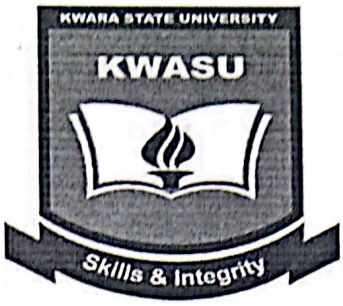
CamScanner



KWASULJ

VOL.2, NO. 1, 2021

ISSN: 2672-4332

This Journal may be cited as
Kwasulj, Vol. 2, NO. 1, 2021

All rights reserved. No part of this journal should be reproduced, stored in any retrieval system or transmitted in any form or by any means in whole or in part without the prior written consent of the copyright owner

A Publication of the Faculty of law
Kwara State University, Malete-Ilorin, Nigeria
http:journals.kwasu.edu.ng/index.php/law/index

EDITOR-IN-CHIEF

Prof. Abiodun Amuda-Kannike SAN

DEPUTY EDITORS

Assoc. Prof. Yahya Duro Uthman Hambali

Assoc. Prof. Hammed Adekunle Hanafi

Dr. Oyesola Olufemi Animashaun

ASSOCIATE EDITORS

Dr. Khafayat Yetunde Olatinwo

Halimat Tope Akaje (Mrs)

Mikaeel Ahmed Mohammed

SECRETARY

Kamaldeen Olaitan Salman

EDITORIAL BOARD

Prof. Abiodun Amuda-Kannike SAN	Dean of Law (Chairman)
Prof. Najeem Adeyemi Ijaiya	Kwara State University, Malete, Nigeria
Prof. Kayode Ibrahim Adam	University of Ilorin, Ilorin, Nigeria
Prof. Kola Odeku	University of Limpopo, South Africa
Prof. Kareem Olatoye	Lagos State University, Ojo, Nigeria
Prof. Abdurazaq Alaro	University of Ilorin, Ilorin, Nigeria
Prof. Olaide Abass Gbadamasi	Osun State University, Ifetedo, Nigeria

CamScanner

ADVISORY BOARD

Prof. Muhammed Mustapha Akanbi, SAN
Kwara State University, Malete, Nigeria

Prof. M.T. Abdulrazaq
Lagos State University, Malete, Nigeria

Prof. M.T. Ladan
Nigeria Institute of Advanced Legal Studies, Nigeria

Prof. Yahaya Yunusa Bambale
Ahmadu Bello University, Zaria, Nigeria

Prof. Abiola Sanni SAN
University of Lagos, Lagos, Nigeria.

Prof. Abdulmumini Bala Ahmed
Bayero University, Kano, Nigeria

Prof. Farid Sufian Shuaib
International Islamic University, Malaysia

Prof. Efe Useh
North West University, Mafikeng, South Africa.

Hon. Justice Kareem A. Adedokun
Oyo State Judiciary, Ibadan, Nigeria

CamScanner

CONTENTS

Effective Enforcement of Environmental Sanitation Laws: A Tool for Eradicating Open Defecation in Nigeria
Halimat Tope Akaje 1-13

Application of Alternative Dispute Resolution to the Resolution of Environmental Disputes in the Niger Delta Region
Oluwayemi Oluwadunsin Ogunkorode 14-25

Online Arbitration as a Mechanism for Settlement of E-Commerce Disputes
Abiola Adekunle Saheed 26-38

An Analysis of the Right of a Private Person to initiate and Prosecute Criminal Proceedings in Kwara State
Abubakar Shehu Ahmad Tijani & Abdulrazaaq Adelodun Daibu 39-47

Space Resources and Developing Nations: The Innuendo of Parallel Benefits
Olatinwo Khafayat Yetunde 48-57

Donor Anonymity and Right of Access to Personal Origins in Nigeria: A Critical Analysis
Obadan A. Abibu 58-68

Examining the Powers and Limitations of Company Directors and Officers
B.S. Shoroye 69-79

Challenges of Taxing the Informal Sector in Nigeria
Olariyike Damola Akintoye 80-93

Examination of Taxation of Employment Income under the Personal Income Tax Act
Isau Olatunji Ahmed 94-103

Should Petroleum Profits Tax in Nigeria be in the Exclusive or Residual Legislative List?
Oyesola Animashaun 104-115

Analysis of the Legal Frameworks for Combating Cyber Crimes: A Tool for Economic Development in Nigeria
Olujobi Olusola Joshua 116-131

CamScanner

CONTENTS

The Regulation of Armed Conflict through Means and Methods of Warfare
Amade Roberts Amana 132-14

Securing Sustainable Development through Reform of Anti-Corruption Strategies in Africa: A Peep into the New Partnership for Africa's Development
Hanafi Adekunle Hammed 143-15

Unfair Prejudice Petition and Protection of Company's Interest Under the Companies and Allied Matters Act (CAMA) 2020
BS. Shoroye 158-16

Application of Corporate Personality Doctrine under the Nigerian Corporate Law and Shari'ah
Ahmed A. Muhammed-Mikaaeel 170-18

Liability for Medical Negligence under Islamic Law
Ibrahim Yahya Abikan & Fatai Abdul Tijani 182-19

Analysis of Misconception of Nature of Dissolution of Nikāḥ at the Instance of Wife under Islamic Family Law
AbdulWahab Muhammad Jamiu Elesin 198-20

Legality of the Right to Self-Defence under Islamic Law
Kamaldeen Olaitan Salman 207-213

A Critical Appraisal of Judicial Attitude Towards Judicial Corruption in Nigeria
Ibrahim Shuaib & Halima Jimada 214-224

CamScanner

Examination of Taxation of Employment Income under the Personal Income Tax Act

Isau Olatunji Ahmed*

Abstract
Every country in the world tends to generate income through taxation. In Nigeria, taxation of employment income constitutes a major source of revenue for State governments. Over the last couple of decades, taxation of employment income has become a major source of internal generated revenue for State government. The prominence of taxation of employment income has grown in the face of reduction of revenue allocation to the States owing the low prices of crude oil in the international market. Taxation of employment income in Nigeria is administered under the Personal Income Tax Act (PITA). This paper examines the taxation of employment income under the Personal Income Tax Act (PITA).
Keywords: Taxation, Employment, Revenue generation, Personal Income Tax

1. Introduction

Taxation of employment income is a major source of generating internal revenue for State Government in Nigeria.[1] State governments in Nigeria are known for their over-reliance on revenue allocation from the Federal Government which is usually based on sale of crude oil. However, over the years, there has been reduction of revenue allocation to the States due to the low prices of crude oil in the international market.[2] This has spurred various States in country to look for ways to boost their internally generated revenue.[3] It is therefore not surprising to see that State governments nowadays have become more aggressive in taxing employment income to increase their revenue.[4] This paper examines the taxation of employment income in Nigeria under the Personal Income Tax.

2. Employment Income

Employment is a contractual relationship whereby a party (known as the employee) is hired or employed by another party (known as the employer) to provide labour services on a regular basis in exchange for compensation.[5] In other words, in an employment situation, the employee works in return for payment by the employer.[6] This definition of employment is supported by the provision of Sections 3 (2) (d) Personal Income Tax (Amendment) Act 2011 which defined employment to include "any service rendered by any person in returns for any gains or profits."

What can be deduced from the above definition of employment is that, in rendering his labour services to his employer, an employee is entitled to be compensated for his services. In Nigeria, compensation received by an employee for his labour services is known as 'personal emolument'.

---

*Ph.D., ACTI, Dept of Business and Private Law, Faculty of Law, Kwara State University, Malete, Email: ahmed.isau@kwasu.edu.ng Tel: 07030070078

[1] Enejo S. and Gabriel T., Taxation and Revenue Generation: An Empirical Investigation of Selected States in Nigeria, Journal of Poverty, Investment and Development (2014) Vol. 4 pp 102-104

[2] Ibid

[3] Onuigbo R. A. and Eme O. I., State Governors and Revenue Allocation Formula in Nigeria: A case of the Fourth Republic, International Journal of Accounting Research (2015) Vol. 2 No. 7 pp. 14-30

[4] Ibid

[5] Risatu Robert A., 21st Century Business: Intro to Business (2nd Ed., South Western Cengage Learning, Mason, United States of America 2010) 74

[6] Garner B. A., 'Black's Law Dictionary' (9th Ed., West Publishing Co., Thomson Reuters United States of America) 604

CamScanner

Personal emoluments means "wages or salaries and allowances (including benefits in kind), gratuities, superannuation and any other income derived solely by reason of employment."[7] This means that any salaries, fees, wages, perquisites, allowances and any other form of benefit received by an employee in respect of labour services rendered to the employer will be regarded as an employment income.

It is however important to state that it is not every payment made to an employee by an employer that will be regarded as an employment income. For a payment to qualify as an employment income, such payment must be made in reference to the services rendered by the employee by virtue of his employment, and it must be something in the nature of a reward for services, present or future."[8]

Accordingly, what determines whether a payment will be regarded as an employment income is whether the office or employment is the source of the payment.[9] Thus, where an employee receive a payment that is not tie to his employment, such payment may not be regarded as an employment income.

3. Legislation on Taxation of Employment Income in Nigeria

The principal legislation on the taxation of employment income in Nigeria is the Personal Income Tax Act. The Personal Income Tax Act was introduced in 1993 to replace the Income Tax Management Act (ITMA) of 1961.

Since its introduction in 1993, PITA had undergone series of amendments. For instance, in 1994, to achieve progressive taxation, 30% ceiling was set for PIT. Child allowance was first increased to N1000 and then, in 1996, to N1500 per child payable up to four children. In 1998 this was increased to N2500 per child. In addition, tax relief to low-income earners was increased to N2500, and individual marginal taxes were decreased from 30% in 1995 to 25% in 1996. The present legislation on the taxation of employment income in Nigeria is the Personal Income Tax Act 2011 (as amended). A brief overview of the legislation is provided hereunder.

In 2011, there was a major amendment to the Personal Income Tax Act (PITA). This amendment was borne out of the recommendation of the Prof. Dotun Philips Study Group and the Working Group which reviewed the key recommendations of the Study Group.[10] The Reports of both Groups revealed that certain provisions of the Act are archaic, hence, cannot meet the challenges of modern tax administration.[11] Pursuant to this, the Personal Income Tax (amendment) Bill was recommended by the Joint Tax Board as an Executive Bill and was forwarded by the Federal Executive Council (in consultation with the National Economic Council) to the National Assembly in 2005, along with eight other Bills seeking to amend existing tax laws. The other Bills included the Companies Income Tax Amendment Bill, and the Federal Inland Revenue Service (Establishment) Act Bill.

In December 2011, the Personal Income Tax (amendment) Act Bill was assented to by President Goodluck Jonathan but was dated 24th June, 2011.[12] This generated a lot of controversy about the commencement date and the Joint Tax Board intervened to state that by 1st April, 2012, taxpayers and tax

---

[7] Section 2(8) Personal Income Tax (Amendment) Act 2011

[8] *Hochstrasser* v. *Mayes* [1960] A.C. 376 at p. 388.

[9] *Pritchard* v. *Arundale* (1972) 47 T.C. 680.

[10] Joint Tax Board, 'Highlights of the Personal Income Tax (Amendment) Act, 2011', http://www.jtb.gov.ng/node/95 accessed on 27 November 2021

[11] Ibid

[12] The Amendment was published in the Official Gazette of the Federal Republic of Nigeria notice no. 175 dated 24th June 2011

CamScanner

authorities should be ready to start implementation.[13] The Amendment Act addresses some of
challenges in the Principal Act and it is worth to mention a few of this.

The Amendment Act brings the Personal Income Tax Act up to date with existing realities of the Nige
economy. It introduces a more equitable tax system by providing realistic tax rates, and recommending
efficient and effective tax administrative system, and simpler tax laws. It empowers tax authorities to sh
from direct to indirect taxation by lowering direct tax rates. In fact, the thrust of the Amendment is in li
with the National Tax Policy of the Government which aims at tax burden reduction, equitable incor
redistribution, and a shift from direct to indirect taxation.

The Amendment Act redistributes income by reducing the overall burden of low and middle incor
earners, shifting it to higher net worth individuals. This is in consonance with the principles of taxation
enunciated in Adams Smith's treatises. It also introduces a simplified process of compliance which w
enhance voluntary tax compliance and a subsequent increase in tax revenue generated.[14]

The Amendment Act introduces the Tax Appeal Tribunal (TAT) which was established by Section 59
the Federal Inland Revenue (Establishment) Act, 2007.[15] The Tax Appeal Tribunal replaces the defu
Body of Appeal Commissioners.[16] This body is established to adjudicate over disputes arising from t
operations of the FIRS Act and other Acts listed in its First Schedule (PITA included). In other wor
this provision of the amended Personal Income Tax Act only brings it in line with the existing provisi
of the FIRS Act. TAT is now to provide an independent outlet for aggrieved taxpayers complaints a
speedy resolution of dispute.

The Amendment Act increases the minimum tax payable from 0.5% of total income to 1% of to
income.[17] The import of this is that low income earners e.g. interns and contract staff are now to p
taxes. The Amendment Act broadens the mode of serving a Notice of Assessment on taxpayers. It ma
now be sent by courier service or electronic mail.[18] The Amendment Act also amends Section 10 of PIT
Section 4 of the Personal Income Tax (Amendment) Act 2011 now defines the period of residency
Nigeria to include the period of annual leave or temporary period of absence. This clause now essential
captures itinerant tax avoiders and brings them into the tax net. Similarly, there is an amendment of th
definition of "Principal Place of Residence" in the Personal Income Tax (Amendment) Act 2011. A
individual who works in the branch office or operational site of a company or other body corporate, th
place at which the branch office or operational office or operational site is situated, which includes o
terminals, oil platforms, flow stations, factories, quarries, construction sites with a minimum workforce
50 workers, shall be the Principal Place of Residence for purposes of charging personal income tax.

The issue of residency is a topical one that deserves additional discourse. It would appear that th
residency rule which obligates a taxpayer to pay to the relevant tax authority where he resides still stands
what has now been amended is the principal place of residence which should be considered when a
individual has more than one residence. A challenge with this amendment is whether camps, hotels o
restrooms, provided for an oil company employee by his employer qualify as a principal place o
residence, given the PITA that provides that a place of abode shall exclude these places. It is assumed tha
the provision in the PITA will still stands.

[13] Joint Tax Board, 'Highlights of the Personal Income Tax (Amendment) Act, 2011', http://www.jtb.gov.ng/node/95 accessed on 27 November 2021
[14] Ibid
[15] Section 14 of the Personal Income Tax (Amendment) Act 2011
[16] Section 60 of the Personal Income Tax Act 1993 CAP P8
[17] Section 7of the Personal Income Tax (Amendment) Act 2011
[18] Section 13 of the Personal Income Tax (Amendment) Act 2011

CamScanner

The Amendment Act now requires the President, Vice President and all other political office holders exempted from paying taxes in the previous legislation to now pay tax.[19] The Amendment Act further amends the computation of tax. It retained the progressive tax rate as provided under the 1993 PITA. However, the highest tax rate was reduced from 25% as provided under the 1993 PITA to 24% while the lowest tax rate was increased from 5% as provided under the 1993 PITA to 7%. The lowest annual income tax band was increased from N3,000 to N300,000 and the highest annual income tax band was increased from N160,000 to N3,200,000.[20]

The Amendment Act provides for the following deductions that are tax exempt: National Housing Fund Contribution, National Health Insurance Scheme, Life Assurance Premium, National Pension Scheme and gratuities. Taxpayers can take advantage of these allowable deductions to minismise the tax payable as there is no ceiling to the amount an income earner can contribute. [21] The Amendment Act replaced the personal relief with a Consolidated Relief Allowance (CRA) of N200, 000 subject to minimum of 1 percent of gross income whichever is higher plus 20 percent of the gross income.

The Amendment Act provides that Benefit in Kind (BIK) is to be considered in determining an employee's gross emolument. The import of this provision is that Political Office Holders with a retinue of domestic staff, official cars and occupying official quarters, for instance, will have to pay taxes in respect of these benefits.[22] The Amendment Act also introduces stiffer penalties and offences geared towards enhancing compliance. These include, but are not limited to the following: Any taxpayer who failed to file annual return is now an offence that attracts a fine of N500, 000 for corporate bodies and N50, 000 for individuals.[23]

The thrust of the amendment is to bring the Personal Income Tax Act in line with existing realities in the Nigerian economy and the National Tax Policy of the Government which aims at tax burden reduction, equitable redistribution of income, promoting tax compliance and a radical shift from direct to indirect taxation. The advent of the Personal Income Tax (Amendment) Act 2011is a good opportunity for employers to carry out a PAYE health check, and maintain a simple payroll structure for easy administration and annual consolidation.

3.1 Amendments to the Personal Income Tax Act (PITA) under the Finance Act 2020

On the 31st day of December 2020, President Muhammadu Buhari, GCFR, assented to the Finance Bill 2020 which had earlier been passed by both the Senate and the House of Representatives respectively on 15th December 2020 and 17th December 2020.[24] With this assent, the Finance Bill 2020 became known as the Finance Act, 2020.

The Finance Act, 2020, which has a commencement date of 1st January 2021,[25] made some significant and key changes to existing tax laws in Nigeria such as Capital Gains Tax Act (CGTA), Companies Income Tax Act (CITA), Personal Income Tax Act (PITA), Value Added Tax (VAT) Act (VAT Act), the Stamp Duties Act (Stamp Duties Act), Tertiary Education Trust Fund (Establishment, etc.) Act (TETFA) and Industrial Development (Income Tax Relief) Act (IDITRA).[26]

---

[19] Section 33(a)of the Personal Income Tax (Amendment) Act 2011)
[20] See the Sixth Schedule to the Personal Income Tax (Amendment) Act 2011
[21] Section 34(2) of the Personal Income Tax (Amendment) Act 2011
[22] Section 2 of the Personal Income Tax (Amendment) Act 2011
[23] Sections 20 of the Personal Income Tax (Amendment) Act 2011
[24] Ayodeji Adegboyega, 'Buhari signs Finance Bill into Law' <https://www.premiumtimesng.com/news/headlines/372358-buhari-signs-finance-bill-into-law.html> accessed on 19 November 2021
[25] Section 80 of Finance Act, 2020
[26] Section 1 of Finance Act, 2020

The Finance Act, 2020 also made changes to regulatory laws such as the Federal Inland Revenue Ser (Establishment) Act, Nigeria Export Processing Zones Act and Oil and Gas Export Free Zone Act.[27] addition, in the wake of the COVID-19 pandemic, the Finance Act 2020 also introduced the COVID- incentives for taxpayers to relieve tax liability. The key amendments to the Personal Income Tax A under the Finance Act 2020 are considered below

a. Significant Economic Presence

The Finance Act, 2020 introduced the Significant Economic Presence (SEP) rules in a new Section 6 (A of PITA which applies to taxation of non-resident individuals, executors or trustees carrying on a trade business comprising Technical, Professional Management or Consultancy (TPMC) services to perso resident in Nigeria.[28] By this amendment, non-resident individuals, executors or trustees providi technical/management/consultancy/professional services would also be subject to WHT at 5% as the fin tax. The implication of this amendment is that foreign persons earning business profits from Nigeria a taxed under Section 6 of PITA once a fixed base/taxable presence is created subject to existing treati This amendment corrects the oversight of the Finance Act, 2019 and aligns the relevant SEP provision the CITA with the PITA.[29]

b. Pension Contributions

The Finance Act 2020 amended Section 20(1) of PITA by including a new Section 20 (1g) whic specifically limit tax relief for pension contributions only to schemes, provident or retirement benefi fund that are recognized under the Pension Reform Act (PRA) 2014.[30]

The implication of this amendment is that any pension contribution made into a scheme not recognize under the PRA 2014 will not qualify for tax deduction.[31] Thus, individuals who contribute to foreig schemes will not be able to claim a deduction in Nigeria for such contributions. It is therefore importa for employers to ensure that only contributions to approved pension schemes under the PRA are treated a an allowable deduction on payroll.[32]

c. Commencement and Cessation Rules

The Finance Act 2020 amended Sections 24 and 25 of PITA to provide that the commencement an cessation rules for computing income tax payable by a new and liquidating business respectively, shoul reflect the business's actual accounting period and date of cessation.[33]

By this amendment, the Finance Act, 2020 aligns the provisions of PITA with the current CIT provisions (as introduced by the Finance Act 2019). This simplifies the commencement and cessatio rules for new and cessation businesses and eliminates the risk of double taxation for commencement an cessation of businesses.[34] Entities ceasing business are required to remit the tax liabilities due not late than three months from its date of cessation.[35]

---

[27] Ibid

[28] Section 25 of Finance Act, 2020

[29] KPMG, 'Finance Act, 2020-Impact Analysis' <https://home.kpmg/ng/en/home/insights/2021/02/finance-act-2020-impact-analysis.html> accessed on 19 November 2021

[30] Section 26 of Finance Act, 2020

[31] Ernst & Young, 'Nigeria: Highlights of Finance Act 2020'<https://www.ey.com/en_gl/tax-alerts/nigeria-highlights-of-finance-act-2020> accessed on 16 October 2021

[32] Ibid

[33] Sections 27 and 28 of Finance Act, 2020

[34] KPMG, 'Finance Act, 2020-Impact Analysis' <https://home.kpmg/ng/en/home/insights/2021/02/finance-act-2020-impact-analysis.html> accessed on 19 October 2021

[35] Section 25 of Companies Income Tax Act, 2020 (as amended)

CamScanner

This revision of commencement and cessation rules will prevent possible double taxation which previously applied to a new enterprise on its profits of at least 12 months within the first 3 years of assessment. Also, the possibility of any accounting period escaping taxation during cessation has been eliminated.[36]

d. Redefinition of Gross Income

The Finance Act 2020 amended Section 33(2) of PITA by providing the following definition of Gross Income: 'For the purposes of this Section, "gross income" means income from all sources less all non-taxable income, income on which no further tax is payable, tax-exempt items listed in paragraph (2) of the sixth schedule and all allowable business expenses and capital allowances.'[37]

This amendment redefined gross income for the purposes of determining the Consolidated Relief Allowance (CRA).This amendment has clarified what constitutes "gross income" for the purpose of computing Consolidated Relief Allowance (CRA). Thus, by virtue of this new definition, CRA is no longer calculated on non-taxable income on which no further tax is payable and tax-exempt items listed in paragraph (2) of the Sixth Schedule to the PITA and all allowable business expenses and capital allowance. This amendment could result in an increase in tax payable by individuals.[38]

The implication of this amendment is that tax exempt items should now be deducted from gross emolument before computing the CRA. This means employees will no longer enjoy the additional 20% relief previously claimable on the portion of their income that relates to National Housing Fund, Pension Contribution, and other tax exempt items. The reduction in CRA would result in higher effective tax rate and lower disposable income. Employers need to update their payroll templates or applications to ensure compliance.[39]

Furthermore, the Finance Act, 2020 amended Section 33 (3) of the PITA to reinstates the relief by way of deduction for the premium paid by an individual to an insurance company in respect of insurance for his life or that of his spouse or contract of deferred annuity for his own life or that of his spouse in the preceding year of assessment.[40] This amendment reinstates treatment of life insurance premium as an allowable deduction which was previously eliminated by the Finance Act 2019 probably due to error. This means that individuals can now claim tax reliefs on premium payments on their life assurance or that of their spouse.[41]

e. Tax Exemption for Minimum Wage Earners

The Finance Act 2020 amended Section 37 and Paragraph 33 of the Third Schedule of PITA to introduce a tax exemption for persons whose gross income is less or equal to the National Minimum Wage, as defined in the National Minimum Wage Act.[42] Accordingly, employees who earn not more than the National Minimum Wage (currently N30,000.00) are not liable to tax or deduction of monthly PAYE. In addition, the Finance Act 2020 amended Section 108 of the PITA to include the definition of "Board" under section 86 of PITA as the "Joint Tax Board" and "National Minimum Wage" as the existing National Minimum Wage pursuant to the National Minimum Wage Act.[43] Sections 23, 48, 73, 86, 89, 93

---

[36] Ibid

[37] Section 29 of Finance Act, 2020

[38] Ernst & Young, 'Nigeria: Highlights of Finance Act 2020'<https://www.ey.com/en_gl/tax-alerts/nigeria-highlights-of-finance-act-2020> accessed on 16 October 2021

[39] Ibid

[40] Section 33(3) of Companies Income Tax Act, 2020 (as amended)

[41] Ibid

[42] Section 30 and 33 of the Finance Act, 2020

[43] Section 31 of the Finance Act, 2020

CamScanner

and 106A of PITA were also amended by substituting for the word, "Service", the word, "[illegible]" wherever it appears in the sections.[44] This represents a correction of the drafting errors in the Finance [illegible] 2019.[45]

4. Basis of Taxation of Employment Income in Nigeria

The basis of taxation of employment income in Nigeria can be found in Section 3(1) (b) of the Pers Income Tax Act 2011 (as amended). By virtue of the provision, any "salary, wage, fee, allowance or [illegible] gain or profit from employment including compensations, bonuses, premiums, benefits or [illegible] prerequisites allowed, given, or granted by any person to temporary or permanent employee chargeable to tax. This implies that any compensation received by an employee from his employer virtue of his employment is taxable irrespective of any name or title given to such compensation.

It is also important to note that non-cash incentives such as Benefits in Kind are also taxable due to fact that they are regarded as part of gross emoluments under Section 33(2) of the Personal Income (Amendment) Act 2011. The implication of this is that where an employee is provided with Benefit Kind by virtue of his employment, such Benefits in Kind will be regarded as taxable benefits. Example Benefit in Kind include provision of accommodation or motor vehicle to an employee.

The valuation of Benefits in Kind for taxation purpose is provided under Sections 4 and 5 of the Perso Income Tax Act 2011. In case of accommodation, the employee will be treated as receiving a taxa benefits which is equal to the annual value of the premises based on local rates or as may be determi by the relevant tax authority. To assist taxpayers on the valuation of accommodation for tax purpo some tax authorities such as the Lagos State Internal Revenue Service (LIRS) issued a guideline in t regard. The guideline provides that accommodation benefit provided to an employee will be taxa where it is available to the employee on a permanent basis (that is for an extended period of more than days) or where the employer pays the rent which the employee is ordinarily expected to pay. In su situation, the taxable value of a leased accommodation is the rent paid and where the accommodation owned by the employer, the taxable value shall be the commercial rental value of comparable propert in a similar location. The taxable benefit of a hotel accommodation exceeding 90 days is the amount p by the employer for the hotel room or the room rate. However, the accommodation benefit will not taxable where the employee has a personal/primary accommodation running at the same time and t accommodation is necessitated by business reasons.

With regard to other Benefits in Kinds other than accommodation such as an asset, where an employee provided with assets which continue to belong to an employer for his own (employee) benefit, t employee shall be deemed to be in receipt of annual benefits of an amount equal to 5% of the cost of t asset for tax purposes. Where the cost of the asset cannot be ascertained, 5% of the market value at t time of the acquisition as determined by the relevant tax authority will constitute the taxable benefit to th employee.

It should be noted that where the employment income of an employee cannot be easily ascertained, th tax authority can resort to use deemed income. Deemed income is an assumed or presumptive incom used mainly when the income cannot be easily ascertained. The deemed income is meant to guide ta authorities in determining the income earned by an employee where his income cannot be ascertained Deemed income chart is usually prepared by various States Internal Revenue Service, cuts across different professions and nationalities and have also been stratified into different categories ranging from Technicians to Managing Directors.

[44] Section 32 of the Finance Act, 2020

[45] Ernst & Young, 'Nigeria: Highlights of Finance Act 2020'<https://www.ey.com/en_gl/tax-alerts/nigeria-highlights-of-finance-act-2020> accessed on 16 October 2021

CamScanner

5. Tax Computation on Employment Income

Determining the amount of tax to be paid on the employment income of an employee involves three basic steps. The first step is to identify the gross emoluments of the employee from the employment. As stated earlier, gross emolument is inclusive of wages, salaries, allowances (including benefits in kind), gratuities, superannuation and any other incomes derived solely by reason of employment.[46] This means that any income received by the employee by virtue of his employment as well as the value of the Benefit in Kind will form part of the gross emoluments.

The second step is to ascertain the taxable income out of the gross emoluments. This involves deducting the reliefs and income and allowances that are exempted from taxation from the gross emoluments to arrive at the taxable income. A Consolidated Relief Allowance (=N=200, 000 subject to minimum of 1 percent of gross income whichever is higher plus 20 percent of the gross income) is granted in Section 33(1) of the Personal Income Tax (Amendment) Act 2011.[47]

In addition, there are certain deductions that are not taxable such as the National Housing Fund Contribution, National Health Insurance Scheme, Life Assurance Premium, National Pension Scheme and gratuities.[48] Any employee that is a contributor to any of this scheme will be entitled to enjoy the relief of having his contributions in this regard deducted from the gross emolument which can relief his tax burden. However, any employee who is not a contributor to any of the schemes listed above cannot enjoy the reliefs granted.

It is important to note that Section 33 (3) of the Principal Act which grants children allowance, dependent relative allowance, premium on life assurance and disability allowance was neither amended nor deleted but was only re-numbered as subsection 4. Furthermore, the provision of Section 3 (1) (b) of the Principal Act which grants non-taxable allowances on housing, transport, meal subsidy, utility, entertainment, leave grant, etc. to tax payers was also neither amended nor deleted. The implication of this is that these non-taxable reliefs and allowances granted by both Section 33(4) and Section 3(1) (b) can be claimed in addition to the Consolidated Relief Allowance.

The third step is to compute the tax on the taxable income. After deducting non-taxable allowances from the gross emolument, the balance is the taxable income. It is on this taxable income that tax will be computed on the applicable tax rates. The applicable tax rates is specified below:

Income Tax Rates

These tax rates are graduated:[49]

- First N300,000 at 7%
- Next N300,000 at 11%
- Next N500,000 at 15%
- Next N500,000 at 19%
- Next N1,600,000 at 21%
- Above N3,200,000 at 24%

After remitting his taxes to the relevant tax authority, the employee can demand for the issuance of a Tax Clearance Certificate from the tax authority. A Tax Clearance Certificate is an official document issued by the tax authority to a taxpayer certifying that the tax assessed on the income of the person for the three

[46] Section 33 (2) of the Personal Income Tax (Amendment) Act 2011
[47] Section 33 (1) of the Personal Income Tax (Amendment) Act 2011
[48] See the Sixth Schedule to the Personal Income Tax (Amendment) Act 2011
[49] See the Sixth Schedule to the Personal Income Tax (Amendment) Act 2011

years immediately preceding the current year of assessment has been duly paid. Such tax [illegible] certificate is issued only issued to an employee who has settled his tax liability and which must have [illegible] remitted to the relevant tax authority.

6. Pay as you Earn

Taxation of employment income in Nigeria is operated through the Pay-As-You-Earn (PAYE) [illegible] Under the scheme, the employer is regarded as an unpaid agent of the tax authority and as such [illegible] expected to deduct taxes on salaries, wages, bonuses, allowances and benefits in kind. The [illegible] ensures that tax withheld monthly from employee's salaries and wages are remitted to the relevant [illegible] authority. The running and operation of the PAYE scheme is guided via 'Operation of Pay as you Ea [illegible] (PAYE) Regulations' (PAYE Regulation) which is a subsidiary legislation to the Personal Income Tax [illegible] Act.

Employers of labour are expected to use this PAYE Regulation as the standard for making tax deductions [illegible] and tax payments to tax offices in respect of their employees on a monthly basis. The Regulation applies [illegible] all incomes (i.e. emoluments which includes salary and allowances and benefits in kind) of an employee [illegible] derived or deemed to be derived from Nigeria whether or not such income is received in Nigeria. [illegible] Employers of Labour, Agents and Consultants should ensure that all employees make full disclosure [illegible] all their incomes at the beginning of the year (whether or not such income is received in Nigeria or in [illegible] when tax Forms 'A' are completed by them before returning same to the tax office. Such disclosure [illegible] should encompass as required by law all incomes earned, accruable, derived or accumulated in Nigeria [illegible] This includes disclosure of income paid both in Nigeria and outside Nigeria as well as full disclosure [illegible] all salaries and allowances paid either in cash or in kind.

It must be noted that any employers of labour, tax agents, consultants and employees who engage [illegible] incomplete disclosure of income are liable to be charged for concealment of information with intent [illegible] defraud the Government of Nigeria which is chargeable under the criminal code of Nigeria. It is therefore [illegible] important for all employers of labour both in the public and private sectors, to fully implement the [illegible] contents of the PAYE Regulation in order to ensure a hitch free Pay-As-You-Earn (PAYE) Tax Scheme [illegible] operation.

By virtue of the PAYE Regulation, all employers of labour are expected to register with the relevant tax [illegible] authority as an agent of the State Government, for the purpose of deducting and remitting PAYE tax from [illegible] the employee's employment emoluments. Accordingly,an employer shall register with the relevant tax [illegible] authority for the purposes of deducting income from his employees with or without formal notification or [illegible] direction by the relevant tax authority. The employer shall within six months of commencing a business [illegible] deduct tax from emoluments of his employees and remit to the re levant tax authority. Where an employer [illegible] fails to or refuses to register with the relevant tax authority within the period of time as stipulated by the [illegible] PAYE Regulation, such employer will be liable on conviction to pay =N=25,000 in addition to the [illegible] payment of arrears of the tax due.

7. Conclusion

The paper provides a basic and simple understanding of taxation of employment income in Nigeria. [illegible] Taxation of employment income in Nigeria is administered under the Personal Income Tax Act which [illegible] was recently amended under the Finance Act 2020. The paper revealed that any compensation received by [illegible] an employee from his employer by virtue of his employment is taxable under Section 3(1) (b) of the [illegible] Personal Income Tax Act 2011 (as amended) irrespective of any name or title given to such [illegible] compensation.

CamScanner

The paper further revealed that determining the amount of tax to be paid on the employment income which involve three basic steps. The first step is to identify the gross emoluments of the employee from the employment. The second step is to ascertain the taxable income out of the gross emoluments. The third step is to compute the tax on the taxable income.

It is also revealed in this paper that taxation of employment income in Nigeria is operated through the Pay-As-You-Earn (PAYE) scheme. Under the scheme, the employer is regarded as an unpaid agent of the tax authority and as such is expected to deduct taxes on salaries, wages, bonuses, allowances and benefits in kind. The system ensures that tax withheld monthly from employee's salaries and wages are remitted to the relevant tax authority.This paper recommended that both the employers and employees alike should familiarize themselves with the Personal Income Tax Act in order to have a good understanding of the tax treatment of employment income in Nigeria.

CamScanner