

## **CORPORATE TAXATION LAWS IN NIGERIA: A REVIEW**

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### **ABSTRACT**

*It is a general knowledge that the field of law of taxation is complex and highly technical. It requires clear perception of fiscal terms and concepts as well as strict application of myriad of rules allowing various deductions and exemptions. Some of these concepts connote something more than what is commonly understood by the terms under non-tax statutes by the tax payers. Surprisingly, some of these terms are either not defined at all by the corporation tax laws or they are incomprehensively defined posing more confusion than clarification. Therefore, this study aimed at reviewing some basic concepts under corporate tax laws in Nigeria. Based on the findings of this study, it was suggested that a reconciliation of two enactments thus the CAMA and CITA to a policy of charging tax on profit rather than charging on turnover be given immediate attention.*

*Keywords: Corporate, Taxation, Laws, Cases*

### **INTRODUCTION**

There are certain concepts and issues which, though, are provided for by the corporation tax laws, but their bases are questionable making some of them constitute legal incorrectness. For instance, the locus classicus case of SALOMON V SALOMON & CO. LTD<sup>1</sup>, illustrates the concept of corporate personality. The crux of the concept is that corporation is a legal person distinct from its members. The concept has tax implications. While companies are liable to pay tax on their retained profits<sup>2</sup>, their distributed profits are charged to tax in the hands of the shareholders<sup>3</sup>. Be this as it may, companies are veritable vehicle for investments and profit making but liable to tax with different incidents unlike individuals<sup>4</sup>. However, some scholars over the years, have queried the rationale behind taxing companies differently from the shareholders. They posit that the idea poses a situation of using companies as instrument of double taxation<sup>5</sup>. Again, the issue of whether the tax should be levied on the profits of the company rather than on its turnover is another issue of controversy<sup>6</sup>.

In another way round, Nigeria cannot afford to operate contradictory legislation whereby one will create a right and the other one will negate it. The Companies and Allied Matters Act<sup>7</sup> is the principal legislation regulating incorporation and management of companies in Nigeria. The Act prohibits the existence of a foreign company in Nigeria for any purpose unless assimilated as a Nigerian entity<sup>8</sup>. This position has a serious tax consequence. As a matter of fact, some companies, especially those in shipping and air transportation operate globally and render their

returns on global basis. Nigerian tax system cannot afford to overlook profits from their on-shore operations free from tax. Besides, Companies Income Tax Act treats Nigerian companies and foreign companies differently for tax purposes. This attempt is fraught with difficulties, which efforts on conceptual clarification in this work may solve.

Furthermore, the Companies Income Tax Act and Petroleum Profits Tax Act make companies assessable and chargeable to corporation taxes. One may tend to think that the companies envisaged by these Acts are profit making companies only. There is the need to ascertain whether the Acts contemplate companies in liquidation (which will occasion the ascertainment of capital receipt or revenue receipt) or re-constituted companies (which will affect enforcement of cessation and commencement provision and exemption from any initial allowance) etc. The critical test of liability to corporation tax is residence<sup>9</sup>. The determination of a company's residence is an indispensable requisite in assessment to corporation tax in Nigeria. This makes the concept crucial in both domestic and bilateral tax treaties. As important as this concept is, it is not defined by the corporation tax statutes.

From a digest of the foregoing explanations, a conceptual clarification of the key terms like: company, foreign company, residence, fixed base, permanent establishment etc under the corporation tax laws becomes imperative.

### **BASIS FOR CORPORATION TAX**

A company is liable to pay corporation tax on its profits while a shareholder is liable to pay income tax in respect of any income distribution by the company. The charge to tax of both company and shareholder is a clear case of imposition of two taxes on one corporate profit. In other words, it occasioned a situation whereby corporate profits are taxed twice; once to the corporation when earned; and once to the shareholder when the earnings are distributed as dividends.

This approach may exact double burden on the company thereby making it detestable. This is because the idea of levying tax on companies as juristic persons may lead to either juridical or economic double taxation<sup>10</sup>. The former is imposition of comparable taxes in two or more states on the same tax payer for the same subject matter or identical goods. It may occur in a situation whereby a company is regarded as resident in two different tax jurisdictions (place of incorporation and place of central management and control). The latter is imposition of two taxes on one corporate profit<sup>11</sup>.

Therefore the tax system should be contented with the emergence of the income in the form of dividends in the hands of the shareholders who could then be subject to income tax under the Personal Income Tax Act<sup>12</sup>. In other words, the doctrine of 'alter ego' can be invoked to impute the profits of the company to that of the individual share-holders and for it to be taxed as such in the hands of the shareholders.

Another school of thought argues that if the above view is accepted, it means companies will simply become repository for accumulation of income free of tax<sup>13</sup>. This will occasion huge revenue loss to the government. Otherwise, what happens should a company decide not to distribute its profit to its shareholders or device a ploy of a sale of the shares in order to realize a capital gain? This also will definitely occasion a revenue loss to the nation as companies will just be used as a conduit for tax free income. Thus, a tax on companies is needed to protect the individual income tax. Corporate status conveys certain privileges and the companies should pay for these privileges. In particular, companies have limited liability status. This protects their shareholders in the event of bankruptcy<sup>14</sup>.

Allied to this, is the fact that taxing companies is more acceptable than taxing individuals as it is less personal<sup>15</sup>. It is our view that the latter position that supports taxing companies seems more plausible and we concur with it on the ground that it will generate sufficient revenue for the government to cater for the societal needs

### **THE MEANING OF COMPANY FOR TAX PURPOSE**

A company formed and registered under the Companies and Allied Matters Act or any enactment replaced by it is what the Act recognizes as a company in Nigeria<sup>16</sup>. Although CAMA defines a foreign company to mean company incorporated elsewhere than in Nigeria, it does not recognize its existence in Nigeria for business activities. It only defines it for the purpose of identifying it to comply with the mandatory incorporation processes before carrying on business in Nigeria<sup>17</sup> and to benefit from exemption from registration<sup>18</sup>.

Section 54(1) CAMA provides that:

*Subject to Sections 56 - 59 of this Act, every foreign company which, before or after the commencement of this Act, was incorporated outside Nigeria, and having the intention of carrying on business in Nigeria shall take all steps necessary to obtain incorporation as a separate entity in Nigeria for that purpose, but until so incorporated the foreign company shall not carry on business in Nigeria or exercise any of the powers of a registered company and shall not have a place of business or an address for service of documents or processes in Nigeria for any purpose other than the receipt of notices and other documents as matters preliminary to incorporation under this Act.*

Carrying on business in Nigeria may be at profit or loss. Corporation tax is charged by reference to profits. Besides, Nigerian system of taxation does not operate in isolation from the rest of the world. Some foreign companies operate globally and render returns on global basis. The profits made by these foreign companies cannot be ignored. In this regard, the definition of 'company' by CAMA cannot be accurate for tax purposes.

The Companies Income Tax Act<sup>19</sup> defines 'company' in a broader sense. Section 105 of the Act defines a company as: "any company or corporation (other than

corporation sole) established by or under any law in force in Nigeria or elsewhere"<sup>20</sup>. By this definition, the Act recognizes both Nigerian companies and foreign companies though on different basis. Be that as it may, a thorough digest of CITA in its entirety reveals that companies yet to commence business; a profit-making company; a company on liquidation; a reconstituted company, a holding company are all contemplated by the Companies Income Tax Act<sup>21</sup>.

It is worthy of note that the mandatory statutory provision of CAMA is clearly unambiguous in prohibiting the existence of a foreign company in Nigeria for any purpose (including carrying on business to make profit. In fact, any violation of the provision is slammed with a penalty<sup>22</sup>. The CITA on the other hand permits the existence of foreign companies and charge their profits derived from Nigeria to tax<sup>23</sup>. These enactments are both Acts of the National Assembly made to serve economic and fiscal purposes. While CAMA regulates incorporation, control and management of companies, CITA charges to tax the profits of these companies. Before CITA can be effective, there must be existence of companies brought into being by CAMA. When CAMA prohibits the existence of a class of company can CITA permit or legalize it? This, no doubt, brings about two conflicting public interest. One is the prevention of proliferation of foreign companies, unless registered as Nigerian company.

The second is the revenue generation from the profits of companies including foreign companies. The two constitute key components of Nigerian economic policy and needs to be reconciled and harmonized. It is instructive to state that the definition of company above analyzed is the same under the Petroleum Profit Tax Act<sup>24</sup>. However, one is disturbed about the rationale behind the treatment of oil companies under a separate statute from other companies. After all, oil companies are companies even though, they are operating in the petroleum sector, just as there are companies in the manufacturing sector and in other sectors. A company is a company, and its income should ideally be taxed under the regular Companies Income Tax Act<sup>25</sup> otherwise it is antithesis of a simple tax system which Nigeria aims at.

From the definition of 'company' under CITA encapsulates other statutory or registered friendly corporations apart from the ones registered under CAMA; such as cooperative societies. The CITA exempts the profits of cooperative societies from tax. However, if the profit is from trade or business outside cooperative activities solely carried out with its members, it is taxable<sup>26</sup>. In other words, if the profit of the cooperative society is derived from any activities that constitute established badges of trade, it is taxable.

The question that comes to mind is whether the Federal Government or any of its revenue agencies can charge to tax the taxable profits of any cooperative society. Nigeria is a federal state that recognizes the doctrine of separation of powers and upholds the principle of autonomy of states within the federation. To this end, the 1999 Constitution of Nigeria provides for separate legislative lists namely: Exclusive, Concurrent and residual lists<sup>27</sup>.

Under the exclusive legislative list of the 1999 Constitution of Nigeria, item 32 empowers the federal government to legislate on incorporation, regulation and winding-up of bodies corporate (other than cooperative societies, local government council and bodies corporate) established directly by any law enacted by a House of Assembly of a state.

This makes any matter regarding cooperative societies an exclusive preserve of state government including taxation of their profits. Surprisingly, item, 59 of the same exclusive legislative list empowers the federal government to charge incomes and profits generally to tax whether or not they are from the cooperative societies. This inconsistency poses a serious legal issue in Nigerian fiscal federalism. Also it may constitute legal fallacy while defining a company for tax purpose.

### TYPES OF COMPANIES

The companies Income Tax Act divides companies into two categories for tax purposes: Nigerian Companies and Foreign Companies. The division is essential to enable Inland Revenue ascertain the profits of the companies derived from and liable to Nigerian tax. A Nigerian company is the one incorporated under the CAMA or any enactment replaced by the Act<sup>28</sup>. Its profits are deemed to accrue in and taxable in Nigeria wherever they have arisen and whether or not they have been brought into or received in Nigeria<sup>29</sup>. Thus, a Nigerian company is charged to tax on its global income. In other words, its chargeable income is limited to the Nigerian source income and what has been brought to Nigeria from outside sources. A foreign company on the other hand is the one incorporated under any law in force in any territory or country outside Nigeria<sup>30</sup>.

However, in case of a re-constituted company, a foreign company is a company incorporated outside Nigeria before 18th November, 1968 and having on that date an established place of business in Nigeria<sup>31</sup>. In other words, a foreign company is the one trading and making profits in Nigeria but incorporated outside Nigeria. The profit of a foreign company from any trade or business is deemed to be derived from Nigeria if the company has a fixed base of business in Nigeria and the profit is attributable to the fixed base;<sup>32</sup> or without any fixed base, it has an agent through whom it habitually operates business and the profit is attributable to the business<sup>33</sup>, or the foreign company involves in a single contract of service deliveries, installations or construction and the profit is from that contract<sup>34</sup> or the company engages in inter-company transaction not at arms' length, the profit adjusted by the Revenue Board<sup>35</sup>.

Apart from the above division, CITA sub-categorizes foreign companies in terms of their trading activities and patterns of business as follows:

***Companies engaged in shipping or air transport:*** The profits or loss deemed to be derived from Nigeria and chargeable to tax in Nigeria of shipping and Transport Company is the full profits or loss arising from the carriage of passengers, mails, livestock or goods shipped or loaded into aircraft in Nigeria<sup>36</sup>.

**Companies engaged in cable and wireless undertakings:** A foreign company that carried on the business of transmission of messages by cable or by any form of apparatus is assessable to tax in Nigeria as if it operates ships or aircraft. In other words, the profit or loss of this category of companies chargeable to tax is the same with and on principles similar to shipping and air transport companies<sup>37</sup>. One thing is notable in companies (a) & (b) above. The profit or loss is chargeable to tax. It is remarked that to tax a company making a loss is grossly inequitable of the company and destructive to business enterprise.

**Companies engaged in insurance business:** The Companies Income Tax Act though recognizes two basic types of Insurance companies viz: Life Insurance companies and Non-Life Insurance companies; it classifies insurance operation into four categories<sup>38</sup> as follows:

i. **Life Assurance by Non-Resident:** Whether Life Assurance Company is mutual or proprietary, provided it has a permanent establishment in Nigeria; the profit for tax purpose is the investment income less the management expenses and commissions<sup>39</sup>. Where the profit accrues partly in Nigeria and partly outside Nigeria, the taxable profit shall be the proportion that the total premium bears to the total premiums receivable less the agency expenses<sup>40</sup>. If the head-office of the company is outside Nigeria, the Revenue Board has the discretion to substitute a different basis from the above<sup>41</sup>.

It is instructive to note that section 16(1) (b) of the Companies Income Tax Act<sup>42</sup> is fraught with difficulties, which may hamper revenue generation in Nigeria. First, it contains multiple provisions which may create problem of comprehension. This is antithesis to the basic rule of taxation that advocates precision of language and abhors verbosity or superfluity<sup>43</sup>. Second, the discretionary power given to the Board under the sub-section is susceptible to abuse. It can be arbitrarily exercised or deliberately rendered inoperative for personal reasons.

ii. **Non-Life Insurance company by Non-Resident:** The non-resident insurance companies, be they mutual or proprietary, that carry on non-life assurance business through a permanent establishment in Nigeria and the profit is partly derived from Nigeria and partly from outside Nigeria, the taxable profit consists of the gross premiums received in Nigeria, the interest received in Nigeria and other incomes received in Nigeria; less any premiums returned, premiums paid on re-insurance, unexpired risks, actual losses in Nigeria, Nigeria agency expenses and a fair proportion of head office expenses<sup>44</sup>.

Section 16 (1) (a) of the Companies Income Tax Act provides for chargeable profits of non-life assurance company by non-resident. One noticeable defect of the section is that it is inelegantly drafted. It is unnecessarily verbose and complicated with clumsy legal coinage. Finding proper sequence of the provision is like going through the maze; whereas it is a pre-requisite of a good tax system to impose the tax clearly and with unambiguous and easily

understandable language. The drafting style used in that section may make implementation and compliance not likely to be easy under such conditions and consequently occasion huge revenue loss.

- iii. ***Nigerian Life and Non-Life Insurance Companies:*** The profits of Nigerian insurance companies chargeable to tax are similar to those of non-residents mentioned above but the whole investments and premiums income are treated as if received in Nigeria and all expenses and other outgoings incurred in Nigeria<sup>45</sup>. It is trite that the current Laws of Federation of Nigeria is the 2004 edition. It encompasses all the amendments made to Companies Income Tax Act after Cap 60 of the 1990 Laws of Federation came into operation. The legal implication of this is that as from 2004 when the current Laws of Federation of Nigeria came into existence, it has expropriated the Laws of Federation of Nigeria 1990. Surprisingly, the National Assembly enacted the Companies Income Tax (Amendment) Act, 2007<sup>46</sup> to amend the Companies Income Tax Act, Cap 60 Laws of Federation of Nigeria 1990 - a non-existence law. The 2007 Act purports to amend Section 14 of 1990 Act which provides for insurance companies instead of amending section 16 of Cap C21 Laws of Federation of Nigeria 2004 - the current law. In law, it presupposes that section 16 CITA 2004 remains unamended. All the shortcomings identified from it above are not and cannot be said to have been amended by the 2007 Act.

### **MAIN FEATURES OF CORPORATE TAXATION IN NIGERIA**

Corporation tax possesses some features which distinguishes it from other taxation. Some of those distinctive features are highlighted under the following sub-headings:

***Scope of chargeable income:*** By virtue of Section 3 (1) of the Personal Income Tax Act<sup>47</sup>, the scope of chargeable income is the aggregate amounts each of which is the income of every taxable person, for each year, from a source inside and outside Nigeria. However, Section 13 (1) CITA defines the chargeable income as the total profits of a Nigerian company taxable in Nigeria whenever they have arisen in Nigeria or have been brought into or received in Nigeria. It can be deduced from both provisions that while a Nigerian resident individual is chargeable on the global income which is made up of income from inside and outside Nigeria; the chargeable income of a Nigerian company is limited to the Nigerian source income and what has been brought into Nigerian from outside sources<sup>48</sup>. In essence incomes not brought into Nigeria are chargeable in the hands of a Nigeria resident individual but not chargeable in the hands of a Nigerian company until they have been brought into Nigeria.

***Taxpayer's Identification Number:*** A distinctive feature of companies' taxation is that the company tax payer has tax identification number. The incorporation number of a company, on registration, serves as tax identification number of the company.

The company is mandated to display the number in all the transactions with any individuals, other companies' revenue authorities, ministries and all government agencies<sup>49</sup>.

**Company's Tax Affairs:** A company is a 'legal persona' separate and distinct from its proprietors. The tax affairs of a company therefore, are treated separately from tax affairs of its shareholders. While the former is governed by CITA, the latter is governed by PITA.

**Rates of Tax:** The CITA is the only tax enactment that empowers the executive to usurp the power of the legislature. Section 100 CITA gives the president discretionary power to revoke, vary or alter the rate of tax for any year of assessment. This contrast with the principles of separation of powers enshrined in the Constitution. Section 4 of the 1999 Constitution empowers the National Assembly to make laws for Nigeria. The power of the national Assembly to make laws covers and extends to amendment of the law made. The words 'revoke', 'alter' and 'vary' used in section 100 of CITA are synonymous with amendment. The power to impose, increase, reduce, vary or cancel any rate of tax is and should be vested in the National Assembly with respect to all tax laws under the federal government.

**Double enabling Enactment:** Another distinguishing feature of corporation tax in Nigeria is that it is governed by two enactments. They are Companies Income Tax Act<sup>50</sup> and Petroleum Profits Tax Act<sup>51</sup>. While the former governs the taxation of profits of companies or corporations other than those operating in the upstream sector of the oil industry the latter governs the profits of companies engaged in petroleum operations in the upstream sector of the oil industry in Nigeria. As earlier observed, this is uncalled for. It complicates corporation tax system in Nigeria.

## THE TAXATION OF COMPANIES' PROFITS OR TURNOVER

The words 'profit' and 'turnover' are not statutorily defined in the corporation tax statutes. However, the Black's Law Dictionary<sup>52</sup> defines profit as the gross proceeds of a business transaction less the cost of the transaction. It is the financial gain which a firm or company realizes from its transactions and business dealings over and above expenditures<sup>53</sup>. Turnover, on the other hand, is the total money received by a business from sales for a particular transaction. It is the total net sales of the business of a firm or company<sup>54</sup>. In other words, it is the total sales for the period under review less the value of goods returned by customers.

The general tenor of the Companies Income Tax Act and Petroleum Profit Tax Act is to tax the profit and not the turnover of the company. The combined effect of Sections 9 and 40 of the CITA is that tax is charged on the profits of any company accruing in, derived from, brought into, or received in Nigeria. Notwithstanding this, the Act equally empowers Inland Revenue to assess and charge to tax turnover of trade or business of a company if it appears to it that the trade or business of the company produces no assessable profits or the assessable profit is less than



expectation, or same cannot be ascertained<sup>55</sup>. It is observed that taxing the turnover of a company that makes no profit in a year of assessment is inequitable and destructive to business enterprise<sup>56</sup>.

## THE JURISDICTION AND TAXING POWERS

Taxing jurisdiction connotes the general power of the Inland Revenue to exercise taxing authority over all companies domicile within the territory of Nigeria. It is the threshold issue/factor that fixes liabilities of companies to income tax in Nigeria; and it is the basis upon which corporation tax is founded. According to Richard Toby<sup>57</sup>;

*In any discussion regarding, the taxation of incomes, it is tremendously important to bear in mind from the very outset that there are three distinct internationally recognized bases for exercising taxing jurisdiction. Taxation may result from the status of the recipient; taxation may result from the carrying on of business activity or trading within the borders of the country; and taxation may result by reason of the fact that a particular payment is derived from the country.*

These three bases are referred to as 'status jurisdiction' 'business jurisdiction' and 'source jurisdiction' respectively<sup>58</sup>.

### ***Status Jurisdiction***

Under the Nigerian corporate tax system, status jurisdiction is typically based on 'place of incorporation test' otherwise known as 'residence test'. By virtue of section 105 CITA, a Nigerian company is any company incorporated under Companies and Allied Matters Act (CAMA) or any Act or any enactment replaced by it. This shows that residence is a matter of considerable importance since it is the main factor which fixes the liability of a company to tax in Nigeria.

In other words, a company is regarded as resident in Nigeria if it is incorporated in Nigeria under the CAMA. This further explains the fact that for income to be liable to Nigeria tax, it is necessary it should either be that of a company resident in Nigeria or derived from a source situate there. Under the CITA, every company is expected to incorporate as a separate Nigerian entity in order to operate in Nigeria<sup>59</sup>. The term residence is not statutorily defined by CITA. It is a question of fact and not of law<sup>60</sup>. It is often said that it has no technical or special meaning<sup>61</sup>. However, there are various factors that establish/determine residence viz:

- i. The period of physical presence in a country in the year under question.
- ii. Past history as to residence.
- iii. Frequency and regularity and duration of visits.
- iv. Purpose of such visits and conversely purpose of the absence abroad.
- v. Whether there is a place available for the taxpayer's domestic use during the year in question<sup>62</sup>.

Be that as it may, subjecting a corporation to status jurisdiction applied on the basis

of place of incorporation only is not adequate. This is because corporation can be dissolved and its assets transferred to individuals or corporations resident in Nigeria or incorporated in another jurisdiction without any tax consequences. It is therefore advocated that place of management and control of a corporation should equally be taken into consideration with place of incorporation in determining residence of a company.<sup>63</sup>

### ***Business Jurisdiction***

The business jurisdiction is applied with respect to income attributable to either a 'fixed base' or 'permanent establishment' concepts. It is helpful to note that these two concepts are what fix the liability of a non-resident company to companies' income tax in Nigeria. While the term 'fixed base' features under the domestic law<sup>64</sup>, 'permanent establishment' is used under bilateral tax treaties<sup>65</sup>.

Although the Companies Income Tax Act does not define what constitutes a fixed base, but the Nigerian Double Taxation Agreement defines the term 'permanent establishment' as a fixed base of business through which the business of an enterprise is usually or partly carried on<sup>66</sup>. It therefore means that a fixed base is a permanent establishment. It is important to note that there is an entry limit beyond which a state of source can tax the income of a non-resident company from the sources located within that state. That threshold is the permanent establishment. What the country of source is entitled to tax is the income attributable to that permanent establishment<sup>67</sup>. In the case of *F.L. SMITH CO. LTD VS FBIR*<sup>68</sup>, the contention in the case was the scope of Article 3 (1) of the Nigeria/UK Colonial Double Taxation Agreement as it applied to the company. It provided:

The industrial or commercial profits of a UK enterprise shall not be subject to a Colonial tax unless the enterprise is engaged in trade or business in the country through a permanent establishment therein. If it so engaged, tax may be imposed on those profits by the Colony but only so much of them as is attributed to that permanent establishment.

The company signed an agreement with the Nigerian Cement Company, Nkalagu, to act as consultant for the rehabilitation of the factory after the Civil War. The Nigerian company was to provide office and residential accommodation for the engineers of the UK Company. The prayer of the Appellant was to be exempted from tax on the profits from its consultancy fees on the ground that it did not operate in Nigeria through a branch or a permanent establishment. The agreement was silent on the duration of the stay of the engineers but the Commissioners discovered that the engineers who came to Nigeria in 1970 were still at the site in 19th. It was also discovered that the signatory to the Agreement was one of the engineers.

The Commissioners cited the cases of (a), *Henriksen Vs. Grafton Hotels Ltd*<sup>69</sup> to point out that the word 'permanent' is not synonymous with 'everlasting' and (b) *Fed. Commissioner of Tax Vs. Austin* to show that the term 'permanent establishment' implies 'indefinitely continuous' and held:

- i. that 'the Appellant sent its employees to Nigeria to do some work for an indefinite period and to do such work under its own name and within premises clearly designated as its own';
- ii. that since the definition of a permanent establishment given in the UK/Nigeria Arrangement was not exhaustive it was their duty to... determine whether ... the facts of this case could lead us to infer that the Appellant operated in Nigeria through what in our view amounted to a permanent establishment. The facts as adduced before us showed that there is a continuity of operation over a period which the evidence established as indefinite.

It dismissed the appeal accordingly.

Also in the recent case of SHELL INTERNATIONAL PETROLEUM MAATSCHAPPIJ B.V. VS. FEDERAL BOARD OF INLAND REVENUE<sup>71</sup>, the Appellant contended at the court of Appeal that it is a foreign company which does not have a fixed base in Nigeria but only come into the country to render services to Shell Petroleum Development Company of Nigeria, and during which period it uses the offices of that company and has been doing so since 1958. It was also contended that the arrangement between the appellant and Shell Petroleum Development of Nigeria was on cost sharing billing system which meant that its income from Shell Petroleum Development Company of Nigeria was not subject to taxation in Nigeria. The court of appeal held that:

*On the issue of whether the appellant has a fixed base of business in Nigeria being a non-Nigeria company, the appellant contends it has no fixed based in Nigeria even though it uses SPDC facilities for short time its staff are in Nigeria to collect some data. However, Mr. Krover of the appellant's company in his testimony had said that they are using any available empty offices. If they have to use any office in Lagos they would use available empty offices in the building of SPDC.*

*Without a clear statutory definition of 'fixed base' it would be mistaken to equate 'fixed base' to 'residence' or 'ordinary Residence', as the case may be. And it is important to appreciate that following current judicial opinion, 'volition' is no longer a necessary factor used to sort out ordinary resident and residence.....*

*The situation depicted by the facts and circumstances given above by Mr. Kroven conform to my notion of what having a fixed base connotes within the contexts of the CITA and whereas here the appellant has used the said facilities since 1958 when the relationship with SPDC started. It would be hard to suggest that the appellant does not have a fixed base at SDPC. It is a finding of facts and this court will not interfere.*

The underlying principle is that a non-resident company must have a sufficient presence, technically called fixed base/permanent establishment in Nigeria to be liable to tax in respect of its profits attributable to that permanent establishment. This attribution principle with respect to its effect upon all areas of income arising

within the taxing jurisdiction is of some significance to Nigeria, being a developing country. Recognition of this concept is important in order to determine the manner of treatment of the income for purposes of taxation and for preventing the escape from tax of income directly or indirectly resulting from the existence of the permanent establishment<sup>72</sup>.

### ***Source Jurisdiction***

It is typically applied with respect to income from real or immovable property, located within the taxing country with respect to income from sources and capital<sup>73</sup>. It should be noted that source jurisdiction has characteristics similar to that of business jurisdiction. A situation may arise where a non-resident corporation may decide to split its profits through the creation of several permanent establishments within a jurisdiction. In such a situation, the income from these other permanent establishment would be attracted to those of the main permanent establishment and the profits would be aggregated for tax purposes in as much as the products or activities are similar to those affected through the main permanent establishment. This is what is technically termed as concept of force of attraction<sup>74</sup>.

### **DUAL RESIDENCE OF A CORPORATION AND TIE-BREAKER RULE**

A company could have more than one residence for tax purposes<sup>75</sup>. This may occur when a company incorporated and resident in Nigeria operates in a country which treats management and control (or some other criterion other than incorporation) as its test of residence<sup>76</sup>. It means both countries would lay claim to its residence. In *SWEDISH CENTRAL RAILWAY CO. LTD VS THOMPSON*<sup>77</sup>, a company was incorporated in the United Kingdom to build a railway in Sweden. At a time when the company was managed and controlled in Sweden, the directors formed a committee to transact administrative business in the United Kingdom (Share transfers, and the drawing of cheques on the company's English bank account).

The special commissioners held that the company was resident in the United Kingdom, notwithstanding that it was controlled and managed abroad (which would of course be sufficient to make the company resident in Sweden). The House of Lords held that there was evidence to support the conclusion of the commissioner<sup>78</sup>. It is noteworthy that over the years, the Inland Revenue has been concerned about the loss of tax attributable to the exploitation of dual-resident companies. Nevertheless, in a case involving dual residence of a corporation, the question may be resolved by the application of a 'tie-breaker' rule in a Double Taxation Arrangement. Article 4 (2) of Nigerian Double Taxation Agreement with United Kingdom<sup>79</sup> provides for four bases upon which 'tie breaker' rules can be sustained namely:

- i. Centre of vital interests
- ii. Habitual abode
- iii. Nationality
- iv. Mutual agreement

Any of the above can be used as a tie breaker to determine the actual residence of a person having dual residence.

## **ELECTRONIC COMMERCE AND TAXING JURISDICTION ISSUE**

As earlier analyzed, resident test with respect to place of incorporation is a determinant factor for liability of a Nigerian Company to tax. On a non-resident company, it must have a fixed base/permanent establishment in Nigeria to be liable to tax in respect of its profits from business operations in Nigeria. However, the current wave of globalization and technological revolution has had a tremendous effect on the concept of fixed base/permanent establishment in companies' income taxation. In the observation of the former vice president Algore of the United States of America;

*Innovations in information and communication technology have created a digital revolution that is changing the way the world works, learns, communicates and transacts business. This revolution is helping to foster economic growth and social development across the globe. Businesses are using the tools of electronic commerce to increase productivity, access global markets, reduce the time required to develop new products, and forge closer relationships with their customers. Some observers estimate that by 2003, global e-commerce could well exceed \$1.8 trillion<sup>80</sup>*

As a matter of fact, technological advancement has today made it possible for an e-merchant to transact substantial business activities in many countries without necessarily being resident in or having a fixed base/permanent establishment in those countries. In other words while today's tax system relies on knowing where a particular economic activity is located; the internet may enable an individual worker to operate in many different countries while sitting at the same desk<sup>81</sup>.

Considering the above observation, does it mean that e-commerce has caused a breakdown in the fixed base/permanent establishment concept? Has it made irrelevant the requirement of being in a particular physical location before making profit in Nigeria? How then should such profit be assessable to income tax in Nigeria? Or if an e-merchant has a website in Nigeria and business is conducted through the website, does it satisfy the requirement of fixed base/permanent establishment? Besides, electronic-commerce is a relatively new phenomenon. Can the old rules of companies' income tax assessment, collection and enforcement be applicable to this new trend? Based on the foregoing, it is essential:

- i. to highlight some components of e-commerce and their tax implications on the concept of fixed base;
- ii. to ascertain whether or not the fixed base/permanent establishment concept is still a relevant concept in companies' income tax in Nigeria;
- iii. to appraise (briefly) the capacity/worthiness of Nigerian tax authorities in coping with emerging tax problems occasioned by e-commerce.

**Electronic Commerce (e-Commerce):** Electronic commerce simply connotes operating business transactions and commercial activities by means of electronic instrument. Typically, it involves the use of computer, website, Internet Service Provider (ISP) etc<sup>82</sup>. It creates a situation whereby business activities are free from the encumbrances of border limit and physical presence before a transaction can be concluded. E-commerce manifests in many forms such as: e-banking, e-dividend, e-payments, e-fund transfer, e-money (digital cash), e-trading, e-mail etc. It is worthy of note that the 'e', a shortened form of electronic is a common prefix for other terms associated with electronic transaction<sup>83</sup>.

**Electronic Commerce, its Components and their Tax Implications on Fixed Base Concept:** As earlier pointed out<sup>84</sup>, electronic commerce occurs in many forms such as: e-dividend payment (e-dividend), e-banking; e-fund transfer, e-trading, e-money etc. However, all these components of e-commerce cannot be discussed here; rather, few of them and their impacts on the concept of fixed base will be examined.

**Electronic Dividend Payment (e-dividend):** E-dividend payment is a convenient, secure, on-line means of paying dividends directly to the shareholder's account instead of printing and mailing dividend warrants. This is achieved by making a shareholder who has a bank account (savings or current) with any company (by completing the mandate form) and has his/its dividend paid directly into that account regardless of where he/it resides<sup>85</sup>. Dividends are generally taxable in the companies and shareholders' hands as part of the assessable income for the relevant year. The company pays corporation tax (companies' income tax) as the underlying tax. The shareholders pay withholding tax on the distribution from the after tax profits distributed to them as dividends. The shareholder may be an individual or a corporation.

There may not be too much problems on determination of residence/fixed base of an e-dividend receiver as tax on his/its dividend must have been deducted at source at the rate of 10%<sup>86</sup>. Given the enabling provision of the Federal Inland Revenue (Establishment) Act 2007 the tax authority can call for books and records of banks and companies involving e-payment of dividend and from the book glean the appropriate withholding tax for remittance or collection accordingly. However, section 71 (4) PITA provides for remittance of the tax so deducted to the relevant tax authority which authority is to be determined in accordance with the provision of section 2 of the same Act (PITA). Section 2 (1) (a) PITA provides that:

*Tax on amount to be determined from the table set out in the sixth schedule (in this Act referred to as income tax) shall be payable for each year of assessment on the total income of the company*

*(a) every individual other than persons under paragraph (b) of this subsection or corporation sole or body of individuals deemed to be resident in the relevant state under the provisions of this Act. (underlined mine).*

The purport of the foregoing provision if read harmoniously together with section 71 (4) of the same Act is that dividend deducted should be remitted to the tax authority

in the state where the beneficiary of the dividend is resident or has a fixed base. In a situation where such an individual is resident in UK and his/its dividend is electronically paid to him how is the relevant tax authority determined in line with his residence for remittance of tax so deducted?

In the same vein, section 80 (4), Companies Income Tax Act (CITA) 2004 provides that tax deducted from the dividend of a corporate beneficiary is to be final tax due from the resident recipient of the payment. What happens to the non-resident beneficiary whose dividend may be prepared and packaged to him electronically. The foregoing constitutes some of the potential controversial issues poised by digital transactions in the face of concepts of residence/fixed base in income tax.

***Electronic Money<sup>87</sup> (e-money)***: Electronic money refers to money or scrip which is exchanged only electronically. It is a collective term for financial cryptography<sup>88</sup> and technologies enabling it. More precisely, it is a system of debits and credits used to exchange value within another system, or itself as a stand alone system, on line or digital currency or off line<sup>89</sup>. In the use of off-line electronic money, the merchant does not need to interact with the bank before accepting a coin from the user. Instead he can collect multiple coins spent by users and deposit them later with the bank<sup>90</sup>.

Nevertheless, the e-money merchant tries to achieve unlinkability between withdrawals and spend transactions. One of the local issues raised by transfer of digital currencies is how to levy taxes. The profit accruable to a digital currency investor/trader is unlinkable to any fixed base. The financial value of the proceeds migrates to cyberspace and largely untaxed. As such, it is not caught up by section 13 (2) CITA.

***Electronic-Gold (e-gold)***: E-gold is an electronic currency issued by e-gold Ltd<sup>91</sup> 100% backed at all times by gold bullion in allocated storage. It is integrated into an account based payment system that empowers people to use gold as money<sup>92</sup>. Specifically, the e-gold payment system enables people to spend specified weights of gold to other e-gold account. Only the ownership changes; the gold in the treasury grade vault stays put<sup>93</sup>. It is instructive to note that e-gold is accounted by weight of metal and not in any national currency unit. Weight units have a precise, invariable, internationally recognized definition. Additionally, precious metals, gold in particular, enjoy a long history of monetary use around the world. Thus, e-gold is ideally suited for international transactions. In essence, it means, for example, that a Canadian can pay a Nigerian or Japanese the weight of gold (e-gold) for a good or service as if the price had been quoted in his own national currency<sup>94</sup>.

The e-gold is borderless. It may be spent to any other e-gold account anywhere in the world via the e-gold Shopping Cart Interface (SCI), the e-gold Account Manager, or web enabled mobile phone without necessarily being tied down to a particular fixed base/permanent establishment<sup>95</sup>. The use of e-gold payment raises two issues in the opinion of this writer. One, it is accounted by weight of metal and not in any national currency unit. How is this resolved in the face of section 54 CITA

which provides that, notwithstanding anything to the contrary in any law, an income tax assessment under section 52, 53 or 55 of this Act shall be made in the currency in which the transaction giving rise to the assessment was effected?

Two, and more relevant to the topic at hand, is the fact that e-gold is borderless. Whereas section 13(2) CITA provides that, the profits of a company other than a Nigerian company from any trade or business shall be deemed to be derived from Nigeria if that company has a fixed base of business in Nigeria to the extent that the profit is attributable to the fixed base. An e-gold merchant is not envisaged by the provision quoted above. In a situation whereby an e-gold trader (individual or corporation), with characteristic borderless ness of the trading, has no fixed base in Nigeria let alone his profit being attributable to that fixed base, the profits from such e-gold trading escapes being taxed.

This is because, traditionally, liability to tax of a non-resident (company or individual) in Nigeria is considered from three major perspectives viz:

- i. trading through a branch
- ii. trading through an agency
- iii. trading in the country<sup>96</sup>.

The test to determine when a person (natural or artificial) is trading in a country are: place of conclusion of contract<sup>97</sup>; place of delivery<sup>98</sup> and place of payment<sup>99</sup>. In the case of ALUMINIUM INDUSTRIES AKTIEN GESELLSCHAFT VS FBIR<sup>100</sup> the non-resident company granted a loan to its wholly-owned Nigerian subsidiary 'Alumaco'. The contract agreement was concluded in Switzerland and the terms were that both the principal and the interest were payable in Swiss francs in Switzerland. The Inspector of Taxes assessed the interest to tax under section 17 CITA, 1961<sup>101</sup> and the company went on appeal. The Supreme Court held that the right to payment was in Swiss francs in Switzerland and allowed the appeal. The Supreme Court held:

The source of the obligation was the agreement made in Zurich, between the Appellant Company and the Aluminium Manufacturing Company of Nigeria Ltd. and the obligation itself under that agreement was for Aluminium Manufacturing Company of Nigeria Ltd to repay the principal and the interest on the loan to the appellant company in Zurich Swiss currency. Hence neither the source of the obligation nor the obligation itself arose in Nigeria but was in Switzerland. That been so on that ground we must decide that the claim for tax could not be brought within the first deeming provision of section 17 of the CITA, 1961 which only deems interests to be derived from Nigeria and so liable to tax if there is a right to payment of that interest in Nigeria. An e-merchant generally is not traceable to a place. He may trade with Nigeria but not having sufficient presence/ fixed base in Nigeria to constitute trading in Nigeria to make him liable to Nigerian income tax.

***Electronic Banking (e-banking):*** Electronic banking is the method of transacting modern banking business through the use of automated processes and electronic



devices such as computers, telex, internet, Automated Teller Machine and other electronic media<sup>102</sup>. E-banking is of two categories viz: non-network-based electronic banking and network-based electronic banking. The former requires the physical presence of customer at the point of service (either at the banking hall or at the location of an electronic service machine); while the latter does not. Rather it entails the use of electronic information technology networks for the transmission and decoding of information anywhere and does not require the physical presence of the customer. In other words, transactions may be carried out from anywhere in the world<sup>103</sup>.

As far as income tax is concerned, a customer of a bank (corporate or individual) may be liable to income tax in the country of source but definitely not in a country of residence. This is so because he does not need to be present at all in a country, let alone having sufficient presence or fixed base there. It therefore means that a customer that transacts banking business by network-based electronic banking may not be caught up by provision of section 13(2) CITA which makes having a fixed base of business in Nigeria a pre-requisite for liability to companies' income tax.

#### **THE OLD RULES AND NEW TECHNOLOGY**

In the observation of Arogundade<sup>104</sup>, the e-commerce is a relatively new technology. New rules are yet to be designed for the tax treatment of the income from the source. Discussions are therefore centered mainly on the application of the old rules to the new technology. Applying old rules of assessment, collection and enforcement to a new and different situation in a fast changing world of commerce and technology may resort to colossal revenue loss in Nigeria.

In other words, traditional rules are no longer applicable as solution to some tax problems emerging from e-commerce transactions. For instance, under assessment procedure, it is only a tax payer that is linkable or traceable to a fixed base that can subscribe to either self assessment procedure<sup>105</sup> or government assessment procedure<sup>106</sup>. Not only this, under enforcement procedure, the modes of litigation, search and levying of distress are only applicable to a taxpayer whose fixed base is known. It therefore presupposes that assessment, collection and enforcement procedures under the income tax in Nigeria may not be adequately applicable to e-merchants who are only traceable to their websites.

In order to identify suspicious transaction, their perpetrators and other person involved; the Federal Inland Revenue Service (Establishment) Act<sup>107</sup> empowers the Federal Inland Revenue Service to establish and maintain a system for monitoring international dynamics of taxation<sup>108</sup>. This clears or lessens the difficulties that the Revenue Authority will encounter in assessment, collection and enforcement of tax due to non-traceable of e-merchant to a particular fixed base.

But, the transactions of e-merchants are not necessarily suspicious one. These may be legitimate business transaction which may be devoid of any criminality. The only crux is that they are unlinkable to any fixed base on which they can be held

liable to pay income tax. Therefore, the above quoted section of FIRS Act 2007 does not and may not be said to envisage e-merchants in the course of electronic trading. It is worthy of note that the foregoing exposition is an attempt to bring forth the dilemma that a developing country like Nigeria may face with respect to the tax implications of the e-commerce, particularly if it is considered from the perspective of fixed base/permanent establishment concept under the income taxation in Nigerian.

The researcher (like other observers) is concerned about the shift from paper based records to electronic records which can easily be kept out of the reach of the tax authority. E-commerce is transacted through websites and internet. The website, on its own cannot meet the condition of geographical fixedity of a fixed base because of its intangible nature. As a result, the tax authority is weakened particularly in the areas of assessment, collection and enforcement of income tax in Nigeria. As this may be, the researcher finds that:

- i. Though the concept of fixed base/permanent establishment is crucial to the determination of liability of non-resident companies' income tax in Nigeria; but, electronic commerce which epitomizes borderlessness has weakened the strength and relevance of this concept.
- ii. The e-commerce has made it almost impracticable for the Revenue Authority to drag the traders in all the components of e-commerce into the income tax net. This is because, if they are unlinkable to a particular fixed base, it may be very difficult to hold them liable to tax.
- iii. The attempt made by this exposition is to confront the fixed base/permanent establishment concept with instances of electronic commerce only. As regards other sectors of business (other than e-commerce) the concept of fixed base is still relevant and there will always be demand for physical presence where there is need for establishment of business relationship on them.

## **CONCLUSION AND RECCOMENDATIONS**

This paper aims at a thorough analysis of some basic concepts under Corporation Tax Laws in Nigeria. In doing so, it attempts a justification for charging companies to tax distinct from dividends in the hands of the recipient. Besides, attempt was made to compare and contrast the definition of a company under the Companies and Allied Matters Act to the one under the Companies Income Tax Act.

The mandatory statutory provision of CAMA is clearly unambiguous in prohibiting the existence of a foreign company in Nigeria for any purpose (including carrying on business to make profit). The CITA on the other hand permits the existence of foreign companies and charge their profits derived from Nigeria to tax. The two enactments are Acts of the National Assembly made to serve both economic and fiscal purposes.

The researcher suggests a reconciliation or harmonization of the two seemingly conflicting key component of Nigerian economic policy. Furthermore, the policy of

charging the turnover as against the profit of companies to tax is detested as it is destructive to economic growth in Nigeria. Finally, technological advancement is goading the business world into exhibiting and achieving height of ingenuity hitherto undreamt of. Taxation is dynamic. So also is technology. The former cannot afford to stand still while the latter is a step ahead. This paper makes attempt to blaze the trail in thinking out ways of incorporating new legal corporate perspectives into Nigerian tax statutes to cater for electronic commerce.

## NOTES

<sup>1</sup> (1897) A.C. 22

<sup>2</sup> Section 9, Companies Income Tax Act, (CITA) Cap C 21,, Laws of Federation of Nigeria (LFN), 2004.

<sup>3</sup> Ibid, Section 19

<sup>4</sup> Sweeny C.A et al-Revenue Law in Australia, Butterworths, Durban, 1975 p. 187.

<sup>5</sup> See Wington F8 Lecture Series No 1 for Review of Economic Literature; See also Reamonn- The Philosophy of Corporate Taxation (1971) quoted in John Tiley-Revenue Law, Butterworths, London 2000 pp. 622-623.

<sup>6</sup> See Report of Richads on Committee on Turnover Taxation, 1964 also quoted in John Tiley op. cit (fn 5) p. 623.

<sup>7</sup> Cap C. 20 LFN 2004.

<sup>8</sup> Companies and Allied Matters Act, (CAMA), Cap C20, LFN 2004, Section 54.

<sup>9</sup> CITA,Cap C21, LFN, 2004, Section 13 (1)

<sup>10</sup> Tiley J. -Revenue Law, Butterworths, London, 2000, p. 622.

<sup>11</sup> Bryan A. Garner - Black's Law Dictionary, 8th edition, West Publishing Co., USA, 2004, p. 1500.

<sup>12</sup> Cap P 8, LFN, 2004, Section 12, See also Tiley J. op.cit (fn 10)

<sup>13</sup> Ibid.

<sup>14</sup> Abdulrazaq M. T\_\_ Nigerian Revenue Law, Matthouse Press Ltd, Lagos, 2005, p. 28.

<sup>15</sup> Tiley, J. op.cit (fn. 10)

<sup>16</sup> CAMA, Cap 20, LFN, 2004, Section 54.

<sup>17</sup> Ibid

<sup>18</sup> Ibid, Sections 56 and 59.

<sup>19</sup> Cap C21, LFN, 2004

<sup>20</sup> See also Petroleum Profits Tax Act, Cap P 13, LFN, 2004, Section 2.

<sup>21</sup> Companies Income Tax Act, 2004, Sections 40 (4), 47, 29 (10).

<sup>22</sup> CAMA, Section 55

<sup>23</sup> CITA, Section 13 (2).

<sup>24</sup> CITA, Section 105 and Petroleum Profit Tax Act (PPTA.), Cap LFN, 2004, Section 2.

<sup>25</sup> Nigerian Tax Reform in 2003 and Beyond- The Main Report of the Study Group on the Nigerian Tax System 2003, p 266.

<sup>26</sup> CITA, Section 23(b), op. cit.(fn 2)

<sup>27</sup> Second Schedule, Parts I & II of the 1999 Constitution

<sup>28</sup> CITA, Section 106

<sup>29</sup> Ibid, Section 13 (1)

<sup>30</sup> Ibid, Sections 11, 29 (10) and 106

<sup>31</sup> CITA, Section 29 (10)

<sup>32</sup> Ibid, section 13 (2) (a)

<sup>33</sup> Ibid, Section 13 (2) (b)

<sup>34</sup> Ibid, Section 13 (2) (c)

- <sup>35</sup> Ibid, Section 13 (2) (d)
- <sup>36</sup> Ibid, Section 14 (1)
- <sup>37</sup> Ibid, Section 15
- <sup>38</sup> Ibid, Section 16 (1)
- <sup>39</sup> Ibid, Section 16 (1) (b)
- <sup>40</sup> See the proviso to Section 16 (1) (b) CITA, 2004
- <sup>41</sup> Ibid. See also Arogundade J. A \_\_ Nigerian Income Tax & Its International Dimension, Spectrum Books Ltd, Ibadan, 2005, pp303-304 and Ola C.S \_\_ Incorporated Tax Law for corporate and Unincorporated Bodies in Nigeria, Heinemann Educational Books (Nig) Ltd, Ibadan p237
- <sup>42</sup> Cap C21, LFN, 2004
- <sup>43</sup> Colten Iron Company Vs Black (1881) 6 AC 315
- <sup>44</sup> CITA, Section 16 (1)(a)
- <sup>45</sup> Ibid, Section 16 (1) (c)
- <sup>46</sup> No 11 of 2007
- <sup>47</sup> Cap P8, LFN, 2004
- <sup>48</sup> Arogundade J. A op.cit (fn 41) p31
- <sup>49</sup> CITA, 2004, Section 10
- <sup>50</sup> Cap C21, LFN, 2004
- <sup>51</sup> Cap P13, LFN, 2004
- <sup>52</sup> 8th Edition, 2004, P1246
- <sup>53</sup> Ibid, p1246
- <sup>54</sup> The New Webster's Dictionary of the English Language, International Edition, 1993, p1064
- <sup>55</sup> CITA, 2004, Section 30
- <sup>56</sup> Nigerian Tax Reform in 2003 & Beyond op.cit p174(fn 25)
- <sup>57</sup> Toby R.A \_\_ The Theory and Practice of Income Tax, Sweet & Maxwell, London, 1978 p36
- <sup>58</sup> Ibid. See also Mayson S.W \_\_ Revenue Law, Blackstone Press Ltd, London, 1980, pp34-35
- <sup>59</sup> CAMA, Cap 20, LFN, 2004, Sections 56-59
- <sup>60</sup> IRC Vs. Lysaght (1927) 13 TC 511
- <sup>61</sup> Per Lord Warrington in Levene Vs IRC (1929) AC, 217, p232
- <sup>62</sup> Abdulrazaq M. T. op.cit. (fn 14) p169, See also Anthony Sumption \_\_ Taxation of Overseas Incomes and Gains, Butterworths, London, 1973 pp2-18
- <sup>63</sup> Toby R. A op.cit (fn 56) p36
- <sup>64</sup> CITA, op.cit (fn 19), Section 13(2)
- <sup>65</sup> Article 5, Double Taxation Relief (Between the Federal Republic of Nigeria and Government of the Kingdom of Belgium) Order 15 of 1997 (hereinafter referred to as Nigerian Double Taxation Agreement, DTA for short)
- <sup>66</sup> Ibid.
- <sup>67</sup> Arogundade J. A op.cit (fn 41) p32
- <sup>68</sup> (1976) APP/COMM/228 quoted in and culled from Arogundade J. A op.cit pp52-54
- <sup>69</sup> (1942) TC 453
- <sup>70</sup> (1932) 24 C.L.R (Australia) pp601-602
- <sup>71</sup> (2004) 3 NWLR (pt 859) 46 @ 63 paras F-H.
- <sup>72</sup> Toby R.A op.cit (fn 57) p37
- <sup>73</sup> Ibid.
- <sup>74</sup> Arogundade J. A op.cit (fn 41) p426
- <sup>75</sup> Swedish Central Railway Co. Ltd. Vs Thompson (1925) A.C 495
- <sup>76</sup> Unit Construction Co. Ltd Vs Bullock (1960) A.C 351, Per Lord Radclif
- <sup>77</sup> Supra (fn 75)
- <sup>78</sup> Quoted in and culled from Mayson S.W op.cit (fn 58) p539

- <sup>79</sup> Agreement Between the Government of the Federal Republic of Nigeria and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains; 9th June, 1987.
- <sup>80</sup> Economic Perspectives: An Economic Journal of the US Department of State Vol. 5, No 2, 2000, p2 quoted in Linus Ali - Corporate Criminal Liability in Nigeria, Malthouse Press Ltd, Lagos, 2008, p250.
- <sup>81</sup> The Economist, January 29, 2000, p10.
- <sup>82</sup> Bryan A. Garner\_\_Black's Law Dictionary, op.cit (fn 11), p551
- <sup>83</sup> Ibid
- <sup>84</sup> See Para. 3.8.1 ante
- <sup>85</sup> See 'e-dividend payment' in Daily Trust, p38, Friday, March 28, 2008
- <sup>86</sup> PITA 2004, Section 71(2); See also CITA, 2004, Section 82
- <sup>87</sup> Also known as electronic cash, electronic currency, digital money, digital cash or digital currency
- <sup>88</sup> The science or study of analyzing and deciphering codes using secret symbols
- <sup>89</sup> "[http:// en. Wikipedia.org/wiki/Electronic Money](http://en.Wikipedia.org/wiki/Electronic_Money)", 30th June, 2009 Note further that by on-line it means it is connected to a computer or internet; while off-line means it is concerned with a part of a computer system not connected to the central processing unit but controlled by a computer storage device.
- <sup>90</sup> Ibid
- <sup>91</sup> A Nevis Corporation
- <sup>92</sup> [www.e-gold.com](http://www.e-gold.com) , 30th June, 2009
- <sup>93</sup> Ibid
- <sup>94</sup> Ibid
- <sup>95</sup> Ibid
- <sup>96</sup> Arogundade, J. A op.cit (fn 41) p34
- <sup>97</sup> Grainger & Sons Vs Gough (1896) A.C 325
- <sup>98</sup> Macpherson & Co. Vs Moore (1926) 6 TC 107
- <sup>99</sup> Wilcock Vs Pinto & Co. (1925) 9 TC 111
- <sup>100</sup> (1971) N.M.L.R 339
- <sup>101</sup> Now Section 9, CITA, 2004
- <sup>102</sup> Goldface-Irokalibe I. J - Law of Banking in Nigeria ,Malthouse Press Ltd, Lagos, 2007, p 203
- <sup>103</sup> Ibid, pp 204-205
- <sup>104</sup> Arogundade, J.A op.cit, (fn 41), p 54
- <sup>105</sup> This is a system whereby a tax payer accesses himself.
- <sup>106</sup> This is a system whereby a tax payer is called upon to file tax returns and the tax office would make assessments to be served on him.
- <sup>107</sup> No. 13 of 2007 (hereinafter referred to as FIRS Act 2007)
- <sup>108</sup> Ibid Section 8 (1)(k)