



FEDERAL INLAND REVENUE SERVICE

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INFORMATION CIRCULAR

No:2021/20

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SUBJECT: INFORMATION CIRCULAR ON EXTENSION OF THE MEANING OF 'IN USE'

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 amends, updates or replaces contents of any circular, notice or other publication previously issued by the Service.

1.0 Introduction

The purpose of this circular is to provide guidelines on the application of Paragraph 16 of the Second Schedule of Company Income Tax Act (CITA), LFN 2004 (as amended) on the Extension of the meaning of 'in use' for the claim of Capital Allowances.

This guideline will specify the requirement for granting Capital Allowance on an asset during a period of **temporary disuse** and **capital work- in-progress**.

For the purpose of this guideline, Capital Work–in-progress means an asset on which Capital Expenditure has been incurred but which has not been put to use for the purpose of a trade or business.

2.0 Background

Capital Allowance (CA) is a claim against Assessable Profits by Companies when computing their tax liabilities as a tax relief in lieu of depreciation.

It is granted to companies that have incurred qualifying capital expenditure for the purposes of a trade or business to generate taxable income, which are claimable in line with Table 1 and 2 of the Second Schedule of CITA. Qualifying Capital Expenditure (QCE) are assets on which capital allowances are claimable.

Initial allowance is granted in the basis period for which an asset was first used for the purpose of a trade or business, while annual allowance is granted in the year the asset was used for the purpose of trade or business.

However, the second schedule of CITA allows a company to claim capital allowance on an asset where:

1. The asset is in a state of temporary disuse;
2. The asset has not been put to use but the first use will be for the purposes of the trade or business, subject to the concurrence of the Service.

All costs are warehoused in a capital work in progress account pending when the project will be completed and the asset put to use.

3.0 Legal Framework

Paragraph 16 (1 & 2) of the Second Schedule to the Companies Income Tax Act (CITA), Cap C21, LFN,2004 (amended) states:

- (1) *For the purposes of this Schedule, an asset shall be deemed to be in use during a period of temporary disuse.*
- (2) *For the purposes of paragraphs 6, 7 and 8 of this Schedule-*
 - (a) *an asset in respect of which qualifying expenditure has been incurred by the company owning such asset for the purposes of a trade or business carried on by it shall be deemed to be in use, for the purposes of that trade or business, between the dates hereinafter mentioned, where the Board is of the opinion that the first use to which the asset will be put by the company incurring such expenditure will be for the purposes of that trade or business;*
 - (b) *The said dates shall be taken to be the date on which such expenditure was incurred and the date on which the asset is in fact first put to use.*

4.0 Capital Work in Progress

Capital Work- in- Progress (CWIP) is the total accumulation of costs incurred on owned assets on which construction or production has not been completed. It represents cost incurred to date on an owned asset that is still under construction as at the date of Statement of Financial Position (at Balance sheet date). The costs incurred on such assets may not be recognized as a QCE until the asset is ready for use.

5.0 Conditions for the claim of Capital Allowance on Capital Work-in-Progress

In line with the discretion granted in paragraph 16(2)(a) of CITA, the Service hereby specifies the following conditions in exercising its opinion that the first use to which the asset will be put will be for the purpose of the trade or business;

- i. The expenditure relates to:
 - a. Qualifying Building Expenditure;
 - b. Qualifying Manufacturing Industrial Plant Expenditure;
 - c. Qualifying Construction Plant Expenditure (excluding furniture and fittings);
 - d. Qualifying Plant Expenditure (excluding furniture and fittings);
 - e. Qualifying Mining Expenditure;
 - f. Qualifying Plantation Equipment Expenditure;
 - g. Qualifying Ranching and Plantation Expenditure;
 - h. Qualifying Agricultural Plant Expenditure; and
 - i. Qualifying Housing Estate Expenditure.
- ii. The asset must be for the purpose of the trade or business;
- iii. The cost on each asset is separately warehoused in a separate work-in-progress account;
- iv. The construction or production of the asset has been partially completed; and
- v. The completed portion of the asset has been put to use.

6.0 Temporary Disuse

For the purpose of this guideline, an asset is said to be in state of **'temporary disuse'** where:

- a the asset is undergoing major repairs;
- b where the company is dormant or in the state of recession and the asset is in the state of redundancy; and
- c Where there is force majeure as a result of unforeseen circumstances.

7.0 Grant of Capital Allowance

Consequent upon the conditions specified in paragraph 5 and 6 of this circular, CA shall be granted as follows:

i. Completed QCEs that has not been put to use:

Where capital expenditure has been incurred on an asset, which has not been put to use in generating taxable income for the purpose of that trade or business, the assets **will not** qualify as Qualifying Capital Expenditure for Capital Allowance purposes.

ii. Partially completed QCEs

Where capital expenditure has been incurred on an asset that is partially completed, and the completed portion or part has been put to use in generating taxable income of that trade or business, the capital expenditure incurred on the asset will be granted capital allowance on the cost incurred to date (as at the end of the basis period). The CA to be granted shall be the portion that relate to non-exempt income.

iii. Temporary Disuse

Where an asset is in the state of "**temporary disuse**", the Company would have claimed initial allowance. The company may claim Annual **allowance** on the 'tax written down value' (TWDV) of the asset during the period of 'temporary disuse' at the rate specified in Table 2 to the Second Schedule of CITA.

8.0 Process of Granting the Capital Allowance

The following are the procedures for granting Capital Allowance on capital work in progress (CWIP):

- a. The company shall submit an application to the Service in writing stating the details of such assets and providing all relevant documents; such as Audited accounts, fixed assets schedule, capital work-in-progress account ledger, etc.
- b. The Service shall review each application on a case by case basis;
- c. Where in the opinion of the Service the asset meets the criteria set-out in the tax law, the company shall be granted approval to claim capital allowance on such capital expenditure.

- d. The Board shall determine the date the assets is deemed to be put to use pursuant to paragraph 16 (2) (a) (b) after considering the following:
- i. The date of acquisition;
 - ii. The proposed date the assets will be put to use;
 - iii. The nature of the asset;
 - iv. Circumstances of the Company;
 - v. Documents provided; and
 - vi. Past Compliance history of the Company.

9.0 Eligibility Criteria

The following conditions must also be satisfied before a company can claim capital allowance on Capital Work in Progress:

- i. The taxpayer making the claim must be the owner of the asset;
- ii. The asset must have been incurred by the taxpayer;
- iii. The asset must be used for the purpose of the trade or business (partially or fully);
- iv. The taxpayer making the claim must be the beneficial owner of the asset for the relevant period;
- v. The asset must be used wholly, reasonably, exclusively and necessarily for the purpose of the trade or business; and
- vi. The asset must have a lifespan of more than 12 calendar months.

10.0 Amendment or Revision of the Circular

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

11.0 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, No 15
Sokode Crescent, Wuse
Zone 5, Abuja.

Or

Director, Tax Policy and Advisory Department
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