FEDERAL INLAND REVENUE SERVICE
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INFORMATION CIRCULAR
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Subject: **CLARIFICATION ON COMMENCEMENT AND CESSATION RULES, AND BUSINESS REORGANISATION: - SECTIONS 29 OF CITA, 32 OF CGTA, SECTION 24 & 25 OF PITA AND 42 OF VATA (AS AMENDED BY THE FINANCE 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. This circular replaces FIRS Information Circular 2020/06 of 29th April 2020.

1.0 Introduction

This Information Circular provides clarification on the administration of the various amendments to relevant tax laws with respect to commencement, cessation and business reorganisation (**Section 29 (3), (4) & (9) of the Companies Income Tax Act (CITA), Section 32 of the Capital Gains Tax Act (CGTA), Sections 24 & 25 of the Personal Income Tax Act (PITA) and Section 42 of the Value Added Tax Act (VATA).**

2.0 Commencement of Trade or Business

Sections **29(3) of CITA and 24 of PITA,** as amended eliminate the occurrence of overlap of basis period upon commencement of trade thereby ensuring that the profits and income of a particular year are only assessed to tax once.

2.1 Basis of Assessment for New Trade or Business

Section 29 of CITA and Section 24 of PITA, as amended provide that tax shall be assessed in the event of new trade, profession, vocation or business on a preceding *year basis*. As such, the income of a given year is assessed to tax in the immediate following year of assessment.

2.1.1 First Year of Assessment

Section 29(3)(a) of CITA and section 24(a) provide that, ***for the first year, the assessable profits shall be the profits from the date in which the company or individual commenced to carry on such trade or business in Nigeria to the end of the first accounting period.***

As such, a company or an individual shall not be assessed to tax (on the basis of the actual profit/income) in the year in which it commenced business. The profits/income of the first accounting period are assessed to tax in the year of assessment immediately following the year in which business commenced.

Illustration 1

A company or an enterprise commenced business on 1st July, 2020 and makes up its accounts to 30th September same year.

The first Year of Assessment is **2021** and profits or income to be assessed are those of 1st July to 30th September, 2020.

Illustration 2

A company commenced business on 1st January, 2019 and makes up its account to 31st December 2019.

The first Year of Assessment is **2020** and profits to be assessed are those of 1st January to 31st December, 2019.

For an individual taxpayer that commenced business on 1st January, 2020 and makes up its account to 31st December, 2020, the first Year of Assessment is **2021** and income to be assessed are those of 1st January to 31st December, 2020.

Illustration 3

A company commenced business on 1st April, 2019 and makes up its account to 31st March 2020.

The first Year of Assessment is **2021** and profits to be assessed are those of 1st April, 2019 to 31st March, 2020.

Similarly, if an enterprise commenced business on 1st April, 2020 and makes up its account to 31st March 2021, the first Year of Assessment is 2022 and income to be assessed are those of 1st April 2020 to 31st March, 2021

2.1.2 Second Year of Assessment

Section 29(3)(b) of CITA and section 24(b) of PITA stipulate that ***for the second year, the assessable profits shall be the profits from the first day after the first accounting period to the end of the second accounting period***.

Based on the above provisions, the profits or income assessable to tax in the second year of assessment shall be the profits or income arising in the second accounting period only, that is, the accounting period immediately following the first accounting period.

Illustration 4

A company or enterprise commenced business on 1st July, 2020 and makes up its account to 30th September in 2020 and subsequent years.

The first Year of Assessment is **2021** and profits or income to be assessed are those of 1st July to 30th September, 2020.

The second Year of Assessment is **2022** and profits or income to be assessed are those of 1st October, 2020 to 30th September, 2021.

2.1.3 Third Year of assessment

Section 29(3)(c) of CITA and section 24(c) of PITA provide that "***for the third year and for each subsequent year, the assessable profits shall be the profits from the day after the accounting period just ended.***"

Based on the above, profits or income assessable to tax in the third and subsequent years of assessment shall be the profits or income of the accounting period immediately preceding the year of assessment.

Illustration 5

A company or enterprise commenced business on 1st July, 2020 and makes up its account to 30th September in 2020 and subsequent years.

The first Year of Assessment is **2021** and profits or income to be assessed are those of 1st July to 30th September, 2020.

The second Year of Assessment is **2022** and profits or income to be assessed are those of 1st October, 2020 to 30th September, 2021.

The third Year of Assessment is **2023** and profits or income to be assessed are those of 1st October, 2021 to 30th September, 2022.

NOTE:

There will not be any overlap of basis period where the profits of all the relevant years are computed, in line with the new provision. However, there may be an overlap of basis period in the third year of assessment due to transitional issues for a company, that commenced business in **2018**, and for an individual that commenced business in **2019**.

Illustration 6

A company commenced business on 1st April, 2018 and makes up its account to 31st December in 2018 and subsequent years.

The company's first Year of Assessment ***falls under the old provision***, hence its first year of assessment is **2018** and profits to be assessed are those of 1st April to 31st December, 2018.

The second Year of Assessment also ***falls under the old provision*** which is **2019** and profits to be assessed shall be that of: 1st April, 2018 to 31st March, 2019.

The third Year of Assessment is 2020 and profits to be assessed shall be that of: 1st January 2019 to 31st December 2019**. An overlap occurs between 1st January – 31st March, 2019 due to the transition**.

Illustration 7

Adieu Enterprise commenced business on 1st April, 2019 and makes up its account to 31st December in 2019 and subsequent years.

The enterprise's first Year of Assessment ***falls under the old provision***, hence its first year of assessment is **2019** and profits to be assessed are those of 1st April to 31st December, 2019.

The second Year of Assessment also ***falls under the old provision*** which is **2020** and profits to be assessed are those of: 1st April, 2019 to 31st March, 2020.

The third Year of Assessment is 2021 and profits to be assessed are those of: 1st January, 2020 to 31st December, 2020**.**

Note: *An overlap occurs between 1st January, 2020– 31st March, 2020 due to the transition*.

2.1.4 Determination of the End of First Accounting Period

The determination of the first year of assessment and the relevant basis period is based on the taxpayer's period-end. Therefore, the first accounting period of a company or individual is the date of commencement to the end of its first accounting year-end.

Illustration 8

ABC Limited was incorporated in July 2019 and commenced business on 1st September, 2019. The Company prepared its first set of financial statements covering 16 months (1^{st} September, 2019 to 31^{st} December, 2020).

The end of the Company's first accounting year period is December 2020 and not December 2019.

Therefore, its first Year of Assessment is 2021 which falls under the new provision. The profits to be assessed shall be that of 1^{st} September 2019 to 31^{st} December, 2020 (first accounting year-end).

The second Year of Assessment is 2022 which falls under the new provision. The profits to be assessed shall be that of 1^{st} January to 31^{st} December, 2021.

The third Year of Assessment is 2023 and profits to be assessed shall be that of 1^{st} January to 31^{st} December, 2022.

Illustration 9

ABC Enterprise was incorporated in July 2020 and commenced business on 1^{st} September 2020. The Enterprise prepared its first set of financial statements covering 16 months (1^{st} September, 2020 to 31^{st} December, 2021).

The end of the Enterprise's first accounting period is December, 2021 and not December, 2020.

Therefore, its first Year of Assessment is 2022, which falls under the new provision. The income to be assessed shall be that of 1st September 2020 to 31^{st} December, 2021.

The second Year of Assessment is 2023, which falls under the new provision. The income to be assessed shall be that of 1^{st} January to 31^{st} December, 2022.

The third Year of Assessment is 2024, and income to be assessed shall be that of 1^{st} January to 31^{st} December, 2023.

3.0 Cessation of Business

Section 29(4) of CITA as amended provides that:

"Where a company permanently ceases to carry on a trade or business (or in the case of a company other than a Nigerian company, permanently ceases to carry on a trade or business in Nigeria) in an accounting period, its assessable profits therefrom shall be the amount of the profits from the beginning of the accounting period to the date of cessation and the tax thereof shall be payable within six months from the date of cessation."

Similarly, Section 25 of PITA as amended, provides that:

''Where an individual permanently ceases to carry on a trade, business, profession or vocation in Nigeria, such individual's assessable income therefrom shall be the amount of income from the beginning of the accounting period to the date of cessation and the tax thereof shall be payable within three months from the date of cessation.''

3.1 Basis of Assessment

Based on 3.0 above:

a. a company that permanently ceases business operation must file tax returns for the year of cessation within six (6) months. The due date of filing may fall in the year of cessation or in the year following the year of cessation – depending on the date the company ceased operation during the year. If the Company ceases operations between January and June, tax returns and payment shall fall due in that year of cessation. However, if the company ceases operations between July and December, filing of tax returns and payment of tax due may fall into the succeeding year.

b. where an individual permanently ceases business operation, the due date of filing the cessation returns is not later than three (3) months from the date of cessation. If an individual ceases operation between January and September, the filing of cessation returns and tax payment are due in the year of cessation. However, if the individual ceases business operations between October and December, filing of tax returns and payment of tax due may fall into the succeeding year.

There is the possibility of filing tax returns of two years of assessment in the year of cessation. Where this occurs, the company or individual must file the outstanding tax returns in addition to those arising upon cessation of business.

Illustration 10

(Scenario I): XYZ Nigeria Limited makes up its account to 31st December and permanently ceased operation on 30th April, 2020.

The relevant years of assessment and the due date for payment of tax due are as follows:

YOA	Basis Period	Due Date of Payment
2020	1/1/2019-31/12/2019	30th June, 2020 (PYB)
2020	1/1/2020-30/04/2020	31st October, 2020 (cessation)

In the above scenario, the company would file tax returns twice in the same year – one based on the normal preceding year basis (PYB) and the other being cessation returns.

(Scenario II): *If* XYZ enterprise makes up its account to 31st December and permanently ceased operation on 30th April, 2021, the position would be:

YOA	Basis Period	Due Date of Payment
2021	1/1/2020-31/12/2020	31st March, 2021 (PYB)
2021	1/1/2021-30/04/2021	31st July, 2021 (cessation)

From the above, the company/enterprise would file tax returns twice in the same year – one based on the normal preceding year basis (PYB) and the other being cessation returns.

Illustration 11

(Scenario I)*:* XYZ Ltd makes up its account to 31st December and permanently ceased operation on 31st July, 2020.

The relevant years of assessment and the due date for payment of tax due are as follows:

YOA	Basis Period	Due Date of Payment
2021	1/1/2020-31/07/2020	31st January, 2021

From the above, the cessation returns fall into the year following the year of cessation.

(Scenario II): Xan Yan Zan is a sole trader who makes up account to 31st December; he permanently ceased business operations on 31st October, 2021;

the relevant years of assessment and the due date for payment of tax due are as follows:

YOA	Basis Period	Due Date of Payment
2022	1/1/2021-31/10/2021	31st January, 2022

Illustration 12

XYZ Ltd makes up its account to 31st March and permanently ceased operation on 30th June, 2020.

The relevant years of assessment and the due date for payment of tax due are as follows:

YOA	Basis Period	Due Date of Payment
2021	1/04/2019 – 31/03/2020	30th September, 2020 (PYB)
2021	1/04/2020 -30/06/2020	31st December, 2020 (cessation)

Illustration 13

XYZ Ltd makes up its account to 30th June and permanently ceased operation on 30th November, 2020.

The relevant years of assessment and the due date for payment of tax due are as follows:

YOA	Basis Period	Due Date of Payment
2021	01/07/2019 -30/06/2020	31st December 2021(PYB)
2021	01/07/2020 -30/11/2020	31st May, 2021 (Cessation)

From the above, the cessation returns fall in the year following the year of cessation.

Illustration 14

XYZ is a sole trader and makes up its account to 30th June and permanently ceased operation on 30th November, 2020; the relevant years of assessment and the due date for payment of tax due would be as follows:

YOA	Basis Period	Due Date of Payment
2021	01/07/2019 - 30/06/2020	31st December, 2021 (PYB)
2021	01/07/2020 - 30/11/2020	28th February, 2021 (cessation)

From the above, the cessation returns fall in the year following the year of cessation.

4.0 Business Reorganisation and Restructuring

4.1 Section 29(9) of CITA

Where a trade or business carried on by a company is sold or transferred to a Nigerian company for the purposes of better organisation of that trade or business or the transfer of its management to Nigeria and any asset employed in such trade or business is sold or transferred, the entities will qualify for the specified concessions subject to the following conditions:

i. The parties must obtain the consent of the Federal Inland Revenue Service ("the Service") in writing;

ii. The companies must prove to the satisfaction of the Service that one company has control over the other or that the companies are controlled by some other person or are members of a recognised group of companies;

iii. The entities involved must have been related for not less than a consecutive period of 365 days before the reorganisation;

Where the conditions are met, the Service may direct that:

1. Commencement and cessation rules shall not apply;
2. Assets would be deemed transferred at Tax Written Down Value (TWDV) for the purposes of capital allowances and as such balancing adjustments will not be made.

4.2 Section 32 of Capital Gains Tax Act

Where a trade or business carried on by a company is sold or transferred to a Nigerian company for the purposes of better organisation of that trade or business or the transfer of its management to Nigeria and any asset employed in such trade or business is sold or transferred, capital gains tax shall not apply where:

a. one company has control over the other or both are controlled by some other person or are members of a recognised group of companies;
b. the companies have been related for a consecutive period of not less than 365 days prior to the date of re-organisation; and
c. the acquired assets are not further disposed within 365 days after the date of transaction.

4.3 Section 42 of Value Added Tax Act

Where a trade or business carried on by a company is sold or transferred to a Nigerian company for the purpose of better organisation of that trade or business or the transfer of its management to Nigeria and any asset employed in such trade or business is sold or transferred, value added tax shall not apply where:

a. one company has control over the other or both are controlled by some other person or are members of a recognised group of companies;
b. the companies have been related for a consecutive period of not less than 365 days prior to the date of re-organisation; and
c. the acquired assets are not further disposed within 365 days after the date of transaction.

4.4 Withdrawal of Tax Concessions

The concessions granted under section 29(9) of CITA, section 32 of CGTA and section 42 of VATA shall be withdrawn where the assets transferred in the reorganisation process are further disposed within 365 days of the reorganization. As such, all relevant taxes shall be treated as due but unpaid from the date it ought to have been paid if there had been no concession, and all penalties and interest shall apply accordingly.

5.0 Amendment or Revision of the Circular

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

6.0 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,
Revenue House Annex 4,
12, Sokode Crescent,
Wuse Zone 5, Abuja.

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