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Editorial

I am delighted to present the Proceedings of 6th Annual International Conference on Law, Regulations and Public Policy (LRPP 2017) organized by the Global Science and Technology Forum in Singapore on 5th - 6th June, 2017.

This conference serves as an annual forum for scholars, policy makers, experienced professionals, and business executives to present and exchange new ideas and advances in law, regulations and public policy. We seek the widest possible dissemination of these ideas and advances both within the fields represented at the conference, and to scholars in related fields.

All papers selected for presentation at the conference and for publication in these proceedings have been subjected to double-blind peer review. We are most grateful to review committee members, partner universities, organizing committee members, and especially to the conference participants for making this conference a great success.

I am sure that the participants will benefit from the contributions found in these Proceedings and I trust that this volume will be useful to you in your research endeavours.

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An Appraisal of Assessment Procedure under The Nigerian Tax Law

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Abstract – Assessment is the core value of taxation and cannot be divorced from tax. It is through tax assessment that the whole process of measurement of a taxable person's tax obligation is determined. The objective of this paper is to evaluate assessment procedure in Nigeria in line with 2011 Regulations. The methodology employed is analytical with the use of both primary and secondary sources of law. Assessment plays a vital role in taxation as it is the key factor to tax collection. Under the Nigerian law, it is based on the information contained in the taxpayer's returns. In the year 2011, the Tax Administration (Self Assessment) Regulations was enacted to modify processes and procedures for self-assessment. The rationale behind this is to make compliance easier for taxpayers and make tax payments convenient for ease of administration. It has been found that before the enactment of these Regulations, assessment practice in Nigeria varies from one type of tax to another. It is recommended that the relevant laws should be amended accordingly instead of promulgating rules and regulations which are null and void ab initio.

Keywords: Appraisal, Assessment, Procedure, Nigerian Tax Law

INTRODUCTION

This work seeks to evaluate processes and procedures of filing self-assessment of tax returns under the Nigerian Tax Law. The work emphasized the importance of assessment to tax collection and its relevance to the revenue generation of the government. The work analyzed the classes of assessment and basis period for assessable profits. The work further x-rayed the rationale behind the enactment of the Tax Administration (Self Assessment) Regulations 2011. The work posits that its enactment contradicts the provisions of section 61 of the Federal Inland Revenue Service (Establishment) Act 2007 as it does not have full backing of the law. Nigeria need to amend the law accordingly in order to make the amendment workable as the Board does not have powers to do such.

CONCEPT OF ASSESSMENT

The overriding objective of assessment function is to ensure that all taxpayers, within a defined tax jurisdiction, are brought into the tax net and assessed correctly in order to plug all possible leakages. Tax assessment however is the whole process of measurement of a taxable person's tax obligation

and putting him on notice in respect thereof.¹ Generally, tax assessment involves;

1. ascertaining the base or the assessable profit of the tax;
 2. granting all the reliefs and allowances as may be prescribed by law; and
 3. applying the relevant tax rate.²
- Under the Nigerian law, taxpayers are generally categorized according to the legal status of their businesses which includes the following:³
1. Individuals/Enterprises, usually sole proprietorship or self-employed;
 2. Partnership, association of two or more persons coming together to form a business in order to make profit;
 3. Corporate entities /public companies, usually limited by shares; and
 4. Non-Government Organization (NGOs), unlimited or limited by guarantee.

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

- Individual /Enterprises: This is a taxable person who is chargeable to tax in his name or in the name of a Receiver, or his Agent. Usually, the tax affairs of this category of taxpayers are to be handled by State Internal Revenue Service (SIRS), where the taxable persons domiciled or reside. Individuals are assessed to tax under the Personal Income Tax Act (PITA).
- Partnership: These categories of business are assessed to tax under the Personal Income Tax Act (PITA) in the same way as individuals and Enterprises. In Nigeria, Partners are assessed in their

¹ Ishola, K.A., *Taxation Principles and Fiscal Policy in Nigeria* (Lantern Publishers, Limited, Ilorin 2011) p. 633.

² Ibid p. 634 and see further Section 55 of the Companies Income Tax Act (CITA), 2007.

³ See Section 56 of the Personal Income Tax Act (PITA), 2004 as amended 2011 and Section 67 of the Companies Income Tax Act (CITA) 2007.

⁴ Sections 40 and 54 of the Personal Income Tax Act (PITA), 2004 as amended 2011.

individual names, based on the share of partnership profits allocated to them.⁵

- **Corporate Entities/Public Companies:** These are limited liabilities companies or public companies registered with profit – motive in mind. Their tax affairs are being handled by the Federal Inland Revenue Service (FIRS) which is the Federal taxing authority in Nigeria. Assessment function is an Integrated Tax System⁶ which is agreed to include filing an assessment duties with respect to all taxes being collected by that office among which are Petroleum Profit Tax (PTP), Companies Income Tax (CIT), Value Added Tax (VAT), Withholding Tax (WHT) and Capital Gains Tax (CGT).
- **Non-Government Organizations:** These are non-profit making organizations which are qualified for income tax exemption under Section 23(1) (i) of Companies Income Tax Act (CITA), 2004. They are often unlimited or at best limited by guarantee. These types of organizations have duty to apply for exemption. The form in which NGOs are registered determines which tax authority will handle their tax affairs.⁷

On the part of the tax authority, it accepts the tax returns as filed, subject to completeness, and carry out audit in due course. Very much unlike an administrative assessment where the tax authority raises an assessment where a taxpayer has failed to file and pay taxes due on or before the due date or there is an understatement of tax in the return filed.⁸

With the taxpayer's assumption of the role of assessing self, an obligation arises for the tax authority to ensure that the taxpayer understands the procedures involved in tax administration and how to compute tax liabilities and complete tax returns (if the option is self-services). In addition to taxpayer enablement, it is the responsibility of the tax authority to ensure compliance with all tax administration processes especially accuracy of declarations made and the timeliness of tax returns.⁹

The Constitution of the Federal Republic of Nigeria 1999 amended in 2011 has provided a direction for implementation of self assessment. Section 34 (1) states as follows:

"That it shall be the duty of every citizen to declare his income honestly to appropriate and lawful agencies and pay his tax promptly"

The self-assessment tax system regime was introduced in Nigerian tax laws by the Federal Inland Revenue Service (FIRS) in 1992 following the enactment of the appropriate law in 1991. The FIRS Board in exercise of the powers conferred on it by Section 61 of the Federal Inland Revenue Service (Establishment) Act 2007 with the approval of the Minister of Finance gazetted a Regulation¹⁰ modifying the processes and procedures for self-assessment returns. The Regulations on tax returns under the Companies Income Tax Act (CITA), Education Tax Act (ETA), Petroleum Profit Tax Act (PTT), Personal Income Tax Act (PITA), National Information Technology Development Act (NITDA) and Value Added Tax Act (VATA). Though not specifically mentioned Capital Gains Tax Act (CGTA) given that all taxes under the FIRS Establishment Act are stated as falling under the scope of the Regulations.

AN ASSESSMENT NOTICE

This is a statement that is sent by the Board¹¹ to a company or person on whose name a company is charged. An assessment notice shall state among other things¹²:

- The name of the person (or company) charged with taxes;
- The amount of income assessed or total profits;
- The tax payable;
- The place where payment of tax is to be made; and
- The rights and duties of the taxpayer in relation to assessment that is, the right of objection.

It is important to note that the assessment notice must be served personally on the taxpayer or served by registered post.

CLASSES OF ASSESSMENT

Assessments are normally raised on the Income or Profit of Companies or Corporation arising from trade or business carried on in Nigeria. Assessment is to be imposed on the "profit" of an enterprise in relation to an accounting period. There are two principal classes of assessments, namely¹³: Self Assessment – This assessment scheme aims at shifting the duty of raising of assessment to the taxpayers themselves. Under this system, the taxpayer is expected to accompany tax returns with self assessment notice and evidence of payment to the FIRS through appropriate designated collection bank.

Government Assessment – This is an assessment raised on behalf of the government by the tax authorities, examples which are:

¹¹ Federal Inland Revenue Service (FIRS)

¹² See Section 57 of the Personal Income Tax Act 2004 as amended 2011 and Section 68 of Companies Income Tax Act, 2007.

¹³ "Assessment Procedure (1)". The Nation Newspaper (Nigeria 21 April 2014) p. 40. See also Ishola, *Op. Cit.* p. 634.

⁵ Section 8 of the Personal Income Tax Act (PITA), 2004 as amended 2011

⁶ Introduced by the Federal Inland Revenue Service (FIRS) in 2013 to enable taxpayers file tax returns and pay their taxes online. See *Integrated Tax System* (http://www.pwcnigeria.typed.com/tax_matters) accessed 18 October 2016.

⁷ Assessment Procedure (1)". The Nation Newspaper (Nigeria 21 April 2014) p. 40

⁸ Frank Okoro, "Self-Assessment can drive tax growth in 2013", Vanguard Newspaper (Nigeria 10 February 2013)

⁹ <http://www.vanguardngr.com/2012/06/self-assessment-in-practice-in-nigeria/> accessed on 27 September, 2014.

¹⁰ Ibid.

¹¹ Tax Administration [Self Assessment] Regulations 2011. It is dated 19 December 2011.

¹² http://www.pwcnigeria.typed.com/tax_matters accessed on 27 September, 2014.

- Assessment raised in accordance with audited accounts and computations filed by the taxpayers.¹⁴
- Administrative assessment based on physical assessment of the company or profit perceived to be fair and reasonable.¹⁵

TYPES OF ASSESSMENT

Under the Nigerian tax law, several types of assessment may be raised. These include:

1. Assessment based on taxpayers' returns.¹⁶

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

In Nigeria, minimum tax is payable by every company when the total profits of the company from all sources have reduced on tax, or tax payable which is less than the minimum tax specified by the law. However, the followings are exempted from the payment of minimum tax:

- (i) Companies which engages in agricultural trade or business;
- (ii) Companies with at least 25 per cent imported equity capital; and
- (iii) Any company for the first four years of its commencement of business.¹⁷

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

- 0.5 per cent of Gross Profit;
- 0.5 per cent of Net Assets;
- 0.25 per cent of paid-up share capital; and
- 0.35 per cent of turnover of up to ₦500,000

If however the turnover is higher than ₦500,000, the minimum tax payable will be the highest of the above plus 0.125 per cent of the excess of the turnover above ₦500,000.¹⁸

Treatment of Capital Allowances when minimum tax is applicable

It is important to note that in any year of assessment when minimum tax is chargeable, the capital allowance due in that tax year must be adjusted against the profit of that year along with the unabsorbed balances brought forward. This treatment is adopted to ensure that the charging of the minimum tax does not preclude the deduction from assessable profit and the utilization of capital allowances for that year. The position of the law is that capital allowances should be deducted as far as possible, from the assessable profit of that year and the unabsorbed portion, if any, shall be carried forward.¹⁹

Minimum tax on dormant cases

Minimum tax is justified on the theoretical premise that every asset should generate income and it is applied as an anti-tax avoidance measure. This tax is sometimes referred to as asset tax. Already, it is being applied in that manner during periods of dormancy in the sense that minimum tax is computed and charged on net assets or share capital; whichever is higher of the two. The aim of this clarification is to ensure uniformity in the application of the law on minimum tax with respect to dormant cases. Minimum tax should be computed though the assessment may be raised when the business eventually recommences.²⁰

2. Best of Judgment Assessment

This assessment is raised where audited accounts and other relevant returns are not submitted within the stipulated time in line with the tax law. It is usually based on "fair and reasonable" estimate of income/profit of the preceding year's results reported by the company.²¹

3. Amended/Revised Assessment

Where accounts are submitted and the basis of assessment is faulted, the original assessment earlier made is revised or amended in line with the new information as disclosed in the tax computation.²²

4. Additional Assessment

The Board is empowered to examine the returns submitted by taxpayers to ensure that the presentation of the accounting details conform to the provisions of the Income Tax Act. Unapproved claims and allowances discovered are disallowed and added back to profit. This, in addition to other information will form the basis for additional assessment. All rules and regulations governing other assessments also apply to additional assessments.²³

5. Jeopardy/Protective Assessment

These assessments are raised on the ground of expediency. If the relevant tax authority is of the opinion that such assessments are necessary for any reason of urgency, which may include the following:²⁴

- Where a case referred to the Board for ruling is yet to be determined;
- Imminent liquidation of a company or an intention to dispose of its valuable assets, the result of which may cripple its operation;
- Imminent sale or transfer of trade business of the company to another;
- Intended remittances to foreign partners;
- Payment being made to a taxpayer who had hitherto been evading tax;

¹⁴ Ibid.

¹⁵ Isibola, *Op.Cit.*, p. 25

¹⁶ Ibid p. 617

¹⁷ Section 55 of Personal Income Tax Act, 2004 as amended 2011 and Section 66 of the 2011 Companies Income Tax Act, 2007.

¹⁸ Section 29 of Companies Income Tax Act, 2007, Soyode, L., and Kajola, S.O., *Taxation Principles and Practice in Nigeria* (Silicon Publishing Company, Ibadan, 2006) pp. 92-94 Federal Inland Revenue Service (FIRS) Circular, 2006 No. 6 <<http://www.pdt/tax/assessment>>

PROCEDURE, 2006 06.pdf accessed on 7 December, 2016

¹⁹ Section 65 Companies Income Tax Act, 2007.

²⁰ Ibid.

²¹ See Sections 41 and 54 of the Personal Income Tax Act, (PITA) 2004 as amended 2011 and Sections 55 and 65 of the Companies Income Tax Act (CITA) 2007.

²² See Section 3(3) of the Companies Income Tax Act (CITA), 2007

²³ Ibid.

²⁴ Ibid Sub-section (4)

- Imminent escape by a taxpayer to foreign countries; and
- In all other cases of emergency.

6. Assessment on Turnover

The Board is empowered to assess on the turnover of the taxpayer's business, where it appears that the trade or business produces no assessable profits or declare turnover that is less than might be expected to arise from such trade or business. Such an assessment is made by assuming a fair percentage of turnovers as assessable or adjusted profit for the year to which capital allowances and other deductions are charged before arriving at total profit and then applying the current rate of tax to determine tax due for the year.²³

7. Assessment Levied on Dividend Provision where no tax is computed or payable

The Board is empowered to raise assessment on amount of dividend paid to shareholders as if such dividend declared is the total profit of the company for the year of assessment to which the account relates. Such a situation may arise where a company declares dividends to its shareholders when it has no tax payable reported as a result of:

- No total profits; or
- Total profits which are less than the amount of dividend paid.

In all cases where dividends are declared, officers should always compare the total profits to the amount of dividend declared.²⁴

8. Other Assessments/Levies

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

Penalty for late returns

Penalty is normally imposed when a taxpayer's audited accounts and tax computations are submitted late to the Revenue Authority. The amount of penalty at present is ₦25,000 for the first month in which the failure occurs and ₦500 for each subsequent month of failure. It is a form of assessment raised whenever the returns are submitted late. The amount is subject to review from time to time at the discretion of government.²⁵

9. Pre-Operational Levy

This levy is imposed on companies which fail to commence business within six months after their incorporation. The levy is ₦20,000 in the first instance and ₦25,000 for any other year, if it still has not commenced business.

It is to be levied when the taxpayer applies for the Tax Clearance Certificate (TCC). Pre-operational levy should not be imposed for any previous years when the company did not apply for TCC neither should it be raised in arrears to cover earlier years.²⁶

10. Education Tax Levy

This is a levy being imposed on all taxable companies in Nigeria to assist government in the development of education. It is charged at the rate of two per cent of the assessable profit and should be assessed alongside the normal tax assessment for each year.²⁷

The assessable profit shall be ascertained in the manner specified in the Companies Income Tax Act or the Petroleum Profits Tax Act as the case may be.²⁸ Pioneer Companies are usually not assessed to Education Tax in view of the income exemption status from tax payment that they enjoy during the pioneer period.

BASIS PERIOD FOR ASSESSABLE PROFITS

According to the Nigerian Tax Laws it is mandatory for companies deriving income from Nigeria to pay various forms of taxes.²⁹ The laws equally provide for how the taxes are to be computed on the company's profits and when they should be paid. The main issue here is centered on how to determine the basis period for assessable profits to be subjected to tax.

Assessable profits

The accounting profit arrived at in the trading profit and loss account is not usually the same as "tax profit". This is because in ascertaining the accounting profit some expenses which are not allowed for tax purposes may have been reported as some income included in the accounting profit are tax-free.³⁰ In simple terms, assessable profit is computed as adjusted profit fewer losses (unrelieved c/f) before taking into consideration capital allowances, and or balancing charge. This could also be a profit in which education tax is treated at 2%. The treatment of this profit depends on the tax type. For companies income tax treatment differs from petroleum profits tax treatment.³¹

Adjusted profit is computed as below:

Net Profit (as per account)

Add: Disallowable expenses taxable income (not reported)

Less: Allowable expenses (not reported) non-taxable income (reported).³²

Apportionment of Assessable Profit

Section 29 (6) of CITA, 2007 allows for the apportionment and aggregation of profits in order to arrive at the profit for a year of assessment. Any apportionment shall be made in proportion to the number of months in the respective periods. In practice, this is usually obtainable under the abnormal situations. That is, under commencement of new business, change of date or cessation of business.³³

Meaning of Basis Period

Basis period means time within which an assessment is raised or computed on a taxpayer for the purpose of establishing the correct amount of tax liability in a particular period.³⁴ Basis

²³ Ibid. Section 1 of the Education Tax Act, (Amendment) Act, 1998

²⁴ Ibid. Sub-section (1)

²⁵ Section 11 of the Companies Income Tax Act, 2007

²⁶ Section 23 of the Companies Income Tax Act, 2007

²⁷ Oyedunji, J.O., *Principles and Practice of Taxation in Nigeria* (Frontline Publishers, Ibadan 2006) pp. 66-69

²⁸ Ibid. Pp. 85-90. See Further Sections 24-28 of the Companies Income Tax Act, 2007

²⁹ See "Taxation", the Nation Newspaper (Nigeria, Monday, July 7, 2014) p. 80

³⁰ See Table II, Second Schedule to the CITA, 2007.

³¹ See Table II, Second Schedule to the CITA, 2007.

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¹⁸² See Table II, Second Schedule to the CITA, 2007.

¹⁸³ See Table II, Second Schedule to the CITA, 2007.

¹⁸⁴ See Table II, Second Schedule to the CITA, 2007.

period can also be said to be the basis upon which tax liabilities would be computed.

Every business has its accounting year end (accounting period) as it suits the company's operations except for few instances in Nigeria where the permanent year end is determined by the applicable authority.⁴¹

Where a company's accounting date may not correspond with the government fiscal year, which is 1st January to 31st December.⁴² Based on the above, it can be said that for the sake of equity, which is one of the qualities of the Nigerian tax system, the Nigerian government through the tax authorities provides for the basis upon which taxes would be computed on a common ground.

Importance of Ascertaining the Correct Basis Period

The importance of ascertaining the correct basis period cannot be over emphasized because of the following reasons:

- It aids tax authority in making an all inclusive, assessment of a taxpayer's profits whereby a profit is not tax twice while no portion of taxable profit is left unassessed;
- It helps in the determination of the appropriate grant of capital allowances as well as the carry forward of such capital allowances; and
- In computation of loss relief, the correct identification of basis period helps in determining the set off as well as lapsing of losses.⁴³

Types of Basis Period

There are basically two types of basis period applicable to every company liable to tax under the Nigerian tax laws. These are:

- Preceding Year Basis
- Actual year Basis⁴⁴

These will be explained one after the other.

Preceding Year Basis Period

Section 25(1) of the Companies Income Tax Act, 2007 provides that:

... the profit of any company for each year of assessment from such source of its profits (hereinafter referred to as the "assessable profits") shall be the profits of the year immediately preceding the year of assessment from each such source.

It can be deduced that the profit to be subjected to tax in a particular year will not be that earned that same year but the profit of the immediate past year. Assessment profits are computed on the amount of the profits of the year ended on that day in the year preceding the year of assessment.

It is important to note that for companies, profit is being ascertained on an annual basis. This means that every basis

period determined on preceding year basis must be up to twelve months ending on a company's permanent year end.

Under normal circumstance, the basis period is the same as the accounting period. What differs are the "accounting year" and "tax year." For example in a bid, to determine the *tax year* and *basis period* for a company that has just filed 2015 financial statement, having 30th September as its permanent year end. The company has been in operation for five years from this analysis:

- Tax year: 2016
- Basis Period: 1/10/2014 - 30/9/2015

Actual Year Basis Period

This translates that the months in the basis period of a year of the assessment shall be within the same year.⁴⁵ However, unlike preceding year basis period, the years of account will coincide with the year of assessment. Considering the earlier example, the year of assessment will not be 2016 but 2015 and the basis period will be 1/1/2015 - 31/12/2015.

Taxes that are assessed on actual year basis include, Petroleum Income Tax, Capital Gains Tax, Personal Income Tax, etc.

Normal Basis Period

A basis period is considered to be normal if the following conditions are fulfilled.⁴⁶

- The number of months in the basis period must be exactly twelve (12) because year of Assessment literally means twelve months;
- The basis period must have commenced the day after the end of the previous one. There must be continuity; and
- There must be only one permanent year end.

A good example of this is a company whose permanent year end is October 30 every year. In considering the basis period for assessable profits for 2014 to 2016 years of assessment, it can be done as follows:

Tax Year	Basis Period
2014	1/11/2012 - 30/11/2013
2015	1/11/2013 - 30/11/2014
2016	1/11/2014 - 30/11/2015

It is important to note that it is only a business in continuous operation (say over three years) and that has neither changed permanent year-end nor cease operations that will have a normal basis period.

Abnormal Basis Period

Any basis period that does not comply with the conditions stated under the normal basis period is said to be abnormal. Therefore, an abnormal basis period can be obtained under the following circumstances.⁴⁷

- Commencement of a new business;
- Change in the accounting date; and
- Cessation of a business.

⁴¹ Example Banks where other laws are applicable to them. See the Banks and Financial Institutions Act (BOFIA), 2007.

⁴² Section 40 of the Companies Income Tax Act, 2007

⁴³ Soyode and Kajola, *Op. Cit.*, p. 80

⁴⁴ Section 25 of the Companies Income Tax Act, 2007.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ Section 29 (3) and (4) of the Companies Income Tax Act, 2007 and Oyediji, *Op. Cit.*, p. 129

These will now be discussed one after the other.

Commencement of a New Business

There are commencement rules guiding assessment of a company that is starting business newly. The normal basis period cannot apply because there will be no profits of preceding accounting period from which assessment can derive.

Section 29 (3) (a-c) of the CITA 2007 provides that:

The assessable profits of any company from any trade or business for the year of assessment in which it commenced to carry on trade or business (or in the case of a company other than a Nigerian Company, for the year of assessment in which it commenced to carry on such trade or business in Nigeria) and for the two following years assessment (which years are in this subsection respectively referred to as "the first year", "the second year", and "the third year") shall be ascertained in accordance with the following provisions:

- First Year:** The assessable profits shall be the profits of that year (i.e. from date of commencement up to the end of the same year);
- Second Year:** The amounts of the profits of one year (i.e. 12 months) from the date of commencement of the business; and
- Third Year:** Shall be computed in accordance with section 29(1) of the CITA, 2007 which has been earlier discussed. This means the basis period will be on a preceding year basis except otherwise provided.
- For the third year, it may not be possible to obtain a realistic basis period as the period might begin in a month earlier than the month of commencement. This arises where the month of commencement is after the month chosen as the permanent year end. In such situation, the **repetitive rule** will be applied.⁴²

Section 29(3) further provides that a new business is entitled, on giving notice in writing within two years after the end of the second year to the Board to require that the assessable profits both for the second year and third year (but not for one or other only of those years) shall be the actual profits of the respective years of assessment (that is, profits of 1st January to 31st December, of the second and third years of assessment).⁴³

In other words, the taxpayer reserves the right to be assessed to tax in the second and third year on actual year basis instead of the rule highlighted under the commencement of business. Naturally, the taxpayer will exercise this right only where it may result in a lower tax liability.

Cessation of Business

When a company ceases to carry on business permanently, cessation rule shall be applied for the assessment of the last two years of operation. The last two years are:⁴⁴

- The year of cessation that is referred to as the "ultimate year". This is assessed on actual basis. The basis for the ultimate year is from 1st January of the year to the date of cessation,
- The year immediately before the year of cessation referred to as the "penultimate year".⁴⁵

In this year, the assessment is always based on the profits assessed on either preceding year basis or actual year basis. The practice of the tax authority is to base the assessment for the penultimate year on the greater of the actual or preceding year. This means that the option that is available under cessation is that the tax authority can assess company on either actual basis or preceding basis for the penultimate year. Where any sum of money is received or paid in a transaction occurs after the date of permanent cessation, it would have been taken into account in computing the profit if it had been prior to that date, such shall be deemed to have been received or paid on the last day before the cessation occurred. It should also be noted that if a company ceases production as a result of lack of raw material, or industrial dispute or machine breakdown, cessation rule shall not apply. Thus, the word "permanent cessation" is significant for cessation rule to apply. The rule applies to a company that "dies and never resurrects".⁴⁶

Change in Accounting Date

In Nigeria, a company is at liberty to change its accounting date if for any reason it found it necessary to do so. While in the United States the Internal Revenue Service (IRS) give permission for companies to change their accounting dates especially to tackle tax avoidance, and may take as 10 years to effect another change in some cases,⁴⁷ yet so in Nigeria and this is an area which should be addressed.

As soon as it is known that a business has changed or intends to change its accounting date, it would be requested to state reasons for its change and whether the change is permanent. For a temporary change, the business will be assessed on the results of 12 months ended on the terminal date.⁴⁸

Different challenging business decisions can force a company to change their accounting dates. Sometimes a pronouncement such as that issued to banks post-2004 to have a uniform year end was an event which forced in one fell swoop change their different accounting dates to December.

However, a lot of companies still do not know the tax implications to change of dates in their accounting. Beyond the approval they get from their shareholders to change. In February 2006, the Federal Inland Revenue Service (FIRS) issued a circular as a guide to officers who have responsibility for filling assessment duties, and those who may be required as a matter of duty to carry out preliminary reviews on

⁴² Ibid.

⁴³ This is same as actual year basis earlier discussed. Based on the requirement of the law, the right of election must be exercised on or before 31st December (i.e. within two years after the end of the second year) the law equally gives a taxpayer the opportunity to revoke his earlier request for an election by giving notice in writing to the Board (FIRS) within twelve months after the end of the third year of assessment.

⁴⁴ Oyeboji, *Op. Cit.*, p. 135

⁴⁵ That is, the year preceding the year of cessation.

⁴⁶ Oyeboji, *Op. Cit.*, p. 135

⁴⁷ See Taxation, the Nation Newspaper (Nigeria 14 October 2004)

⁴⁸ Sanyola and Kajola, *Op. Cit.*, p. 90

returns submitted by companies as well as officers vested with audit responsibilities, who from time to time will come across cases of change in accounting dates in the course of that audit assignment.⁵¹

There are number of reasons why a company/business may wish to change its accounting date and this includes:⁵²

- Where a subsidiary company wants to adopt the accounting date of the parent's company;
- Where a company wants to change to the government fiscal date so as to avoid unnecessary tax dispute; and
- Where a new company emerges from merger and acquisition schemes and the new company adopts an accounting date different from that of the two companies involved in the merger.

Where a change in accounting date takes place, be it a sole trader, partnership or a limited liability company the law provides that:⁵³

"The tax authorities have the power to decide the basis of computing the tax liability for the year in which the change occurs and the two following years of assessment".

It can be deduced from the above provisions of the law that the tax official will base his decision on the best advantage to the tax authority and determine the three relevant years as follows:

- The assessment year in which the accounting date become different from the date of the earlier years. This is known as the year when the change occurred; and
- The next two years of assessment following that in which the change occurred.

In practice, calculations are made on both the old and new dates. The greater of these two aggregates will be the likely choice of the revenue authority.⁵⁴ Concerning the years involved in the tax computations, whenever a request for a change of accounting date has been approved, the company making the change shall be assessed to tax through a special process of determining the basis of assessment. This process requires computations for three relevant years. Where the year of cessation is involved (ultimate year) in these three relevant years, the request for a change shall not be approved. However, where the year immediately before the year of cessation (penultimate year) is involved in these three relevant years, the request may be approved by the FIRS, depending on other evidence before it.⁵⁵

Assessment Procedure on Change of Accounting Date

For an on going business, current assessment is based on preceding year basis. But whenever there is a change of accounting date, a normal accounting period may not have ended in the year of change. This is so because when there is a change of accounting date, it is either that an account is

prepared for more than twelve months to the new accounting date or even less than twelve months to the new accounting year end. The FIRS will often adopt the following procedures to determine the assessments for the three relevant years.⁵⁶

- Identifying the first year in which the business has failed to make up the accounts to its usual accounting date;
- Identifying the two years immediately following the year of failure;
- Computing assessable profit for the three relevant years based on the old accounting date (on preceding year basis);
- Computing assessable profit for the three relevant years based on the new accounting date (on preceding year basis);
- Adding up the assessable profits for the three years in (ii) and (iv) above separately and (vi) selecting the higher of the two profits added up in (v) above.

Illustrations

Example 1

Salfat Nigeria Limited has been in business for many years. It has for a long time prepared its annual accounts up to April 30. In 1996, it decided to change its account date to October 31. Available figures showed its adjusted profits as follows:

		₦	(No of Months)
Year ended	30/4/1995	450,000	12
Period ended	30/10/1996	830,000	18
Year ended	31/10/1997	590,000	12
Year ended	31/10/1998	600,000	12

You are required to compute the correct assessments for all the relevant years in the light of the change in accounting date.

Solution

Salfat Nigeria Limited

Computation of assessment

Note

The last account submitted before the change was April 30, 1995. Therefore, the year of change is 1996. The three relevant years are therefore 1996, 1997 and 1998.

- Original assessment (Based on old Accounting date of April, 30)

Year of assessment Basis Period Assessment

1996	P.Y.B. 1/5/94-30/4/95	₦450,000
1997	1/5/95 -30/4/96	
1998	(1/5/96 -30/4/97)	
	(6/18 X 830,000) +	
	(6/12 X 590,000)	₦571,667

- Assessment Based on October, 31

Year of assessment Basis Period Assessment

1996	1/11/94-31/10/95	
	(1/11/94 -30/4/95) +	
	(1/5/95-31/10/95)	

⁵¹ See "Taxation", (the Nation Newspaper (Nigeria) 14 October, 2013) p. 40

⁵² Soyode and Kajola, *Op. Cit.*, p. 90

⁵³ Section 25(2) of Companies Income Tax Act 2007

⁵⁴ See "Taxation", (the Nation Newspaper (Nigeria) 14 October 2013) p. 40

⁵⁵ *Ibid.*

⁵⁶ Soyode and Kajola, *Op. Cit.*, p. 106.

	(6/12 x 450,000)	
	6/18 x 830,000)	₦501,667
1997	P.Y.B. to 31/10/96	
	(1/11/95 – 31/10/96)	
	(12/18 x 830,000)	₦553,333
1998	P.Y.B. to 31/10/97	₦590,000

(c) Summary of assessments

Year	Old date of April 30	New date of October 31
	₦	₦
1996	450,000	501,667
1997	553,333	553,333
1998	571,667	590,000
	1,575,000	1,645,000

Conclusion

The revenue will choose to raise assessments on the basis of the new accounting date as it results in greater assessment.

Adapted from the Nation Newspaper (Nigeria 14 October, 2013) p. 40

PROCEDURE OF ASSESSMENT UNDER THE 2011 REGULATIONS

On December 12, 2011 the Management Board of the Federal Inland Revenue Service (FIRS) in exercise of the powers conferred on it by section 61 of the Federal Inland Revenue Service (Establishment) Act 2007, with the approval of the Minister of Finance gazetted some Regulations⁵⁷ dated 19 December, 2011 modifying the processes and procedures for self assessment returns in Nigeria.

The Regulations cover tax returns under Companies Income Tax Act (CITA), Education Tax Act (ETA), Petroleum Profit Tax Act (PPTA), Personal Income Tax Act (PITA), National Information Technology Development Act (NITDA) Value Added Tax Act (VATA) and though not specifically mentioned Capital Gains Tax Act (CGTA) given that all taxes under the FIRS Establishment Act are stated as falling under the scope of the Regulations.⁵⁸

The self assessment tax regime is a system of tax administration whereby a tax payer is granted the right by law to compute his liability pay the tax due and produce evidence of tax paid at the time of filing returns.⁵⁹ Returns refer to an act of submission by individuals or companies of a record of financial statement and required related documents to the tax offices for a specific financial year.⁶⁰ The relevant tax authority, Federal Inland Revenue Service (FIRS) shall accept all tax returns submitted by the taxpayer. The Tax Authority shall carry out necessary checks to ensure that all required information have been appropriately entered into the tax return

forms. Failure by a tax payer to submit the tax returns forms on or before the due date is a breach of these regulations and the taxpayer shall be liable to pay such fines together with interests as may be prescribed in these Regulations or under the relevant provisions of the applicable tax laws.⁶¹

Mode of Filing Returns

- (i) A taxpayer must file tax returns under the self assessment regime in person or engage the services of accredited agents to file returns on his behalf; and
- (ii) For an agent to carry out the services required under these Regulations, the agent must be fully certified by anyone of the underlisted bodies:
 - The Association of National Accountants of Nigeria (ANAN);
 - The Chartered Institute of Taxation of Nigeria (CITN); and
 - The Institute of Chartered Accountants of Nigeria (ICAN).⁶²

It is important to state that for the agent to render the services under the regulations, the agent must have the accompany seals of any of the under listed bodies:

Signing of Forms where Agent is Engaged by the Taxpayer
Where an agent has been engaged by a taxpayer for the purpose of filing of tax returns:

- (i) In the case of filing returns for Personal Income Tax Act, the form must be signed by the taxpayer in person;
- (ii) In the filing of returns under the Companies Income Tax Act, the forms must be signed by a Director or the Company Secretary; and

⁵⁷ If there is a failure to file a self assessment return on due date, section 55 (1), (2) and (3) of Companies Income Tax Act (CITA), 2007 provides for the penalty of ₦25,000.00 in the first month in which the failure occurs, and ₦5,000.00 for each month in which the failure continues.

- Where an offence (that relates to failure to file returns is proved to have been committed by the consent or connivance or to be attributed to, any neglect on the part of any director, manager, secretary or other similar officer, servant or agent of company as well as the company, section 55 (3) of Companies Income Tax Act (CITA) 2007 provides the penalty of fine not exceeding ₦100,000.00 or imprisonment of not less than six months or both fine and imprisonment.
- Where there is a failure to furnish a statement or information or keep the records required, section 85 of Companies Income Tax Act (CITA), 2007 provides a penalty of ₦20,000.00 and ₦2,000.00 for each day during which the failure continues and six months imprisonment in default of payment.
- Any person who aids, abets, conceals, incites or induces any other person to make or deliver any false return or statement, keep or prepare any false account or particulars concerning any profits on which tax is payable under CITA, or unlawfully refuse or neglect to pay tax will be subject to the provisions of sections 94 to a penalty of ₦1,000.00 fine or five years imprisonment or both fine and imprisonment.

⁵⁸ See Tax Administration (Self Assessment) Regulations 2011.

⁵⁹ <http://www.firs.gov.ng/publications/2011/01/12/2011-self-assessment-regulations.html> accessed on 29 September, 2016.

⁵⁷ Tax Administration (Self Assessment) Regulations 2011

⁵⁸ <http://www.firs.gov.ng/publications/2011/01/12/2011-self-assessment-regulations.html> accessed on 29 September, 2016.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ "Self Assessment Practice", The Nation Newspaper (Nigeria 30 June, 2014), p. 40.

- (iii) In either (i) or (ii), the agent shall sign alongside any of the signatories mentioned in (i) and (ii) above.⁶⁷

Time for Filing Returns

1. For Personal Income Tax Act (PITA) - The due date for the filing of self-assessment returns under the PITA shall be on or before the 31st day of March of every year.
2. For Company Income Tax Act (CITA) -
 - For newly incorporated companies, the submission shall be within eighteen months from the date of its incorporation or not later than six months after the end of its first accounting period, whichever ever is earlier.
 - For existing companies - companies that have been in business for more than eighteen months, the submission shall be not more than six months after the close of the companies accounting year.⁶⁸
3. For Petroleum Profits Tax Act (PPITA) - Under the PPITA, a company shall file a return of its estimated tax for an accounting period within two months after the commencement of each accounting period while installment payment shall commence not later than the third month of the accounting period and the final return shall be filed within five months after the end of the accounting period with evidence of payment of the final instalment.⁶⁹
4. For Value Added Tax Act (VATA) - Taxable persons and agents of Ministries, Departments and Agencies of government subject to Value Added Tax (VAT) shall render a return of activities of the preceding month and remit VAT due on or before the 21st day of the month after the month of transaction with evidence of payment.⁷⁰

Extension of Time for Making Returns

1. For the purpose of filing income tax returns, a taxpayer may apply in writing to the Board of the Federal Inland Revenue Service (FIRS) for an extension of time within which to file returns provided the taxpayer:
 - (a) Makes the application before the due date of filing returns; and
 - (b) Shows good cause of its inability to comply

2. The Board may in writing grant the extension of time for making returns to such time as it may consider appropriate.⁷¹

Conditions for Granting Extension of Time for Making Returns

1. In granting any extension, the Board of the Federal Inland Revenue Service (FIRS) shall take the following into consideration:
 - (a) In the case of individual taxpayer, on the death of the taxpayer within the period of filing of the returns;
 - (b) In the case of a company, on the death of any principal officer of the company, such as the Chairman, Managing Director or Company Secretary, within the period of filing of the returns; and
 - (c) Where the company experienced a fire or natural disaster within the period of filing.
2. The company must provide verifiable evidence of the fire or natural disaster or of the death of the principal officer of the company.⁷²

Consequence of Late Filing Under the Period of Extension

Where an extension is granted, any late filing outside the period of extension whether accompanied by payment of tax due or not shall be penalized for late filing under those regulations.⁷³

Approval to Extend Time Not to Alter Time for Payment of Taxes

Any approval granted by the Board of the Federal Inland Revenue Service (FIRS) under 14 of these Regulations shall not be construed as to alter the time within which payments of taxes shall be made under any applicable tax law provision. The filing of returns for Value Added Tax (VAT) is excluded from this extension.⁷⁴ This implies that taxes must be paid as at when due regardless of any approval for extension of time for filing granted by the tax authority. Such tax payments may have to be estimated given that in many cases the actual amounts may not be known.

Installment Payments of Tax

A taxpayer may make installment payments of tax due by commencing payments in the relevant year of assessment in a manner that the final installment payment shall be made not later than the due date provided that:

- (a) The taxpayer notifies the Federal Inland Revenue Service (FIRS) of his intention to make installment payments; and
- (b) The taxpayer files returns on or before the due date with evidence of payment of the final installment.
- (c) The Federal Inland Revenue Service (FIRS) shall not approve more than three installment payments from the due date.

⁶⁷ *Ibid*

⁶⁸ *Ibid*

⁶⁹ *Ibid*

⁷⁰ *Ibid* See further Part III, Section 12 of VAT Law as amended.

⁷¹ *Ibid*. See further Section 59 of Companies Income Tax Act (CITA), 2007. This section did not stipulate any condition for seeking extension of time to make returns but the Regulations give the conditions for such to be granted.

⁷² *Ibid*

⁷³ *Ibid*

⁷⁴ *Ibid*

- (d) The payment of Value Added Tax (VAT) is excluded from installment payments.⁷¹

It is important to state that *due date* is defined as the day prescribed by the law for the filing of returns and making of payments by taxable persons.⁷² This means that whether extension has been granted or not any payment after the due date is liable to interest. This clearly defeats the purpose of seeking an extension as envisaged in the relevant laws.

Payment of Tax Due

Where a tax falls due and is not paid under any enactment by any person from whom it is due, whether or not the payment of such tax is secured by a bond, the tax due shall be paid on demand by the Federal Inland Revenue Service (FIRS) or by delivering the demand notice in writing to his place of abode or business or through his agent, registered post or approved courier service or electronic mail.⁷³

Administrative Assessment for Failure to File Returns

For the purpose of these regulations the term "Administrative Assessment" means an assessment raised by the Board of Federal Inland Revenue Service (FIRS) where a taxpayer has failed to file returns and pay taxes due on or before the due date or where there is an understatement of tax in the returns filed.⁷⁴

Administrative Assessment Not to Relieve Taxpayer from Obligation to File Returns

A determination of the tax payable through Administrative Assessment shall not relieve taxpayers from the obligation to file tax returns of their businesses in the case of a company or full disclosure of income from all sources in the case of an individual. Administrative Assessment shall include penalties and interests imposed as part of the liability due, effective from the time the returns became due.⁷⁵

Failure to File Returns after Extension of Time

Where a taxpayer, agent or employer fails to file the tax returns for an accounting period after the time extended by the service, the taxpayer, agent or employer shall be liable to pay prescribed penalties for late filing of returns from the due date of filing.⁷⁶

Determination of Penalties and Interests

The determination of penalties and interest shall be as prescribed under the relevant tax laws, rules and regulations issued by the service from time to time.⁷⁷

Dispute Resolution Appeal Procedure

Where a taxpayer is dissatisfied with any Administrative assessment levied on him under the established Self Assessment Regime, he may seek redress as follows:

- (a) Lodge an appeal with the appropriate tax office of the service responsible for the assessment;

- (b) If dissatisfied with the decision of the appropriate tax office of the service, he may appeal directly to the Executive Chairman;
- (c) In the event that the assessment complained of remains unresolved, the taxpayer may appeal directly to the Tax Appeal Tribunal;
- (d) Any further appeal from the Tax Appeal Tribunal may be lodged at the Federal High Court in resolution; and
- (e) Time within which to appeal or raise objection shall be as prescribed by the relevant tax law.⁷⁸

CONCLUSION AND RECOMMENDATION

This paper has x-rayed Assessment Procedure under the Nigerian Tax Law. It has also shown extensively the overriding objective of assessment which is to bring all taxpayers within a defined tax jurisdiction and plug out all possible leakages. It also showed the depth of assessment practice in Nigeria including the classes of assessment and basis period for assessable profits which varies from one type of tax to another. The Tax Administration (Self Assessment) Regulations seeks to provide some guidance and introduce some level of consistency in the filing of self assessment tax returns.

However, the enabling section 61 of the Federal Inland Revenue Service (Establishment) Act, 2007 only grants powers to the FIRS Board to make rules and regulations for giving full effect to the provisions of the law. The Board does not have powers to amend or modify the law.⁷⁹ Therefore any provisions of the Regulations which run contrary to the relevant laws will be of no effect. The enactment of these Regulations seem to be a lofty gesture as far as filing of self assessment tax returns is concerned in Nigeria but its provisions may not see the light of the day in view of the fact that it does not have full backing of the law. It is therefore strongly recommended that the relevant laws should be amended accordingly instead of promulgating rules and regulations which are null and void *ab initio*.

⁷¹ Ibid.

⁷² Ibid.

⁷³ Ibid. See further section 57 of the Personal Income Tax (Amendment) Act, 2011.

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ The powers to modify or amend the law lie with the National Assembly which comprises of the Senate and House Representatives having gone through proper procedure. See section 4 of Constitution of the Federal Republic of Nigeria 1999 as amended.