FEDERAL INLAND REVENUE SERVICE
15 SOKODE CRESCENT, WUSE ZONE 5, P.M.B 33, GARKI, ABUJA, Nigeria

INFORMATION CIRCULAR
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Subject: **CLARIFICATION ON SUNDRY PROVISIONS OF THE FINANCE ACT 2020 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 2020/04 of 29th April 2020.

1.0 Introduction

This updates the circular issued pursuant to Finance Act, 2019 and provides clarification on other amendments introduced by the Finance Act, 2020.

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 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 the 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.

3.1 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.

4.0 Section 23 of CITA- Profits Exempted

4.1 Exemption of Small Companies from Income Tax

Section 23(1)(o) of CITA, as amended, exempts "the profits of a "**small company"** in a relevant year of assessment" from companies' income tax.

The exemption is applicable only to companies with a gross turnover not exceeding ₦25million.

The conditions for the exemption are that the company:

a. shall register for tax and obtain the tax identification number (TIN),
b. shall file its tax returns on or before the due date;
c. has complied with all other obligations stipulated under CITA; and
d. has paid all penalties imposed for breach of statutory duties.

In view of the conditions attached to the tax exemption, a company that defaults in meeting those conditions shall be liable to the penalties prescribed under the Act.

However, the Service shall appropriately assess the company to tax including, but not limited to, administrative or best of judgement assessment (based on the information available to it) should the company refuse or otherwise fail to file tax returns as and when due.

Dividends received by a small company from another small company in the manufacturing sector in the paying company's first five years of operation is exempt from tax under Section 23(1)(o) (ii) of CITA.

4.1.1 Withholding Tax Obligations

The exemption of the profits of small companies from tax did not remove the obligation of entities carrying out qualifying business with a small company to withhold tax from payments due to the small company and remit same to FIRS. Where a company has fulfilled the condition for the exemption of its profit from tax under section 23(1)(o) of CITA, such company may request for the refund of the withholding tax suffered.

Similarly, a company whose profits are exempt from tax shall continue to deduct and remit withholding tax from qualifying payments due from it to other companies.

4.1.2 Small Companies and Tertiary Education Tax (TET)

Section 1(2) of the Tertiary Education Trust Fund Act 2011 provides that the TET be charged at 2% of the assessable profit of a company registered in Nigeria, other than small companies as defined under the Companies Income Tax Act

As such, small companies (having gross turnover of ₦25million or less) are exempt from Tertiary Education Tax.

4.1.3 Treatment of Capital Allowances for Small Companies

Capital allowances are claimable on qualifying capital expenditure (QCE) used in generating taxable income. Where the profits of a company are exempt from tax under section 23(1)(o), all costs incurred (including capital allowances on QCE employed) in generating the tax-exempt profits are deemed fully granted and cannot be carried forward to succeeding year(s) of assessment.

As such, no part of the costs relating to the years in which profits were exempt from tax may be carried forward to year(s) of assessment when the company becomes taxable under the Act. This is in line with **Sections 24** and **27(1)(h)** of CITA (as amended).

Where a small company incurred qualifying capital expenditure prior to crossing the threshold to medium or large. All allowances (initial and annual) for the period while it was a small company are deemed utilised. Only annual allowance pertaining to the assessment years it operated as a medium or large company may be claimed against the profits of the relevant years.

In the case of qualifying capital expenditure incurred after crossing the threshold to medium or large, all capital allowances shall be granted as provided by the law.

Illustration 4

ABC limited incurred QCE on Furniture and Fittings of **₦**1,000,000 in 2020 year of assessment when the company has a gross turnover of **₦**20,000,000.

The company crossed the threshold into a medium company in the fifth year of assessment after the QCE was incurred.

Determine the capital allowance claimable on the QCE in that fifth year of assessment (i.e. 2024 YOA).

Initial allowance is claimable for the year of assessment in which the QCE was first put into use, i.e., 2020 YOA. The initial allowance (deemed fully utilised) in that 1st YOA is ₦250,000 (i.e., 0.25 X ₦1,000,000), while the annual allowances claimable yearly is ₦150,000 (0.2 X ₦750,000).

At the end of the fourth year (2023 YOA), a total capital allowances equal to **₦**850,000 are deemed utilised (i.e., initial allowance of **₦**250,000 plus annual allowance of **₦**600,000 for four years). The tax written down value of the QCE carried forward to the fifth year of assessment is **₦**150,000.

As such, the capital allowance claimable in the fifth year of assessment (i.e., 2024) is **₦**150,000 *less* the retention.

4.1.4 Anti-abuse

Section 22 of CITA empowers the Service to discountenance any disposition, arrangement or structure made for the purposes of reduction of tax liability. As such, where:

i. transactions or business dealings being carried on by a company prior to the commencement of the Finance Act 2019 is subsequently split between one or more entities, for the purposes of enjoying the benefit provided for small companies under CITA, the Service shall discountenance such splitting, aggregate such transactions or business dealings and attribute all to the company originally doing the business, for the purpose of application or otherwise of this provision.

ii. A person, after the commencement of the Finance Act 2019, incorporates, or uses, two or more companies to carry on a contract or business that could have been otherwise carried out by one company and the Service is convinced that the arrangement by which the business or contract is split is targeted at obtaining the benefit available to small companies under CITA, the value of such contract or business shall be aggregated and taxed as appropriate in the hand of one of the companies.

iii. A company that conceals its turnover for the purposes of obtaining tax benefit available to small companies under CITA shall be prosecuted along with its directors and relevant principal officers in accordance with Section 42 of the FIRS (Est.) Act. In addition, taxes due shall be recovered with penalties and interest.

4.2 Profits on Goods Exported (Section (23) (1q))

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 is liable to tax proportionately.

In order to ascertain the portion of export proceeds exempted from tax, a company engaged in 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 exempt from tax) is not deductible from income of business operations.

5.0 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.

5.1 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).

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 of 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 5

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:

		₦
Assessable Profit		*400,000*

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

Interest on debts:	*Paid to XYZ UK Limited*	*400,000*
	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		100,000
Interest Qualifying for Deduction	500,000	

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.

6.0 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 in order to prove (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 6

Coy Nigeria Limited reported a net profit 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	15,800,000	16,500,000
Assessable profit before donations		23,200,000
Unrelieved loss brought forward		(1,200,000)
		22,000,000
Capital Allowance absorbed		(1,000,000)
Total Profit before donations		**21,000,000**

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)	7,250,000	8,250,000
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	1,505,000	8,755,000	9,755,000
Assessable Profit			**16,455,000**
Unrelieved loss brought forward			(1,200,000)
			15,255,000
Capital Allowance absorbed			(1,000,000)
Total Profit			**14,255,000**

Tertiary Education Tax @ 2% of Assessable Profit = **₦329,100**

Companies Income Tax @ 30% of Total Profit = **₦4,276,500**

Note:

Taxpayers must cross check to make sure that allowable donation to educational institutions is not less than 25% of Companies Income Tax payable as follows:

(a) 15% of total profit before donations = (15% x 21,000,000) = **3,150,000**

(b) 25% of Companies Income Tax payable = (25% x 4,276,500) = ₦1,069,125

Therefore, the allowed donation to educational institution is in order as it is the higher of the two options.

7.0 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 7

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 8

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.

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

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

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.

7.1 Section 27(1) (l): Tax or Penalty Borne on Behalf of another Person

By section 27(1)(l), 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 9

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.

7.2 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 ishall not be allowed for tax purposes.

Consequently, the followings 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.

8.0 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 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 13

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	(2,695,000)
Profit from Discontinued operations	305,000

Revenue from other non-core operating activities	5,000,000
Less: Expenses	(4,500,000)
Profit from other non-core operating activities	500,000

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)	1,000,000
Total Turnover	31,000,000
Less: Franked Investment Income	2,000,000
Gross Turnover (for minimum tax)	29,000,000
The minimum tax = 0.25% X ₦29,000,000	= ₦72,500

9.1 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 ₦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.

10.0 Gas Utilisation (Downstream Operations)

10.1 Trade or business of Gas Utilisation in Downstream Sector

Section 39(1) (2) (3) 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.

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.

In any event, a company that has enjoyed the incentives under section 39 of CITA shall not claim similar incentives under any law in Nigeria including the Petroleum Profit Tax Act or the incentives under the Industrial Development (Income Tax Relief) Act in respect of the same qualifying capital expenditure incurred for that trade or business.

The tax incentive is for an initial period of three years, which is subject to renewal for an additional period of two years upon satisfactory performance of the trade or business after administrative review by the Service.

10.2 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.

11.0 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
1.	Small Company	₦25million and below	Income is exempt from tax subject to conditions (see paragraph 3.1 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).

12.0 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 iv.

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.

12.1 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.

13.0 Time Within Which Tax is to be Paid

Section 77(2) of CITA LFN 2004 was amended to reduce the time within which tax is to be paid from 60 days to 30 days after the service of Notice of Assessment.

Consequently, tax assessment notices having been served upon a company shall henceforth be payable, in the absence of a valid objection or an appeal, within 30 days of service.

13.1 Section 77(1) - Removal of Provisional Tax

Section 77(1) and 77 (6) of CITA has been deleted, therefore provisional tax is no longer applicable whether on self or government assessments.

13.2 Section 77(5) - Filing and Payment of Tax

1. By Section 77(5) and (7) of CITA as amended: Payment of tax is to be made on or before the due date of filing in one lump sum or instalments.
2. Any taxpayer may pay the tax due in instalments provided that instalment payments commence prior to the due date of filing and that the final instalment is paid on or before the due date of filing.
3. A company that pays all of its tax liability 90 days before the due date shall be granted a bonus as follows: a 2% of the tax in the case of a medium-sized company; or b 1% for any other company.

The bonus is available as credit against the company's future tax liabilities.

4. A company granted early payment bonus may set-off the bonus against its future taxes.

5. Any tax due and unpaid by the due date of filing shall attract interest and penalties as provided in the extant tax laws.

Illustration 14

ABZ Limited makes up its accounts to 31st December 2019 with 30th June 2020 as its due date of filing for 2020 year of assessment. As such, the company is required to pay its tax due on or before the due date of 30th June 2020 in one lump sum or by instalment. Where it desires to pay by instalments, the final instalment **must** be paid on or before 30th June 2020 (the due date).

NOTE:

The due date of filing and due date of payment have converged. Consequently, any additional tax arising as a result of incorrect disclosure or reporting of profits shall attract interest and penalty from the date the tax was first due for payment irrespective of when the incorrect disclosure was discovered or the additional tax assessed.

14.0 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 works (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, any subcontract thereof shall attract WHT at the applicable rate in line with paragraph 2 above.

15.0 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.

16.0 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.

17.0 Amendment or Revision of the Circular

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

18.0 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