FEDERAL INLAND REVENUE SERVICE

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INFORMATION CIRCULAR

NO: 2020/06 **Publication Date: 29th April 2020**

Subject: **CLARIFICATION ON COMMENCEMENT AND CESSATION RULES, AND BUSINESS REORGANISATION: - SECTIONS 29 of CITA, 32 of CGTA and 42 of VATA (AS AMENDED BY THE FINANCE ACT, 2019).**

This circular is issued for the information and guidance of the general public, taxpayers and tax practitioners in line with the provisions of the relevant tax laws. This instant circular amends, updates or replaces contents of any circular, notice or other publication previously issued by the Service that is inconsistent with its contents to the extent of such inconsistency.

1.0. Introduction

This Information Circular provides clarification on the administration of the various amendments to relevant tax laws with respect to commencement, cessation and business reorganisation (**Sections 29 (3), (4) & (9) of Companies Income Tax Act (CITA), 32 of Capital Gains Tax Act (CGTA) and 42 of Value Added VATA).**

2.0 <u>Commencement of Trade or Business</u>

Section **29(3) of CITA** is amended to eliminate the occurrence of overlap of basis period upon commencement of trade thereby ensuring that the profits of a particular year are only assessed to tax once.

2.1 <u>Basis of Assessment for Commencement of Trade or Business</u>

Section 29 of CITA, as amended, clearly provides that the basis of taxation is the ***preceding year basis*** (PYB). As such, the income of a given year is assessed to tax in the immediate following year of assessment.

2.1.1 First Year of Assessment

Section 29(3)(a) of CITA provides thus: ***"for the first year, the assessable profits shall be the profits from the date in which it commenced to carry on such trade or business in Nigeria to the end of its first accounting period".***

This provision indicates that a company shall not be assessed to tax (on the basis of the actual profit) in the year in which it commenced business . The profits of the first accounting period is assessed to tax in the year of assessment immediately following the year in which it commenced business.

Illustration 1

A company commenced business on 1st July 2020 and makes up its accounts to 31st October.

The first Assessment Year is **2021** and profits to be assessed are those of 1st July to 31st October 2020.

Illustration 2

A company commenced business on 1st January 2019 and makes up its account to 31st December.

The first Assessment Year is **2020** and profits to be assessed are those of 1st January to 31st December 2019.

Illustration 3

A company commenced business on 1st April 2019 and company makes up its account to 31st March.

The first Assessment Year is **2021** and profits to be assessed are those of 1st April 2019 to 31st March 2020.

2.1.2 Second Year of Assessment

The Act stipulates that "***for the second year, the assessable profits shall be the profits from the first day after its first accounting period to the end of its second accounting period***".

Consequently, the profits assessable to tax in the second year of assessment shall be the profits arising in the second accounting period only, that is, the accounting period immediately following that of the year of commencement.

Illustration 1

A company commenced business on 1st July 2020 and makes up its account to 31st October.

The first Assessment Year is **2021** and profits to be assessed are those of 1st July to 31st October 2020.

The second Assessment Year is **2022** and profits to be assessed are those of 1st November 2020 to 31st October 2021.

2.1.3 Third Year of assessment

The Act provides that "***for the third year and for each subsequent year, the assessable profits shall be the profits from the day after the accounting period just ended.***"

That is, the profits of the accounting year immediately preceding the year of assessment.

Illustration 1

A company commenced business on 1st July 2020 and makes up its account to 31st October.

The first Assessment Year is **2021** and profits to be assessed are those of 1st July to 31st October 2020.

The second Assessment Year is **2022** and profits to be assessed are those of 1st November 2020 to 31st October 2021.

The third Assessment Year is **2023** and profits to be assessed are those of 1st November 2021 to 31st October 2022.

NOTE:

There will not be any overlap of basis period where the profits of all the relevant years on commencement are computed in line with the new provision. However, there may be an overlap of basis period in the third year of assessment due to transitional issues. As such, overlap of basis period may only occur in the third year of assessment for a company that commenced business in 2018.

Illustration 2

A company commenced business on 1st July 2018 and makes up its account to 31st October.

The company's first Assessment Year ***falls under the old provision***, hence its first year of assessment is **2018** and profits to be assessed are those of 1st July to 31st December 2018.

The second Assessment Year also ***falls under the old provision*** which is **2019** and profits to be assessed shall be that of: 1st July 2018 to 30th June 2019.

The third Assessment Year is 2020 and profits to be assessed shall be that of: 1st November 2018 to 31st October 2019**. An overlap occurs in 1st Nov 2018 – 30th Jun 2019 due to transition**.

2.1.4 Determination of the End of First Accounting Period

The determination of the first year of assessment and the relevant basis period shall be based on the company's accounting year-end. Therefore, the first accounting period of a company is the date of commencement to the end of its first accounting year-end. Where a company submits financial statement for a period shorter or longer than the first accounting period , the assessable profits for the first accounting period shall be ascertained (on pro-rata basis) up to the indicated accounting year-end.

NOTE:

There will not be gap of basis period where the profits of all the relevant years are computed in line with the new provisions.

There may be a gap (of YOA) between the first and second years of assessment due to transitional issues.

Illustration

ABC Limited was incorporated in July 2019 and commenced business on 1st September 2019. The Company prepared its first set of financial statements covering 16 months (1st September 2019 to 31st December 2020).

The company’s first accounting year end is December 2019 and not December 2020.

Therefore its first Assessment Year is 2019 which ***falls under the old provision.*** The profits to be assessed shall be that of **1st** September to **31st** December 2019.

The second Assessment Year is 2021 which ***falls under the new provision.*** The profits to be assessed shall be that of 1st January to 31st December 2020.

The third Assessment Year is **2022** and profits to be assessed shall be that of: 1st January to 31st December 2021.

There was a gap between 2019 (1st YOA) and 2021 (2nd YOA). The gap was not a gap of “basis period” but a gap of YOA. This means the company has no CIT returns for 2020 YOA.

3.0 <u>Cessation of Business</u>

Section 29(4) of CITA provides that:

"Where a company permanently ceases to carry on a trade or business (or in the case of a company other than a Nigerian company, permanently ceases to carry on a trade or business in Nigeria) in an accounting period, its assessable profits therefrom shall be the amount of the profits from the beginning of the accounting period to the date of cessation and the tax thereof shall be payable within six months from the date of cessation."

3.1 <u>Basis of Assessment</u>

Based on the above provision, a company that permanently ceases operation must file tax returns for the year of cessation within six months. The due date of filing may fall in the year of cessation or in the year following the year of cessation depending on the date on which the company ceased operation in the year. If the Company ceased operations between January and June, returns would be filed and payment made in that year of cessation. However, if it ceased operations between July and December, filing of tax returns and payment of tax due would fall into the following year.

There is the possibility of filing tax returns of two years of assessment in the year of cessation. Where this occurs, the company must file the outstanding tax returns in addition to those arising upon cessation of business.

Illustration 1

XYZ Nigeria makes up its account to 31st December and permanently ceased operation on 30th April 2020.

The relevant years of assessment and the due date for payment of tax due are as follows:

YOA	**Basis Period**	**Due Date of Payment**
2020	1/1/2019-31/12/2019	30th June 2020 (PYB)
2020	1/1/2020-31/04/2020	31st October 2020 (cessation)

In the above scenario, the company would file tax returns twice in the same year – one based on the normal preceeding year basis (PYB) and the other being cessation returns.

Illustration 2

XYZ Ltd makes up its account to 31st December and permanently ceased operation on 31st July 2020.

The relevant years of assessment and the due date for payment of tax due are as follows:

YOA	Basis Period	Due Date of Payment
2021	1/1/2020-31/07/2020	31st January 2021

In the above scenario, the cessation returns fall into the year following the year of cessation.

5.0 Business Organisation and Restructuring

By the provisions of Sections 29(9) of CITA, 32 of CGTA, and 42 of VATA, where a trade or business carried on by a company is sold or transferred to a Nigerian company for the purposes of better organisation of that trade or business or the transfer of its management to Nigeria and any asset employed in such trade or business is sold or transferred, the entities will qualify for the specified concessions subject to the following conditions:

i. The parties must obtain the consent of the Federal Inland Revenue Service ("the Service") in writing;

ii. The companies must prove to the satisfaction of the Service that one company has control over the other or that the companies are controlled by some other person or are members of a recognised group of companies;

iii. The entities involved must have been related for not less than a consecutive period of 365 days before the reorganisation;

Where the conditions are met, the entities shall qualify for the following concessions:

1. Commencement and cessation rules shall not apply;
2. Assets would be deemed transferred at Tax Written Down Value (TWDV) i.e. balancing adjustments would not be made;
3. Capital Gains Tax(CGT) will not apply on such asset transferred or sold;
4. Value Added Tax (VAT) shall not apply on the assets transferred or sold in the process;

However, where assets transferred in the reorganisation process are further disposed within 365 days of the reorganisation, all concessions granted shall be withdrawn and all applicable taxes shall be recovered. As such, all relevant taxes shall be treated as due but unpaid from the date it ought to have been paid if there was no concession, and all penalties and interest shall be charged accordingly.

6.0 Amendment or Revision of the Circular

The Service may, at any time, withdraw or replace this Circular or publish an amended or updated version.

7.0 Enquiries

Any request for further information or clarifications on this Information Circular should be directed to the:

Executive Chairman,
Federal Inland Revenue Service,
Revenue House, No 15 Sokode Crescent,
Wuse Zone 5, Abuja.

Or

Director, Tax Policy and Advisory Department
Federal Inland Revenue Service
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