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INTERNATIONAL TAX ISSUES UNDER THE NIGERIAN TAX LEGISLATION

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ABSTRACT

The drive for global economic integration has necessitated the development and adoption of certain international standards to guarantee increased certainty in business environment across nations and reduce levels of risks in the market. Considering the prominence of tax legislation as a major index or infrastructural component of an enabling environment necessary for optimum investments and business growth, this paper attempts to give an overview of issues relevant to international taxation and examines their level of conformity to global standards.

1. BRIEF INTRODUCTION REGARDING THE *NON BIS IN IDEM* PRINCIPLE

The goal of globalization to deliver increased economic integration, collective prosperity and better welfare for all admits the centrality of such economic policies as removal of trade barriers and imposition of tax as tools for its attainment. However, while removal of trade barriers seems central to internationalization of economic activities, taxation has been employed at the national level to stimulate economic activities and raise revenue for financing affairs of government. This apparent contradiction in substance and strategy of governance at the various levels makes it imperative that some attempts be made to reconcile them. Accordingly, this paper highlights issues that are relevant to international taxation under the Nigerian legislation to determine whether their treatment is consistent with the ultimate philosophy of globalization and how well it strikes a balance between the apparently contradictory strategies. The paper finds that despite its lack of express reference to deliberate policy to uphold the objective of globalization, Nigerian tax legislation carefully applies its provisions to imposition and collection of tax purely to provide direction for national economy and source revenue for running of government but not wrongly to erect barriers against foreign participation. The principal issue of concern to international taxation is the possibility of double taxation as examined in the next section.

2. DOUBLE TAXATION

Double taxation is a matter of serious concern to governments and their subjects across the world. It occurs when more than one jurisdiction exercises authority to levy tax on one and the same tax payer as a result of conflicting and sometimes overlapping tax jurisdictional claims of two or more countries. It is basically wrong for one country to exercise tax control within the tax jurisdiction of another.

The problem of double taxation is traceable to two main conflict factors: first, conflict of residence against source of income whereby one country levies tax on the global income of a tax payer on account of his residence in that country while another country taxes the same person for sourcing his income from within her territory[1].

The second factor relates to the criteria used in defining residence. To some countries, domicile determines residence, but to others the determinant is nationality of the tax payer. In effect, a tax payer may thereby become concurrently fully liable to pay tax to two different countries at the same time[2]. What then are the regimes of double taxation in Nigeria legal environment? Our approach to this question would be from the angle of specific provisions, under which persons are charged to tax in Nigeria.

3. LIABILITY TO TAX

In Nigeria, tax liability is imposed on two categories of persons: natural persons or individuals and artificial persons particularly companies. Firstly, the Personal Income Tax Act, 1993[3] identifies taxable persons and determines their assessable incomes by reference to the residence of tax payers and source of origin of their incomes respectively[4].

The law charges the incomes of every taxable person from a source inside or outside Nigeria including:

a. gains or profits from any trade, business, profession, or vocation;
b. salary, wage, fees, allowances, or other gain or profit from an employment including gratuities, compensations, bonuses, premiums, benefits, or other perquisites allowed, given or granted to an employee (*other than reimbursable expenses*);
c. gain or profit including premiums from the grant of rights for the use or occupation of any property;
d. dividend[5], interest or discount;
e. any pension, charge or annuity; or
f. any profit or gain or other payments not mentioned in the above categories[6].

These provisions enable the income of an individual from any of the above source to be assessed to tax if it arises in Nigeria or wherever it has been made, whether or not it is brought in or received in Nigeria[7]. Liability to tax will not arise where duties are performed on behalf of an employer who is in a country other than Nigeria, or the employer is not in Nigeria, for 183 days or more in a year of assessment, and the remuneration of the employee is liable to tax in that country[8]. It has been said that this rule is convenient for foreigners who can beat the 183 days requirement[9], but this will not be the case where the duties of an employment are mainly performed in Nigeria as the employee may still be chargeable to the extent that his duties are performed in Nigeria[10].

Secondly, liability of incomes arising from businesses of a company is addressed under the Company Income Tax Act[11] while that arising from investment in petroleum

[1] S. Bagaria, "The Nature and Purposes of Double Taxation Agreements and the Issues to which Interpretation of Such Agreements may Give Rise," available at SSRN: http://ssrn.com/abstract=2018859, last visited on 21st March, 2015.
[2] J. E. Gregory & J. Weather, "UK/US Tax Issues for Internationally Mobile Executives," Business Law International, vol. 13. No. 3, (2012): 247-327;
[3] No. 104 of 1993 consolidated under CAP P8 Laws of Federation of Nigeria, 2004, paragraph 1 Schedule 1;
[4] Ibid, SCHEDULE 1 Paragraph 1;
[5] For treatment foreign income including dividend paid outside Nigeria, see section 13, ibid;
[6] Ibid S.3;
[7] I .A. Ayua, The Nigeria Tax Law, (Spectrum Books, Ibadan, 1996), p.66;
[8] Personal Income Tax Act 1993, Section 10(5);
[9] B. B. Kanyip, Taxation Issues in Foreign Investment, Modern Practice Journal of Finance and Investment Law vol. 2 (1998), p. 112;
[10] Cap P8, 2004, Section.10 (a) (i), footnote 3.
[11] CAP C21 LFN 2004;

industry is governed by the provisions of Petroleum Profits Act[12]. A company is defined as any company or corporation (other than a corporation sole) established by or under any law in force in Nigeria or elsewhere[13] and companies are generally classified into two categories namely Nigerian companies and foreign companies[14]. A Nigeria company is any company incorporated under the Companies and Allied Matter Act, or any enactment replaced by that Act. A foreign company, on the other hand, refers to any company or corporation (other than a corporation sole) established by or under any law in force in any territory or country outside Nigeria[15].

The importance of the above distinction is underscored by the tax treatment of the income or profit of various categories of companies. The profits of a Nigerian company are deemed to accrue in Nigeria wherever they have arisen and whether or not they have been brought into Nigeria[16].

Accordingly, a Nigerian company is liable to pay company income tax in respect of all its profits wherever they arise. As for a foreign company, its profits from any trade or business is deemed derived in Nigeria to the extent to which such profits are attributable to any part of the operations of the company carried on within Nigeria. Thus, the profits of a foreign company are taxed to the extent that they derived from sources within Nigeria

Apart from the difference attributable to taxation of the two categories of companies based on the source of income, there is no distinction leading to preferential treatment (or otherwise) in favour of either a Nigerian company or a foreign company in respect of liability to companies income tax on their profits deemed to be derived from Nigeria[17]. However, special tax treatment applies to two categories of company by reference to the nature of their business. First, the full profit or loss arising from the carriage of passengers, mail, livestock, or goods shipped or loaded into an aircraft in Nigeria to the benefit of a non-Nigerian company carrying on the business of transport by sea or air is deemed to have been derived from Nigeria[18]. But the rule does not apply to profits or loss arising in respect of passengers, mail, livestock or goods which are brought into Nigeria solely for transshipment or for transfer from one aircraft to another or in another direction between an aircraft and a ship[19]. In the same vein, a non-Nigerian company which carries on the business of the transmission of messages by cable or any form of wireless apparatus is assessable to tax as though it operates ships or aircrafts and to be treated in like manner for the purpose of computation of its profits deemed to be derived from Nigeria[20].

The second category is the insurance company which has been subdivided into two types namely, non-life insurance companies and life insurance companies.

3.1.Non-Life insurance Companies

The taxable profit of a non-life insurance company is determined by computing the gross premium with interest and other income receivable in Nigeria less reinsurance, and deducting from the balance so arrived at, a reserve for unexpired risks using the percentage consistently adopted by the company in relation to its operation at the end of the accounting year.[21] The amount arrived at is added to a reserved similarly calculated for unexpired risks

[12] CAP P13 LFN 2004;
[13] Ibid, Section 105;
[14] Ibid;
[15] CAP C21 LFN 2004, Section 84, see also section 11;
[16] Ibid, S. 13;
[17] See for example Offshore International S. A. vs. FBIR Unreported Suit No. FRC/36/75;
[18] CAP C21 LFN 2004, S. 14;
[19] Ibid, Section 14 (2);
[20] Ibid, Section 14 (3);
[21] A limitation is imposed on the percentage deductable as reserve from premium: 45 percent is allowed in respect of unexpired risk of the total premium in case of general insurance business and 25 percent of the total premium in case of marine insurance business., while an amount equal to 25 percent is allowed as deduction for other reserves. See footnote 18 at Section 16 (8).

outstanding at the commencement of the accounting period deducting there from the actual losses in Nigeria.[22] In addition, deductions are allowed in respect of agency expenses in Nigeria and a fair proportion of the head office expenses.

3.2. Life insurance companies

The taxable profit of a foreign life insurance company is its investment income less management expenses including commission.[23] For this purpose, investment income has been defined to include "any premiums or any amount ensuing from actuarial revaluation of any unexpired risks transferred by a life insurance company to its profit and loss account.[24]

Where, however, the profit accrues in part outside Nigeria, the profits shall be the proportion of the total investment income of the company as the premium earned whether received or receivable, less the agency expenses of the head office of the company but where the insurance company has its head office outside Nigeria, the Federal Board of Inland Revenue may however substitute another basis for ascertaining the required proportion of the total investment income.[25] It has been observed that this is essential as it is difficult to assess the liability of the total global investment income of the foreign company and in any case it might be difficult even getting the required information.[26]

3.3. Nigerian General Insurance Companies

It does not seem that any substantial distinction exists between a Nigerian Company carrying on non-life insurance business and its counterpart dealing in life insurance, but different tax treatments apply in respect of a Nigerian company engaged in general insurance business and another one dealing in life insurance.[27]

Whereas the taxable profit of a general Nigerian Insurance Company is ascertained in accordance with the provisions of Section 16 (1) as though the whole investment and premium income of the company were derived from Nigeria. Thus, the profits of Nigerian life insurance company is ascertained in accordance with the provisions of subsections (2), (3) and (4) of Section 16 as though the whole investments and other incomes were received in Nigeria and all expenses and other outgoing of the company were incurred in Nigeria.

According to the Act, any amount distributed in any form as dividend from an actuarial revaluation of unexpired risks or from any other revaluation is deemed to be part of the total profits of the company.[28] Thus, the company is required to provide the Board with full particulars of the revaluation carried out including a copy of the actuary's revaluation certificate not more than three months after an actuarial revaluation of unexpired risks or any other revaluation has taken place.[29] Apart from the special tax treatment of the foregoing categories of companies, certain general principles have been laid down in respect of taxation of ordinary business of companies as discussed below.

3.4. Rate of Tax and Chargeable Income of Companies

The rates of tax payable by a company doing business in Nigeria are as set out in the Act[30] with assessment of liability targeting profits of any company accruing in, derived from, brought into or received in Nigeria. In effect, the profits of a Nigerian company is assessed to income tax wherever they have been made if they are derived from, brought into, or received in Nigeria. It is immaterial whether or not all or any part of such profits have been brought

[22] See ibid, Section 16(1).
[23] See ibid, Section 16(2) (a).
[24] See ibid, Section 16(3).
[25] See ibid Section 14(b).
[26] B. B Kanyip, footnote 9, at 114.
[27] See footnote 18 at Section 16 (5).
[28] See ibid, Section 16 (3).
[29] Ibid, Section 16(4).
[30] See ibid, Section 40 (1) & (2).

into or received in Nigeria; they shall be deemed to accrue in Nigeria and accordingly will be taxable.[31] To facilitate the ascertainment of the taxable income of companies, categories of their income are contained in the Act as examined in the next section.

3.5. Categories of Companies' income

The following categories of income have been provided for the purpose of measuring the taxable income of companies:

1. Gains or profits from a trade or business
2. Rents or premiums arising from a trade or business
3. Dividends, interest, royalties, discounts, charges or annuities
4. Any source of annual profit or gains not falling within the preceding categories. This is a sweep-up clause to catch any transaction from which a company has derived profits which appears not to be included in the above categories.
5. Benefits from pension or provident funds treated as income under the income Management Act.
6. Fees, due and allowances (wherever paid) to services rendered.[32]

Thus, a company can only escape tax under the Companies Income Tax Act, by showing that it has got no profits or gains[33] accruing in or derived from Nigeria[34] in respect of any of the above categories of income.

The obvious implication of the above discussion, in relation to the treatment of distinction between Nigerian Companies and foreign companies and chargeability of income to tax, is that income from abroad (of both categories of company) is liable to double taxation since it is highly probable that the corresponding foreign government (whether qualifies as the source of income or home of taxable person) would also impose global tax on the income of its citizens and tax on income of foreigners derived from its land.[35] It is in this regard that some have suggested that double taxation agreements where concluded between jurisdictions (countries) would go a long way in resolving such problems.[36] It is therefore important to examine the nature of double taxation agreements and attitude of Nigerian legislation to the treatment of same.

4. DOUBLE TAXATION AGREEMENT

The main focus of double taxation agreement is the elimination of double taxation on income and on capital and is also for the prevention of fiscal evasion. They protect taxpayers against double taxation, thereby encouraging a free flow of international trade and investment and the transfer of technology. Double taxation agreement also prevents discrimination between taxpayers and provides some degree of fiscal certainty for international operations. They often contain clauses on the exchange of information between tax authorities of countries entering into the agreement thereby enhancing cooperation in carrying out their duties.[37] The history of double taxation can be traced to 1899 when the League of Nations acting through its financial committee entrusted a team of four economists (from Italy,

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[31]Ayuha, footnote 6 at 167.

[32] See footnote 10, Section 15.
[33] Ibid, Section.9.
[34] Ibid
[35] See for instance, United Kingdom, Income and Corporation Taxes Act, 1988, Section 16(2) and Section 11(1).
[36] B. B Kanyip, footnote 9.
[37] Jeffrey Owens and Mary Bernnet, "OECD Model Tax conventions," OECD Observer, available at www.oecdobserver.org, last seen on 24/4/2015.

Holland, United Kingdom and the USA) with the task of preparing the study on the economic aspect of international double taxation.[38]

However, two different models of Double Taxation Agreements have been variously developed by the United Nations and Organisation for Economic Cooperation and Development (OECD) to serve as guides in the negotiation of such agreement between member countries.[39] Whereas the OECD model is primarily set up for the benefit of member countries as to how their government might claim their rightful taxation from growing international businesses why not leaving corporations wronged for being unfairly taxed across the different jurisdictions in which they operate.[40] The UN model[41] seeks to encourage equity in negotiation between developed and developing countries.

4.1. Double Taxation of Subjects in Nigeria

Section 38 (1) of PITA 1993 provides that a double taxation agreement has prior legislative importance over the provisions of the Act and indeed over "anything in any enactment". The provision upholds the sanctity of international agreement. This provision seems inconsistent with the supremacy of the Constitution of the Federal Republic of Nigeria and particularly the provision of section 12 thereof to the effect that any treaty concluded between the country and another would not come into force until ratified or domesticated by the National Assembly. However, a better approach is where the Minister is empowered to give effect to such arrangement by order or subsidiary legislation.[42] Similarly, Section 38 (2) of the Act allows the breach of any obligation as to secrecy in so far as its disclosure is required to an authorized officer of the government with which the arrangements are made.

4.2. Nigeria Double Taxation Agreements

Nigeria's double taxation agreement with other countries is patterned after the UN model which guides the country in negotiating tax treaties with other countries. The model contains clauses on treatment of issues of interest including income from immovable property, business profits, dividends, royalties, interests, capital gains, fees for services, pensions and gratuities and other income[43]

Nigeria is currently a party to a number of double taxation treaties including agreements involving the kingdom of Belgium, French Republic, Canada, Romania, and Kingdom of Netherlands.[44] Most agreements concluded with Nigeria are comprehensive except such as concluded with Italy which covers air and shipping matters only.[45] It is important to note that prior to 1978, Nigeria had double taxation agreement with several countries but in 1978 the Federal Government terminated all such agreements and ordered them to be renegotiated.[46]

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[38] Klaus Vogel, "Double Tax Treaties and their interpretation," International Tax and Busineess Law, vol. 1 Issue. 4 (1986), p. 1-84 also available online at; http://scholarship.law.berkeleyedu.edu/bjl/vol.4/iscl/1 retrieved 15th May, 2015.

[39] Ibid.

[40] J. Owens & M. Bernnet , footnote 37.

[41] It is titled United Nations Model Double Taxation Convention between Developed and Developing Countries, available at www.un.org/esa/ffd/tax, last seen on 20th April, 2015.

[42] See CITA 2011 Section 45.

[43] See UN Model Double Taxation Convention.

[44] Federal Republic of Nigeria, Company Income Tax Act, Cap C21, Subsidiary legislation 1-5, Laws of the Federation of Nigeria, volume 3, 2011.

[45] Delloite, "Improved Double Taxation agreement in Nigeria: Any Reason for Delay?" Inside tax, available online at www.delloite.com/ng. accessed on 13th March, 2015. It has also been reported that agreements between Nigeria and Mauritius; and South Korea are yet to be ratified thereby giving room for uncertainty among treaty stakeholders and could affect inflows of certain foreign direct investment into Nigeria.

[46] Paul Brundage & Adam Starchild, Tax Planning for Foreign Investors in the United States, (Springer Science & Business Media: New York, 1983), p. 121.

5. ANTI AVOIDANCE PROVISIONS

The term tax avoidance is not precisely used in Nigeria tax legislation, hence its definition cannot be found in any of the definition sections of the taxing statutes. The legislative failure to define the term is either due to an assumption that its meaning can be readily understood or a reflection of the difficulties of framing an exhaustive definition of term.[47] However, in the absence of any statutory definition, reliance is often placed on judicial definitions derived from case law analysis of complaints against contravention of anti-avoidance provisions. Opportunity for judicial interpretation usually arises from cases coming before the court on grounds of contravention of sections in the laws usually referred to as anti avoidance provision. Even at that, there is no common judicial definitions of the phrase 'tax avoidance' but it suffices to say that the different attitude of courts to its definition point to one fact that may in the meantime be regarded as the definition of the term.

It is defined as an exploitation of provision or lack in a taxing statute by means through which they legally reduce a previous tax liability, have the appearance of being artificial and of being entered into solely or predominantly for the purpose of reducing tax liability. The means adopted are not those by which one would expect normal business or family dealings to be carried out.[48]

Artificial avoidance of tax is a problem that faces every tax system and is likely to continue to do so when rates of tax are believed to be high since the burden of tax is seen to have a major influence upon the affairs of businesses and upon every aspect of social and personal life.[49] It is this problem which is at the centre of some of the most serious difficulties confronting the Nigerian tax system. Income tax avoidance possibilities are much more limited in respect of employment incomes than in relation to incomes from business or from capital. Although the normal rates are, if anything, more favourable to income from employment than from other sources, the effective outcome is the reverse. The practical consequence has been that differences in employment incomes are not source of major irregularities in wealth distribution as results overwhelmingly from differential incidence of inheritance, capital gains, corrupt patronage and indeed general corruption in government with collaboration of foreign businesses.[50]

While it may be correct to state that tax avoidance is a problem common to all tax system, the case of Nigeria seems unique having regard to the scale of corrupt practices, absence of skilled tax personnel and comprehensive anti-avoidance and anti-evasion tax legislation to curb the problem.[51] The magnitude of the problem could be illustrated by briefly examining counter-measures prescribed against tax avoidance activities by multinationals or similar companies.

The Nigeria tax legislation contains some provisions intended to plug holes engaged by taxable persons to minimize or escape tax liability. These include that which is applied to deem certain sums of money as income for tax purposes and other measures to strike down settlements and trusts designed to avoid tax or other family arrangements meant to escape tax.

However, the most serious concern about tax avoidance arises from the nature of a limited liability company and this can manifest in several forms. First, the structure of a limited liability company can be used as a device to give a person or group of persons (other than formal owners thereof) the control or enjoyment of income of a company. In this way the person or persons, especially those in the middle and upper income groups, can mitigate their

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[47] I.S.L. Agboola, "Company Taxation in Nigeria, with Special Reference to the Anti-Avoidance Provisions and to the Investment Incentives." An unpublished PhD thesis submitted to the University of London (1967-1968); see also M.T. Abdulrasaq, Judicial and Legislation Approaches to Tax Evasion and Avoidance in Nigeria, Journal of African Law, vol. 29 (1985), pp. 59-71.

[48] M. T. AbulRasaq, Principles and Practice of Nigeria Tax Planning and Management (Batay Law Publications, Ilonn, Nigeria, 1993), p.33.

[49] See Ayuha, footnote 6, p.245; See also AbdulRasaq Ibid, p. 35.

[50] AbdulRasaq, ibid, p. 36.

[51] Ibid.

liability to higher rates of tax even escape tax completely. To curb this, the Act contains a measure which covers all companies in few hands by providing that:

where it appears to the Board that a Nigeria company which is under the control of five persons or less and has failed to distribute to its shareholders as dividend, profits made in any accounting periods with a view to reducing the aggregate of tax chargeable in Nigeria on the profit of the company the Board is empowered to direct that any such undistributed profit or income be treated as distributed to its shareholders.[52]

This is however subject to a condition that only such profits that could have been distributed without detriment to the company's business as it existed at the end of that period that can be deemed distributed as aforesaid. Thus the test to be applied is whether the retention of profits in the business is required for the maintenance and development or expansion of the company's trade or business. It is believed that such will constitute a good commercial justification for leaving the profit undistributed since it is not intended to use the profits as a device for saving personal tax.[53] In any event, any amount of profits treated as distributed should be deemed to be profits on income from a dividend accruing to those who are shareholders in the company in proportion to their shares in its ordinary share capital and the amount of such profits or income is now taxable as personal income in the hands of each shareholder.[54] It is to be noted that a company in respect of which any such direction is made has a right of appeal in the like manner as though it were an assessment under Part X of the Act.[55]

Secondly, liability under Companies Income Tax Act can be mitigated by companies especially those under the control of shareholders who are directors for example, fixing very high remuneration for the director since this can rank as deductible expenses for tax purposes. Although this particular device was not originally addressed by legislation, director's remuneration and allowances have now been statutorily subjected to a limit for tax purposes.[56] It has also been observed that a company can circumvent that measure by capitalizing profits through the issuance of new shares to the existing shareholders so that the capital paid on the new shares will be made out of profits thereby depleting the taxable income of a company.[57]

Thirdly, many transactions undertaken by multinationals such as sale of goods, provision of services, licensing of patents and know-how and granting of loans usually take place between members of the same group. It is an open secret that tax is a factor for consideration in prices charged for such transfers which are usually not at arm's length. The multinational or transnational corporation adopts transfer prices which are not arms length prices in order to minimize tax. This can be done for example, either by selling goods to subsidiary in a tax haven at less than arm's length prices or by a parent company overpricing its exports to foreign subsidiary so that by inflating the cost of imports of the final product or raw materials, a corporation can increase the margin of profit which will be concealed for tax purposes.

This leads to artificially lower profits and therefore lower tax collection in the taxing country. Thus, by shifting profits from one company to another company in the group, the tax liability of the relevant company is consequently distorted. This manipulation can have adverse effect on market and industrial structures as well as the balance of payments. Indeed it is likely to affect economic development generally and in particular domestic capital formation and tax revenues of a developing country like Nigeria.

[52] Federal Republic of Nigeria, CITA, section 21.
[53] Ayua footnote 6 at 251.
[54] CITA 2004, Section 17(2).
[55] CITA 2004, Section 21 (6).
[56] CITA 2004, Section 24 (c) (deleted by No. 11 of 2007, Section 6 (a)).
[57] Ayua footnote 6, p. 254.

However, the nefarious tax avoidance activities of multinational companies or related-companies continued unabated due to apparent lack of will on the part of the Nigeria courts to strike down the schemes through the application of the time-honoured doctrine of "lifting the veil of incorporation" to expose the relationship between companies belonging within the same group.[58] To remove the anomaly, a number of studied amendment have since been made to the law to take care of the problems relating to dues and allowances for services rendered in Nigeria and interest payment.

First, any company entering into an agreement in respect of fees, dues and allowances (wherever paid) for service rendered in Nigeria must make a full disclosure of the terms of such agreement to the Board in writing. Presently, interest is deemed to be derived in Nigeria if there is liability to payment of the interest by a Nigerian company or a company in Nigeria regardless of where or in what form the payment is made or regardless of whichever way the interest may have accrued.[59] This is against the previous arrangement whereby interest was taxable in the hands of the recipient thereby creating a possibility of an agreement for payment of interest abroad.[60]

A similar measure is provided against the use of management fees, technical fees and related arrangements by which profits are transferred abroad in order to minimise tax liability. The arrangement whereby such payments were regarded as deductible expenses has since altered to make them taxable as profits.[61] In fact, the law now contains specific prohibition against treating head office expenses incurred for and on behalf of any company in Nigeria as allowable deductions.

Finally, it remains to be stated that just as the avoidance schemes stated above are not by any means exhaustive, the anti avoidance provisions considered are similarly not comprehensive. Besides, more schemes of avoidance are likely to emerge considering the growing sophistication of the time. Accordingly, it is provided by law that where the Board is of the opinion that any disposition is not in fact given effect to or that any transaction which reduces or would reduce the amount of any tax payable is artificial, it may disregard any such disposition or direct that such adjustment be made as to counteract the avoidance or reduction of tax.[62] The term 'disposition' is given an extensive statutory definition to include any trust, grant, covenant, agreement, or even the word arrangement which has a very wide meaning thereby embracing whole range of activities and thus considerably extends the meaning of disposition. However, the term refers only to transactions involving persons one of whom either has control over the other or related to each other or, in the case of individuals, who are related to each other or between persons both of whom are controlled by some other person. The point is that such transactions are regarded as artificial or fictitious particularly where the Board is of the opinion that those transactions have not been made on terms which might fairly have been expected to have been made by persons engaged in the same or similar activities dealing with one another at arm's length. The provision seems general in scope and can pass for an omnibus clause which if employed to the maximum could make a considerable difference.

6. TAX INCENTIVES

[58] Rasis & Co (Nig.) Ltd V. FBIR Suit No. FRC/LIA/76. See also Aluminium Industies Aktien Geselichaf V. FBIR (1971) NMLR 339.

[59] See footnote 11, Section 9 (2)(a & b) (2004 LFN).

[60] See for instance Section 17 of the Company Income Tax Act, 1961 which provided that tax was payable on interest in Nigeria where there was right to pay the interest in Nigeria. The application of that provision was demonstrated in the case of Aluminum Industries Aktien Gesellschaff v. FIBR (1971) NMLR, 339.

[61] See Company Income Tax act, 1961, Section 61A.

[62] See footnote 11, Section 22.

Nations have devised different economic methods to stimulate economic growth and to mobilize foreign capital for the realization of deserving specific national policy objectives. One of the many ways by which this is done is by the grant of tax incentives to investors. The word "incentive" may be defined as a reduction in the effective tax burden on the favoured activity as against that currently imposed upon it in the hope that the reduction in government revenue (due to tax foregone) will be compensated by an expected expansion of the national economy and ultimately by resulting increase in total tax revenue from such broadened economic basis. Following is an overview of statutory incentives having international connotation and their effectiveness in Nigeria.

6.1. Pioneer Industries Relief of Tax Exemption

Nigeria's pioneer companies' relief was first introduced through the promulgation of the "Aid to Pioneer Industries Ordinance, 1952",[63] which was repealed by the Industrial Development (Income Tax Relief) Act 1958.[64] The Act liberated and extended the former aid to pioneer industries and provided that the establishment and development of industrial and commercial enterprises might be encouraged by way of income tax relief.

The industrial development (Income Tax Relief) Act 1958 was in turn repealed by the Industrial Development (Income Tax Relief) Act, 1971.[65] It re-enacted its predecessor though with certain major changes. It provides that the Federal Executive Council may under certain conditions direct in the Gazette a list of pioneer industries and products and upon such publication application may be made for the issue of a pioneer certificate to any company in respect of any such industry or product. The law was later variously consolidated in the Industrial Development (Income Tax Relief) Act.[66]

The current law grants tax relief for 3 years subject to the power of the President to extend the period to a maximum of 5 years where he is satisfied as to the volume of investment, rate of utilization of the local content, expansion, efficiency and the utilization of raw materials. The two years may start with one year and followed with another year. This tax relief is available to both foreign and indigenous industries, although the required initial investment for a foreign company is =N=150,000 and =N= 50,000 for indigenous company. However, a pioneer company is not entitled to carry on any trade or business other than its pioneer enterprise during its tax relief period.[67] Where it earns profits from any activities other than its pioneer enterprise it will be liable to tax in respect of those profits,[68] otherwise the profits of a pioneer company are exempted from tax.[69] Furthermore, a pioneer company is entitled to claim the benefit of capital allowances at the end of its tax relief period thereby extending a tax-free period of five years by another period during which a pioneer company pays no tax.

7. CONCLUSION

Developments in trans-border trade have assumed such exponential proportion that a nation can no longer afford to restrict its legislative consideration to the interests only of her citizens at the expense of citizens of other nations who may have beneficial investment interests in the former. The approach has been shown by this paper that Nigerian tax legislations pay considerable attention to issues of international concern particularly to

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[63] No. 10 of 1952.
[64] No. 8 of 1958.
[65] No. 21 of 1971.
[66] See Laws of the federation of Nigeria, Cap. 179 of 1990; Cap. I7 of 2004 which was later revised in 2010/2011
[67] See Section 12 (1) of cap. I7, 2004 revised edition.
[68] See Ibid, section 12(2).
[69] O.J. Akinyemi & R.M. Akinyemi, The Pioneer IncomeTax Relief as an Investment Income in Nigeria, International Journal of Development and Management, vol.6, No.1, (2011)., available online @ www.ajol..info.php/ijdmarticle., retrieved on 3rd March, 2015.

address the delicate challenge of double taxation. Every investor is keen on maximizing profit and avoiding overtax that is capable of lessening his trade expectations. As shown under the discussion of tax liability and taxable profits, the approach whereby tax is imposed on the global profits or income of a subject raises serious double taxation concern. The approach adopted by the law to address these concerns has also been highlighted in addition to other incentives which may be tapped upon by foreign investors.

Thus, it may be safely observed that the Nigerian tax legislation is replete with measures to ensure fair fiscal treatment of issues of international concern. However, it is apt to maintain that by the nature of tax and the sovereignty of the imposing authority, every nation is free to device measures to encourage flow of international capital just as it can impose measures to stifle tax evasion and avoidance.