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Information Circular

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Subject: **CLARIFICATION ON SUNDRY PROVISIONS OF THE FINANCE ACT AS IT RELATES TO COMPANIES INCOME TAX ACT**

This circular is issued for the information and guidance of the general public, taxpayers and tax practitioners in line with the provisions of the relevant tax laws. The circular replaces FIRS Information Circular 2021/11 of 3rd June, 2021.

1.0 Introduction

This is to update the circular issued pursuant to Finance Act, 2020 and provides clarification on other amendments introduced by the Finance Act, 2021.

2.0 Section 11 of CITA – Charge of Tax on Interest Relating to Foreign Loan and Agricultural Loans and Certain Reliefs

Section 11(2)(a) of Companies Income Tax Act (CITA) Cap. C21 LFN 2004 (as amended) states the conditions for the grant of tax waiver on interest on loans granted for agricultural purposes thus:

- a) qualifying business is **primary agricultural production** as against the erstwhile “agricultural trade or business”;
- b) the minimum moratorium period required in order for the loan to qualify for the tax incentive is **12 months** instead of the previous 18 months; and
- c) the rate of interest on the loan shall not be more than the **base lending rate** at the time the loan was granted, refinanced or otherwise restructured.

“**primary agricultural production**” means primary crop production, primary livestock production, primary forestry production and primary fishing production.

As such, interest on any loan granted by a bank to a company that is engaged in a trade or business outside of the activities listed in the foregoing paragraph shall be liable to tax.

3.0 Section 18 of CITA - Profits of a Company from Certain Dividends

With the deletion of Section 18(c)(iii) of CITA, dividends received from companies chargeable to tax under the Petroleum Profit Tax Act are subject to withholding tax at the rate of 10%. Such dividends shall be regarded as franked investment income of the recipient company in line with the provision of Section 80 of CITA. Consequently, the dividend shall not form part of the profit that will be subject to further tax in the hands of the recipient company.

4.0 Section 19 of CITA- Payment of Dividend by a Nigerian Company

A new Section 19(2) was inserted into CITA which excludes the following classes of dividend from the application of Section 19(1):

- i. Dividends paid out of retained earnings of a company, provided that the dividends are paid out of profits that have been subjected to tax under CITA, Petroleum Profit Tax Act (PPTA) or the Capital Gains Tax Act (CGTA);
- ii. Dividend paid out of all tax-exempt incomes pursuant to CITA, CGTA, PPTA & Industrial Development (Income Tax Relief) Act or any other legislation;
- iii. Franked investment income under CITA; and
- iv. Distributions made by a Real Estate Investment Company to its shareholders from rental or dividend income received on behalf of those shareholders;

The exemption, provided in this section, is applicable even where the profits that generated such dividend accrued in a year other than the year in which the dividend was paid.

NOTE:

Taxpayers are required to maintain, and include in their annual tax returns, a schedule to track the sources of dividend paid in relation to items listed in (i) to (iv) above and the evidence of tax paid, where applicable.

4.1 Determination of Dividends Paid out of Retained Earnings

In determining whether dividend was paid out of retained earnings for the purposes of Section 19(1), profits of the current year disclosed in the financial statements shall be considered first.

For instance, where the profits reported for an accounting period are sufficient to cover the dividend declared for that year, dividend paid for that year shall not be treated as having been paid from other sources (including retained earnings).

Illustration 1

An extract from the financial statements of Dividends Limited for 2019 shows the following:

	₦
Accounting Loss for the Year	(500,000)
Retained Earnings brought forward	1,000,000
Dividend declared for 2019 (paid in 2020)	500,000

From the above illustration, **₦500,000** dividend paid will be exempt from the application of Section 19(1), because it can be reasonably taken that the dividend was paid out of the company's retained earnings.

Illustration 2

An extract from the financial statements of MKL1 Nigeria Limited for 2019 shows the following:

	₦
Profit for the Year	1,000,000
Retained Earnings brought forward	2,000,000
Dividend declared for 2019 (paid in 2020)	1,500,000

From the above, dividend of **₦500,000** from the **₦1,500,000** paid can be said to be paid from the retained earnings of previous years, hence the amount to be subject to the application of section 19(1) shall be restricted to **₦1,000,000** i.e., dividend declared and paid from profit reported for the year 2019.

Illustration 3

An extract from the financial statements of MKL2 Nigeria Limited for 2019 shows the following:

	₦
Accounting Profit for the Year	5,000,000
Retained Earnings brought forward	10,000,000
Dividend declared for 2019 (paid in 2020)	4,000,000

The dividend of **₦4,000,000** declared and paid for 2019 will not be exempt from the application of section 19(1), since the accounting profit of **₦5,000,000** in 2019 was enough to cover the dividend paid for the year.

5.0 Profits of Companies Engaged in Educational Activities.

Companies that are engaged in educational activities are not on the list of institutions whose profits are tax-exempt on grounds of public character. This implies that schools, educational institutions, and other companies that are

engaged in educational activities are now required to pay income tax on their profits.

However, a company carrying out educational activities may be able to claim income tax exemption under this provision where it can demonstrate that its educational activities are charitable in nature. That is, it must satisfy the following three (3) conditions-

- a. solves educational needs on grounds of kindness and benevolence,
- b. without charging fees, and
- c. any surplus/profit is ploughed back into the educational activity.

The company must meet all these conditions jointly to demonstrate that its activities qualify as charitable and exempt from tax.

Kindly refer to FIRS revised circular on "Guidelines on the Tax Treatment of Non-Governmental Organisations" **No 2022/06 of 11th April, 2022.**

6.0 Profits on Goods Exported

Section 23(1)(q) (as amended) exempt the profits of a Nigerian company, in respect of goods exported from Nigeria, if the proceeds of such exports are used for the purchase of raw materials, plant, equipment and spare parts.

Where such proceeds were not so fully utilised, the profits to be exempt from tax shall be limited to the proportion of the proceeds so utilised. Consequently, the profits relating to the portion of export proceeds not utilised in the purchase of raw materials, plant, equipment and spare parts are liable to tax proportionately.

Note that this exemption does not cover companies that are engaged in the upstream, midstream or downstream petroleum operations. However, the exemption shall apply where a non-petroleum operations company uses the outputs of a petroleum operations company as raw materials for producing goods that are exported from Nigeria, and the proceeds of such exports are used for the purchase of raw materials, plant, equipment and spare parts.

In order to ascertain the portion of export proceeds exempted from tax, a company engaged in the export of goods shall maintain a schedule and evidence of utilisation of its export proceeds for the purchase of raw materials, plant, equipment or spare parts.

NOTE:

In accordance with the provisions of Section 27(1)(h) of CITA, any expense incurred in deriving the profits of the export business (which profits are exempted from tax) is not deductible from the taxable income of the business.

7.0 Section 24 – Deductions Allowed

Section 24 of CITA was amended by inserting after the word "profits" in line 5, the words "chargeable to tax".

By this amendment, only expenses incurred wholly, exclusively, necessarily and reasonably in the production of profits chargeable to tax will be allowed as deductions. As such, expenses incurred in generating profits not chargeable to tax (such as exempt income, franked investment, etc.) will **not be allowed** as deduction against profits chargeable to tax.

In addition, all expenses relating to the income of Pension Funds and Assets, as well as Policy Holders funds under Insurance that are exempt from tax will not be deductible expense from taxable income.

Capital allowances relating to such exempt income will be treated in line with the provision of Section 31 (1A – 1D) of CITA as amended.

7.1 Interest Deductibility

Section 24(a) introduced a restriction on deductibility of interest for a Nigerian company or a fixed base of a foreign company in Nigeria that has incurred any interest or deduction of similar nature where loans or debts are obtained from a foreign connected person.

Where a Nigerian company or a fixed base of a foreign company in Nigeria has incurred such interest or deduction of similar nature, the deduction allowed under Section 24(a) of CITA shall be restricted to **only 30%** of the company's earnings before interest, tax, depreciation and amortisation (EBITDA).

NOTE:

1. The interest deductibility rule in the Seventh Schedule to CITA complements and does not replace the transfer pricing rule. As such, taxpayers are to ensure that interest expenses comply with the Income Tax (Transfer Pricing) Regulations before applying the interest deductibility rule.
2. In computing, the 30% of EBITDA allowed under section 24(a) of CITA for such companies, total interest paid or payable (including interest payment to third parties) shall be considered. However, such interest must be those directly incurred in respect of loan or debt obtained wholly, exclusively, necessarily and reasonably for the production of profits chargeable to tax. Where the loan or debt was not utilised for the

production of the profits chargeable to tax, no portion of the interest is allowable deduction.

3. Interest and deductions of similar nature means the cost of borrowing money or other financial charges. It includes interest, discounts, fees, premium, share of profit, finance cost element of finance lease or foreign exchange losses that are paid or payable in relation to a loan or a debt, or any other payment in relation to derivatives used in hedging a loan or debt.
4. EBITDA shall be computed based on assessable profits i.e. assessable profits before the deduction of interest expense (or similar charges). This is consistent with the option provided in the report on Action 4 (excessive interest deduction) of the OECD Base Erosion and Profit Shifting project (BEPS) for the use of tax EBITDA.
5. Any taxpayer that fails to apply the restriction on interest deductibility as provided by this rule will be liable to specific penalties and interest under paragraph 5 of the Seventh Schedule in addition to other relevant penalties or interest imposed by other relevant provisions of the tax laws.

Where any amount of interest or deduction of similar nature has been disallowed by virtue of the limitation imposed, such amount may be carried forward for a period not more than 5 years from the year for which the excessive interest expenditure was first computed. The amount so carried forward shall constitute interest for the purposes of computing the restriction for succeeding years. For this purpose, the deduction of interest shall be on first-in, first-out basis.

The restriction provided in section 24(a) and the Seventh Schedule of CITA does not apply to a Nigerian subsidiary of a foreign company engaged in banking or insurance business. However, the rule shall be applicable to Nigerian banking or insurance companies that are parents to foreign companies, where the Nigerian Company paid interest to that foreign subsidiary.

Illustration 4

XYZ Nigeria Limited is a subsidiary of XYZ (UK) Limited. The following information was extracted from the financial statement of the Nigerian company for 2020 year of assessment:

	₦
<i>Assessable Profit</i>	<i>400,000</i>

In arriving at the assessable profits, the following amounts of interest had been deducted:

<i>Interest on debts: Paid to XYZ UK Limited</i>	<i>400,000</i>
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Paid to other creditors 200,000

~~₦100,000~~ out of the amount paid to third parties was in respect of loan obtained in generating tax-exempt profits.

The restriction provided under section 24(a) and Seventh Schedule of CITA will apply to XYZ Nigeria Limited because the company has made interest payment to a foreign connected person.

Consequently, the amount of interest allowable for tax purposes in 2020 year of assessment shall be restricted to 30% of its EBITDA, as computed thus:

EBITDA	=	Assessable Profit before Interest Deduction
Assessable Profit	=	₦400,000
Interest Deducted	=	₦600,000
EBITDA	=	₦400,000 + ₦600,000 = ₦1,000,000

Total interest deductible (before restriction):	₦
Int. on Loan from XYZ UK	400,000
Int. on Loan from Others	200,000
Total Interest Exp.	600,000
Less: Int. for Tax Exempt Profit	<u>100,000</u>
Interest Qualifying for Deduction	<u>500,000</u>

30% of EBITDA (30% of ₦1,000,000) = ₦300,000

Amount of interest deductible in 2020 YOA is ₦300,000 which is the lower of:

- i. 30% of EBITDA (₦1,000,000) ₦300,000 and ii.

Total interest on qualifying debts ~~₦500,000~~

The excess interest of ~~₦200,000~~ (i.e. ~~₦500,000~~ - ~~₦300,000~~) will be carried forward to 2021 YOA and added to the interest expense for that year for the purposes of computing the restriction for that year.

The excess interest of ~~₦200,000~~ may only be carried forward for a period not exceeding 5 years, i.e. to 2025 YOA, using, for each of the year, the same rule with which the excessive interest expenditure was first computed.

Any amount (out of the ~~₦200,000~~ carried forward in 2020) not deducted after 2025 YOA shall no longer be deductible.

8.0 Section 25 of CITA- Deductible Donations

Section 25 (8) & (9) of CITA (as amended) provides that donations made in cash or kind to any fund set up by the Federal, State or any agency designated by the Government in respect of any pandemic or natural disaster,

shall be tax deductible to a maximum of 10% of assessable profits after all other allowable deductions.

Where the donations are made in the form of tangible items, the cost of such items thereof is tax deductible. Documentary evidence of such donations shall be provided as a proof (to the satisfaction of the Service) that such costs are wholly, reasonably, exclusively and necessarily incurred.

The tax-deductible donations referred to in the foregoing shall be after deducting other allowable donations made by the company pursuant to section 25 and section 25A of CITA.

Illustration 5

Coy Nigeria Limited reported profit before tax of ₦6,700,000 for the year ended 31st December, 2021. This is after charging the following expenses:

	₦
Depreciation.....	500,000
Repairs to a section of its factory affected by fire.....	200,000

Donations made during the year:

▪ Federal Government COVID-19 Relief Fund.....	3,000,000
▪ The Boys Scout of Nigeria.....	500,000
▪ National Sports Commission.....	2,000,000
▪ XYZ Political Party	300,000
▪ Auditorium building to University of Abuja.....	10,000,000

Additional Information:

- i. The factory building affected by fire is insured with XYZ insurance
- ii. Unrelieved loss brought forward is ₦1,200,000
- iii. Capital allowance for the year is ₦1,000,000

Compute for the relevant year of assessment:

- (a). the maximum allowable donations to non-government established fund,
- (b). the maximum allowable donations to government established fund
- (c). the tax payable by the company

Solution

COY Nigeria Limited

(a) Computation of Allowable Donations to Non-Government Established Fund for 2022 year of Assessment

	₦	₦
Net Profit as per Audited Financial Statements		6,700,000
Add back:		
Depreciation	500,000	
Repairs to factory gutted by fire	200,000	
Total Donation	<u>15,800,000</u>	<u>16,500,000</u>
Assessable profit before donations		23,200,000
Unrelieved loss brought forward		<u>(1,200,000)</u>
		22,000,000
Capital Allowance absorbed		<u>(1,000,000)</u>
Total Profit before donations		<u>21,000,000</u>

Note:

- (i) Donation to XYZ Political party is not allowable for tax purposes.
- (ii) Non-educational institutions donations amount to **₦2,500,000** i. e (~~₦2,000,000~~ + ~~₦500,000~~)
- (iii) Maximum allowable donation to non-educational institutions = (10% x 21,000,000) = **2,100,000**. Thus, excess donation of ~~₦400,000~~ i. e (~~₦2,500,000~~ - ~~₦2,100,000~~) to non-educational institutions will be disallowed.
- (iv) Maximum allowable donation to educational institution = (15% x 21,000,000) = **3,150,000**; as such, the excess donation ~~₦6,850,000~~ to educational institutions will be disallowed.

COY Nigeria Limited

(b) Computation of Allowable Donations to Government Established Fund for 2022 year of Assessment

	₦	₦
Net Profit as per Audited Financial Statements		6,700,000

Add back:

Depreciation	500,000	
Repairs to factory gutted by fire	200,000	
Disallowed donation (XYZ Political party)	300,000	
Excess Donations to approved bodies (400,000+6,850,000)	<u>7,250,000</u>	<u>8,250,000</u>

**Assessable profit before donations to Govt. established fund
14,950,000**

- Maximum allowable donation to Government Established fund = (10% x 14,950,000) = **1,495,000**. Thus, the excess donation of ₦1,505,000 (i.e. ₦3,000,000 – ₦1,495,000) to government established fund will be disallowed.

COY Nigeria Limited**(c) Computation of Tax Payable for 2022 year of Assessment**

	₦	₦
Net Profit as per Audited Financial Statements		6,700,000

Add back:

Depreciation	500,000	
Repairs to factory gutted by fire	200,000	
Disallowed donation (XYZ Political party)	300,000	
Excess Donations to approved bodies:		
Non-Educational Institutions	400,000	
Educational Institutions	6,850,000	
COVID-19 Donations	<u>1,505,000</u>	<u>8,755,000</u>
		<u>9,755,000</u>

Assessable Profit **16,455,000**Unrelieved loss brought forward (1,200,000)15,255,000Capital Allowance absorbed (1,000,000)**Total Profit** **14,255,000**Tertiary Education Tax @ 2% of Assessable Profit = **₦329,500**Companies Income Tax @ 30% of Total Profit = **₦4,276,500**

Note:

Taxpayers must cross check to make sure that allowable donation to educational institutions does not exceed an amount equal to 15% of total profit and 25% of tax payable, whichever is higher as follows:

- (a) 15% of total profit before donations = $(15\% \times 21,000,000) =$
₦3,150,000
- (b) 25% of Companies Income Tax payable = $(25\% \times 4,276,500) =$
₦1,069,125

Therefore, the allowed donation of **₦3,150,000** to educational institution is in order as it is the higher of the two options.

9.0 Section 27(1) (h) – Deductions not allowed (Expenses Incurred in Earning Exempt Income)

Section 27(1)(h) provides that *any expense incurred in deriving tax exempt income, losses of a capital nature and any expense allowable as a deduction under the Capital Gains Act* are not allowed.

In particular, any expense directly incurred to generate tax-exempt income shall not be allowed in computing the company's assessable profits.

Where a deductible expense is incurred to earn both taxable and tax-exempt income, the portion of the expense that relates to income assessable to tax shall be determined and allowed for deduction while the part that relates to the tax-exempt income shall not be allowed as a deduction.

The following steps shall be employed in order to determine and separate cost relating to taxable income:

- a. cost directly and solely incurred to earn each class of income shall be separated, for instance:
 - i cost of goods sold – actual cost relating to the respective class of income;
 - ii staff remuneration – officers performing relevant activities;
 - iii professional fee – fee of experts employed to work on the particular income line;
 - iv consumables – cost of items directly consumed by each income line;
 - v license – fee related to license relating to the business operation
- b. joint costs i.e. costs that are incurred for both classes of income shall be apportioned on the basis of appropriate allocation keys e.g.
 - i. rent – floor space occupied;

- ii. staff remuneration – man-hour, production quantity, or any other appropriate allocation key
- iii. shared fixed assets – production units, hours operated, distance covered, etc.

In the event that appropriate allocation key could not be determined, the joint costs will be allocated using the formula:

$$\frac{A}{A+B} \times C$$

Where:

A: - represents income assessable to tax.

B: - represents tax-exempt income.

C: - represents total available expenses.

Illustration 6

Banking Bank Plc secured a pool of fund, which was wholly invested in generating an income of ₦1 billion which is exempt from tax. The bank incurred the sum of ₦100million by way of interest, administrative and other operating costs pertaining to the investment. The company incurred another ₦200million by way of interest, administrative and other operating costs in its other banking business to generate ₦2 billion which is wholly assessable to tax.

Only ₦2billion is assessable to tax. The sum of ₦100million being cost incurred for the purposes of generating tax-exempt income of ₦1billion cannot be charged to the ₦2billion income; only the ₦200million can be deducted from the taxable income.

Illustration 7

Company XYZ incurred ₦200,000 deductible expenses in generating business profits of ₦1million in the year ended 31st December 2019. Only the sum of ₦700,000 of the total business profits is assessable to tax while the remaining ₦300,000 is tax-exempt. How much of the expense would be allowed for deduction?

In order to determine the portion of the expense to be allowed, the following formula is applied:

$$\frac{A}{A+B} \times C$$

Where:

A: - represents income assessable to tax i.e. ₦700,000

B: - represents tax-exempt income i.e. ₦300,000

C: - represents total available expenses.

$$\frac{\text{₦700,000}}{(\text{₦300,000} + \text{₦700,000})} \times \text{₦200,000}$$

$$\frac{\text{₦700,000}}{\text{₦1,000,000}} \times \text{₦200,000} = \text{₦140,000.}$$

Accordingly, ₦140,000 will be allowed for deduction against the income of ₦700,000 while ₦60,000 (i.e. ₦200,000 – ₦140,000) will not be allowed.

9.1 Section 27(1) (I): Tax or Penalty Borne on Behalf of another Person

By section 27(1)(I), any tax or penalty borne by a company on behalf of another person is not an allowable deduction for tax. As such, where a contract is issued net of taxes, any withholding tax (WHT) or any other taxes borne by the payer on behalf of the vendor will not be deductible.

Illustration 8

Company A agreed the hire of a facility from Company B for ₦1million per annum net of all taxes. Company A paid ₦1million to Company B and in addition remitted ₦100,000 WHT to FIRS.

In ascertaining the assessable profits, Company A may deduct the hire charge of ₦1million but the sum of ₦100,000 WHT remitted on account of the hire charge is not deductible.

9.2 Section 27 (1)(k) Penalty or Fine

Section 27(1)(k) stipulates that any penalty or fine imposed pursuant to a legislation enacted by the National Assembly or a State House of Assembly shall not be allowed for tax purposes.

Consequently, the following are not allowable deductions for tax purposes.

Any expense incurred for:

- i. violation of any law or legislation enacted by the National Assembly or State House of Assembly;
- ii. violation of any subsidiary legislation or regulation made pursuant to any law or legislation enacted by the National Assembly or State House of Assembly.

10.0 Section 31 (1A & 1B) CITA: Qualifying Capital Expenditure partially utilized in generating taxable income

Section 31 of CITA requires that the capital allowance to be allowed must relate to those qualifying capital expenditure that is incurred in generating the company's assessable profits for each Year of Assessment (YOA). The provision demands that capital allowances be either granted in full or prorated based on the proportion of taxable income to total income as follows:

- i. Where the non-taxable income constitutes more than 20% of the total income, it means that taxable income is less than 80% of total income. Therefore, allowable capital allowance will be prorated.
- ii. Where the non-taxable income constitutes 20% or less of total income, it means that taxable income is more than 80% of total income. Therefore, capital allowance will be granted in full.

Illustration 9

XYZ Ltd is into manufacturing of pencils for both local and the export markets. The company uses the same production line for its products and utilize all its assets in the production process.

Below is an excerpt from the Financials of XYZ Ltd. for the years ended 2020 and 2021:

	YEAR 2021	YEAR 2020
Proceeds from local sales	₦21,000,000	₦24,000,000
Proceeds from Exported Sales	<u>₦9,000,000</u>	<u>₦6,000,000</u>
Total Sales proceed	₦30,000,000	₦30,000,000

The proceeds from exported sales were used for the purchase of spare parts from abroad for use in the business.

In line with the provisions of Section 31(1A and 1B), the full capital allowance will be allowed in 2020 because the non-taxable income of ₦6,000,000 is 20% of the total income.

However, allowable capital allowance in 2021 will be prorated to 70% of the total qualifying capital expenditure. This represents the proportion of taxable income to total income of the company.

Illustration 10

The following is an excerpt from the books of XYZ limited:

	₦
Assessable profit:	2,000,000

Capital Allowance computed on all QCE 7,000,000

The company has taxable and exempt income, and QCE is only partially utilised in generating the taxable income. The proportion of taxable and non-taxable income to total income is as follows:

Taxable Income 70%

Exempt Income 30%

Determine the total profit.

	₦	₦	₦
Assessable profit:			2,000,000
Capital Allowance on all QCE	7,000,000		
Allowable Capital Allowance (0.7x7,000,000)		4,900,000	
C.A claimable (66 2/3 percent of assessable profit)		<u>(1,333,333)</u>	
		<u>(1,333,333)</u>	
Unutilised C. A. Carried forward		3,566,667	
Total Profit			<u>666,667</u>

11.0 Section 33 of CITA – Payment of Minimum Tax

Minimum tax is computed at a fixed rate of **0.5% of Gross Turnover**. Gross turnover, for the purposes of computing minimum tax, shall not include **franked investment income**.

However, with the tax returns that falls due for any year of assessment from 1st January 2020 up to 31st December, 2021, the minimum tax rate is 0.25%.

NOTE

In computing minimum tax, franked investment income is first deducted from the gross turnover (where franked investment income had been included in gross turnover) and the amount derived is multiplied by the minimum tax rate.

Franked investment income is defined by **Section 80(3)** of CITA as *dividend received by one company from another after deduction of withholding tax* as specified in that Section.

Any dividend that has not suffered WHT is not a franked investment income and shall not be deducted from gross turnover for the purposes of minimum tax.

"Gross turnover" means the *gross inflow of economic benefits* during the period arising in the course of the operating activities of an entity when those inflows result in increase in equity, other than increases relating to

contributions from equity participants, including sales of goods, supply of services, receipt of interest, rents, royalties or dividends.

Gross turnover, for the purposes of minimum tax, includes all incomes from operating activities, sales of goods, supply of services and all other investment income as reflected in the financial statements, books or records, but does not include increases relating to contributions from equity participants.

Illustration 11

The following information was extracted from the Statement of Profit or Loss of ABC Limited:

	₱
Turnover (main business activities)	20,000,000
Revenue from Discontinued operations	305,000
Revenue from other non-core operating activities	500,000
Rent received (Gross)	1,000,000
Franked investment income	2,000,000

Notes to the accounts further disclosed the following information:

Revenue from Discontinued operations	3,000,000
Less: Expenses on Discontinued operations	<u>(2,695,000)</u>
Profit from Discontinued operations	<u>305,000</u>
Revenue from other non-core operating activities	5,000,000
Less: Expenses	<u>(4,500,000)</u>
Profit from other non-core operating activities	<u>500,000</u>

Compute the minimum tax of the company.

The gross turnover of the company is computed thus:

	₱
Turnover from main business activities	20,000,000
Revenue from Discontinued operations	3,000,000
Revenue from other non-core operating activities	5,000,000
Franked investment income	2,000,000
Rent received (Gross)	<u>1,000,000</u>
Total Turnover	31,000,000
Less: Franked Investment Income	<u>2,000,000</u>
Gross Turnover (for minimum tax)	<u>29,000,000</u>
The minimum tax = 0.25% X ₱29,000,000	<u>= ₱72,500</u>

12.0 Scope of the Minimum Tax Provision

The new minimum tax rule is applicable to all companies, except those specifically exempt by the Act, namely:

- i. Companies with gross turnover of ~~N~~25million or less.
- ii. Companies carrying on agricultural trade or business as defined in section 11(4) of CITA.
- iii. Any company in its first four calendar years of business operations.

NOTE:

1. A company with at least 25% imported equity capital is no longer exempt from payment of minimum tax.
2. Computation of minimum tax for insurance companies is not covered in this Section because it has been specifically provided for under Section 16 of CITA.

12.1. Minimum Tax Relief

Section 55(8) stipulates that companies claiming the minimum tax relief of 0.25% of gross turnover must file their tax returns as and when due; otherwise, they will be required to pay a penalty of an amount equivalent to the relief sought.

The relief may be claimed in respect of any two accounting periods ending on any date between 1st January 2019 and 31st December 2021.

Taxpayer has the prerogative to decide which two accounting periods to claim the relief within the above time span.

Note: The Service granted three extensions for due date for filing of tax returns in 2020 YOA. The extension granted are as follows:

- i. First extension ending 31st July, 2020
- ii. Second extension ending 31st August, 2020
- iii. Third extension ending 31st December, 2020

Any returns not covered by this extension shall attract appropriate penalties as stated above.

13.0 Section 39 of CITA-Gas Utilisation (Downstream Operations)

13.1 Trade or business of Gas Utilisation in Downstream Sector

Section 39(1) & (2) of CITA as amended stipulates that where a company is engaged in a trade or business of gas utilisation in downstream operations, the

company, shall, in respect of that trade or business, be granted the incentives provided under the law.

The incentives provided in section 39(1) are limited to the **trade or business** of gas utilisation in downstream operations. In essence, only trade or business of gas utilisation in the downstream sector are to benefit from the incentives as contained in the section quoted above.

It is worthy of note that:

- i. the incentive is only claimable once by the same company;
- ii. In schemes of reorganisation, restructuring, buy-back or other similar schemes, where a new company is formed out of a company that has already enjoyed the incentive, then that new company shall not be entitled to the incentive.
- iii. the incentive shall not apply to any company that has claimed an incentive for trade or business of gas utilisation under any law in Nigeria, including the Petroleum Profits Tax Act or the incentives under the Industrial Development (Income Tax Relief) Act.

A company engaged in both upstream petroleum operations and downstream gas utilisation will enjoy similar incentives under the Petroleum Profits Tax Act (PPTA). As such, the company cannot benefit from the incentives provided under section 39 of CITA.

13.2 Taxability of Interest Payable on Loan.

Section 39(1)(e), which allows for the deduction of interest payable on any loan obtained with the prior approval of the Minister for a gas project has been deleted. Accordingly, such interest on loan shall only be deducted if:

- a. the relevant income or profit is not exempt from tax;
- b. the interest satisfies the wholly, reasonable, exclusive and necessary (WREN) principle; and
- c. the interest satisfies the interest deductibility rules introduced by section 24(a) and the Seventh Schedule of CITA.

14.0 Section 40 - Rate of Tax

The rate of tax under section 40 of CITA has been reviewed. Below is the summary of the new tax rates.

S/NO	CLASSIFICATION	THRESHOLD (GROSS TURNOVER ₦)	TAX RATE
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1.	Small Company	₦25million and below	Income is exempt from tax subject to conditions (see paragraph 6.1 of this Circular)
2.	Medium Company	Above ₦25million but less than ₦100million	20%
3.	Large Company	₦100million and above	30%

Section 40 of CITA has further been amended by the deletion of the provisions relating to Pre-operational levy, Investment Tax Relief and excess profit tax. As such, companies yet to commence business are no longer required to pay Pre-operational levy (POL) before obtaining Tax Clearance Certificate (TCC).

15.0 Section 53- Self-Assessment of Tax Payable

Section 53 (1) (2) and (3) provides that a company shall file income tax returns for the year of assessment with evidence of payment of tax due. However, where the company, by deliberate and dishonest act, fails to fully declare the true and correct amount of tax payable or submits an incorrect statement, the company is liable to pay outstanding tax including penalties and interest from the date in which the tax return was due.

Deliberate and dishonest act include but not limited to:

- i. Inflating expenses or other tax deductions
- ii. Suppressing of income
- iii. Deliberately omitting information on the tax returns

For the purposes of Section 53(3), additional tax arising from a desk review, tax audit, tax investigation or any examination by the Service shall attract penalty and interest, which shall accrue, from the date the incorrect return was due.

15.1 Computation of Penalty and Interest

Note that the penalty and interest will be imposed from the date the incorrect return was due. As such, it is required of every taxpayer to ensure due diligence by filing tax returns as and when due; and to ensure conformity with the relevant provisions of the tax laws.

16.0 Section 78- Deduction of Tax from Interest, etc.

Section 78(4) of CITA as amended provided a Withholding Tax rate of 10% on interest other than interest on inter-bank deposits or royalty from one company

to another company or to any person to whom the provisions of Personal Income Tax Act apply.

The Withholding Tax so deducted from the interest payments shall be the final tax due from a –

- i. Non-resident recipient of the payment; and
- ii. Unit trust recipient of the payment.

Those authorised to deduct Withholding Tax on interest include government, departments, parastatals, statutory bodies, institutions and any other establishments approved for the operation of the Pay As You Earn (PAYE) system.

17.0 Section 81 – Deduction of Tax at Source (WHT Rate for Construction Contracts)

Section 81(2) of CITA provides a Withholding Tax rate of 2.5% for contracts of construction of roads, bridges, buildings and power plants.

NOTE:

1. The 2.5% rate is limited to contracts for the construction of roads, bridges, buildings and power plants. WHT rate on other forms of construction contracts remains 5%.
2. WHT rate of 2.5% is applicable to construction work only. However, any part of the construction contract (other than the actual construction work) subcontracted shall attract WHT at the rate specified in the law. For example, subcontracts for supply of materials, equipment, labour, etc. or services such as survey, architectural design, soil test, environmental impact assessment, structural design etc., shall not qualify for 2.5% WHT rate, but shall attract WHT at the rate specified for such supplies or services in the law.
3. Where construction work and other activities that are preparatory, incidental or ancillary to that construction (e.g. survey, architectural design, soil test, environmental impact assessment, structural design, etc.) are embedded in a construction contract, the applicable WHT rate on the entire contract sum shall be 2.5%. However, where any part of the activities listed above is subcontracted it shall attract WHT at the applicable rate as if the activity was not embedded in the construction contract.

18.0 Section 105 – Interpretation

For the purpose of Section 23 (c) of CITA, Public Character means with respect to any organisation or institution:

- (a) that is registered in accordance with relevant law in Nigeria
- (b) does not distribute or share its profit in any manner to members or promoters.

In view of the foregoing, the organisation must be registered under the relevant law of the Federal, State or Local Government in Nigeria.

Furthermore, the profit of such institution shall not be paid or transferred directly or indirectly by way of dividend or bonus to its members, trustees or promoters.

19.0 Relief for Foreign Loans

The Third Schedule to CITA relating to relief for foreign loans was amended as follows:

S/N	Repayment period	Grace period (including Moratorium)	Tax exemption allowed
1	Above 7 years	Not less than 2 years	70%
2	5-7 years	Not less than 18 months	40%
3	2-4 years	Not less than 12 months	10%
4	Below 2 years	Nil	Nil

NOTE:

Moratorium is a period during which the borrower is not expected to make a repayment of principal or interest. Where principal or interest repayments are made during the moratorium period, tax exemption shall be in line with actual moratorium granted.

20.0 Amendment or Revision of the Circular

The Service may, at any time, withdraw or replace this Circular or publish an amended or updated version.

21.0 Enquiries

Any request for further information or clarifications on this Information Circular should be directed to the:

Executive Chairman,
Federal Inland Revenue Service,

Revenue House,
15, Sokode Crescent,
Wuse Zone 5, Abuja.

Or

Director, Tax Policy and Advisory Department,
Federal Inland Revenue Service, Annex 4
12, Sokode Crescent,
Wuse Zone 5, Abuja.

Or

Email: tpld@firs.gov.ng