

**Subject: ASSESSMENT PROCEDURE**

*This Information Circular is issued as guide to all Revenue Staff, Taxpayers, Tax Practitioners and the general public. It will be found very' useful, particularly in the light of the new experiment with Integrated Tax System which provides an opportunity for taxpayers and their Consultants/Tax Agents to have their various tax matters to be handled at one tax location. The functions described in this Circular apply to all LTOs and ITOs equal/y.*

**1.0 Introduction**

The overriding objective of assessment function is to ensure that all taxpayers, within a defined tax jurisdiction, are brought into the tax net and assessed correctly in order to plug all possible leakages. Generally, taxpayers are categorized according to the legal status of their businesses which includes the following:

- Individuals/Enterprises, usually sole proprietorship or self-employed
- Partnership, association of two or more persons coming together in business with a view to making profit.
- Corporate Entities/Public Companies, usually limited by shares
- Non-Governmental Organizations, usually unlimited or limited by guarantee.

A brief description of each of the above business entities will help in the understanding of their respective duties and obligation under the tax laws.

**Individual/Enterprises** - This is a taxable person who is chargeable to tax in his own name or in the name of a receiver, or his agent. Usually, the tax affairs of this category of taxpayers are to be handled by the State Internal Revenue

Service (SIRS), where the taxable person is domiciled or resides. Individuals are assessed to tax under the Personal Income Tax Act (PITA).

**Partnership:**

This category of businesses is assessed to tax under the Personal Income Tax Act (PITA) in the same manner as individuals/ enterprises. In Nigeria, partners are assessed in their individual names, based on the share of partnership profits allocated to them.

**Non-Governmental Organisations:** These are non-profit making organizations which are qualified for income tax exemption under Section 23(1) (i) of CITA C21 LFN, 2004). They are often unlimited or at best limited by guarantee. These types of organizations have a duty to apply for exemption. The form in which NGOs are registered determines which Tax Authority will handle their tax affairs

**Corporate Entities/Public Companies:** These are limited liability companies or public companies registered with profit - motive in mind. Their tax affairs are being handled by the Federal Taxing Authority

Assessment function in an Integrated tax System is agreed to include filing and assessment duties with respect to all taxes being collected by that office -among which are: PPT, CIT, VAT, WHT, CGT etc.

## 2.0 Classes of Assessment

Assessments are normally raised on the Income or Profit of companies or corporation arising from trade or business carried on in Nigeria. Assessment is to be imposed on the "Profit" of an enterprise in relation to an accounting period. There are two (2) principal classes of assessments, namely;

(a) **Self-Assessment:-** This assessment scheme aims at shifting the duty of raising of

assessment to the taxpayers themselves. Under this system, the taxpayer is expected to accompany its tax returns with self-assessment notice and an evidence of payment to the FIRS through appropriate designated collecting bank.

(b) **Government Assessment:** - This is an assessment raised on behalf of the Government by the Tax Authorities, examples of which are:

- assessment raised in accordance with audited accounts and computations filed by the taxpayers.
- best-of-judgment (BOJ) assessment based on estimated profit or profit perceived to be fair and reasonable.
- protective/jeopardy assessment.
- amended/additional assessment.

### 3.0 **Types of Assessment**

#### 3.1 **Assessments Based on Taxpayers' Returns**

These are assessments based on the information contained in the taxpayer's returns. The tax computations together with the Capital allowances computations are enclosed along with the audited accounts and such assessment could either be self-assessment or government assessment.

#### 3.2 **Minimum Tax**

Minimum Tax is payable by every company in Nigeria when the total profits of the company from all sources have produced no tax, or tax payable which is less than the minimum tax specified by the law. However, the followings are exempted from the payment of minimum tax:

- companies engaged in agricultural trade or business.
- companies with at least 25% imported equity capital.
- any company for the first four (4) years of its commencement of business.

The rates applicable to companies which are liable to minimum tax is the highest of any of the following:

- (a) 0.5% of Gross Profit
- (b) 0.5% of Net Assets
- (c) 0.25% of Paid-up Share Capital
- (d) 0.25% of Turnover of up to N500,000.

If however the turnover is higher than N500,000, the minimum tax payable will be the highest of the above plus 0.125% of the excess of the turnover above N500,000.

### **3.2.1 Treatment of Capital Allowances when Minimum tax is applicable**

It is important to note that in any year of assessment when minimum tax is chargeable, the capital allowances due in that tax year must be adjusted against the profit of that year along with the unabsorbed balances brought forward. This treatment is adopted to ensure that the charging of minimum tax does not preclude the deduction from assessable profit and the utilization of capital allowances for that year. The position of the law is that capital allowances should be deducted as far as possible, from the assessable profit of that year and the unabsorbed portion, if any, shall be carried forward.

### **3.2.2 Minimum Tax on Dormant Cases**

Minimum Tax is justified on the theoretical premise that every asset should generate an income and it is applied as an anti-tax avoidance measure. This tax is sometimes referred to as asset tax. Already, it is being applied in that manner during periods of dormancy in the sense that minimum tax is computed and charged on net asset or share capital, whichever is the higher of the two. The aim of this clarification is to ensure uniformity in the application of the law on minimum tax with respect to dormant cases. Minimum tax should be computed although the assessment may be raised when the business eventually recommences.

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### **3.3 Best of Judgment Assessment**

This is raised where audited accounts and other relevant returns are not submitted within the stipulated time in line with the tax law. It is usually based on "fair and reasonable" estimate of income/profit of the preceding year's results reported by the company.

### **3.4 Amended/Revised Assessment**

Where accounts are submitted and the basis of the assessment is faulted, the original assessment earlier made is revised or amended in line with the new information as disclosed in the tax computations.

### **3.5 Additional Assessment**

The Board is empowered to examine the returns submitted by taxpayers in order to ensure that the presentation of the accounting details conform with provisions of the Income Tax Act. Unapproved claims and allowances discovered are disallowed and added back to profit. This, in addition to other information will form the basis for additional assessment. All rules and regulations governing other assessments also apply to additional assessments.

### **3.6 Jeopardy/Protective Assessment**

These assessments are raised on the ground of expediency. If the relevant tax authority is of the opinion that such assessments are necessary for any reason of urgency, which may include the following:

- where a case referred to the Board for ruling is yet to be determined.
- imminent liquidation of a company or an intention to dispose of its valuable assets, the result of which may cripple its operation.
- imminent sale or transfer of trade/business of the company to another.
- intended remittances to foreign partners.
- payment being made to a taxpayer who had hitherto been evading tax.
- imminent escape by a taxpayer to foreign countries.
- in all other cases of emergency.

### **3.7 Assessment On Turnover**

Under Section 30(1) (a) and (b) of CITA C21 LFN, 2004, the Board is empowered to assess on the turnover of the taxpayer's business. Where it appears that the trade or business produces no assessable profits or declare turnover that is less than might be expected to arise from such trade or business. Such an assessment is made by

assuming a fair percentage of turnover as assessable or adjusted profit for the year to which capital allowances and other deductions are charged before arriving at total profit, And then applying the current rate of tax to determine tax due for the year

### **3.8 Assessment Levied on Dividend Provision where no Tax is Computed or Payable**

Section 19 of CIT A empowers the Board to raise assessment on amount of dividend paid to shareholders as if such dividend declared is the total profit of the company for the year of assessment to which the accounts relates. Such a situation may arise where

a company declares dividend to its shareholders when it has no tax payable reported as a result of:

- i. no total profits; or
- ii. total profits which are less than the amount of dividend paid.

In all cases where dividend is declared, officers should always compare the total profits to the amount of dividend declared.

### **3.9 Other assessments/Levies**

There are other levies or imposition usually encountered in the course of assessment duties, among which are:

#### **a Penalty for Late Returns:**

Penalty is normally imposed when a taxpayer's audited accounts and tax computations are submitted late to the Revenue Authority. The amount of penalty at present is N2,500 for the first month in which the failure occurs and N500 for each subsequent month of failure. It is a form of assessment raised whenever the returns are submitted late. The amount is subject to review from time to time at the discretion of Government.

#### **b Pre-Operational Levy:**

This is a levy imposed on companies which fail to commence business within

six months after their incorporation. The levy is N500 in the first instance and N400 for any other year, if it still has not commenced business. It is to be levied when the taxpayer applies for current Tax Clearance Certificate (TCC). Preoperational levy should not be imposed for any previous years when the Company did not apply for TCC; neither should it be raised in arrears to cover earlier years.

**c     Education Tax Levy:**

This is a levy being imposed on all taxable companies in Nigeria to assist Government in the development of education in Nigeria. It is charged at the rate of 2% of the assessable profit and should be assessed alongside the normal tax assessment for each year. Pioneer Companies are usually not 'assessed to Education Tax in view of the income exemption status from tax payment that they enjoy during the pioneer period.

**4.0     Requirements for Filing of Tax Returns**

All taxpayers, including those granted exemption from tax, are required to file their tax returns to the relevant Tax Authority every year. The audited accounts of the business for the preceding accounting year must be accompanied by:

- Income tax computations,
- Capital allowance computations,
- Schedules of fixed assets, trade debtors and trade creditors and
- Evidence of payment (whole or part) of tax being assessed.

The Act also prescribes the time within which the returns must be submitted to include:

- all companies must submit their audited accounts not later than six (6) months after the end of the company's accounting date.
- a newly incorporated business is allowed to submit its returns within 18 months from the date of its incorporation, or not later than six (6) months after the end of its first accounting period, whichever is earlier,
- a company may request in writing for approval to submit accounts at

a later date, in view of any peculiar circumstances, e.g. fire disaster or need to obtain prior approval before submission. This must be specifically approved in writing by the relevant Tax Authority.

## **5.0 Basis for Assessment**

Taxpayers that are liable to tax under CIT A are to be assessed on basis periods for which their individual accounts are made up. Companies have a choice under the relevant Tax laws as to the date to which they make up their accounts, provided that the accounting year-end dates are maintained from year to year. Normal basis period is a period of twelve (12) months from the date.

## **5.1 Commencement Provisions**

The basis of assessment in any year for a continuing business is the income of the preceding year. However, for new trades or businesses, the basis of assessment for the first three years is as follows:

### **(a) Normal basis:**

- 1<sup>st</sup> year - profits from the date of commencement to 31<sup>st</sup> December will be relied upon to assess for this year.
- 2<sup>nd</sup> Year- the basis of assessment is the profits of the first twelve months from date of commencement.
- 3<sup>rd</sup> year- the basis of assessment is the profits of the preceding year, but not exceeding or less than 12 months.

### **(b) Election Option Based On Actual Year Basis**

Under the law, a taxpayer has the choice of election between the normal basis period and actual basis period for the second and third years of the commencement of trade. Where this applies, the request should be made within two (2) years after the end of the second year of assessment.

## 5.2 **Cessation Provision**

The law provides that the assessable profit of the year of assessment shall be the amount of profit of that year i.e. from January of the year to date of cessation. For the year proceeding the year of cessation, (penultimate year), the amount of profit computed on the preceding year basis (P.Y.B) shall be compared with the amount of profit computed on actual year basis and the higher of the two results is taken as assessable profit. This is however at the option of the Revenue Authority.

## 5.3 **Changes in Accounting Date**

Every taxpayer is at liberty to change its accounting date, if for any reason, it finds it expedient to do so. In such a case, the assessable profits of the year of assessment in which the change occurs and the two subsequent years are to be computed at the discretion of the relevant tax authority. The following conditions must however hold:

- a a confirmation of the permanency of the new date and reasons for such a change. If temporary, the assessments should continue to be based on the results of the twelve months ending on the old terminal date; if permanent, the three discretionary years of assessment should be determined to ensure that the Tax authority obtains the best terms possible.
- b since it is not possible at the onset to determine the basis periods for those three years, the new proposed terminal dates are adopted provisionally and the taxpayer must understand that any assessment made for the first and second years are subjected to a review.
- c in accepting a new date, any of these situations may arise:
  - (i) if a new date is later in the fiscal year than the old date, profits of some periods will not come into the assessment at all,
  - (ii) if the new date is earlier in the income tax year than the old, the profits of some periods will come into assessment twice,
  - (iii) the amount of profit excluded or included and the profits involved must be ascertained and recorded for future use.

## 6.0 **Objections**

Taxpayers are free to raise objection to any government assessments, which they believe are incompatible with the relevant tax laws or where they are of the opinion that such assessments were raised on wrong premises and are therefore objectionable. An objection can either be valid or invalid.

### 6.1 **Valid Objection**

Valid objection must be made in writing. It must be filed within the stipulated period or time (usually 30 days) and must state the precise grounds of objection. It must always be accompanied with the relevant audited accounts and computations.

### 6.2 **Invalid Objection**

Any objection that fails to possess the quality of a valid objection is rendered invalid. Where all the grounds of objection are rejected by the relevant Tax Authority, a notice of refusal to amend the assessment is sent to the taxpayer. The taxpayer then has the option to appeal within 30 days of the receipt of the notice of refusal to amend or pay the assessment. It is important to add that when an assessment is declared final and conclusive, no further correspondence is entertained on the assessment, except that appeal proceedings are initiated.

### 6.3 **Appeals**

Provisions have been made in the Nigerian tax law to enable aggrieved persons seek redress under a different and independent adjudication. Such appeals could be referred to the Body of Appeal Commissioners and the Civil Courts of the land. It must be noted that there are specific guidelines provided for such appeals. Officers are advised to familiarize themselves with these procedures in order to be able to render assistance to taxpayers whenever they may be requiring such.

## 7.0 **General Application to VAT Operation**

VAT assessment has not been specifically mentioned in this circular, but it is to be understood that with the introduction of the Integrated Tax System, which involves the administration of all taxes at one tax location, what generally applies to income

tax will also be applicable to the Value Added Tax (VAT).

## **8.0    Enquiries**

All enquiries on any aspect of this publication are to be directed to:

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