whom paragraph (b) of subsection (1) of section 2 of this Act relates, to any appeal under this Act.

[Cap. C21.]

PART IX

Collection, recovery and repayment of tax

68. Payment of income tax

(1) Income tax charged by an assessment which is not or has not been the subject of an objection or appeal, shall be payable, after the deduction of any amount to be set-off for the purposes of collection, or any amount deposited against the tax, at the place stated in the notice of assessment within two months after the date of service of that notice:

Provided that—

(a) if the period of two months expires before the fourteenth day of December within the year of assessment for which the income tax has been charged, and the aggregate of the tax to be deducted as aforesaid and of any income tax paid for that year within that period amounts to not less

than one half of the tax so charged, then payment of any balance of such tax may be made not later than that day;

(b) the relevant tax authority in its discretion may extend the time within which payment is to be made.

(2) Collection of income tax in a case where notice of an objection or an appeal has been given by or on behalf of the person shall remain in abeyance until the objection or appeal is determined, except that the relevant tax authority may enforce payment of that portion, if any, of the tax which is not in dispute.

(3) On the determination of an objection or appeal, the relevant tax authority shall serve notice on the taxable person of the tax chargeable as so determined and that tax shall be payable within one month of the date of service of the notice:

Provided that, if the period of one month ends before the fourteenth day of December within the year of assessment and the conditions specified in paragraph (a) of the proviso to subsection (1) of this section are otherwise satisfied with respect to the amount of the tax chargeable as so determined, then any balance of that tax to be paid may be paid not later than that day.

(4) Notwithstanding any of the foregoing provisions of this section, if in a particular case the relevant tax authority has reason to believe that any income tax charged by an assessment may not be recovered, by reason of the person charged leaving Nigeria or otherwise, the relevant tax authority may give notice to pay the amount of the tax or to give security to the satisfaction of the relevant tax authority for payment thereof, and if the payment is not made, or security so given, within that time, the amount of the tax shall be recoverable forthwith for the purpose of this subsection, and the relevant tax authority may, if necessary, assess any taxable person for any year of assessment at any time during the preceding year of assessment.

69. Deduction of tax on rent

(1) Where a rent becomes due or payable to a person, the payer of the rent shall, at the date when the rent is paid or credited, whichever first occurs, shall deduct therefrom tax at the rate prescribed in subsection (2) of this section and shall forthwith pay over to the relevant tax authority the amount so deducted.

(2) The rate at which tax is to be deducted for the purpose of this section shall be 10 per cent of gross rent.

(3) In accounting for the tax so deducted to the relevant tax authority, the payer shall state in writing the following particulars which shall accompany the remittance, that is—

- (a) the gross amount of the rent;
- (b) the amount of tax being accounted for;
- (c) the name and address of the recipient and the period for which the rent has been paid or credited; and
- (d) the address or accurate description of the location of the property concerned.

(4) For the purpose of this section, the relevant tax authority shall be determined in accordance with the provisions of section 2 of this Act.

(5) The payer of a rent in subsection (1) of this section refers to a company (corporate or unincorporated) and includes Government Ministries and Departments, parastatals, statutory bodies, institutions and other established organisations approved for the operation of Pay As You Earn system, whether or not liable itself to tax under any enactment or law relating to taxation of income in Nigeria or elsewhere.

(6) The tax, when paid over to the relevant tax authority, shall be the final tax due from a non-resident recipient of the payments. [1996 No. 30.]

70. Deduction of tax on interest, etc.

(1) Where a payment, such as interest or royalty, becomes due or payable to a person, the payer at the date when the payment is made or credited, whichever first occurs, shall deduct therefrom tax at the rate prescribed in subsection (2) of this section and shall forthwith pay over to the relevant tax authority the amount so deducted.

(2) The rate at which tax is to be deducted under this section shall be 10 per cent of gross interest and 5 per cent of gross royalty. [1996 No. 30.]

(3) In accounting for the tax so deducted to the relevant tax authority, the payer shall state in writing the following particulars, that is—

- (a) the gross amount of the payment;
- (b) the name and address of the recipient; and
- (c) the amount of the tax being accounted for.

(4) For the purpose of this section, the relevant tax authority shall be determined in accordance with the provisions of section 2 of this Act, except in the case of savings interest where the relevant tax authority shall be that where the branch of the bank paying the interest is situated.

(5) The payer in subsection (1) of this section refers to any company (corporate or unincorporated), including Government Ministries and Departments, any person engaged in banking or charged with the administration of the FSB International Plc, parastatals, statutory bodies, institutions and other established organisations approved for the operation of Pay As You Earn System whether or not liable to tax under any enactment or law relating to taxation of income in Nigeria or elsewhere.

(6) The provisions of this section shall not apply to payments of interest by any person engaged in banking where the interest is due and payable on pass-book savings account, which is less than N50,000.

(7) The tax, when paid over to the relevant tax authority, shall be the final tax due on the income.

[1996 No. 30. 1996 No. 32.]

71. Deduction of tax on dividend

(1) Where a dividend or such other distribution becomes due from or payable by a Nigerian company to a person, the company making the payment shall at the date when the amount is paid or credited,

whichever first occurs, deduct therefrom tax at the rate prescribed under subsection (2) of this section and shall forthwith pay over to the relevant tax authority the amount so deducted.

(2) The rate at which tax is to be deducted in this section shall be 10 per cent. [1996 No. 30.]

(3) In accounting for the tax so deducted to the relevant tax authority, the company shall state in writing the following particulars, that is—

- (a) the gross amount of the dividend or such other distribution;
- (b) the name and address of the recipient; and
- (c) the accounting period or periods of the company in respect of the profits of which the dividend or distribution is declared to be payable and the date on which payment is due.

(4) For the purpose of this section, the relevant tax authority shall be determined in accordance with the provisions of section 2 of this Act.

(5) The tax, when paid over to the relevant tax authority, shall be the final tax due on the income. [1996 No. 30. 1996 No. 32.]

72. Deduction of tax on director's fees

(1) Where any payment of director's fees becomes due or payable to a person, the payer at the date when the payment is made or credited, whichever first occurs, shall deduct therefrom tax at the rate prescribed in subsection (2) of this section and shall forthwith pay over to the relevant tax authority the amount so deducted.

(2) The rate at which tax is to be deducted for the purpose of this section shall be 10 per cent. [1996 No. 30.]

(3) In accounting for the tax to be deducted to the relevant tax authority, the payer shall state in writing the following particulars, that is—

- (a) the gross amount of the payment;
- (b) the name and address of the recipient; and
- (c) the amount of tax being accounted for.

(4) For the purpose of this section, the relevant tax authority shall be determined in accordance with the provisions of section 2 of this Act.

(5) The payer in subsection (1) of this section refers to any company (corporate and unincorporated) including Government Ministries and Departments, parastatals, statutory bodies, institutions and other established organisations approved for the operation of Pay As You Earn System whether or not liable itself to tax under any enactment or law relating to taxation of income in Nigeria or elsewhere.

73. Deduction of tax at source

(1) Income tax assessable on a person whether or not an assessment has been made, shall, if the relevant tax authority so directs, be recoverable from any payment made by any person to that person.

(2) A direction under subsection (1) of this section—

(a) may apply to a person specified in the direction either with respect to a person or persons or a body of individuals, liable to pay tax;

(b) shall be in writing addressed to the person or be published in the State Gazette and shall specify the nature of payments and the rate at which tax is to be deducted.

(3) In determining the rate of tax to be applied to any payment made to a person, the relevant tax authority may take into account—

(a) any assessable income of that person for the year arising from any other source chargeable to income tax under this Act; and

(b) any income tax or arrears of tax payable by that person for any of the six preceding years of assessment.

(4) Income tax recovered under the provisions of this section by deduction from payments made to a person shall be set-off for the purposes of collection against tax charged on that person by an assessment, but only to the extent that the total of those deductions does not exceed the amount of the assessment.

(5) A person required under any provision of the Act to make a deduction from payments made to a person shall account to the relevant tax authority in such a manner as the relevant tax authority may prescribe for the deduction so made.

(6) The Minister on the advice of the Board may, from time to time, make regulations for carrying out the provisions of this section.

74. Penalty for failure to deduct tax

A person who, being obliged to deduct tax under section 69, 70, 71 or 72 of this Act, fails to deduct or having deducted fails to pay to the relevant tax authority within thirty days from the date the amount was deducted or the time the duty to deduct arose, is guilty of an offence under this Act and is liable on conviction to a fine of N5,000 or 10 per cent of the amount of the tax due, whichever is higher, in addition to the amount of tax deductible or deducted plus interest at the prevailing commercial rate. [1996 No. 30.]

75. Application of provision

(1) The provisions of sections 69, 70, 71 and 72 of this Act shall apply respectively to dividend, interest, rent and royalty forming part of the income or profit exempted from tax under any section of this Act and the Third Schedule thereto: [Third Schedule.]

Provided however, that dividend, interest, rent or royalty derived from outside Nigeria and brought into Nigeria through Government approved channels shall remain exempted.

(2) For the purpose of this section, “Government approved channels” means—

(a) the Central Bank of Nigeria;

(b) any bank or corporate body appointed by the Minister as authorised dealer under Foreign Exchange (Monitoring and Miscellaneous Provisions) Act or any enactment replacing that Act.

[Cap. F34.]

76. Penalty for non-payment of income tax

(1) If any income charged by any assessment is not paid within the periods prescribed in section 68 of this Act a sum equal to 10 per cent per annum of the tax shall be added thereto, and the provisions of this Act relating to the recovery and collection of tax shall apply to the recovery and collection of that sum.

(2) The relevant tax authority shall serve a demand note on the taxable person or the person in whose name the taxable person is chargeable and, if payment is not made within one month from the date of the service of the demand note, the relevant tax authority may proceed to enforce payment as hereinafter provided.

(3) A penalty imposed under this section shall not be deemed to be part of the tax paid for the purpose of claiming relief under any provision of this Act.

(4) A person who without lawful justification or excuse, the proof whereof shall lie on such person, fails to pay the income tax within the period of one month prescribed in subsection (2) of this section, shall be guilty of an offence under this Act.

77. Interest for late payment of income tax

The tax due from a taxable person shall carry interest at bank base lending rate from the date when the tax becomes payable until it is paid.

78. Action for income tax by the relevant tax authority

(1) Income tax may be sued for and recovered in a court of competent jurisdiction by the relevant tax authority in its official name with full costs of action from the person charged therewith as a debt due to the Government of the Federation or to the relevant tax authority.

(2) For the purposes of this section a court of competent jurisdiction shall include a magistrate's court, which court is hereby invested with the necessary jurisdiction, provided that the amount claimed in any action does not exceed the amount of the jurisdiction of the magistrate concerned with respect to action for debt.

(3) In an action brought under subsection (1) of this section, the production of a certificate signed by a person duly authorised by the chairman of the relevant tax authority giving the name and address of the defendant and the amount of income tax due, shall be sufficient evidence of the amount so due and sufficient authority for the court to give judgment for the said amount.

79. Remission of penalty

The relevant tax authority may, for any good cause shown, remit either before or after judgment the whole or any part of the penalty due under section 76 of this Act.

80. Remission of tax

The Governor of the State may, on the recommendation of the Commissioner responsible for finance acting on the advice of the relevant tax authority, remit wholly or in part, any tax payable under this Act if satisfied that it is just and equitable so to do.

81. P.A.Y.E.

(1) Income tax chargeable on an employee by an assessment whether or not the assessment has been made, shall, if the relevant tax authority so directs, be recoverable from any emolument paid, or from any payment made on account of the emolument, by the employer to the employee.

(2) A direction under subsection (1) of this section shall be in writing addressed to an employer or be published in the State Gazette, and shall specify the emolument of an employee or class of employees to which it refers and the amount or amounts of income tax to be deducted, whether by reference to tax tables issued by the relevant tax authority or otherwise.

(3) In arriving at the amount of income tax to be deducted from any payment of or on account of the emolument to an employee, the relevant tax authority shall secure so far as possible that the aggregate amount of all the deductions made during a year of assessment shall equal the income tax chargeable on him in respect of his emoluments for that year.

(4) Notwithstanding the provisions of subsection (3) of this section, in determining the amount of a deduction or deductions to be made in the case of any particular employee, the relevant tax authority may take into account an assessable income of that employee for the same year arising from any other source chargeable with income tax under this Act.

(5) Income tax recovered under the provisions of this section by deduction from the emoluments of an employee shall be set-off for the purposes of collection against tax charged on him by an assessment, but only to the extent that the deductions have been made on account of or by reference to an income charged by the assessment.

(6) The Minister may make regulations generally for the carrying out of the provisions of this section.

82. Employer to be answerable for tax deducted

An employer required under a provision of this Act to make deductions from emoluments or amounts on account of emoluments paid by him to an employee shall account to the relevant tax authority in such manner as the relevant tax authority may prescribe for the deductions so made, and in the event of failure by the employer to make the deduction, or properly to account therefor, the amount thereof together with a penalty of 10 per cent per annum of the amount plus interest at the prevailing commercial rate shall be recoverable as a debt due by the employer to the relevant tax authority.

83. Relief in respect of error or mistake

(1) If a taxable person who has paid income tax for a year of assessment alleges that an assessment made on him for that year was excessive by reason of some error or mistake in a return, statement or an account made by him or on his behalf for the purpose of the assessment, he may, at anytime not later than six years after the end of the year of assessment within which the assessment was made, make an application in writing to the relevant tax authority for relief.

(2) On receiving an application, the relevant tax authority shall enquire into the matter and shall, subject to the provisions of this section, give, by way of repayment of tax, relief in respect of the error or mistake as appears to be reasonable and just:

Provided that no relief shall be given under this section in respect of an error or a mistake as to the basis on which the liability of the applicant ought to have been computed where the return, statement or account was in fact made on the basis or in accordance with the practice of the relevant tax authority generally prevailing at the time when the return, statement or account was made.

(3) In determining an application under this section, the relevant tax authority shall have regard to all the relevant circumstances of the case, and in particular, shall consider whether the granting of relief would result in the exclusion from charge to tax of any part of the income of the applicant, and for that purpose the relevant tax authority may take into consideration the liability to tax of the applicant and any assessment made on him for other years.

(4) A determination of the relevant tax authority under the section shall be final and conclusive.

84. Payment of tax

(1) Except as is otherwise provided in this Part of this Act, no claim for repayment of tax shall be allowed unless it is made in writing within six years after the end of the year of assessment to which it relates.

(2) The relevant tax authority shall give a certificate of the amount of any tax to be repaid under any of the provisions of this Part of this Act, or under any order of a court of competent jurisdiction, and on the receipt of the certificate the Accountant-General of the relevant territory shall cause repayment to be made in conformity therewith.

85. Tax clearance certificate

(1) Whenever the relevant tax authority is of opinion that tax assessed on the income of a person for the three years immediately preceding the current year of assessment has been fully paid or that no tax is due on the income or that the person is not liable to tax for any of those three years, it shall issue a tax clearance certificate to the person within two weeks of demand for the certificate by that person or give reasons for the denial, so however, that the payment of current year tax shall not be made a condition for the issuance of the certificate unless the applicant is leaving the country finally.

(2) A Ministry, Department or an agency of Government or a commercial bank with whom a person has any dealing with respect to any of the transactions mentioned in subsection (4) of this section, shall demand from the person a tax clearance certificate for the three years immediately preceding the current year of assessment.

(3) A tax clearance certificate shall disclose in respect of the last three years of assessment—

- (a) chargeable income;
- (b) tax payable;
- (c) tax paid; and
- (d) tax outstanding or alternatively a statement to the effect that no tax is due.

(4) The provisions of subsection (2) of this section shall apply in relation to the following, that is—

- (a) application for Government loan for industry or business;

- (b) registration of motor vehicle;
- (c) application for firearms licence;
- (d) application for foreign exchange or exchange control permission to remit funds outside Nigeria;
- (e) application for certificate of occupancy;
- (f) application for award of contracts by Government, its agencies and registered companies;
- (g) application for approval of building plans;
- (h) application for trade licence;
- (i) application for transfer of real property;
- (j) application for import or export licence;
- (k) application for agent licence;
- (l) application for pools or gaming licence;
- (m) application for registration as a contractor;
- (n) application for distributorship;
- (o) confirmation of appointment by Government as chairman or member of a public board, institution, commission, company or to any other similar position made by the Government;
- (p) stamping of guarantor's form for a Nigerian passport;
- (q) application for registration of a limited liability company or of a business name;
- (r) application for allocation of market stalls;
- (s) appointment or election into public office.

(5) An applicant for control permission to remit funds to a non-resident recipient in respect of income accruing from rent, dividend, interest, royalty, fees or any other similar income shall be required to produce a tax clearance certificate to the effect that tax has been paid on the fund in respect of which the application is sought or that no tax is payable, whichever is the case.

(6) When a person who has deducted any tax pursuant to the provisions of this Act fails to pay the tax so deducted to the relevant tax authority, no tax clearance certificate may be issued to that person even if he has fully discharged his own tax liability under this Act.

(7) A person who—

(a) for the purpose of obtaining a tax clearance certificate, gives incorrect information in relation to any matter or thing affecting his liability to tax; or

(b) obtains a tax clearance certificate through misrepresentation, forgery or falsification, is guilty of an offence and liable on conviction to a fine of N500 plus twice the tax payable by him or to imprisonment for three years or to both such fine and imprisonment.

(8) Where a person is able to produce evidence that he has suffered tax deduction at source and that the year of assessment to which the tax relates falls within the period covered by the tax clearance certificate, the person shall not be denied a tax clearance certificate:

Provided that any balance of tax after credit for the tax so deducted has been fully paid.

PART X

Administrative and transitional provisions

86. Joint Tax Board

(1) There is hereby established a Board which shall be known as the Joint Tax Board (in this Act referred to as “the Board”).

(2) The Board shall consist of the following members, that is—

(a) the chairman of the Federal Board of Inland Revenue, appointed pursuant to section 1 of the Companies Income Tax Act who shall be chairman of the Board; and [Cap. C21.]

(b) one member from each State, being a person experienced in income tax matters nominated either by name or office, from time to time, by the Commissioner charged with responsibility for matters relating to income tax in the State in question; and a nomination under this paragraph shall be evidenced by notice thereof in writing delivered to the secretary to the Board.

(3) The Federal Civil Service Commission shall appoint an officer who is experienced in income tax matters to be secretary to the Board, and may, in accordance with existing law, appoint such other staff as the Board may deem to be necessary, from time to time, including on secondment or transfer, from any public service in Nigeria.

(4) The secretary shall not be a member of the Board but shall be responsible for maintaining records of the Board’s proceedings and for signifying all decisions of the Board.

(5) The secretary shall summon a meeting of the Board whenever the business requiring its attention so warrants, or on the request of a member, and a majority decision of the members obtained by him in written correspondence on any matter, shall be treated in all respects as though it were a decision of the Board in an actual meeting, unless any member has requested the submission of that matter to such meeting.

(6) At a meeting of the Board, a member may be represented by an official duly authorised by the member for such purpose, and seven members or their representatives shall constitute a quorum.

(7) The chairman or any person duly authorised to represent him under subsection (6) of this section shall preside at all meetings of the Board and every decision of the Board shall, when there is no consensus, be by majority of the members present and voting, and the chairman shall have a casting vote apart from his deliberative vote when there is an equality of votes.

(8) The Legal Adviser, Federal Board of Inland Revenue shall be in attendance at meetings of the Board and shall serve thereat as adviser to the Board.

(9) The Board shall—

(a) exercise the power or duties conferred on it by express provisions of this Act, and any other powers and duties arising under this Act which may be agreed by the Government of each territory to be exercised by the Board;

(b) exercise powers and perform duties conferred on it by any enactment of the Federal Government imposing tax on the income and profits of companies, or which may be agreed by the

Minister to be exercised or performed by it under the enactment in place of the Federal Board of Inland Revenue;

(c) advise the Federal Government, on request, in respect of double taxation arrangement concluded or under consideration with any other country, and in respect of rates of capital allowances and other taxation matters having effect throughout Nigeria and in respect of any proposed amendment to this Act;

(d) use its best endeavours to promote uniformity both in the application of this Act and in the incidence of tax on individuals throughout Nigeria; and

(e) impose its decisions on matters of procedure and interpretation of this Act on any State for purposes of conforming with agreed procedure or interpretation.

(10) The Federal Government shall provide an office for the Board of which the recurrent expenses incurred by that Government, including the emoluments of the secretary and of any other officers or employees of the Board, shall be shared between the Federal and State Governments either in proportion to their respective tax revenues or in some other manner as those Governments may agree upon from time to time.

87. Establishment and composition of the State Board of Internal Revenue

(1) There is hereby established for each State, a Board to be known as the State Board of Internal Revenue (in this Act referred to as "the State Board") whose operational arm shall be known as the State Internal Revenue Service (in this Act referred to as "the State Service"). [1996 No. 31.]

(2) The State Board shall comprise—

(a) the executive head of the State Service as chairman, who shall be a person experienced in taxation and be appointed by the Governor from within the State Service;

(b) the Directors and Heads of Departments within the State Service;

(c) a Director from the State Ministry of Finance;

(d) the Legal Adviser to the State Service;

(e) three other persons nominated by the Commissioner for Finance in the State on their personal merits; and

(f) the secretary of the State Service who shall be an ex-officio member.

(3) Any five members of the State Board, of whom one shall be the chairman or a Director, shall constitute a quorum.

(4) The secretary of the State Service shall be appointed by the Board from within the State Service.

(5) Notwithstanding that the Legal Adviser to the State Service is a member of the State Board, he may appear for and represent the State Board or State Service in his professional capacity in any proceedings in which the State Board or State Service is a party, and the Legal Adviser shall not in such circumstances give evidence on behalf of the State Board or State Service.

(6) The secretary shall summon a meeting of the State Board whenever the business requiring its attention so warrants, or on the request of a member.

(7) A majority decision of the members on any matter obtained by the secretary in written correspondence shall be treated in all respects as though it were a decision of the Board in an actual meeting unless any member has requested the submission of the matter to such meeting.

88. Functions of the State Board

(1) The State Board shall be responsible for— [1996 No. 31.]

(a) ensuring the effectiveness and optimum collection of all taxes and penalties due to the Government under the relevant laws;

(b) doing all such things as may be deemed necessary and expedient for the assessment and collection of the tax and shall account for all amounts so collected in a manner to be prescribed by the Commissioner;

(c) making recommendations, where appropriate, to the Joint Tax Board on tax policy, tax reform, tax legislation, tax treaties and exemption as may be required, from time to time;

(d) generally controlling the management of the State Service on matters of policy, subject to the provisions of the law setting up the State Service; and

(e) appointing, promoting, transferring and imposing discipline on employees of the State Service.

(2) The State Board shall be autonomous in the day-to-day running of the technical, professional and administrative affairs of the State Service.

(3) Subject to subsection (4) of this section, the State Board may, by notice in the Gazette or in writing, authorise any person to— [1998 No. 18.]

(a) perform or exercise on behalf of the State Board, any function, duty or power conferred on the State Board; and

(b) receive any notice or other document to be given or delivered to or in consequence of this Act and any subsidiary legislation made under it.

(4) Notwithstanding the provisions of subsection (3) of this section, the State Board shall not delegate any power conferred on it under sections 2, 6, 7, 17, 46, 47, 50, 53, 54, 55, 57, 78, 86, 99, 102, 103 and 104 of this Act to any person.

89. Establishment of Technical Committee of the State Board

(1) There shall be a Technical Committee of the State Board (in this Act referred to as “the Technical Committee”) which shall comprise— [1996 No. 31.]

(a) the chairman of the State Board as chairman;

(b) the Directors within the State Service;

(c) the Legal Adviser to the State Service;

(d) the secretary of the State Service.

(2) The Technical Committee shall—

(a) have powers to co-opt additional staff from within the State Service in the discharge of the duties;

(b) consider all matters that require professional and technical expertise and make recommendations to the State Board;

(c) advise the State Board on all its powers and duties specifically mentioned in section 88 of this Act;

(d) attend to such other matters as may, from to time, be referred to it by the Board.

90. Establishment of Local Government Revenue Committee

(1) There shall be established for each local government area of a State a Committee to be known as the Local Government Revenue Committee (in this Act referred to as “the Revenue Committee”). [1996 No. 31.]

(2) The Revenue Committee shall comprise—

(a) Supervisor for Finance as chairman;

(b) three local government councilors as members; and

(c) two other persons experienced in revenue matter to be nominated by the chairman of the local government on their personal merits.

91. Functions of the Revenue Committee

(1) The Revenue Committee shall be responsible for the assessment and collection of all taxes, fines and rates under its jurisdiction and shall account for all amounts so collected in a manner to be prescribed by the chairman of the local government. [1996 No. 31.]

(2) The revenue committee shall be autonomous of the local government treasury and shall be responsible for the day-to-day administration of the Department which forms its operational arm.

92. Establishment and composition of Joint State Revenue Committee

There is hereby established for each State of the Federation a Joint State Revenue Committee which shall comprise— [1998 No. 19.]

(a) the chairman of the State Internal Revenue Service as the chairman;

(b) the chairman of the Local Government Revenue Committee;

(c) a representative of the bureau on local government affairs not below the rank of Director;

(d) a representative of the Revenue Mobilisation Allocation and Fiscal Commission, as an observer;

- (e) the State Sector Commander of the Federal Road Safety Commission, as an observer;
- (f) the Legal Adviser of the State Internal Revenue Service;
- (g) the secretary of the Committee who shall be a staff of the State Internal Revenue Service.

93. Functions

The functions of the State Joint Revenue Committee shall be to—

[1998 No. 19.]

- (a) implement decisions of the Joint Tax Board;
- (b) advise the Joint Tax Board and the State and local governments on revenue matters;
- (c) harmonise tax administration in the State;
- (d) enlighten members of the public generally on State and local government revenue matters; and
- (e) carry out such other functions as may be assigned to it by the Joint Tax Board.

PART XI

Offences and penalties

94. Offences and penalties

(1) A person guilty of an offence under this Act, or a person who contravenes or fails to comply with any of the provisions of this Act or any rule or regulation made thereunder for which no other penalty is specifically provided, shall be liable on conviction to a fine of N200 and where the offence is the failure to furnish a return, statement or information or to keep records required, a further sum of forty naira for every day during which the failure continues, and, in default of payment, to imprisonment for six months, and the liability to such further sum shall commence from the day following the conviction, or from such other day thereafter as the Court may order.

(2) A person who—

- (a) fails to comply with the requirements of a notice served on him under this Act; or
- (b) without sufficient cause, fails to attend in answer to a notice or summons served on him under this Act, or having attended fails to answer any question lawfully put to him,

is guilty of an offence against this Act.

(3) Notwithstanding any of the provisions of the Criminal Procedure Act or the Criminal Procedure Law or Code of a State, a magistrate may dispense with the personal attendance of the defendant if he pleads guilty in writing or so pleads by a legal practitioner. [Cap. C41.]

(4) In the case of failure by a person to comply with the requirements of a notice given by the relevant tax authority under the provisions of section 41 of this Act for the purposes of the income tax for a year

of assessment to be charged on that person, with respect to income from any source other than from an employment, the relevant tax authority may, in lieu of the institution of proceedings against the person under the provisions of subsection (2) of this section, impose a penalty on him of an amount equal to the income tax chargeable on him for the preceding year of assessment:

Provided that—

- (a) written notice of the penalty shall be served on the person;
- (b) any amount of the penalty remaining unpaid thirty days after service of the notice, may be sued for and recovered in a court of competent jurisdiction by the relevant tax authority in its official name with full costs of action from the person liable thereto as a debt to the Federal Government or relevant State;
- (c) a certificate signed by an officer of the relevant tax authority setting out the name and address of the person, the date of service of the said notice, and the amount of the penalty remaining unpaid, shall be sufficient authority for the court to give judgment for that amount; and
- (d) the relevant tax authority may remit the whole or any part of the penalty, whether before or after judgment, for any reason which appears to it to be adequate.

95. Penalty for making incorrect returns

(1) A person who, without reasonable excuse—

- (a) makes an incorrect return by omitting or understating any income liable to tax under this Act; or
- (b) gives an incorrect information in relation to a matter or thing affecting the liability to tax of any taxable person,

is guilty of an offence and liable on conviction to a fine of 10 per cent of the correct tax and double the amount of tax which has been undercharged in consequence of the incorrect return or information, or would have been so undercharged if the return or information had been accepted as correct. [1996 No. 30.]

(2) No person shall be liable to a penalty under this section unless the complaint concerning the offence was made in the year of assessment in respect of or during which the offence was committed or within six years after the expiration thereof.

(3) The relevant tax authority may compound any offence under this section and may before judgment stay or compound any proceeding thereunder.

96. False statements and returns

(1) A person who—

- (a) for the purpose of obtaining a deduction, set-off, relief or an overpayment in respect of tax for himself or any other person, or who in a return, account or particulars made or furnished with reference to tax, knowingly makes a false statement or false representation; or
- (b) aids, abets, assists, counsels, incites or induces any other person—

- (i) to make or deliver a false return or statement under this Act; or
- (ii) to keep or prepare false accounts or particulars concerning any income on which tax is payable under this Act; or
- (iii) unlawfully refuses or neglects to pay tax,

is guilty of an offence and liable on conviction to a fine of N5,000 or imprisonment for five years or to both such fine and imprisonment: [1996 No. 30.]

Provided that where an offence under this section is committed by a person in relation to tax payable by, or repayable to him for a year of assessment, there shall be substituted for the amount of the fine as aforesaid, the amount of N1,000 or treble the tax chargeable on the person for that year, whichever is the greater.

(2) The Board may compound an offence under this section and with the leave of the court may before judgment stay or compound any proceeding thereunder.

97. Penalty for offences by authorised and unauthorised persons

A person who—

- (a) being a person appointed for the due administration of this Act or employed in connection with the assessment or collection of the tax—
 - (i) demands from a person an amount in excess of the authorised assessment of the tax; or
 - (ii) withholds for his own use or otherwise, a portion of the amount of tax collected; or
 - (iii) renders a false return, whether orally or in writing, of the amount of tax collected or received by him; or
 - (iv) defrauds a person, embezzles any money, or otherwise uses his position to deal wrongly with the relevant tax authority; or
- (b) not being authorised under this Act to do so, collects or attempts to collect the tax under this Act,

is guilty of an offence and liable on conviction to a fine of N1,000 or to imprisonment for three years or both such fine and imprisonment. [1999 No. 30.]

98. Tax to be payable notwithstanding proceedings

The institution of proceedings for the imposition of a penalty, fine or term of imprisonment under this Act shall not relieve a person from liability to payment of any tax for which he is or may become liable.

99. Prosecution to be with sanction of Board

No prosecution in respect of an offence under this Part of this Act may be commenced except at the instance of the relevant tax authority.

100. Saving for criminal proceedings

The provisions of this Part of this Act shall not affect any criminal proceeding under any other enactment.

101. Place of an offence

An offence under this Act shall be deemed to occur in the State or at such place as the relevant tax authority may decide.

PART XII

Powers of tax collectors

102. Definition of tax collector

(1) For the purpose of this Part of this Act, a tax collector means a duly authorised official of the State Service or the Federal Board of Inland Revenue.

(2) The production by a tax collector of a certificate or warrant—

- (a) issued by, and having printed thereon the official name of the relevant tax authority;
- (b) setting out his full name or names; and
- (c) stating that he is, or is authorised to exercise the functions of a tax collector,

shall be sufficient evidence that the tax collector is duly authorised for the purposes of this Act.

103. Power to enter and require information

Whenever it is necessary for the purpose of obtaining information in relation to a person who is or may be liable to the tax imposed by this Act, or the income, occupation or domestic circumstances of that person, or for the purpose of collecting the tax, a tax collector may, during daylight hours, enter into and upon any house or premises, provided he does so without damage to the house or premises, and require a person found therein to give all the information orally to him.

104. Power to distrain for non-payment of tax

(1) Without prejudice to any other power conferred on the relevant tax authority for the enforcement of payment of tax due from a taxable person, where an assessment has become final and conclusive and a demand note has, in accordance with the provisions of this Act, been served on the taxable person or on the person in whose name the taxable person is chargeable, then if payment of the tax is not made within the time limited by the demand note, the relevant tax authority may, in the prescribed form, for the purpose of enforcing payment of the tax due—

- (a) distrain the taxpayer by his goods or other chattels, bonds or other securities;
- (b) distrain upon any land, premises, or place in respect of which the taxpayer is the owner,

and subject to the following provisions of this section, recover the amount of tax due by sale of any thing so distrained.

(2) The authority to distrain under this section shall be in such form as the relevant tax authority may direct, and that authority shall be sufficient warrant and authority to levy by distress the amount of tax due.

(3) For the purpose of levying a distress under this section, an officer authorised in writing by the relevant tax authority may execute a warrant of distress, and if necessary break open any building or place in the day time for the purpose of levying the distress and he may call to his assistance any police officer and it shall be the duty of that police officer when so required to aid and assist in the execution of the warrant of distress and in levying the distress.

(4) Things distrained under this section may, at the cost of the taxable person, be kept for fourteen days and at the end of that time if the amount due in respect of the tax and the cost and charges of and incidental to the distress are not paid, they may, subject to subsection (6) of this section, be sold at any time thereafter.

(5) Out of the proceeds of a sale under this section, there shall in the first place be paid the cost or charges of and incidental to the sale and keeping of the distress, and disposal thereunder and in the next place the amount due in respect of the tax, and the balance (if any) shall be payable to the person on demand being made by him or on his behalf within one year of the date of the sale.

(6) Nothing in this section shall be construed so as to authorise the sale of an immovable property without an order of a High Court, made on application in such form as may be prescribed by rules of court.

105. Obstruction to be an offence

Any person who—

(a) having been required to give information under the provisions of the preceding section wilfully obstructs a tax collector in the performance of his duties by neglecting or refusing to give such information; or

(b) otherwise obstructs or wilfully misleads or attempts to mislead a tax collector in the performance of his duties under this Part of this Act,

is guilty of an offence under this Act.

106. Immunity from action, etc.

A tax collector shall not be liable in any action or proceeding, whether civil or criminal, for anything done or said by him in the lawful exercise of the powers conferred upon him by section 102 of this Act.

PART XIII

Miscellaneous

107. Repeal of Cap. 173, Cap. 43 and Cap. 174 L.F.N. 1990

Subject to section 6 of the Interpretation Act, the Income Tax Management Act, the Capital Transfer Tax Act and the Income Tax (Armed Forces and Other Persons) (Special Provisions) Act are hereby repealed. [1996 No. 32. Cap. I23.]

108. Interpretation

In this Act, unless the context otherwise requires—

“assessable income” means assessable income determined under the provisions of Part III of this Act;

“Board” means the Joint Tax Board established under section 86 of this Act;

“company” means a company or corporation (other than a corporation sole) established by or under a law in force in Nigeria or elsewhere;

“employment” includes any appointment or office, whether public or otherwise, for which remuneration is payable, and “employee” and “employer” shall be construed accordingly;

“executor” includes any person administering the estate of a deceased person;

“individual” includes a corporation sole and a body of individuals but does not include a company, partnership, community, family, trustee or executor, or any body of trustees or executors;

“itinerant worker” means an individual who works at any time during a year of assessment (other than as a member of the armed forces) for a daily wage or customarily earns his livelihood in more than one place in Nigeria and whose total income does not exceed N600;

“Minister” means the Minister charged with responsibility for matters relating to taxation;

“Nigerian company” means any company incorporated under the Companies and Allied Matters Act or any enactment replaced by that Act; [Cap. C20.]

“person” includes an executor, trustee, company, partnership, community, family and individual;

“relevant tax authority” means, in relation to—

(a) an individual for a year of assessment, the tax authority of the territory in which the individual is deemed to be resident in that year;

(b) an executor, the tax authority of the territory in which the deceased individual was last deemed to be resident or would have been deemed to be resident if the provisions of this Act had been in force prior to the date of his death;

(c) a trustee of a trust or settlement—

(i) where all the income of the settlement or trust for a year of assessment arises in one territory, the tax authority of that territory; or

(ii) where the income of the settlement or trust for a year of assessment arises in more than one territory, or in any other case (where the relevant tax authority cannot be determined under any of the foregoing provisions), the Federal Board of Inland Revenue;

(d) a partnership for a year of assessment, the tax authority of the territory in which the principal office or place of business of the partnership in Nigeria is situated on the first day of that year, or is first established during that year;

(e) a village or other indigenous community, the tax authority of the territory in which that community is to be found;

(f) a person to whom section 2 (1) (b) of this Act applies, the Federal Board of Inland Revenue;

“tax” means any income tax imposed in conformity with the provisions of this Act;

“State Relevant tax authority” means the State Relevant tax authority established under section 87 of this Act; [1996 No. 31.]

“Tax Authority” means the Federal Board of Inland Revenue, the State Board or the Local Government Revenue Committee; [1998 No. 18.]

“taxable person” means any individual or body of individuals (including a family, any corporation sole, trustee or executor) having any income which is chargeable with tax under the provisions of this Act;

“territory” means a State of the Federation and includes the Federal Capital Territory, Abuja;

“total income” means, in relation to an individual for a year of assessment his aggregate assessable income for that year after the additions and deductions specified in Part IV of this Act have been made;

“year of assessment” means the period of twelve months commencing on the first day of January.

109. Short title and application

This Act may be cited as the Personal Income Tax Act and shall apply throughout the Federation except as herein provided.

SCHEDULES

First Schedule

[Sections 8 (7), 15 and 27.]

Determination of residence

1. Interpretation

In this Schedule, unless where the context otherwise requires—

“earned income” in relation to an individual, means income derived by him from a trade, business, profession, vocation or employment carried on or exercised by him and a pension derived by him in respect of a previous employment;

“foreign employment” means an employment the duties of which are wholly performed outside Nigeria save during any temporary visit of the employee to Nigeria;

“Nigerian employment” means any employment, not being a foreign employment, the duties of which are wholly or partly performed in Nigeria;

“Nigerian pension” means a pension in respect of past service under, and payable by, a government or governments in Nigeria;

“place of residence” in relation to an individual, means a place available for his domestic use in Nigeria on a relevant day, and does not include any hotel, rest-house or other place at which he is temporarily lodging unless no permanent place is available for his use on that day;

“principal place of residence” in relation to an individual with two or more places of residence on a relevant day, not being both within any one territory means—

(a) in the case of an individual with no source of income other than a pension in Nigeria, that place of those places in which he usually resides;

(b) in the case of an individual who has a source of earned income other than a pension in Nigeria, that place of those places which on a relevant day is nearest to his usual place of work;

(c) in the case of an individual who has a source or sources of unearned income in Nigeria, that place of those places in which he usually resides.

2. Foreign employments

An individual not being a person to whom subsection (1) (b) of section 2 of this Act applies, who holds a foreign employment on the 1st day of January in a year of assessment, or who first becomes liable to income tax in Nigeria for that year by reason of his entering that employment during that year, shall be deemed to be resident for that year in the territory in which the principal office of his employer is situated on that day or on the day his foreign employment commences, as the case may be.

3. Nigerian employment

An individual who holds a Nigerian employment on the 1st day of January in a year of assessment, or who first becomes liable to income tax in Nigeria for that year by reason of his entering that employment during that year, shall be deemed to be resident for that year in the territory in which he has a place or principal place of residence on that day or, as the case may be, on the day on which he enters upon the full duties of that employment in Nigeria:

Provided that if the individual is on leave from a Nigerian employment on the 1st day of January in a year of assessment he shall be deemed to be resident for that year by reference to his place or principal place of residence immediately before his leave began.

4. Other employments

An employee whose remuneration is subject to income tax in Nigeria for a year of assessment, but who is not deemed to be resident in a territory for that year under the provisions of paragraph 3 of this Schedule, shall be deemed to hold a foreign employment, and if he has no territory of residence for that year under the provisions of paragraph 2 of this Schedule, he shall be deemed to be a person to whom subsection (1) (b) of section 2 of this Act applies.

5. Pensions

(1) An individual whose only source of earned income arising in Nigeria on the 1st day of January in a year of assessment was a pension, and who had a place or principal place of residence on that day shall

be deemed to be resident for that year in the territory in which that place or principal place of residence was situated on that day.

(2) An individual whose only source of earned income arising in Nigeria on the 1st day of January in a year of assessment was a pension, and who had no place of residence on that day, shall be deemed to be resident for that year—

(a) if the pension is a Nigerian pension wholly payable by the Government of one territory, not being a Nigerian pension in respect of which the subsection (1) (b) of section 2 of this Act applies, in that territory;

(b) if the pension is not a Nigerian pension, in the territory in which the principal office in Nigeria of the pension fund or other person authorising payment of the pension is situated.

(3) An individual whose only source of earned income arising in Nigeria on the 1st day of January in a year of assessment was a Nigerian pension, and who had no place of residence on that day shall, if the pension is payable by more than one government or if there are two or more pensions arising in different territories to the individual on that day, be subject to subsection (1) (b) of section 2 of this Act.

6. Other earned income

An individual (other than a corporation sole or body of individuals) who has a source of earned income in Nigeria for a year of assessment, other than an employment or a pension, shall be deemed to be resident for that year in the territory in which he had a place or principal place of residence on the 1st day of January in that year:

Provided that—

(a) if the source of the income is first acquired by the individual during the year of assessment, and he had no place of residence on the first day of that year, he shall be deemed to be resident for that year in the territory where he first establishes a place of residence during that year; and

(b) in any other case, the individual shall be deemed to be resident for that year in any territory from which any part or the whole of his earned income arising in Nigeria is derived, if the income is derived from more than one territory.

7. Unearned income

An individual (other than a corporation sole or body of individuals) who has no source of earned income in Nigeria for a year of assessment but who has one or more source of unearned income in Nigeria for that year shall be deemed to be resident for that year in the territory in which he has a place or principal place of residence on the 1st day of January of that year:

Provided that—

(a) if all the unearned income of the individual for that year arises in one territory, and he has no place of residence on that day, he shall be deemed to be resident for that year in that territory;

(b) if the unearned income of the individual arises for that year in more than one territory, and he has no place of residence on that day, he shall be deemed to be resident for that year in the territory from which any part of the unearned income arises.

8. Application

(1) Where the territory of residence of an individual for a year of assessment may be determined under more than one of the preceding paragraphs of this Schedule, it shall be determined by the first-numbered paragraph which is applicable to his circumstances.

(2) If, by reason of sub-paragraph (1) of this paragraph, or otherwise, a determination of residence of an individual for a year of assessment falls to be revised by a tax authority, other than that of the territory in which the individual is finally determined to be resident for that year, it shall discharge any assessment made by it on the income of the individual for that year.

9. Corporation sole or body of individuals

A corporation sole or body of individuals other than a family or community shall be deemed to be resident for a year of assessment in the territory in which its principal office in Nigeria is situated on the first day of January in that year or, if it has no office in Nigeria on that day, in a territory in which any part or the whole of its income liable to tax in Nigeria arises for that year.

10. Objections, disputes and appeals

(1) In an objection to an assessment which is or includes, an objection to the determination of an individual's territory of residence by any tax authority, the individual shall set out all the grounds on which he relies to refute that determination, and those grounds together with the observations thereon by that tax authority shall be referred by it to the Board.

(2) Where a dispute arises as to the territory of residence of an individual for a year of assessment, either between two or more tax authorities or between a tax authority and an individual before he has been assessed to tax by that authority for that year, the facts may be referred to the Board by any tax authority which is a party to the dispute.

(3) Where a dispute arises between two or more tax authorities with respect to the territory of residence of an individual for a year of assessment and that individual has already been assessed to tax in Nigeria for that year, the facts of that dispute may be referred to the Board by any tax authority.

(4) The secretary to the Board shall give notice of any grounds, observations or facts referred to the Board under the provisions of sub-paragraphs (1), (2) or (3) of this paragraph to those parties, including the individuals who are affected or likely in his opinion to be affected by a determination of residence by the Board, and shall afford the parties a period being not less than thirty days from the issue of the notice in which to reply thereto.

(5) The secretary to the Board may call for further information to be given by any party, including an individual, to an objection or dispute within such time as may appear to him to be reasonable, and after the expiry of that period or to the period mentioned in sub-paragraph (4) of this paragraph, whichever is the later, the Board shall proceed to determine the territory of residence of the individual for the relevant year of assessment.

(6) Written notice of a determination by the Board shall be given by its secretary to the individual and to each tax authority affected thereby, and an assessment which has been made on that individual otherwise than in accordance with the determination of the Board shall be discharged.

(7) Pending a determination by the Board, the tax authority which has referred an objection to the Board under the provisions of this paragraph shall not determine that objection unless that objection, insofar as it concerns the territory of residence of the individual, is previously withdrawn by him in writing.

(8) A determination by the Board under this paragraph shall be binding on all tax authorities and on an appeal tribunal or other body established under a law of a territory for the purposes of income tax within that territory, but may be questioned by the individual in the High Court of the territory of the tax authority which has made the relevant assessment.

(9) It shall not be competent for an appellant in an appeal against an assessment to enter a ground of appeal concerning his territory of residence which he has not disclosed on a valid objection to the relevant assessment.

(10) An appeal from a decision of a High Court in respect of the territory of residence of an individual shall lie to the Court of Appeal.

(11) Where a tax authority discovers that an individual who has been assessed by it to tax for a year of assessment, is deemed to be resident for that year in the territory of some other tax authority, the assessment shall be discharged and any tax already paid by the individual in respect of that assessment shall be—

(a) set-off against tax owing for any other year by that individual to the first-mentioned authority; or

(b) paid to the Government of that other authority; or

(c) repaid to the individual,

in such proportions as the first-mentioned authority may decide.

Second Schedule

[Sections 16 and 27.]

PART I

Income from settlements, trusts and estates

1. Subject to Part II of this Schedule and notwithstanding Part III of this Schedule, the income of a settlement or trust shall for all the purposes of this Act be deemed to be the income of the settlor or person creating the trust, as the case may be, if—

(a) that settlor or person retains or acquires an immediately exercisable general power of appointment over the capital assets of the settlement or trust or over the income derived therefrom; or

(b) that settlor or person makes use, directly or indirectly, by borrowing or otherwise, of any part of the income arising under the settlement or trust; or

(c) the settlement or trust is revocable in circumstances whereby that settlor or person, or the spouse thereof, resumes control over any part of the income or assets comprised therein:

Provided that a settlement or trust shall not be regarded as revocable solely by reason of the fact that an income or asset comprised therein may revert to that settlor or person, or the spouse thereof, in the event of a beneficiary predeceasing that settlor or person, or of the happening of an uncertain event upon which the settlement or trust is limited.

2. (1) For the purposes of this Part and Part III of this Schedule, the income of a settlement or trust, other than a settlement or trust to which the provisions of paragraph 4 of this Schedule apply, or of the estate of a deceased individual shall be so much of that income as is derived from a source in Nigeria and any of the income brought into or received in Nigeria.

(2) The amount of the income (in this Schedule referred to as the "computed income") of each period of twelve months ending on the thirty-first day of December in each year shall be ascertained as though the provisions of Parts I and II of this Act applied thereto and—

(a) there shall be deducted—

(i) any expenses of the trustee or executor relative to the settlement, trust or estate which is authorised by the terms of the deed of settlement or trust or of the will, as the case may be;

(ii) any annuity of fixed annual amount paid out of the income of the settlement, trust or estate in accordance with the provisions of the deed or will; and

(b) if the income includes any gain or profit from a trade, business, profession or vocation, or a rent or premium, there shall be added or deducted, as the case may require, any sum which would have been added or deducted for the next following year of assessment under the provisions of Part IV of this Act if the income from those sources had been the assessable income of an individual for that year ascertained under the provisions of section 36 of this Act.

3. The computed income of a year of a settlement, trust or estate shall be apportioned for the assessment in the following manner—

(a) where—

(i) the terms of the deed of settlement or trust or of a will provide that the whole income of the settlement, trust or estate after deduction of any authorised expense or annuity of fixed amount is to be divided in specific proportions among the beneficiaries entitled thereto, from time to time; or

(ii) by operation of law, on an intestacy, the income of an estate is to be divided in the manner referred to in sub-paragraph (a) (i) of this paragraph,

the income of each beneficiary of any year from the settlement, trust or estate shall be his similarly apportioned share of the computed income;

(b) where a trustee or executor has discretion to make any payment (other than a payment on account) to a beneficiary out of the income of a settlement, trust or estate in such amount as he sees fit, from time to time; then—

(i) the amount of the payment to a beneficiary made in the course of a year shall be treated as income of that year which is assessable to tax in the hands of that beneficiary; and

(ii) out of the remainder of the computed income after deducting the aggregate amount of all the payments during any year, there shall be apportioned to each beneficiary who has any specified proportional interest in the income of the settlement, trust or estate, so much thereof as is obtained by applying the proportion to that remainder:

Provided that if the aggregate amount exceeds the computed income, the amount of each payment to be treated as income in the hands of a beneficiary under this sub-paragraph shall be reduced proportionally so that the aggregate of the amount as so reduced does not exceed the computed income;

(c) any remainder of the computed income of a settlement, trust or estate of any year after deducting all amounts apportioned to beneficiaries, or treated as income in the hands of beneficiaries under the provisions of sub-paragraph (b) of this paragraph shall be apportioned to the trustee or executor for assessment in his name as trustee of the settlement or trust or as executor of the estate.

PART II

Special provisions as to settlement on unmarried children

4. (1) Notwithstanding any other provision of this Act where, by virtue or in consequence of a settlement and during the life of the settlor an income is paid to or for the benefit of a child of the settlor in a year of assessment, the income shall, if at the time of payment the child was an infant and unmarried, be treated for the purposes of this Act as the income of the settlor for that year and not as the income of any other person.

(2) Income paid to or for the benefit of a child of a settlor shall not be treated as provided in sub-paragraph (1) of this paragraph for any year of assessment in which the aggregate amount of the income paid to or for the benefit of that child, which but for this sub-paragraph, would be so treated by virtue of sub-paragraph (1) of this paragraph, does not exceed N500.

(3) This paragraph shall not apply in relation to an income arising under a settlement in a year preceding a year of assessment if the settlor is not in Nigeria at any time during that year of assessment, or is not in Nigeria for a period or periods amounting to 183 days or more in any twelve-month period commencing in the calendar year and ending either in the same year or the following year.

5. For the purposes of paragraph 4 of this Schedule—

(a) income which, by virtue or in consequence of a settlement, may become payable or applicable to or for the benefit of a child of the settlor in the future (whether on the fulfilment of a condition or on the happening of a contingency, or as the result of the exercise of a power or discretion conferred on any person, or otherwise) shall be deemed to be paid to or for the benefit of that child; and

(b) an income dealt with as aforesaid which is not required by the settlement to be allocated, at the time when it is so dealt with, to any particular child or children of the settlor shall be deemed to be paid in equal shares to or for the benefit of each of the children to or for the benefit of whom or any of whom the income or assets representing the income will or may become payable or applicable.

6. (1) Where, by virtue of paragraph 4 of this Schedule, any income tax becomes chargeable on and is paid by the settlor, he shall be entitled—

(a) to recover from any trustee or other person to whom the income is payable by virtue or in consequence of the settlement the amount of the tax so paid; and

(b) for that purpose to require the relevant tax authority to furnish to the settlor a certificate specifying the amount of income in respect of which he has so paid tax and the amount of the tax so paid, and any certificate so furnished shall be conclusive evidence of the facts appearing therein.

(2) Where the settlor obtains from a trustee or any other person a payment in excess of the amount he is entitled to recover by virtue of sub-paragraph (1) of this paragraph, then an amount equal to the excess shall be paid by him to the trustee or other person to whom the income is payable by virtue or in consequence of the settlement, or, where there are two or more such persons, the amount shall be apportioned among those persons as the case may require.

(3) If a question arises as to the amount of any payment or as to any apportionment to be made under sub-paragraph (2) of this paragraph, that question shall be decided by the relevant tax authority and its decision thereon shall be final and not subject to an appeal or any review whatsoever by any court of law.

7. (1) In the case of any settlement where there are more than one settlor, paragraph 4 of this Schedule shall, subject to the provisions of this paragraph, have effect in relation to each settlor as if he were the only settlor.

(2) In the case of a settlement as aforesaid, income originating from that settlor or person may, for the purposes of paragraph 4 of this Schedule, be taken into account, in relation to any settlor, as income paid by virtue or in consequence of the settlement to or for the benefit of a child of the settlor.

(3) References in this paragraph to income originating from a settlor shall include references to the following, that is—

(a) income from property which that settlor has provided directly or indirectly for the purposes of the settlement;

(b) income from property representing that property, including accumulated income from that property; and

(c) income from so much of any property which represents both property provided as aforesaid and other property as, on a just apportionment, represents the property so provided.

8. In this Part of this Schedule—

“child” includes a stepchild, an adopted child and an illegitimate child;

“settlement” includes any disposition, trust, covenant, agreement, arrangement or transfer of assets;

“settlor” in relation to a settlement, includes a person by whom the settlement was made or entered into directly or indirectly, and in particular (but without prejudice to the generality of the foregoing) includes a person who has provided or undertaken to provide funds directly or indirectly for the purpose of the settlement, or has made with any other person a reciprocal arrangement for that other person to make or enter into the settlement.

PART III

Supplementary provisions

9. For the purposes of this Act, where an asset of a trade or business, profession or vocation forms part of the estate of a deceased individual, being an asset in respect of which an annual allowance may be claimed in arriving at the total income of that individual for the year of assessment in which he died, the provisions of the Fifth Schedule to this Act shall apply in the following manner—

(a) notwithstanding any provision of that Schedule, no balancing allowance or charge shall be given or made to that individual in respect of the asset for that year; and

(b) the estate shall be deemed to have incurred qualifying expenditure on the acquisition of the asset equal in amount to the residue of the expenditure on the day following the death of the individual; and

(c) in the event of the disposal of the asset on or after that day, an addition to be made by way of a balancing charge in computing the income of the estate shall be made by reference to the sum of all allowances or deductions made in respect of the asset to the individual and to the estate.

10. An individual in receipt of an annuity of fixed annual amount paid out of the income of a settlement, trust or an estate shall be assessable to tax on the full amount of the annuity.

11. The income arising from a settlement, trust or an estate assessable to tax under a provision of this Schedule in the hands of any trustee, executor, beneficiary or annuitant for a year of assessment shall be the amount of the income ascertained under the foregoing provisions of this Schedule of the year preceding that year.

12. (1) Where the income of a settlement, trust or estate of a year includes an income which has borne tax in Nigeria or elsewhere, whether by deduction or otherwise, the provisions of Part V of this Act with respect to any relief to be given or repayment to be made shall apply as though the whole of the taxed income were receivable by the persons to whom the computed income of that year is apportioned under the provisions of paragraph 3 of this Schedule—

(a) in due proportion to their respective shares therein; or

(b) where sub-paragraph (b) of paragraph 3 of this Schedule applies in proportion to their shares in the remainder of the computed income as therein specified,

and where there is no computed income, the relief or repayment shall be given or made to the trustee or executor for the account of the settlement, trust or estate.

(2) For the purposes of this paragraph, references to an individual in Part V of this Act shall be deemed to include references to a trustee or executor.

13. Subject to the foregoing provisions of this Schedule—

(a) a trustee of a settlement or trust, and every executor, shall be answerable for all things to be done in connection with the tax to; and

(b) an income apportioned to a trustee or executor shall be assessable by, the relevant tax authority in relation to that settlement, trust or estate.

14. A trustee of a settlement or trust in Nigeria, and the executor of an estate in Nigeria, shall prepare accounts of the income from all sources of the settlement, trust or estate for successive periods to the thirty-first day of December in each year, and to the date on which the assets of the settlement, trust or estate are finally distributed.

15. An appeal against the inclusion of an income of a settlement, trust or estate in an assessment to tax, by whatever tax authority it may have been made, shall lie only in accordance with the appeal provisions of the income tax law of the territory to the tax authority of which the trustee or executor is answerable for the relevant year of assessment under the provisions of paragraph 13 of this Schedule.

Third Schedule

[Sections 19 (1), 75.]

Income exempted

1. The incomes set out in this Schedule are exempted from taxation.
2. The official emoluments of the President, and of the Governor of a State and of any person performing the functions of the President, received by such person in his capacity as such.
3. The official emoluments of the holders for the time being of the offices of Vice-President and Deputy Governor of a State.
4. The emoluments payable from United Kingdom funds to members of visiting or other forces and to persons in the permanent service of the United Kingdom Government in Nigeria in respect of their offices under the United Kingdom Government and the emoluments payable to members of any civilian component, and the income of any authorised service organisations, accompanying the visiting forces:

Provided that this exemption shall not apply to any individual who is a citizen of Nigeria or who ordinarily resides in Nigeria.

5. All consular fees received on behalf of a foreign State, or by a consular officer or employee of the State of his own account, and all income of such officer or employee, other than income in respect of any trade, business, profession or vocation carried on by an officer or employee or in respect of any other employment exercised by him with Nigeria:

Provided that this exemption shall not apply where the employee is engaged on domestic duties or where the officer or employee ordinarily resides in Nigeria and is not also a national of the foreign State.

6. (1) Interest accruing to a person who is not resident in Nigeria as specified in the following sub-paragraphs—

(a) the interest on a loan charged on the public revenue of the Federation and raised in the United Kingdom;

(b) the interest on a bond issued by the Government of the Federation to secure repayment of a loan raised from the International Bank for Reconstruction and Development under the authority of the Railway Loan (International Bank) Act;

[Cap. R2.]

(c) the interest on any money borrowed by the Government of the Federation or of a State on terms which include the exemption of interest from tax in the hands of a non-resident person;

(d) where the Minister of Finance so consents, the interest on any moneys borrowed outside Nigeria by a corporation established by a law in Nigeria upon terms which include the exemption of such interest from tax in the hands of any non-resident person;

(e) the interest on deposit accounts, provided the deposits into the account are transfers wholly made up of foreign currencies (funds) to Nigeria on or after 1 January 1990 through Government-approved channels and the depositor does not become non-resident after making the transfer while in Nigeria.

(2) For the purpose of the exemption referred to in sub-paragraph (1) of this paragraph, a person shall only be deemed to be resident in Nigeria for a year of assessment if he is in Nigeria for a period or periods amounting to 183 days or more in any twelve-month period commencing in the calendar year and ending either in the same year or the following year.

7. Interest on any loan granted by a bank on or after 1 January 1997 to a person—

[1998 No. 18.]

(a) engaged in—

(i) agricultural trade or business;

(ii) the fabrication of any local plant and machinery; or

(b) as working capital for any cottage industry established by the person under the Family Economic Advancement Programme,

if the moratorium is not less than 18 months and the rate of interest on the loan is not more than the base lending rate at the time the loan was granted.

8. The income of a national of the United States of America from employment by the International Co-operation Administration, being an administration or agency formed and directed by the Government of that country.

9. The income of a national of the United States of America from employment by the International Development Services as agents or the International Co-operation Administration.
10. The income of an individual from employment by the Ohio University of Athens, Ohio, as agent for the International Co-operation Administration, in connection with any scheme for the training of teachers in Nigeria.
11. An income in respect of which tax is remitted or exempted under the provisions of the Diplomatic Immunities and Privileges Act or of any enactment, order or notice continued in force or effected by that Act. [Cap. D9.]
12. The income of a local government or government institution.
13. The income of any ecclesiastical, charitable or educational institution of a public character in so far as such income is not derived from a trade or business carried on by such institution.
14. Wound and disability pensions granted to members of the armed forces or of any recognised national defence organisation or to persons injured as a result of enemy action.
15. Pensions granted to a person under the provisions of the Pensions Act relating to widows and orphans. [Cap. P4.]
16. The income of a trade union registered under the Trade Unions Act, in so far as the income is not derived from a trade or business carried on by that trade union. [Cap. T14.]
17. Gratuities payable to a public officer by the Government of the Federation or of a State in respect of services rendered by him under a contract of service with that Government and described as gratuities either in the contract or some other document issued by or on behalf of Government in connection with such contract.
18. Gratuities payable to an employee in the private sector in respect of services rendered by him under a contract of service with his employer and described as gratuities either in the contract or some other document issued by or on behalf of the employer in connection with such contractor:

Provided that—

- (a) where the period of services does not amount to ten years, the exemption provided under this Schedule shall not apply;
- (b) where the total gratuity payable exceeds the amount of N100,000, the amount of any excess shall not be so exempt but shall be deemed to be income of the employee on the last day of his employment, including any terminal leave arising therefrom;
- (c) where the period of service (or where service is not continuous, the aggregate period of service in any 63 consecutive months) does not amount to five years, then, if the total gratuities exceed a sum calculated at the rate of N1,000 per annum for such period or aggregate period the amount of any excess shall not be so exempt but shall be deemed to be income of the last day of the employment, including any terminal leave arising therefrom.

19. Gratuities payable to a member or former member of the staff of the Nigerian College of Arts, Science and Technology by the College in respect of services rendered by him under a contract of service

with the College and described as gratuities either in the contract or in some other document issued by or on behalf of the College in connection with the contract, subject to the like provisions as those contained in the proviso to paragraph (17) of this Schedule.

(2) For the purposes of this exemption, "member of the staff" means an individual appointed to an office specified in the Second Schedule to the Nigerian College of Arts, Science and Technology Act.

20. Gratuities payable to an employee or former employee under a contract of service with a body established pursuant to the Nigerian Research Institutes Act or any Act repealed by that Act or by the West African Council for Medical Research Act, being a gratuity so described either in his contract of service with the body or in some other document issued by or on behalf of the body in connection with that contract. [1996 No. 32. Cap. N132.]

21. The income of a statutory or registered friendly society in so far as such income is not derived from a trade or business carried on by such society.

22. The income of a co-operative society registered under the Nigerian Co-operative Societies Act, not being income from any trade or business carried on by the Society other than the co-operative activities solely carried out for and with its members or from any share or other interest possessed by that Society in a trade or business in Nigeria or elsewhere carried on by some other person or authority. [Cap. N98.]

23. A sum received by way of death gratuities or as consolidated compensation for death or injuries.

24. A sum withdrawn or received by an employee from a pension, provident or other retirement benefits fund, society or scheme approved by the relevant tax authority under the provisions of paragraph (g) of section 20 of this Act other than a sum which is deemed to be income of the employee under an express provision of this Act, and a sum withdrawn or received by an employee from a national provident fund or other retirement benefits scheme established under the provisions of any enactment for employees throughout Nigeria.

25. (1) Dividends paid to a person by a company incorporated in Nigeria:

Provided that—

(a) the equity participation of the person in the company paying the dividends is either wholly paid for in foreign currency or by assets brought into Nigeria between 1 January 1987 and 31 December 1992; and

(b) the person to whom the dividends are paid owns not less than 10 per cent of the equity share capital of the company.

(2) For the purpose of the exemption referred to in sub-paragraph (1) of this paragraph, the dividend tax-free period shall commence from the year of assessment following the year in which the new capital is brought into Nigeria for the real purpose of the trade or business in Nigeria of the company paying the dividends and shall continue for five years if the company paying the dividends is engaged in agricultural production within Nigeria or processing of Nigerian agricultural products produced within Nigeria or production of petrochemicals or liquified natural gas, and in any other case, the tax-free period shall be limited to three years.

26. Any compensation for loss of employment.

27. The income of a person, other than a citizen of Nigeria, from employment by any government, organisation or agency between which and the Government of the Federation or of a State there exists an arrangement for technical assistance, insofar as and to the extent only that the employment is solely in pursuit of the technical assistance arrangement. [1996 No. 32.]

28. The interest accruing to a person on foreign currency domiciliary accounts.

29. Income earned from outside Nigeria by a temporary guest, lecturer, teacher, nurse, doctor and other professional and brought into Nigeria shall be exempt from tax provided that such income is deposited in a domiciliary account in an authorised bank in Nigeria. [1996 No. 32.]

30. Income from dividend, interest, rent, royalties, fee, commission earned from abroad and brought into Nigeria by a Nigerian resident is exempt from tax, provided that such income is brought in convertible currency and paid into a domiciliary account in a bank approved by the Government.

31. Income earned from abroad by an author, sportsman, playwright, musician, artist and brought into Nigeria is exempt from tax provided that such income is brought in foreign currencies and paid into a domiciliary account in an authorised bank in Nigeria.

32. Nothing contained in this Schedule shall exempt any dividend, interest or royalty from a deduction to be made under the provisions of section 69 or 70 of this Act.

Fourth Schedule

[Section 20 (g).]

Retirement benefits schemes

1. In this Schedule—

“pension fund” means a society, fund, contract or scheme the assets of which are held under irrevocable trusts and any scheme established by a law in Nigeria or elsewhere, the main objects of which are, in the opinion of the Board, the provision of non-assignable and non-commutable retirement pensions or annuities for an individual or his dependants after his death, or for any group or class of individuals and their dependants;

“provident fund” means a society, fund or scheme, not being a pension fund, established under irrevocable trusts or a law in Nigeria or elsewhere, the objects of which are the provision of retirement benefits for an individual or benefits for his dependants, after his death, or for any group or class of individuals and their dependants.

2. For the purpose of ascertaining the income of an individual the amount to be deducted in respect of a contribution made by him to a pension, provident or other retirement benefits fund, society or scheme approved by the Board under the provisions of paragraph (g) of section 20 (1) of this Act shall, subject to such conditions as the Board may prescribe, be computed in accordance with the provisions of this Schedule.

3. Subject to such conditions as may be prescribed by the Board, the amount to be deducted for the purpose of ascertaining the income of any period of an employer or employee in respect of any contribution paid to a pension fund shall be the amount of the contribution paid by the employer or employee respectively during that period.

4. Subject to such conditions as may be prescribed by the Board, the amount to be deducted for the purpose of ascertaining the income of any period of an employer or employee in respect of any contribution paid to a provident fund shall be the amount of the contribution paid by the employer or employee respectively during that period:

Provided that where the aggregate of the contributions made for any period by an employer and employee to a provident fund (other than a contribution made with the approval of the Board in respect of the past service of the employee with that employer) exceeds 25% of the remuneration paid by that employer to that employee for that period, the excess shall be excluded from the amount to be deducted in ascertaining the income of either the employer or employee by reference to the relevant accounting period of the employer or to the period for which the employee's income is to be ascertained, as the Board may decide.

5. In the case of an employee, no deduction shall be allowed under this Schedule in respect of an excess over N5,000 for a year of assessment of the aggregate of the following amounts—

- (a) a deduction allowed under paragraph (f) of section 20 of this Act;
- (b) a relief given to him for that year in respect of policies of insurance or contracts for deferred annuities on his life or the life of his wife;
- (c) a deduction which would be otherwise allowed under this Schedule.

6. (1) In the case of an employee whose employment ceases before he has completed five years' employment with an employer, if the total value of any benefit (other than a sum paid by way of a pension or annuity) received by the employee from a pension or provident fund exceeds a sum calculated at the rate of N300 per annum for the period of the employment, the amount of the excess shall be deemed to be income derived by him from his employment on the last day thereof.

(2) For the purposes of this paragraph, where a person has had employment or successive employments with any one or more Governments established in Nigeria (including in such expression the former Government of Nigeria) and his next employment is with a body directly incorporated by, or an unincorporated body established by, an Act or Law of any legislature in Nigeria, then his employment or successive employments with that Government or Governments and his next employment with that body shall be treated as one continuing employment.

(3) This paragraph shall, as respects a person who is not a citizen of Nigeria and ceases to be employed by a body corporate or unincorporated as is mentioned in sub-paragraph (2) of this paragraph, have effect subject to the following provisions, that is—

- (a) if the relevant tax authority within the meaning of this Act is satisfied that the employment in question ceased with a view to the employment of a citizen of Nigeria in the place of that person, the provisions of this paragraph shall not apply in relation to that employment; and

(b) the relevant tax authority may if it thinks fit, in a case not falling within the foregoing paragraph, determine that those provisions shall apply in relation to that employment with the substitution for the reference to the rate aforesaid of a reference to such larger rate as may be specified in the determination.

7. Where in respect of a pension or provident fund an employer becomes entitled to any benefit whatsoever, the value of that benefit shall for the purpose of this Act be deemed to be income of the trade, business, profession or vocation in connection with which the fund was approved at the date when the right to the benefit first arose.

8. Where in respect of any pension or provident fund any benefit is paid to an employee before the cessation of his employment with an employer, such benefit shall be deemed to be income derived by him from his employment on the date on which the benefit is paid.

9. Where a contribution is made by a self-employed individual to a pension, provident, annuity of other retirement benefit fund, society or scheme approved by the Board for his eventual retirement from gainful employment, the premium shall be exempted from tax provided it does not exceed 10% of the self-employed total income. [1996 No. 32.]

Fifth Schedule

[Section 36.]

Capital allowances

ARRANGEMENT OF PARAGRAPHS

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13. Meaning of "disposed of".
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24. Meaning of “allowances made”.
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Fifth Schedule

[Section 36.]

Capital allowances

1. Interpretation

For the purpose of this Schedule—

“basis period” has the meaning assigned to it by the following provisions of this definition—

(a) in the case of an individual to or on whom an allowance or a charge falls to be made in accordance with the provisions of this Schedule, his basis period for a year of assessment shall be the period by reference to the profits of which an assessable income for that year falls to be computed, under the provisions of sections 23 to 31 of the Act;

(b) such income means income in respect of the trade or business in which there was used an asset in connection with which the allowance or charge falls to be made:

Provided that, in the case of the trade or business—

(i) where two basis periods overlap, the period common to both shall be deemed, except for the purpose of making an annual allowance, to fall in the basis period ending at the earlier date and in no other basis period;

(ii) where two basis periods coincide, they shall be treated as overlapping, and the basis period for the earlier year of assessment shall be treated as ending before the end of the basis period for the later year of assessment;

(iii) where there is an interval between the end of the basis period for one year of assessment and the basis period for the next year of assessment, then unless the second-mentioned year of assessment is the year in which an individual permanently ceases to carry on the trade or business, the interval shall be deemed to be part of the second basis period, and

(iv) where there is an interval between the end of the basis period for the year of assessment preceding that in which the trade or business permanently ceases to be carried on by an individual and the basis period for the year in which it so ceases, the interval shall be deemed to form part of the first basis period;

“concession” includes a mining right and a mining lease;

“lease” includes an agreement for a lease where the term to be covered by the lease has begun, any tenancy and any agreement for the letting or hiring out of an asset, but does not include a mortgage, and the expression “leasehold interest” shall be construed accordingly and—

(a) where, with the consent of the lessor, a lessee of an asset remains in possession thereof after the termination of the lease without a new lease being granted to him, that lease shall be deemed for the purposes of this Schedule to continue so long as he remains in possession as aforesaid; and

(b) where, on the termination of a lease of an asset, a new lease of that asset is granted to the lessee, the provisions of this Schedule shall have the effect as if the second lease were a continuation of the first lease;

“qualifying expenditure” means, subject to the express provisions of this Schedule, expenditure incurred in a basis period which is—

(a) capital expenditure (hereinafter called “qualifying plant expenditure”) incurred on plant, machinery or fixtures;

(b) capital expenditure (hereinafter called “qualifying building expenditure”) incurred on the construction of buildings, structures or works of a permanent nature, other than expenditure which is included in sub-paragraphs (a) or (c) of this definition;

(c) capital expenditure (hereinafter called “qualifying mining expenditure”) incurred in connection with, or in preparation for, the working of a mine, oil well or other source of mineral deposits of a wasting nature (other than expenditure which is included in sub-paragraph (a) of this definition)—

(i) on the acquisition of, or of rights in or over, the deposits or on the purchase of information relating to the existence and extent of the deposit;

(ii) on searching for or on discovering and testing deposits, or winning access thereto; or

(iii) on the construction of any work or building which is likely to be of little or no value when the source is no longer worked or, where the source is worked under a concession, which is likely to become valueless when the concession comes to an end to the individual working the source immediately before the concession comes to an end; or

(d) capital expenditure (hereinafter called “qualifying plantation expenditure”) incurred in connection with a plantation on the clearing of land for planting and on planting (other than replanting), and for the purposes of this definition where—

(i) expenditure is incurred for the purpose of a trade or business by an individual about to carry on that trade or business; and

(ii) that expenditure is incurred in respect of an asset owned by that individual,

then, if that expenditure would have fallen to be treated as qualifying expenditure had it been incurred by that individual on the first day on which he carries on that trade or business, that expenditure shall be deemed to be qualifying expenditure incurred by him on that day;

“trade or business” means trade or business or that part of a trade or business the profits of which are assessable under this Act;

(e) “capital expenditure” that is, “qualifying research and development expenditure” incurred—

(i) on equipment and facilities, patents, licences, secret formulas or process; or

(ii) for information concerning industrial, commercial or scientific process, technical feasibility or products or process and purchase; or

(iii) on searching for and discovering and testing products or process for future market or use and such other similar costs which has brought into existence an asset;

(f) capital expenditure, that is, qualifying agricultural expenditure incurred on plant in use in agricultural trades and business within the meaning of section 9 of the Companies Income Tax Act;

[Cap. C21.]

(g) capital expenditure, that is, qualifying public transportation motor vehicle expenditure, incurred on a fleet of buses of not less than three used for public transportation;

(h) capital expenditure (hereinafter called “qualifying public transportation” (inter-city) new mass transit coach of 25 seats and above operated by a recognised private establishment.

2. Year of assessment

The provisions of this Schedule with respect to the making of allowances and charges shall have effect for the year of assessment commencing on the 1st January, 1993 and for each succeeding year of assessment and any references in this Schedule to a year of assessment shall not include any year commencing prior to the 1st January, 1993.

3. Provisions relating to mining expenditure

(1) For the purposes of this Schedule, where—

(a) qualifying mining expenditure has been incurred on the purchase of information relating to the existence and extent of the deposits or on searching for or on discovering and testing deposits or winning access thereto and the expenditure has been incurred for the purposes of a trade or business carried on by the individual incurring the expenditure, and such expenditure would have fallen to be treated as such qualifying mining expenditure if it had been incurred in a basis period;

(b) the expenditure has not brought into existence an asset; and

(c) the trade or business consists of the working of a mine, oil well or other source of mineral deposits of a wasting nature,

then such expenditure shall be deemed to have brought into existence an asset owned by the individual incurring the expenditure and in use for the purposes of the trade or business.

(2) For the purpose of this Schedule, an asset in respect of which qualifying mining expenditure has been incurred by an individual for the purposes of a trade or business carried on by him and which has

not been disposed of, shall be deemed not to cease to be used for the purposes of that trade or business so long as the individual continues to carry on that trade or business.

(3) So much of a qualifying mining expenditure incurred on the acquisition of rights in or over mineral deposits and on the purchase of information relating to the existence and extent of the deposits as exceeds the total of the original cost of acquisition of those rights and of the cost of searching for, discovering and testing those deposits prior to the purchase of the information shall be left out of account for the purpose of this Schedule:

Provided that where the costs were originally incurred by a company which carried on a trade or business consisting, as to the whole or part thereof, in the acquisition of the rights or information with a view to the assignment or sale thereof, the price paid on the assignment or sale shall be substituted for the aforementioned costs.

4. Owner and meaning of relevant interest

(1) For the purposes of this Schedule, where an asset consists of a building, structure or works the owner thereof shall be taken to be the owner of the relevant interest in the building, structure or works.

(2) Subject to the provisions of this paragraph, in this Schedule, the expression “the relevant interest” means, in relation to an expenditure incurred on the construction of a building, structure or works, the interest in that building, structure or works to which the person who incurred the expenditure was entitled when he incurred it.

(3) Where an individual incurs qualifying building expenditure or qualifying mining expenditure on the construction of a building, structure or works, he shall be entitled to two or more interests therein, and one of those interests is an interest which is reversionary on all the others, that interest shall be the relevant interest for the purposes of this Schedule.

5. Sale of buildings

Where capital expenditure has been incurred on the construction of a building, structure or works and thereafter the relevant interest therein is sold, the individual who buys that interest shall be deemed, for all the purposes of this Schedule except the granting of initial allowances, to have incurred, on the date when the purchase price became payable, capital expenditure on the construction thereof equal to the price paid by him for the interest or to the original costs of construction whichever is the less:

Provided that where the relevant interest is sold—

(a) before the building, structure or works has been used, the foregoing provisions of this paragraph shall have effect with respect to the sale with the omission of the words “except the granting of initial allowances” and the original cost of construction shall be taken to be the amount of the purchase price on such sale;

(b) more than once before the building, structure or works is used, the provisions of paragraph (a) of this proviso shall have effect only in relation to the last of those sales.

6. Qualifying industrial building expenditure

For the purposes of this Schedule—

(a) where but for this paragraph an individual is entitled to an annual allowance in respect of qualifying building expenditure in respect of an asset in use, for the purposes of a trade or business carried on by him, at the end of his basis period for any year of assessment commencing on or after the 1st January, 1993, then, if that asset is an industrial building or structure in use as such at the end of his basis period for any such year then, in lieu of such allowance and qualifying building expenditure, the qualifying expenditure in respect of that asset shall be taken to mean a qualifying industrial building expenditure for any allowance to be made to that individual, in respect of that qualifying expenditure, for that year; and

(b) “industrial building or structure” means a building or structure in regular use—

(i) as a mill, factory, mechanical workshop, or other similar building, or as a structure used in connection with any such buildings;

(ii) as a dock, port, wharf, pier, jetty or other similar building structure;

(iii) for the operation of a railway for public use or of a water or electricity undertaking for the supply of water or electricity for public consumption; and

(iv) for the running of a plantation or for the working of a mine or other source of mineral deposits of a wasting nature.

7. Initial allowances

(1) Subject to the provisions of this Schedule, where in his basis period for a year of assessment the owner of an asset has incurred in respect thereof qualifying expenditure wholly and exclusively for the purposes of a trade or business carried on by him, there shall be made to that individual for the year of assessment in his basis period for which that asset was first used for the purposes of that trade or business an allowance (in this Schedule called “an initial allowance”) at the appropriate rate per centum, set forth in the Table I to this Schedule, of the expenditure. [Table I.]

(2) Where capital expenditure is incurred on the purchase of an asset and either the purchaser is a person over whom the seller has control, or some other person has control over both the purchaser and the seller, then, the amount of an initial allowance to be made in respect of the expenditure shall be such an amount as the relevant tax authority may determine to be just and reasonable having regard to all circumstances relating to the asset and control:

Provided that the amount shall not exceed the amount of the initial allowance which would have been allowable apart from the provisions of this sub-paragraph.

8. Annual allowance

(1) Subject to the provisions of this Schedule, where in his basis period for a year of assessment the owner of an asset has incurred in respect thereof qualifying expenditure wholly, exclusively, necessarily and reasonably for the purposes of a trade or business carried on by him, whether or not an initial allowance may be made to him in respect of that qualifying expenditure, there shall be made to that individual for each year of assessment in his basis period for which that asset was used for the purposes of that trade or business an allowance (hereinafter called “an annual allowance”) at the rate specified in respect thereof in Table II of this Schedule of the expenditure after the deduction of initial allowance where applicable: [Table II.]

Provided that an amount of N10 shall be retained in the accounts for tax purposes until the asset is disposed of.

(2) In the case of an asset in respect of which an allowance has been granted before the commencement of this sub-paragraph, an allowance shall be made in respect of the asset for the number of years of assessment which, if added to the number of years of assessment for which allowance has already been made, equals the number of years of assessment for which allowance is to be made under the provision of sub-paragraph (1) of this paragraph:

Provided that if an allowance has been made for a number of years which is equal to or more than the number of years specified under sub-paragraph (1) of this paragraph, a single allowance shall be made for an amount which is N10 less than the residue of the qualifying expenditure for the year of assessment in which this sub-paragraph takes effect.

9. Asset to be in use at end of basis period

An initial allowance or an annual allowance in respect of qualifying expenditure incurred in respect of an asset shall only be made to an individual for a year of assessment if at the end of his basis period for that year he was the owner of that asset and it was in use for the purposes of a trade or business carried on by him.

10. Balancing allowances

Subject to the provisions of this Schedule, where in his basis period for a year of assessment the owner of an asset, who has incurred in respect thereof qualifying expenditure wholly and exclusively for the purposes of a trade or business carried on by him, disposes of that asset, an allowance (hereinafter called "a balancing allowance") shall be made to that individual for that year of the excess of the residue of that expenditure, at the date the asset is disposed of, over the value of that asset at that date:

Provided that a balancing allowance shall only be made in respect of the asset if immediately prior to its disposal it was in use by the owner in the trade or business for the purposes of which the qualifying expenditure was incurred.

11. Balancing charges

Subject to the provisions of this Schedule, where in his basis period for a year of assessment the owner of an asset, who has incurred in respect thereof qualifying expenditure wholly and exclusively for the purposes of a trade or business carried on by him, disposes of that asset, a charge (hereinafter called "a balancing charge") shall be made on that individual for that year of the excess of the value of that asset, at the date of its disposal, over the residue of that expenditure at the date:

Provided that a balancing charge shall only be made in respect of the asset if immediately prior to its disposal it was in use by the owner in the trade or business for the purposes of which the qualifying expenditure was incurred and shall not exceed the total of any allowances made under the provisions of this Schedule in respect of the asset and, in cases falling under paragraph 19 of this Schedule, of any allowance or deduction made under any income tax law in Nigeria in respect of the capital cost of the asset.

12. Residue

(1) The residue of qualifying expenditure, in respect of an asset, at any date, shall be taken to be the total qualifying expenditure incurred on or before that date, by the owner thereof at that date, in respect of that asset, less the total of an initial or annual allowance made to the owner, in respect of that asset, before that date.

(2) For the purposes of this paragraph, an initial allowance or annual allowance shall be deemed to be made at the end of the basis period for the year of assessment for which any such allowance is made.

13. Meaning of “disposed of”

Subject to an express provision to the contrary, for the purpose of this Schedule—

- (a) a building, structure or works of a permanent nature is disposed of if—
 - (i) the relevant interest therein is sold; or
 - (ii) that interest, being an interest depending on the duration of a concession comes to an end on the coming to an end of that concession; or
 - (iii) that interest, being a leasehold interest, comes to an end otherwise than on the individual entitled thereto acquiring the interest which is reversionary thereon; or
 - (iv) the building, structure or works of a permanent nature is demolished or destroyed or without being demolished or destroyed, ceases altogether to be used for the purposes of a trade or business carried on by the owner thereof;
- (b) plant, machinery or fixture is disposed of if it is sold, discarded or ceases altogether to be used for the purposes of a trade or business carried on by the owner thereof;
- (c) an asset in respect of which qualifying mining expenditure is incurred is disposed of if it is sold or ceases to be used for the purposes of the trade or business of the individual incurring the expenditure either on that individual ceasing to carry on the trade or business or on that individual receiving insurance or compensation moneys therefor.

14. Value of an asset

(1) The value of an asset at the date of its disposal shall be the net proceeds of the sale thereof or of the relevant interest therein, or if it was disposed of without being sold, the amount which, in the opinion of the relevant tax authority, the asset or the relevant interest therein, as the case may be, would have fetched if sold in the open market at that date, less the amount of any expenses which the owner might reasonably be expected to incur if the asset were so sold.

(2) For the purpose of this paragraph, if an asset is disposed of in such circumstances that insurance or compensation moneys are received by the owner thereof, the asset or the relevant interest therein, as the case may be, shall be treated as having been sold and as though the net proceeds of the insurance or compensation moneys were the net proceeds of the sale thereof.

(3) So much of sub-paragraph (1) of this paragraph as relates to the circumstances for determining the value of an asset by reference to the disposal of the asset other than by way of sale shall have effect—

- (a) in relation to an asset or the relevant interest therein disposed of, not being by way of bargain made at arm’s length; or

(b) where the sale is between persons who are related to each other or between persons both of whom are controlled by some other person or one of whom has control over the other.

15. Apportionment

(1) A reference in this Schedule to the disposal, sale or purchase of an asset includes a reference to the disposal, sale or purchase of that asset, as the case may be, together with any other asset, whether or not qualifying expenditure has been incurred on the last-mentioned asset, and, where an asset is disposed of, sold, or purchased together with another asset, so much of the value of the assets as, on a just apportionment, is properly attributable to the first-mentioned asset shall, for the purposes of this Schedule, be deemed to be the value of or the price paid for that asset, as the case may be.

(2) For the purposes of sub-paragraph (1) of this paragraph, all the assets which are purchased or disposed of in pursuance of one bargain shall be deemed to be purchased or disposed of together, notwithstanding that separate prices are or purport to be agreed for each of those assets or that there are or purport to be separate purchases or disposals of those assets.

(3) The provisions of sub-paragraph (1) of this paragraph shall apply, with any necessary modifications, to the sale or purchase of the relevant interest in an asset together with any other asset or relevant interest in any other asset.

16. Reference to asset to include part of an asset

A reference in this Schedule to an asset shall be construed whenever necessary as including a reference to a part of an asset (including an undivided part of that asset in the case of joint interest therein) and when so construed any necessary apportionment shall be made as may, in the opinion of the relevant tax authority, be just and reasonable.

17. Extension of meaning of "in use"

(1) For the purposes of this Schedule, an asset shall be deemed to be in use during a period of temporary disuse.

(2) For the purposes of paragraphs 7, 8 and 9 of this Schedule—

(a) an asset in respect of which qualifying expenditure has been incurred by the owner thereof for the purposes of a trade or business carried on by him shall be deemed to be in use, for the purposes of that trade or business, between the dates hereinafter mentioned where the relevant tax authority is of the opinion that the first use to which the asset will be put by the individual incurring the expenditure will be for the purposes of that trade or business;

(b) those dates shall be taken to be the dates on which the expenditure was incurred and the date on which the asset is in fact first put to use:

Provided that where an allowance has been given in consequence of this sub-paragraph and the first use to which the asset is put is not for the purposes of the trade or business, all such additional assessments shall be made as may be necessary to counteract the benefit obtained from the giving of the allowance.

18. Exclusion of certain expenditure

Where an individual has incurred expenditure which is allowed to be deducted, in computing the gains or profits of his trade or business under section 20 of this Act, the expenditure shall not be treated as qualifying expenditure.

19. Application to lessors

(1) Where the owner of an asset other than a building—

(a) has incurred capital expenditure in respect thereof for the purposes of leasing that asset for use wholly and exclusively for the purposes of a trade or business carried on or about to be carried on by a person;

(b) leases the asset to such person; and

(c) during the whole or part of the term of the lease, the asset is used wholly and exclusively by such person in such trade or business,

the provisions of this Schedule shall apply, with such necessary modifications as the relevant tax authority may direct, as though such expenditure were incurred wholly and exclusively for the purposes of a trade or business carried on by the owner from the date when such expenditure was incurred and as though the owner were using the asset for the purposes of such last-mentioned trade or business in the way in which and for the period or periods during which the asset is in fact used in the first-mentioned trade or business.

(2) The provisions of sub-paragraph (1) of this paragraph shall apply in the case of a building leased by its owner to any other person as though such leasing were a trade or business carried on by the owner and, if he incurred the capital expenditure in respect of that building after the 31st day of March, 1955, irrespective of the use thereof intended by the owner at the time he incurred such expenditure.

(3) For the purposes of this paragraph, in relation to the trade or business which an owner is to be treated as carrying on, his basis period for any year of assessment shall be taken to be the year immediately preceding that year of assessment.

20. Asset used or expenditure incurred partly for the purposes of a trade or business

(1) The following provisions of this paragraph shall apply where either or both of the following conditions apply with respect to an asset—

(a) the owner of the asset has incurred in respect thereof qualifying expenditure partly for the purpose of a trade or business carried on by him and partly for other purposes;

(b) the asset in respect of which qualifying expenditure has been incurred by the owner thereof is used partly for the purposes of a trade or business carried on by the owner and partly for other purposes.

(2) An allowance and a charge which would be made if both expenditures were incurred wholly and exclusively for the purposes of the trade or business and the asset was used wholly and exclusively for the purposes of the trade or business, shall be computed in accordance with the provisions of this Schedule.

(3) So much of the allowance and charge computed in accordance with the provisions of sub-paragraph (2) of this paragraph, shall be made as in the opinion of the relevant tax authority is just and reasonable having regard to all the circumstances and to the provisions of this Schedule.

21. Disposal without change of ownership

Where an asset in respect of which qualifying expenditure has been incurred by its owner has been disposed of in such circumstances that the owner remains the owner thereof, then for the purposes of determining whether and, if so, in what amount, an annual or balancing allowance or balancing charge shall be made to or on the owner in respect of his use of that asset after the date of such disposal, qualifying expenditure incurred by the owner in respect of the asset prior to the date of the disposal shall be left out of account:

Provided that the owner shall be deemed to have bought the asset immediately after the disposal for a price equal to the residue of the qualifying expenditure at the date of the disposal, increased by the amount of any balancing charge or decreased by the amount of any balancing allowance made as a result of the disposal.

22. Application to professions and vocations

In relation to qualifying plant expenditure, the provisions of this Schedule shall apply as if references to a trade or business included references to a profession or vocation, the profits of which are assessable under this Act, and in relation to qualifying building expenditure, those provisions shall apply as if references to a trade or business included references to a profession, the profits of which are assessable under this Act.

23. Partnerships

(1) The provisions of this paragraph shall have effect for the purposes of this Schedule, in relation to a trade or business and the person or persons hereinafter mentioned carrying on the trade or business, throughout the period (hereinafter called "the relevant period") being—

(a) a period during which the trade or business is carried on by persons in partnership and at least one of those persons, engaged in carrying on the trade or business as a partner in a partnership at any time, is so engaged immediately after that time, whether as a partner in the same partnership or as a partner in a different partnership carrying on the trade or business; or

(b) the aggregate of any of the following periods which are successive—

(i) a period, ending immediately prior to a person becoming a partner in a partnership carrying on the trade or business, during which the person was carrying on the trade or business on his own account;

(ii) a period ascertained under provision (a) of this sub-paragraph;

(iii) a period during which a person is carrying on the trade or business on his own account, where that person was a partner in a partnership carrying on the trade or business immediately before that period.

(2) The trade or business shall throughout the relevant period be deemed to be carried on by one and the same person (hereinafter called "the deemed person") and an allowance or a charge which would

then fall to be made to or on the deemed person, under the provisions of this Schedule if the deemed person were an individual, shall be computed as though the deemed person had done all things which were done for the purposes of the trade or business by the person or persons actually carrying on that trade or business during the relevant period.

(3) For the purpose of this paragraph, a basis period for a year of assessment shall be such period as the relevant tax authority shall determine by reference to the provisions of the definition of “basis period” in paragraph 2 of this Schedule and to the provisions of sub-paragraph (2) of this paragraph:

Provided that, where at any time during the relevant period a person ceases to be engaged in carrying on the trade or business as a partner in a partnership or commences to be so engaged, the deemed person shall, for the purpose of determining basis periods under the provisions of this sub-paragraph and for that purpose only, be treated as having ceased to carry on the trade or business at that time and as having recommenced to carry on that trade or business immediately thereafter.

(4) The amount of the computed allowance or charge in respect of an asset shall be allocated to the person, or apportioned amongst the persons, actually carrying on the trade or business, in the same manner as a capital loss, in the case of an allowance, or a capital gain, in the case of a charge, in respect of that asset would fall on or accrue to that person or those persons, if that loss or gain arose in the course of carrying on the trade or business and as a result of an event occurring—

(a) in the case of an initial or annual allowance, at the end of the basis period by reference to which the allowance has been computed; and

(b) in the case of a balancing allowance or charge, at the date of the disposal of the asset.

(5) An amount so allocated to or apportioned to an individual in respect of a computed allowance or charge shall be treated as an allowance or charge for the purposes of the provisions of this Schedule relating to deductions from and additions to the remainder of assessable income and shall be made to or on him for the year of assessment for which the amount of the allowance or charge has been so computed:

Provided that, where an allowance or a charge falls to be recomputed, as a result of the application of the proviso to sub-paragraph (3) of this paragraph, all such additional assessments or repayments of tax shall be made as may be necessary to give effect to the provisions of this paragraph.

(6) For the purposes of the provisions of this paragraph, an asset is not disposed of within the meaning of paragraph 13 of this Schedule if the asset is used for the purpose of the trade or business during the relevant period and at least one of the persons actually engaged in carrying on the trade or business has an interest in the asset, or in the relevant interest therein, during the relevant period.

(7) In the application of this paragraph with any of the provisions of the other paragraphs of this Schedule those provisions shall be applied with any modifications which the relevant tax authority may consider necessary in order to give effect to the principles and provisions of this paragraph, and the relevant tax authority may, from time to time, prescribe rules embodying those modifications.

24. Meaning of “allowances made”

A reference in this Schedule to an allowance made includes a reference to an allowance which would be made but for an insufficiency of assessable income against which to make it.

25. Claims for allowances

No allowance shall be made to an individual for a year of assessment under the provisions of this Schedule unless claimed by him for that year or where the relevant tax authority is of the opinion that it would be reasonable and just so to do.

26. Election in double taxation cases

(1) Where an individual makes a claim to an initial or annual allowance under this Schedule in connection with a trade or business, if the tax in respect of the profits of the trade or business is the subject of an arrangement, having effect by virtue of section 38 of this Act, between Nigeria and any other territory, for relief from double taxation, he may elect, at the time of making the claim or within such reasonable time thereafter as the relevant tax authority may allow, that allowance shall be calculated at a lesser rate than that provided for in paragraph 7 or 8 of this Schedule and in making the election he shall specify the amount of the lesser rate.

(2) Where an election has been made under this paragraph, the amount of the lesser rate shall be taken to be the appropriate rate in relation to that allowance for all the purposes of this Schedule.

27. Manner of making allowances and charges

(1) The amount of a charge to be made on an individual under the provisions of this Schedule shall be made on him by making an addition to his assessable income for the year of assessment for which the charge falls to be made under the provisions of this Schedule:

Provided that where the charge falls to be made on an individual for a year of assessment, whenever necessary by reason of the assessment on that individual having become final and conclusive for that year or for other sufficient reason, the relevant tax authority may make an additional assessment on the individual in respect of the amount of the charge.

(2) Subject to the provisions of this paragraph, the amount of an allowance to be made to an individual under the provisions of this Schedule shall be made to him by making a deduction from the remainder of his assessable income for the year of assessment for which the allowance falls to be made under the provisions of this Schedule.

(3) For the purposes of this paragraph the remainder of the assessable income of an individual for a year of assessment shall be ascertained by first giving full effect to the provisions of sub-paragraph (1) of this paragraph and to the provisions of section 36 of this Act relating to the deduction of the amount of a loss.

(4) Where full effect cannot be given to a deduction to be made under sub-paragraph (2) of this paragraph for a year of assessment owing to there being no remainder of assessable income for that year, or owing to the remainder for that year being less than the deduction, the deduction or part of the deduction to which effect has not been given, as the case may be, shall, for the purpose of ascertaining total income (of the individual entitled to the deduction) under section 36 of this Act for the following year, be deemed to be a deduction for that year, in accordance with the provisions of sub-paragraph (2) of this paragraph, and so on for succeeding years.

(5) Where an individual is entitled to a deduction under sub-paragraph (4) of this paragraph, or to a deduction in respect of a balancing allowance, in respect of an asset used in a trade or business carried

on by him, for a year of assessment in which that trade or business permanently ceases to be carried on by him and full effect cannot be given to the deduction for that year owing—

- (a) to there being no remainder of assessable income for that year; or
- (b) to the remainder of his assessable income for that year being less than the deduction,

that deduction or the part to which effect has not been given, as the case may be, may, on a claim being made by the individual, be given by way of a deduction from the remainder of his assessable income for the preceding year of assessment, and so on for other preceding years, so, however, that no such deduction shall be given by virtue of this sub-paragraph for any year earlier than the fifth year before the first-mentioned year of assessment:

Provided that where a relief is given under this sub-paragraph in respect of the deduction, the provisions of sub-paragraph (4) of this paragraph shall cease to have effect in respect of that deduction for any year of assessment subsequent to the year of assessment in which such trade or business ceases.

(6) Where a deduction falls to be given under the provisions of sub-paragraph (5) of this paragraph for any preceding year of assessment, whenever necessary, by reason of any assessment for a year having become final and conclusive, or for other sufficient reason, the relevant tax authority may, with respect to the year, make such repayment or set-off of the tax, or of any part of such tax, paid or charged for the year, as may be appropriate, in lieu of making the deduction.

(7) In giving effect to the provisions of sub-paragraph (2) of this paragraph, the amount of capital allowance to be deducted from assessable profits in any year of assessment shall not exceed 66% of such assessable profits of an individual, but any individual in the agro-allied industry or which is engaged in the trade or business of manufacturing shall not be affected by the restriction under this sub-paragraph.

(8) For the purposes of this paragraph—

“an individual in the agro-allied industry” is a person who—

- (a) establishes or manages a plantation for the production of rubber oil palm, cocoa, coffee, tea and similar crops;
- (b) cultivates or produces cereal crops, tubers, fruits of all kind, cotton, beans, groundnuts, sheanuts, beniseed, vegetables, pineapples, bananas and plantains;
- (c) establishes or manages animal husbandry, that is poultry, piggery, cattle rearing and the like and fish farming.

TABLES

TABLE I

[Paragraph 7.]

Initial allowance

Rate per centum

Qualifying Expenditure in respect of—

Qualifying Building Expenditure	5
Qualifying Industrial Building Expenditure	15
Qualifying Mining Expenditure	20
Qualifying Plant Expenditure (excluding Furniture and Fittings)	20
Qualifying Plant Expenditure (Manufacturing, Construction and Agricultural Production)	25
Qualifying Furniture and Fittings Expenditure	15
Qualifying Motor Vehicle Expenditure	25
Qualifying Motor Vehicle (Public Transportation Expenditure with at least 3 buses)	30
Qualifying Plantation Equipment Expenditure	20
Qualifying Housing Estate Expenditure	20
Qualifying Ranching and Plantation Expenditure	30
Qualifying Research and Development Expenditure	25

TABLE II

[Paragraph 8.]

Annual allowance	Rate per centum
Qualifying Expenditure in respect of—	
Qualifying Building Expenditure	10
Qualifying Industrial Building Expenditure	10
Qualifying Mining Expenditure	10
Qualifying Plant Expenditure (excluding furniture and fittings)	10
Qualifying Furniture and Fittings Expenditure	10
Qualifying Research and Development Expenditure	12½
Qualifying Housing Estate Expenditure	10
Qualifying Ranching and Plantation Expenditure	15
Qualifying Motor Vehicle Expenditure	20
Qualifying Plantation Equipment Expenditure	33?

Sixth Schedule

[Section 37.]

Income tax table

[1998 No. 19.]

Income to be taxed	Rate of tax	Per cent
For every naira of the first N20,000	5k per N1	5%
For every naira of the next N20,000	10k per N1	10%
For every naira of the next N40,000	15k per N1	15%
For every naira of the next N40,000	20k per N1	20%
For every income above N120,000	25k per N1	25%

Seventh Schedule

[Section 38 (5).]

Double taxation arrangements

The double taxation arrangements referred to in section 38 (5) of this Act are contained in the Double Taxation Relief between the Federal Republic of Nigeria and United Kingdom of Great Britain and Northern Ireland Order 1988 published as a subsidiary legislation under the Companies Income Tax Act and any other such arrangements between the Federal Republic of Nigeria and any other country published as subsidiary legislation.

The Order was made under powers conferred by the Companies Income Tax Act, this Act and the Petroleum Profits Tax Act.

[Cap. C21. Cap. P13.]

Eighth Schedule

[Section 53 (2).]

Warrant and authority to enter premises

To

Name of taxpayer

Incorporation or Identification No.

Place of business taxpayer

The Board of Internal Revenue in exercise of the powers vested in it by section 53 of the Personal Income Tax Act hereby authorises you to enter the premises, office, place of management or residence of the above-named taxpayer, office of the agent, factory or representative of the taxpayer suspected by the Board of fraud, wilful default, etc., in connection with the tax imposed under the aforesaid Act ; and whose premises, office, place of management or residence of his principal officer office of the agent, factor of representative is at and for the carrying out of your assignment, the said Board further authorises that you with the aid (if necessary) of your assistants and calling to your assistance a police officer, which assistance the police officer is by law required to give, search and remove (if necessary) such records, books and documents of the named taxpayer wherever they may be found either in possession of any employee of the taxpayer or any other person on his behalf.

And for the purpose of your entry into the aforementioned premises you are hereby authorised if necessary, with such assistance as aforesaid, to break open any building or place in the daytime.

Signed for and on behalf of the Board of Internal Revenue of

State Tax Authority at this day of 20

Signature

Chairman/Director

Board of Internal Revenue

CHAPTER P8

PERSONAL INCOME TAX ACT

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

1. Personal Income Tax (Rates, etc., of Tax Deducted at Source (Withholding Tax)) Regulations.
2. Operation of Pay as You Earn (PAYE) Regulations.

Personal income tax (Rates, etc., of tax deducted at source (withholding tax)) regulations

ARRANGEMENT OF REGULATIONS

1. Rate of tax to be deducted at source.
2. Deduction not to be regarded as extra cost.
3. Deduction to be receipted.

4. Remittance of tax.
 5. Offences.
 6. Interpretation.
 7. Citation and commencement.
- Schedule

PERSONAL INCOME TAX (RATES, ETC., OF TAX DEDUCTED AT SOURCE (WITHHOLDING TAX))
REGULATIONS

[S.I. 9 of 1997.]

under section 72

[1st January, 1995]

[Commencement.]

1. Rate of tax to be deducted at source

(1) The rate at which a person as defined in paragraph (2) of this regulation shall deduct tax under the Act from a payment made by him for an activity or service listed in Column 1 of the Schedule to these Regulations shall be as set out in Column 2 of the Schedule.

(2) For the purposes of paragraph (1) of this regulation—

“person” includes a body corporate and unincorporate, a Government Ministry, Department and agency, a local government, a statutory body, a public authority and any other institution, organisation, establishment and enterprise which operates as Pay-As-You-Earn scheme.

2. Deduction not to be regarded as extra cost

A deduction made from a payment shall not be regarded as an additional cost of the contract to be included in the contract price but as tax due on the payment.

3. Deduction to be receipted

(1) A person who deducts tax from a payment shall issue a receipt for the tax so deducted and a statement containing the following information, that is—

- (a) the name and address of the person from whom the tax was deducted;
- (b) the nature of activity or service in respect of which the payment was made;
- (c) the gross amount paid or payable;
- (d) the amount of tax deducted; and
- (e) the period to which the payment relates.

(2) Where a person from whom tax is deducted claims tax credit for the tax so deducted he shall submit the receipt issued to him under paragraph (1) of this regulation to the relevant tax authority as evidence of the tax deducted.

4. Remittance of tax

(1) A person who deducts tax from a payment shall remit the tax so deducted to the relevant tax authority of the State in which the recipient of the payment is resident or to the Federal Inland Revenue Service where the recipient of the payment is a resident of the Federal Capital Territory, Abuja and the other persons to whom section 2 (1) (b) of the Act is applicable.

(2) The remittance shall be accompanied with a statement containing the following information, that is —

- (a) the name and address of the person from whom the tax was deducted;
- (b) the nature of the activity or service in respect of which the payment was made;
- (c) the gross amount paid or payable;
- (d) the amount of tax deducted; and
- (e) period to which the payment relates.

5. Offences

A person required to deduct tax at source under the Act or under these Regulations who fails to do so or having deducted tax fails to pay the tax to the relevant tax authority within thirty days from the date the tax was deducted or the time the duty to deduct the tax arose is guilty of an offence and liable on conviction to the penalty set out in section 73 of the Act.

6. Interpretation

In these Regulations, unless the context otherwise requires—

- (a) “the Act” means the Personal Income Tax Act 1993; and
- (b) a word or an expression used in these Regulations has the meaning assigned to it in the Act.

7. Citation and commencement

These Regulations may be cited as the Personal Income Tax (Rate, etc., of Tax Deducted at Source (Withholding Tax)) Regulations 1997 and shall be deemed to have come into force on 1 January 1995.

Schedule

[Regulation 1.]

Payments from which tax is to be deducted and rate of tax

Column 1

Column 2

Payments in respect of Rate at which tax is to be deducted

1.	All aspects of building, construction and related activities	5%
2.	All types of contracts and agency arrangements, other than sales in the ordinary course of business	5%[S.I. 43 of 2000.]
3.	Consultancy and professional services	5%
4.	Management services	5%
5.	Technical services	5%
6.	Commissions	5%

Operation Of Pay As You Earn (PAYE) Regulations

ARRANGEMENT OF REGULATIONS

1. Regulation of employer with tax authority.
2. Deduction of tax, etc.
3. Record of deductions.
4. Cumulative net emoluments, etc.
5. Certificate of deduction of tax.
6. Death of employee.
7. Remittance of tax deducted.
8. Demand for remittance of taxes.
9. Application of Act.
10. Returns.
11. Inspection of records.
12. Duty of successor in title.
13. Notice to render returns.
14. Notice of assessment.
15. Objection to assessment.
16. Improper tax deductions, etc.
17. Failure to make or account for deduction.
18. Failure to keep records.
19. Offences by body corporate.
20. Inspection of premises.
21. Legal proceedings.
22. Interpretation.
23. Citation.

OPERATION OF PAY AS YOU EARN (PAYE) REGULATIONS

[S.L. 18 of 2002. 1993 No. 104.]

under section 80 (6)

[1st January, 2002]

[Commencement.]

1. Regulation of employer with tax authority

An employer shall register with the relevant tax authority for the purposes of deducting income tax from his employees with or without formal notification or direction by the relevant tax authority.

2. Deduction of tax, etc.

(1) The employer shall within six months of the commencement of these Regulations, or within six months of commencing a business, deduct tax from emoluments of his employees and remit to the relevant tax authority.

(2) Without prejudice to the provisions of regulation 21 of these Regulations, an employer who fails or refuses to register with the relevant tax authority within the time specified in paragraph (1) of this regulation commits an offence and is liable on conviction to pay N25,000 in addition to the payment of arrears of the tax due.

(3) Where the employee works under the supervision or management of a person who is not his employer, that person (hereinafter in these Regulations referred to as the “manager”) shall furnish the particulars of the employees’ emoluments as may be necessary to comply with the provisions of these Regulations and the Manager shall deduct the tax due from the employees’ emolument and remit same to the relevant tax authority.

3. Record of deductions

(1) An employer shall record, either on the tax deduction card or in such other form as may be authorised by the relevant tax authority, the following particulars regarding emoluments of his employees, that is—

- (a) the month of payment;
- (b) the amount of emolument;
- (c) the contribution by the employee to an approved pensions fund;
- (d) the cumulative net emoluments in relation to the said date;
- (e) the cumulative free emoluments in relation to that date;
- (f) the cumulative taxable emoluments in relation to that date;
- (g) the corresponding cumulative tax; and
- (h) the tax, if any, deducted or repaid on making the payment.

4. Cumulative net emoluments, etc.

(1) Before payment of emolument to any employee, the employer shall ascertain the cumulative net emoluments after due deduction of an approved pensions fund, the cumulative free emoluments, the cumulative taxable emoluments, and the corresponding cumulative tax.

(2) Where the cumulative tax is less than the previous cumulative tax, the employer shall refund the difference to the employee.

(3) Where an employee in respect of whom a tax deduction card has been issued ceases to be in employment, the employer shall send to the relevant tax authority a certificate on the prescribed form containing the following particulars, that is—

- (a) the name of the employee;
- (b) any number used to identify the employer;
- (c) the address of the employee;
- (d) the date on which the employment commenced;
- (e) the date on which the employment ceased;
- (f) the “relief from income tax”, if any, appropriate to the employee’s case;
- (g) the cumulative emoluments at the date of leaving; and
- (h) the corresponding cumulative tax.

5. Certificate of deduction of tax

(1) The employer shall make on the prescribed form two copies of the said certificate and deliver them to the employee on the date on which the employment ceases.

(2) On the commencement of another employment, the employee shall deliver the two copies of the certificate to the new employer who shall—

(a) insert on one copy of the certificate the address of the employee (if different from the existing entry made by the former employer), any number used to identify the employee, and the date on which the employment commenced, and shall send that copy to the collector of taxes for tax deductions while the employer retains a copy;

(b) prepare a tax deduction card in accordance with the particulars given in the copies of the certificate and record on the card the cumulative free emoluments, if any, and the corresponding cumulative tax as from the month the employee left his former employment.

6. Death of employee

(1) On the death of an employee in respect of whom a tax deduction card has been issued, the employer shall send to the collector of taxes the certificate (relating to cessation of employment) and shall insert thereon the name and address of the personal representative of the deceased employee.

(2) If any emoluments are paid by the employer to the deceased employee’s next of kin, the employer shall, in making such payment, deduct tax.

7. Remittance of tax deducted

(1) Within ten days of the end of every month, an employer shall pay to the nearest tax office or to any bank (as may be prescribed or designated by the relevant tax authority) all taxes deducted under these Regulations.

(2) The tax officer shall give the employer a receipt on the prescribed form for the total amount paid.

8. Demand for remittance of taxes

If after ten days of the end of any month an employer fails to remit tax to the tax officer or to any bank designated for such payments, the collector of taxes shall demand for the immediate remittance of the tax due.

9. Application of Act

If the relevant tax authority discovers or is of the opinion at any time that an employer has not been remitting taxes, the tax authority may within the year of assessment or within six years after the expiration thereof, assess the employer and the provisions of the Act as to notice of assessment, appeal and other proceedings shall apply to that assessment or additional assessment and to the tax thereunder.

10. Returns

(1) Not later than thirty days after the end of each year, an employer shall render to the relevant tax authority on Form H1 or such other form as the tax authority may approve, or prescribe, a return in respect of each employee showing the total emoluments of each employee during the year, the tax relief, if any, and the total tax deducted from the employee.

[Form H1.]

(2) The return specified in sub-paragraph (1) of this regulation shall be accompanied by a statement and a declaration on Form H1 or any other form approved or prescribed by the relevant tax authority.

[Form H1.]

11. Inspection of records

Every employer shall produce for inspection, at the employer's premises, all wages records, tax deduction cards, vouchers and other documents and records relating to payment of emolument to his employees and the deduction of tax thereof.

12. Duty of successor in title

If any employer is unable to perform the duties under this regulation by reason of death, incapacitation, liquidation or for any other reason, his personal representative or successor shall perform such duties.

13. Notice to render returns

The relevant tax authority may give notice to an employer requiring him to render returns of any emolument paid to the employees before the end of that year, and any such returns shall be rendered to the relevant tax authority within the time specified in the notice.

14. Notice of assessment

The relevant tax authority shall serve a notice of assessment on every employee assessed every six years.

15. Objection to assessment

(1) If an employee is aggrieved by an assessment he may, within thirty days from the service upon him of a notice of assessment, give notice thereof to the relevant tax authority stating the grounds of his objection.

(2) On receipt of any such notice, the relevant tax authority shall review the assessment and make amendments, where necessary.

(3) Notice of the amendment shall then be served on the employee by the relevant tax authority.

16. Improper tax deductions, etc.

Where an employer fails to make proper tax deduction or fails to account properly for deductions made, he commits an offence and is liable on conviction to a penalty of the total sum of taxes due and ten per cent per annum thereon.

17. Failure to make or account for deduction

An employer who fails to deduct taxes or to account for deduction made shall be liable to the relevant tax authority for the sums lost.

18. Failure to keep records

An employer who fails to keep proper records or fails to collect and pay tax under the provisions of these Regulations or who fails to submit returns to the relevant tax authority commits an offence and is liable on conviction to a penalty of N5,000.

19. Offences by body corporate

Where an offence under these Regulations or the Act is committed by a body corporate or firm or other association of individuals—

- (a) every director, manager, secretary or officer of the body corporate;
- (b) every partner or officer of the firm; or
- (c) every person concerned in the management of the affairs of the body corporate,

shall be severally liable for the commission of the offence.

20. Inspection of premises

(1) An authorised officer of a tax authority may, at any time within working hours, enter without warrant any business premises in order to ascertain whether these Regulations are being complied with and on entry may carry out necessary inspections as may be specified by the relevant tax authority.

(2) Where an authorised officer enters any premises in exercise of the powers conferred on him by subparagraph (1) of this regulation, he may take with him such persons as he considers necessary for carrying out his functions under these Regulations.

21. Legal proceedings

Proceedings may be brought against an employer for the recovery of all arrears of taxes outstanding against his employees.

22. Interpretation

In these regulations unless the context otherwise requires—

(a) “Act” means the Personal Income Tax Act 1993;

(b) a word or an expression used in these Regulations has the meaning assigned to it in the Act;

“earned income”, in relation to employment, means the basic salary;

“emoluments” means total emoluments including all allowances, salaries, wages, perquisites, bonuses, and compensation;

“employment” has the meaning assigned to that expression in section 100 of the Act;

“free emoluments”, in relation to any individual, for any year of assessment, means the appropriate amount of his emoluments which under the provisions of the Act are not chargeable to tax;

“income tax reliefs”, in relation to any year of assessment, means the sum of personal allowance and other reliefs as provided in the Act;

“taxable emoluments” means emoluments reduced by free emoluments;

“tax deduction card” means a tax deduction card in the form prescribed by the relevant tax authority or such other document as may be authorised by the relevant tax authority.

23. Citation

These Regulations may be cited as the Operation of the Pay As You Earn (PAYE) Scheme Regulations.