

CHAPTER SIX



Overview of the Nigerian Tax System



Official Website – <http://www.nafdac.gov.ng>

6.1 REGULATORY AUTHORITY

The apex tax authority in Nigeria is the Federal Inland Revenue Service (FIRS), while every state in Nigeria has its own revenue service with the responsibility of collection of taxes.

6.2 Applicable Laws And Payable Taxes

6.2.1 VALUE ADDED TAX (VAT)

• Scope of coverage

All entities dealing on taxable supplies.

Rate of Tax

The rate is 7.5% of all VATable invoices with exemption for entities (small businesses) with turnover below N25 million.

Enabling laws

Value Added Tax Act Cap V1, LFN 2004, as amended to date.

Recent Amendments

- a. Increase of VAT rate from 5% to 7.5% (from 1st February 2020).
- b. Penalties associated with failure to register; file & notification of cessation/ change of address is N50, 000 in the first month of default and N25, 000 for subsequent months of failure.
- c. N25 Million Naira turnover threshold as the basis for charging and remitting VAT.
- d. VAT is now remitted on cash basis.
- e. Non-resident companies are now expected to register for VAT and also to include VAT in their invoices.
- f. The duty to self-charge or self-account for VAT is now an additional responsibility for taxpayers.

• Filing Obligations

21st day following the month of transaction

• Associated Penalties

- Non-filing of Returns
- The failure to file is N50, 000 for the first month of default then N25,000 for the subsequent months in which the default continues.
- Non-Payment of Taxes
- Penalties at 10% and interest at the prevailing market rate.

• Available Reliefs

Input VAT claim on goods purchased for re-sale; furthering production processes; raw materials other than those of a capital

nature.

6.2.2 STAMP DUTIES

Scope/Companies covered

Documents executed between a company and an individual, group or body of individuals.

Rate of Tax

The applicable rate is provided in the schedule to the Stamp Duties Act.

Enabling laws

Stamp Duties Act, CAP S8, LFN 2004 as amended to date.

Recent Amendments -

a. Electronic receipt or any money transferred in any bank or any bank account is to be accounted for by the person that received it at N50 for every N10,000 transaction.

Filing obligations

Payable on actual year basis in 12 equal monthly instalments of which the first instalment is due by the end of March.

6.2.3 PETROLEUM PROFIT TAX (PPT)

Scope/Companies covered

This is applicable to all entities operating in the oil & gas upstream sector.

Rate of Tax

The rate is 85% for Joint Ventures of taxable profits and 50% for Production Sharing Contracts.

Enabling laws

Petroleum Profits Tax Act (Cap P13 LFN 2004) as amended to date.

Recent Amendments -

a. Income and dividend received from companies in the upstream will now be subject to relevant taxes as provided in other enabling tax laws.

Filing Obligations

Payable on actual year basis in 12 equal monthly instalments of which the first instalment is due by the end of March.

Tax returns are filed on/before 31 May of every year.

Associated Penalties

- Non-filing of returns
- The Failure to file is N10, 000 for the initial default then N2,000 for the subsequent period in which the default continues.

6.2.4 PERSONAL INCOME TAX (PIT)

Coverage

PIT is levied on individuals' including employees, partners in a partnership, unincorporated trusts, joint ventures, families and communities. It is imposed based on source and residency rules.

Chargeable Income

- Employment income - Gross income includes salaries, wages, fees, allowances or other gains or profit from employment including compensations, bonuses, premiums, benefits-in-kind, gratuities, superannuation, and any other income derived solely by reason of employment.
- It is important to note that Benefits-in-Kind (BIK) such as official cars, accommodation, etc. provided to an employee by the employer are considered to be part of the employee's total emoluments for a particular period.
- Business Income – This includes business income derived by individuals, business enterprise, partnership, trusts and other unincorporated entities which have business place of operations in Nigeria.

Rate

PIT rate is applied on a graduated scale and taxable income band as set out below:

Tax ' = N =	Rate (%)
First 3 0 0 , 0 0 0	7
Next 3 0 0 , 0 0 0	1 1
Next 5 0 0 , 0 0 0	1 5
Next 5 0 0 , 0 0 0	1 9
Above N 1 . 6 M	2 1
Above N 3 . 2 M	2 4

6.2.5 INDUSTRIAL TRAINING FUND

The Industrial Training Fund (the Fund) was established by Law in 1971 to promote, accelerate and encourage the acquisition of indigenous skills required in industry and commerce to meet the

developmental needs of Nigeria.

The Industrial Training Fund provides direct specialised training in the areas of research and consultancy services, engineering and technology, management, human resource development, safety, computer and information training, vocational and apprentice training, accounting and financial management, advisory and management consulting.

The Industrial Training Fund Law mandatorily requires every employer having 25 or more employees with apprentices on its payroll, in each calendar year not later than the 1st day of April of each such year, to contribute one percent of the amount on its payroll to the Fund.

As stated above, every employer with more than 25 employees and apprentices must contribute one percent (1%) of the amount on its payroll to the Industrial Training Fund.

The Industrial Training Fund through its governing Council may refund up to 60% of the amount contributed by an up-to-date levy contributor/employer to the Fund if the Council is satisfied that the training programme of the employer for its employees in the relevant period is adequate. According to the Industrial Training Fund, the aim of the reimbursement scheme is to ensure that training activities of every employer is evenly distributed amongst the various strata of each employer's work force.

6.2.6 EDUCATION TAX

Scope/Companies covered

All registered Companies in Nigeria.

Rate of Tax

The rate of the tax is 2% of assessable profit

Enabling laws

Tertiary Education Trust Fund (Establishment, etc.) Act 2011

Filing obligations

This aligns with the annual returns filing period for corporate entities.

Associated Penalties

- Non-filing of returns
5% of the tax plus principal tax amount.
- Non-payment of taxes

Penalties at 10% and interest at the prevailing market rate.

6.2.7 CAPITAL GAINS TAX

Scope/Companies covered

All chargeable assets are subject to Capital Gains Tax when disposed at a gain aside those specifically exempted by the Act.

Rate of Tax

The rate is charged at a flat rate of 10% of chargeable gains.

Enabling laws

Capital Gains Tax Act, Cap C1 LFN 2004(amended)

Recent Amendments

a. Compensation for loss of employment below N10m to be exempted from CGT

6.2.8 COMPANIES INCOME TAX (CIT)

Introduction

Companies Income Tax (CIT) is a tax imposed on the profit of companies other than those involved in the oil & gas upstream sector. It is important to state that income from all sources are taxable except those exempted.

Rate of Tax

The rate is 20% of taxable profit for medium size companies (Turnover > N25 million < 100 million) and 30% for large companies (Turnover > N100 million).

Enabling laws

Companies Income Tax Act (CITA), Cap C21, LFN 2004 (amended)

Recent Amendments

1. The exemption of companies with less than N25 million annual turnover from payment of CIT.
2. Provision of exemptions for the application of excess dividend tax under Section 19 of the CIT Act.
3. Requirement of a Tax Identification Number (TIN) for opening of bank accounts or continued operation of existing bank account.
4. Commencement and cessation rules modified to eliminate overlaps.
5. Bonus of 2% of tax payable (medium-sized companies) and 1% for large companies for early payment of CIT.

Filing obligations

6 months after accounting year end.

Associated Penalties

Non-filing of returns

- The failure to file is N 25,000 for the first month of default, then N 5,000 for every subsequent month in which the default continues.

Non-payment of taxes

- Penalties of 10% and interest at the prevailing market rate

Available Reliefs

As detailed in the enabling tax law and regulations

6.2.9 WITHHOLDING TAX (WHT)

Scope/Companies covered

It is applicable on all relevant transactions except those exempted like imported goods; sales in the ordinary course of business; direct purchases from the manufacturers; exempted income; etc.

Rate of Tax

The rate is between 2.5% and 10% depending on the nature of transaction.

Enabling laws

Withholding tax regulations and other provisions in CITA, PPTA and PITA.

Recent Amendments -

1. WHT on technical, management and consultancy fees offered outside Nigeria shall be final.
2. WHT on construction contract is now 2.5%.

Filing obligations

21st day following the month of transaction for transactions with corporate entities and 30th day of the following month for transactions involving individuals.

Associated Penalties

- Non-payment of taxes

Penalties at 10% and interest at the prevailing market ranging from 19% - 21%.

6.3 OTHER INVESTMENT INCENTIVES AND TAX RELIEFS

6.3.1 TAX RELIEFS UNDER THE COMPANIES INCOME TAX ACT

The Companies Income Tax Act has provided a number of reliefs for some companies with respect to payment of taxes. The following reliefs are as follows:

1. The Finance Act has provided that a company whose turnover is below N25million is exempted from payment of companies' income tax.
2. A company is exempted from minimum tax if it meets the following conditions;
 - It is within its first four calendar years of business.
 - It has at least 25% of its paid up capital as imported equity.
 - It carries on agricultural trade or business.
3. The following are exempted from companies income tax for 10 years since 2nd January 2012:
 - Short term Federal Government securities such as Treasury Bills and Promissory Notes.
 - Bonds and Promissory Notes.
 - Bonds issued by corporate and supra-nationals and interest earned by holders of bonds and securities listed above.
4. Capital Allowances: Capital allowances are granted to companies against taxable income in lieu of the wear and tear of business assets. Rates of capital allowances are highest (95%) for expenditure on replacement plant and machinery for mining agricultural production, industrial plant and machinery, and motor vehicles used for public transportation.

6.4 PIONEER STATUS INCENTIVE IN NIGERIA

Pioneer Status is a form of tax holiday granted to certain qualifying industries and products for an initial period of three years which can be extended for another one or two years. This form of tax holiday exempts the companies or players in the qualified sectors from paying companies income tax for the number of years aforementioned.

For a company to enjoy a pioneer status tax holiday, it must prove that it will incur a capital expenditure in excess of N5, 000, 000. An application for pioneer status must be submitted within one year of the applicant company commencing commercial production otherwise the application will be time-barred.

REQUIREMENTS FOR PIONEER STATUS INCENTIVE

Application for Pioneer Status Incentive can be done online by downloading and filling the application form in the right order below

with the following requirements:

- Whether the Applicant Company is an indigenously controlled or foreign controlled company.
- Particulars of the assets on which qualifying capital expenditure will be incurred by the company, including their source and estimated costs.
- The probable date of commencement of production by the company.
- The location of the assets in respect of which qualifying expenditure will be incurred by the applicant company.
- The product and any by-product proposed to be or that is being produced by the company.
- Provide particulars of the loan and share capital, or the proposed loan and share capital of the applicant company or the proposed applicant company.
- Provide the names, addresses and nationalities of each Director, and the number of shares held by each such Director in the applicant company.
- Give the name(s), addresses and nationalities of each promoter in the case of a company that is yet to be incorporated.

The application form is to be accompanied with the following documents

1. Formal covering letter to the Executive Secretary of NIPC
2. A copy of the Certificate of Incorporation
3. Certified True Copy of form CAC 1.1
4. Certified True Copy of Memorandum and Articles of Association
5. Current Tax Clearance Certificate
6. A copy of Pensions Certificate of Compliance
7. A copy of Industrial Training Fund Compliance Certificate
8. A copy of Nigeria Social Insurance Trust Fund Compliance Certificate
9. A copy of NIPC Business Registration Certificate
10. A copy of the regulatory license(s) to operate in the sector or business activity (where applicable)
11. A copy of the approval letter received for any incentives/waivers/concessions/grants from other government agencies (where applicable)
12. A copy of five year business plan for the project

The following are industries which qualify for Pioneer Status:

1. **Agriculture**
 - Crop Production
 - Livestock
 - Fishing
 - Forestry

2. Mining/Quarrying

- Mining of Coal
- Mining of metal Ores
- Quarrying and Mining of other Minerals

3. Manufacturing

- Refining of crude oil and gas production
- Manufacture of food and beverage products
- Processing and preserving of fish and shell fish
- Processing and preservation of fruits, nuts and vegetables
- Manufacture of edible oils, meals and kernels
- Manufacture of dairy products
- Manufacture of grain mill products
- Manufacture of starches and starch products
- Manufacture of sugar
- Processing of cocoa
- Manufacture of coffee and tea products
- Manufacture of yeast, spices and condiments
- Manufacture of animal feeds
- Preparation, spinning of textile fibres, weaving of textile and manufacture of made up textiles
- Manufacture of wearing apparels
- Tanning and dressing of leather
- Manufacture of leather luggage and handbags
- Manufacture of leather footwear
- Manufacture of pulp and paper
- Manufacture of household and personal hygiene paper products
- Manufacture of basic chemicals
- Manufacture of fertilizers and nitrogen compounds
- Manufacture of pesticides and agrochemicals
- Manufacture of paint, varnishes and printing ink
- Production of enzymes
- Manufacture of pharmaceuticals and medical chemicals
- Manufacture of glass and glass products
- Manufacture of factory products
- Manufacture of cement, lime, plaster
- Manufacture of alum
- Processing and finishing of locally quarried stone
- Manufacture of rubber products and Manufacture of plastic products (builders' plastic ware) and moulds
- Manufacture of electric motors, generators, transformers and electricity distribution and control apparatus
- Manufacture of batteries and accumulators

- Manufacture of electrical lighting equipment
- Manufacture of wiring
- Manufacture of domestic appliances
- Manufacture of electronic components
- Manufacture of computer and peripheral equipment
- Manufacture of communication equipment
- Manufacture of consumer electronics
- Manufacture of measuring, testing and navigation equipment
- Manufacture of irradiation, electro medical and electrotherapeutic equipment
- Manufacture of optical instruments and photographic equipment
- Manufacture of basic iron and steel
- Manufacture of other non-ferrous metals
- Casting of metals
- Manufacture of tanks, reservoirs and containers of metal
- Manufacture of steam generators
- Manufacture of nails and other fabricated metals
- Manufacture of motor vehicles and components
- Manufacture of motorcycles and components
- Manufacture of tricycles and components
- Building of ships, boats and floating structures for transportation
- Manufacture of aircraft and components
- Manufacture of railway locomotives and rolling stock
- Manufacture of lifting and handling equipment
- Manufacture of office machinery and equipment
- Manufacture of power driven hand tools
- Manufacture of general purpose machinery
- Manufacture of agricultural and forestry machinery
- Manufacture of metal forming machinery and machine tools
- Manufacture of machinery for metallurgy
- Manufacture of machinery for mining, quarrying and construction
- Manufacture of machinery for food and beverage processing
- Manufacture of machinery for textile, apparel and leather production
- Manufacture of machinery for paper and paperboard production
- Manufacture of plastics and rubber machinery
- Manufacture of furniture
- Manufacture of medical and dental equipment and supplies

- Maintenance, repair and overhaul of aircrafts
- 4. Electral/Gas Supply**
 - Manufacture of gas and gas distribution
 - Electric power generation, transmission and distribution
- 5. Waste Management**
 - Waste management
- 6. Construction**
 - Civil Engineering works development and operations through PPP and BOT arrangements
 - Construction of building
 - Construction and operation of non-residential buildings
 - Construction and operation of industrial projects
 - Construction and operation of water projects
 - Construction and operation of utility projects
- 7. Trade**
 - E-Commerce Services
- 8. Information/ Communication**
 - Publishing of books
 - Software development and publishing
 - Motion picture, video and television programme production, distribution and exhibition
 - Music production, publishing and distribution
 - Telecommunication
- 9. Professional Services**
 - Photographic activities
- 10. Financials**
 - Real Estate Investment Trust (REITs)
 - Mortgage backed securities
- 11. Administrative Services**
 - Business process outsourcing
 - Transportation

6.5 FREE TRADE ZONES/ EXPORT FREE ZONES

Free Trade Zones Regulation:

All Free Trade Zones have their regulation that determines how they are regulated which is NEPZA, aside OGEFZ which has a different regulation i.e. OGEFZA. The laws regulating export trade zones are: Nigeria EPZ Act Cap N107 LFN 2004, Regulations and Operational Guidelines for Free Zones in Nigeria, 2004, issued pursuant to Section 10 (4) of the Nigeria EPZ Act (the NEPZ Regulations), the Oil and Gas Export Free Zone Act, 1996, the Oil and Gas Export Free Zones Regulations, 2003, the Oil and Gas Export Free Zone (Special Import Provisions) Order 2003, Central Bank of Nigeria Guidelines for Banking Operations in the Free Zones in Nigeria, 2016, as well as the various regulations of the EPZs.

Nigeria Export Processing Zones

The idea of the Nigeria Export Processing Zones Act was brought about to provide for the establishment of the Nigerian Export Processing Zones. It is responsible for promoting and facilitating local and international investments in Nigeria into licensed EPZs.

Under the Act there are seven permitted activities in Export Processing Zones, which are; manufacturing of goods for export, warehousing, customs clearance, handling of duty-free goods (marketing, sorting, packaging, trans-shipment), financial services (banking, stock exchange, insurance), import of goods and special services and activities relating to integrated zones; these activities are; oil and gas logistics, electrical and electronic products, textile products, garments, wood products, leather products, petroleum products, cosmetics and other chemical products.

There are General Private Export Trade Zones operating in Nigeria which are:

- Snake Island Integrated Free Zone (the first registered Export Trade Zone)
- LADOL Free Zone (provides onshore and offshore logistics support for hydro-carbon production and exploration)
- Lekki Free Trade Zone (home of over 95 enterprises)

License for Operating in Export Processing Zones

Enterprises that want to engage in activities within the EPZ have to apply in writing to NEPZA for permission of which NEPZA may grant a license for approved activity to an individual or business whether or not the business is incorporated in Nigeria.

The Types of Licenses issued by NEPZA are;

- **Free Zone Developers License:** granted to either a public or private entity or a combination of the two for the establishment, operation and management of an FZ in Nigeria under the

supervision, monitoring and regulation of NEPZA;

- **Free Zone Enterprise License:** granted for an enterprise to undertake an approved activity within an FZ. These activities could be manufacturing, trading or service provision; and

- **Export Processing Factory/Export Processing Farm License:** granted to an export-oriented manufacturing enterprise or farm located in Nigeria which has the capacity to export over 75% of its production.

Incentives in NEPZ

- Legislative provisions pertaining to taxes, levies, duties and foreign exchange regulations shall not apply within free trade zones.
- Repatriation of foreign capital investment at any time with capital appreciation of the investment, remittance of profits and dividends earned by foreign investor
- No import or export licenses shall be required
- Up to 100% of production may be sold in the customs territory against a valid permit and on payment of appropriate duties to the provisions of custom, excise, tariff etc.
- Importation of capital consumer goods, raw materials, components or articles intended to be used for the purpose of and in connection with an approved activity including any article for the construction, alteration, reconstruction, extension or repair of premises in a zone or equipping such premises in a zone shall be free of custom duty.
- Up to 25% of production may be sold in Nigeria against a valid permit and on payment of appropriate duties.
- Rent-free land at construction stage, thereafter rent shall be as determined by NEPZA.

Oil and Gas Export Free Zone

The enabling law for the OGEFZ in Nigeria is the OGEFZ Act, which designated the Onne/ Ikpokiri area of Rivers State as the sole oil and gas FZ in Nigeria. The bill provides that the President of Nigeria, on the recommendation of NEPZA, may designate any area as an Oil and Gas Free Zone or a special investment area.

License for Operating in the Oil and Gas Export Free Zones

Three types of licenses can be granted to prospective enterprises in the OGEFZ – a general licence, a special licence or a free zone enterprise licence. It is possible for an enterprise to be granted more than one of the above licences, and application for a licence(s) can only be made to and granted by the OGEFZA.

Incentives in OGEFZ

- Custom duties are not paid on equipment and machinery stored and consumed in the OGEFZ.
- No duties or levies are expected to be paid on FZ goods exported to other countries or on goods transferred into the OGEFZ from any port of entry in Nigeria under the authority of a document issued by the OGEFZA to the Nigeria Customs Service for the same purpose.
- A 75% duty rebate is allowed on raw materials processed in the OGEFZ.
- The OGEFZ Act provides that approved enterprises operating in the OGEFZ shall be exempt from all legislative provisions pertaining to taxes, levies and duties, and that foreign exchange regulations shall not apply within the OGEFZ.
- Those operating in the FZ shall be entitled to up to 100% foreign ownership of any business in the FZ and up to 100% foreign management of any business in the FZ.

Official Website – <https://www.firs.gov.ng/>