

APPENDIX

LIST OF LAWS AND REGULATIONS RECOMMENDED FOR REVIEW AND AMENDMENT AND THE JUSTIFICATIONS

Appendix (A)

Laws and Regulations Recommended for Review and Amendment By Honourable Minister of Finance

S/N	Subject Matter	Proposal	Justification
1	Tax deductibility based on NOTAP and TP Regulations (Section 27 (g,h) of CITA)	<ul style="list-style-type: none"> As Transfer Pricing is tax legislation, the TP documentation should supersede the NOTAP approval for the purposes of tax deductibility. This policy should be harmonised between the Ministry of Information and Technology, the Central Bank of Nigeria and the Ministry of Finance. Aligning NOTAP and TP regulations to ensure NOTAP agreed payments is always consistent with the TP basis for deductibility to ensure NOTAP is more commercial in application. 	<ul style="list-style-type: none"> It aligns the issuance of forex, tax deductibility and justification of any technology transfer.
2	Pre-incorporation expenses (Section 27 of CITA)	<ul style="list-style-type: none"> There is no rule that specifically deals with such expenses. There should be a specific provision to allow for a deduction for such expenses either via capital allowances or a revenue deduction. 	<ul style="list-style-type: none"> To provide clarity and allow a deduction for legitimate business expenditure.
3	Interest and penalties for tax default (Section 32 and 40 of FIRS Act)	<ul style="list-style-type: none"> The interest rate applied by the Revenue should reflect a reasonable commercial lending rate and if it is a one off charge, it should be clear whether it is simple or compound interest. Interest should be a two way obligation and should be triggered on the date the tax due should have been assessed or the date the refund becomes due. With respect to disputed liabilities, the TAT should be given the powers to decide whether interest and/or penalty will apply and from which date. 	<ul style="list-style-type: none"> To aid clarity and reflect commercial circumstances.
4	Capital allowances on certain items	<ul style="list-style-type: none"> The second schedule to CIT should include assets such as ships, aircraft and intangible assets. 	<ul style="list-style-type: none"> Such specific and specialised items should be categorised and treated specifically to avoid uncertainty.

5	Artificial transactions	CITA and the CGT Act both stipulate that transactions must be at arm's length and leaves the determination of the arm's length basis at the discretion of the tax authority. This is inappropriate in the light of the TP rules and OECD guidelines. Therefore, this provision should be clarified to specify that the tax authority would have to provide justification in line with TP Regulations.	<ul style="list-style-type: none"> • Avoids excessive subjectivity and duplication.
6	Ministerial and FIRS approval for tax deductions (Section 27 (1) (h) of CITA)	<ul style="list-style-type: none"> • The deduction for management expenses and expenses incurred outside Nigeria give the Minister of Finance and FIRS respectively the power to approve such deductions. This is inappropriate in the light of the WREN and TP rules. Furthermore, these provisions merely cause an unnecessary additional administrative burden. 	<ul style="list-style-type: none"> • Avoids excessive subjectivity and duplication.
7	Clarity on withholding tax regulation (WHT Regulations)	<ul style="list-style-type: none"> -Clarify that there is no withholding tax on the sale of goods by clarifying the definition of "ordinary course of business" through Regulations. -Dividends, rent, interest and royalty should be 10% WHT, and construction contracts at 2.5%, all other items should be 5%. -Clarify that reimbursements (of whatever nature) are exempt from except the reimbursements relate to foreign purchases which have not been subject to WHT in accordance with the law. -Include a threshold of compliance whereby companies that have a low risk based on their tax governance structure are exempt from WHT on their invoices to customers 	<ul style="list-style-type: none"> - This eases the current position where the WHT tax rate on sales of goods and other items are sometimes higher than the profit margin generated by the supplier.
8	Pioneer Legislation (S.14 IDITRA)	<ul style="list-style-type: none"> - Pioneer legislation should be assessed whether it should be continued based on the value it has added to government versus the cost. A sectoral (based on industry) or geographical (based on where factory is located e.g. outside Lagos, PH, Abuja or Ogun) exemption without discretion granted to any government authority should be considered for equity based on parameters outlined under "Tax incentives" - The March 2015 list is outdated and should be revisited to 	<ul style="list-style-type: none"> • Tax incentives should provide a net benefit to the country. • They should also be available equally to all persons in the same class. • Provisions on tax incentives should also be very clear and avoid ambiguity.

		<p>align with current realities.</p> <ul style="list-style-type: none"> - Incidental income to a pioneer business (such as interest income) should be clearly defined in the tax law on whether they are taxable or exempt during the relief period. - Pre-pioneer tax losses and Pre-pioneer qualifying capital expenditure carried forward to post pioneer periods should be clarified. 	
9	Intra-group transactions	<ul style="list-style-type: none"> • Companies within a group (e.g. 75% effective ownership group) should be able to transact free from WHT, and VAT. 	<ul style="list-style-type: none"> • This will encourage business (particularly Nigerian conglomerates) to organise themselves more efficiently and avoid unnecessary tax leakage and additional cost of doing business.
10	Stamp Duty (Stamp Duty Act)	<ul style="list-style-type: none"> • The Stamp Act is currently not fit for purpose, it is outdated. A transaction could fall within a number of provisions. Stamp duty should be applicable on specifically designed instruments or based on underlying transactions (rather than instruments) to tackle avoidance. • The old Act should be repealed and a new act should be enacted to specify the specific instruments that will be stamped and the rate of the duty. 	<p>Currently the cost of administering the Act is higher than the benefit. There is also breach of law with regards to the CBN circular on Stamp duty which could lead to cash refund to depositors based on court judgments or refund to State governments. A more efficient mechanism for taxing consumption is through VAT</p>
11	Franked Investment Income	<p>The rules on offsetting of WHT on franked dividend income by a company which is further distributed to individuals should be clarified.</p>	<ul style="list-style-type: none"> • To avoid multiple taxation on the same income.

Appendix (B)

Laws and Regulations Recommended for Review and Amendment by NASS

S/N	Subject Matter	Proposal	Justification
1	Commencement, Change of Accounting and Cessation Rules (Section 29 of CITA)	These rules should be taken out of CITA.	<ul style="list-style-type: none"> These rules are complicated and places unnecessary compliance burden on the taxpayers. Particularly, the commencement rule often leads to double taxation of a company at its early stage and increases the chances of failure. <p>A company should be taxed based on the profit it earns and its ability to compensate shareholders through dividends. This should be reflected by the normal profits earned each accounting year.</p>
2	Excess Dividend Tax (Section 19 of CITA)	Redrafting the excess dividend tax provision in CITA to specifically exempt franked investment income, capital gains, income exempt under other provisions of the law e.g pioneer profit, income from bonds, prior year already taxed retained earnings, and dividends received from foreign subsidiaries.	<ul style="list-style-type: none"> To make Nigeria a favourable jurisdiction for incorporating Hold Cos and to place Nigeria in a favourable position to be considered as the West African Hub for investments in the ECOWAS region. Preventing double taxation Most companies in Nigeria are already moving to neighbouring and other countries with favourable tax legislation for Hold Cos
3	Minimum tax (Section 33 of CITA)	<p>The exemption for foreign companies with at least 25% imported equity should be removed as it is considered discriminatory to Nigerian companies.</p> <ul style="list-style-type: none"> Overall, minimum tax should be removed altogether, OR minimum tax should be imposed on a percentage of turnover e.g. 0.3 %. When a company is assessed to minimum tax, the company should be able to carry forward all its unutilized capital allowances and tax losses that has not been used in computing the minimum tax. 	<ul style="list-style-type: none"> Loss making companies are usually forced to pay tax out of equity or further increasing the already existing negative retained earnings. Where a company has claimed capital allowances in arriving at the loss for tax purposes and it pays minimum tax, it loses the capital allowance claimed in effect. The government can collect minimum tax fairly in instances where profit shifting has resulted in losses in the local operating entity.
5.	Taxation of Insurance companies (Section 16 of CITA)	<ul style="list-style-type: none"> The proposals by the Nigeria Insurers Association to amend the law to deal with ambiguities should be considered and agreed amendments adopted in the next one year. The definition of insurance companies in section 16 should be made clear to exclude Health Maintenance Organisations as they are not required to keep their 	<ul style="list-style-type: none"> This is necessary to provide more certainty for insurance companies, which is a developing industry.

6	VAT	<p>The current VAT Act should be repealed and replaced with an entirely new VAT Act immediately as a matter of urgency. The VAT Act should be aligned with global best practices.</p> <p>Considerations should include:</p> <ul style="list-style-type: none"> - Definition of Vatable persons (a threshold should be in place before a person is registerable for VAT). - Input VAT recovery on all inputs (including overheads) regardless of the nature of the Vatable supply. - Definition of goods and services. - Destination principle should be adopted to give clarity on the point at which VAT is applicable on a particular supply. - There should be a workable refund mechanism (Loss of input VAT). - Expanding the definition of input VAT. - Expand the list of items that are zero rated to enable input VAT recovery for the supplier. - Financial services should be treated as exempt. - Reverse charge should apply on e-commerce transactions - Customs legislation should be aligned with the VAT. - VAT should be on a cash basis rather than accrual basis to align with how most businesses in Nigeria operate. - VAT of bad debt should be reclaimable without unnecessary bottlenecks. - Deduction of VAT at source by government and companies in the oil and gas sector should be scrapped as it leaves vendors with claimable input VAT without adequate output VAT. - Exemption of VAT on exported services should be more clearly defined. - Consideration should be given to a progressive VAT system e.g. higher VAT rate on luxury items e.g. cars, planes, jewelry. Whilst there should be an expansion of exemption on basic food and other items considered to be essential to the poor. 	<p>These changes should:</p> <ul style="list-style-type: none"> - Align Nigerian VAT Act with that of other jurisdictions to avoid double taxation and double non-taxation - Align Nigerian VAT with international best practices - Plug the current significant loss of VAT revenue related to cross-border services and intangibles - Minimize the high cost of doing business in Nigeria. E.g. it is currently often not highlighted that the hidden cost of irrecoverability of input VAT and multiple layers of VAT flows to final cost to business and the economy. - Provide more clarity on transactions, goods and persons to be taxed. - Make the sale of goods and services by Nigerian businesses to be at par with foreign jurisdictions. - Make Nigerian VAT a real value added tax on consumption that is to be borne by the final consumer.
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7	Tax losses carried forward (S.31 (2ii) of CITA)	<ul style="list-style-type: none"> -Amendment of the law to clarify that tax losses can be carried forward indefinitely in line with the 2007 Amendments. -Give effect to group tax loss relief. Entities in a group should be able to relief tax losses amongst themselves. 	<ul style="list-style-type: none"> - This change should remove the current uncertainty in the law. - Group loss relief will also allow groups of related parties to organize themselves more efficiently and assist related parties to grow by benefiting from investments made by principals in other areas of the group’s business.
8	Intra-group transactions	<ul style="list-style-type: none"> • Companies within a group (e.g. 75% effective ownership group) should be able to transact free from CGT 	<ul style="list-style-type: none"> • This will encourage business (particularly Nigerian conglomerates) to organise themselves more efficiently and avoid unnecessary tax leakage and additional cost of doing business.
9	Stamp Duty (Stamp Duty Act)	<ul style="list-style-type: none"> • The Stamp Act is currently not fit for purpose, it is outdated. A transaction could fall within a number of provisions. Stamp duty should be applicable on specifically designed instruments or based on underlying transactions (rather than instruments) to tackle avoidance. • The old Act should be repealed and a new act should be enacted to specify the specific instruments that will be stamped and the rate of the duty. 	Currently the cost of administering the Act is higher than the benefit. There is also breach of law with regards to the CBN circular on Stamp duty which could lead to cash refund to depositors based on court judgments or refund to State Governments. A more efficient mechanism for taxing consumption is through VAT
10	Capital Gains Tax (CGTA)	<ul style="list-style-type: none"> • The law should allow for the deduction of capital losses given that all chargeable gains (except for shares) are subject to CGT. 	<ul style="list-style-type: none"> - Fairness in taxing only the aggregate gain.
11	Rate of corporate taxation on income under PPTA and/or DOIBPSA. (Section 11 (2)d of PPTA and Section of 3 of DOIBPSCA)	<ul style="list-style-type: none"> • Insert a section in the DOIBPSCA on the rate of tax for income derived from gas projects carried out under a production sharing contract. 	<ul style="list-style-type: none"> • To make it clear that deep offshore gas projects will not be prejudiced through taxation.
12	Definition of income incidental to petroleum operations. (Section 9 of PPTA)	<ul style="list-style-type: none"> • This provision should be more clearly defined 	To avoid uncertainty.
13	Withholding tax on dividend declared by a company engaged in exclusive gas utilization Projects. (Section 60 and 11(2) of PPTA and 80 and 9(1) of	<ul style="list-style-type: none"> • Make section on gas income taxability in PPTA more robust; to speak to applicability of gas profits on CITA concepts such as commencement, excess dividend tax and other non-PPT provisions. 	<ul style="list-style-type: none"> • Avoids uncertainty

	CITA)		
14	The taxation of Farm in and Farm out arrangement- Taxed under PPT or CGT	<ul style="list-style-type: none"> • Introduction of a specific provision that relates to these arrangements. 	<ul style="list-style-type: none"> • There is no provision of the law that relates to these arrangement
15	Restriction of capital allowances claim	<ul style="list-style-type: none"> • Remove the requirement to deduct 170% of Petroleum Investment Allowance or allow oil and gas companies to claim capital allowances at the same rate for depreciation 	<ul style="list-style-type: none"> - The requirement discourages additional investment.
16	Holding Companies	<p>There should a preferential regime for holding companies which exempts them from minimum tax, excess dividend tax (EDT), WHT on intra group transactions, VAT on intra group transactions. A Nigerian headquartered company could easily pay tax at 51% of its profits simply because of the impact of EDT.</p> <p>There will be need to introduce rules to mitigate tax evasion from the proposed favourable regime e.g. participation exemption, substance and beneficial ownership rules</p>	<ul style="list-style-type: none"> • Make Nigeria a regional hub/gateway for investment expansion in west Africa and even Africa • Encourage retention of capital investment in Nigeria versus capital flight to tax havens/countries with preferential tax regimes • Encourage competitiveness of Nigerian headquartered companies by minimizing incidence of double taxation
17	Real Estate Investment Trusts	<ul style="list-style-type: none"> • Nigeria currently has no legislation or regulation that specifically deals with the taxation of Real Estate Investment Trusts (REITs). Hence, there is no clarity of tax treatment of REITs. • In other climes, a REIT is seen as a transparent or flow through entity that is not different and separate from its unit holders/investors. Hence, the income of the REIT is treated as the income of the unit holders or investors and therefore taxed at that level. However, this is not the case in Nigeria based on the current income tax laws and its interpretation by the FIRS 	<ul style="list-style-type: none"> • Specific REIT legislation must be enacted rather than using a combination of corporate income tax law, Investment and Securities law as well as trust law to determine the correct (and often unfavourable) treatment for REITS. The current situation encourages non-compliance with the current law and is a disincentive to investment in sector that has clearly generated significant benefits in other jurisdictions.