

SUPER TAX DECREE 1967



ARRANGEMENT OF SECTIONS

Section

- | | |
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| <ol style="list-style-type: none">1. Charge of super tax and power to vary the rate of the tax.2. Super tax not to be allowed as a deduction under section 27 of the Act of 1961.3. Assessment of super tax.4. List of companies assessed.5. Service of notice of assessment to super tax.6. Objection to super tax assessment.7. Appeal against assessment to super tax. | <ol style="list-style-type: none">8. Collection, recovery and repayment of super tax.9. Exemption from super tax etc.10. Double taxation relief.11. Application of administrative provisions of the Act of 1961.12. Interpretation.13. Citation, application and commencement. |
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SCHEDULE:
Provisions of the Act of 1961 applied to super tax.

Decree No. 46

[See section 13]

Commence-
ment.

THE FEDERAL MILITARY GOVERNMENT hereby decrees as follows:—

1.—(1) Subject to the provisions of this Decree, for the year of assessment 1967-68 and for each subsequent year of assessment, a company shall, in respect of its total profits for each such year, be chargeable to a tax (hereafter referred to as “super tax”), computed in accordance with and calculated at the rate specified in subsection (2) of this section.

Charge of
super tax
and power
to vary the
rate of tax.

(2) Subject as aforesaid, super tax shall, for each such year of assessment, in respect of each company, be calculated at the rate of two shillings in the pound on the amount (if any) by which the total profits of the company for that year of assessment exceed the standard deduction for that year.

(3) The Federal Executive Council may, by order published in the Gazette vary for any year of assessment the rate specified in subsection (2) above.

(4) In this section—

(a) subject to paragraph (b) below, “standard deduction”, in relation to any company and as respects any year of assessment, means—

(i) the amount of fifteen per centum of the company's paid up share capital on the first day of the company's accounting period which (under section 30 of the Act of 1961) forms the basis of assessment for that year, or

(ii) the amount of five thousand pounds, whichever is the greater;

(b) “standard deduction”, in relation to any company and as respects the year in which the company commenced to carry on a trade or business, or each of the two years of assessment immediately following that year, means—

(i) the amount of fifteen per centum of the company's paid up share capital on the date on which the company commenced the trade or business, or

(ii) the amount of five thousand pounds, whichever is the greater.

Super tax not to be allowed as a deduction under section 27 of the Act of 1961.

2. The amount of super tax assessed on any company for any year of assessment shall not be allowed as a deduction under section 27 of the Act of 1961 for the purpose of ascertaining under that Act the profits or loss of that company for any period from any source chargeable to tax under the Act of 1961.

Assessments of super tax.

3.—(1) As soon as may be after the Board has, from the return delivered by a company under section 44 of the Act of 1961, determined, for the purpose of section 49 of that Act,—

(a) on the basis of that return, or

(b) (having refused to accept the return) to the best of its judgment, the amount of the total profits of that company for a year of assessment, the Board shall for the purposes of this Decree—

(i) determine the amount by which the total profits of that company for that year of assessment exceed the standard deduction for that year; and

(ii) make an assessment on the company of the amount of super tax payable thereon.

(2) Where, in respect of any year of assessment a company has not delivered a return under section 44 of the Act of 1961, and the Board has, pursuant to subsection (3) of section 49 of the Act of 1961 determined the amount of the total profits of the company for that year of assessment, the Board shall for the purposes of this Decree—

(a) determine the amount by which the total profits of that company for that year of assessment exceed the standard deduction for that year, and

(b) make an assessment on the company of the amount of super tax payable thereon.

(3) Nothing in this section shall prevent the Board from making an assessment to super tax upon a company for any year before the expiration of the time within which the company is required to deliver a return or to give notice under the provisions of section 44 of the Act of 1961, if the Board or any officer of the Federal Inland Revenue Department duly authorised by the Board, considers such assessment to be necessary for any reason of urgency.

List of companies assessed.

4.—(1) The Board shall in respect of each year of assessment, as soon as possible, prepare lists of companies assessed to super tax for that year.

(2) Such lists, hereafter in this section referred to as "Super Tax Assessment Lists", shall contain the following matters, that is to say,—

(a) the names and addresses of the companies assessed to super tax;

(b) the name and address of any person in whose name any such company is chargeable;

(c) the amount by which the total profits of each company exceed the standard deduction for that year;

- (d) the amount of super tax assessment ;
- (e) such other particulars as may be prescribed by the Board.

(3) Where complete copies of all such notices of assessment and of notices amending the assessments are filed in the offices of the Board they shall constitute the Super Tax Assessment Lists for that year.

5. The Board shall, in respect of any year of assessment, cause to be served on or sent by registered post to each company, or person in whose name a company is chargeable, whose name appears on the Super Tax Assessment Lists for that year, a notice of assessment to super tax, stating—

Service of notice of assessment to super tax.

(a) the amount of the total profits of the company for that year of assessment,

(b) the amount by which the said total profits exceed the standard deduction for that year,

(c) the amount of super tax payable by the company for that year,

(d) the place at which payment of the super tax shall be made, and setting out the right of the company, under section 53 of the Act of 1961 (as applied by section 6 of this Decree) to lodge a notice of objection if the company disputes the assessment.

6.—(1) If any company disputes an assessment to super tax it may apply to the Board, by notice of objection in writing, to review and to revise the assessment made upon it.

Objection to super tax assessment.

(2) The provisions of section 53 of the Act of 1961 shall apply in relation to such an objection as they apply in relation to an objection against an assessment made under that Act, and subject to any necessary modifications.

7. An appeal shall lie against an assessment to super tax and the provisions of Part XI of the Act of 1961 shall apply in relation to an appeal against such an assessment as they apply in relation to an appeal against an assessment made under that Act and subject to any necessary modifications.

Appeal against assessment to super tax.

8. The provisions of Part XII of the Act of 1961 shall apply in relation to the collection, recovery and repayment of super tax as they apply in relation to the collection, recovery and repayment of the tax imposed under that Act and subject to any necessary modifications.

Collection, recovery and repayment of super tax.

9.—(1) The Federal Executive Council may, by order published in the Gazette,—

Exemption from super tax etc.

(a) exempt any company or class of companies from all or any of the provisions of this Decree, or

(b) exempt from super tax all or any profits of any company or class of companies from any source,

on any ground which appears to it sufficient.

(2) Any existing exemption order, that is to say any order made or deemed to have been made under section 26(3) of the Act of 1961 and which was in force immediately before the date of commencement of this Decree or having been made before that date came or comes into force on or after that date, shall apply for purposes of giving exemption in relation to super tax as it applies for purposes of giving exemption in relation to the tax imposed under the Act of 1961, and to that intent any such order shall be construed as if—

- (a) a reference therein to the tax imposed under the Act of 1961 included a reference to super tax; and
- (b) the order had been made under section 26(3) of the Act of 1961 and subsection (1) of this section.

Double
taxation
relief.

10. Where for a year of assessment a company has paid, by deduction or otherwise, or is liable to pay, tax under the Act of 1961 on any part of its profits, and in addition has in respect of that year of assessment paid, or is liable to pay, super tax under this Decree, sections 36 and 37 of the Act of 1961 (modified as hereinafter provided) shall apply equally for purposes of giving double taxation relief in relation to super tax and for the giving of such relief in relation to the tax imposed under the Act of 1961; and the said sections aforesaid shall have effect in their application to any such case as if—

(a) in the said section 36, and in—

(i) subsection (1) for the words “under this section for any year of assessment” there were substituted the words “under this Act and under the Super Tax Decree 1967, for any year of assessment”, and for the words “under this Act” wherever they occur, there were substituted the words “under those enactments”;

(ii) subsections (2) for the words “under this Act”, where they first occur, there were substituted the words “under this Act and under the Super Tax Decree 1967” and for these words where they otherwise occur there were substituted the words “under those enactments”;

(iii) subsection (3) for the words “under this Act” there were substituted the words “under those enactments” and for the words “the amount of tax imposed” there were substituted “the aggregate of the amounts of the taxes imposed under this Act and under the Super Tax Decree 1967”; and

(b) in the said section 37, in subsection (1), after the words “by this Act” there were inserted the words “and by the Super Tax Decree 1967”.

Application
of
administra-
tive provi-
sions of the
Act of 1961.

11. The due administration of this Decree and of super tax chargeable thereunder shall be under the care and management of the Board, and the provisions of the Act of 1961 set out in the Schedule of this Decree shall apply in relation to super tax as they apply in relation to the tax chargeable under the Act of 1961 and subject to any necessary modifications.

Interpreta-
tion.

12. In this Decree, unless the context otherwise requires the following expressions have the meanings hereby assigned to them respectively, that is to say—

1961 No. 22.

“the Act of 1961” means the Companies Income Tax Act 1961;

“the Board” means the Federal Board of Inland Revenue established under section 3 of the Act of 1961;

“Gazette” means the official gazette of the Federal Republic of Nigeria;

“standard deduction” has the meaning given by section 1 (4) of this Decree;

“super tax” means the tax imposed under this Decree;

“total profits” has the same meaning as in section 31 of the Act of 1961, and total profits of the company for that year of assessment and cognate expressions shall be construed accordingly;

"year of assessment" means a year beginning on 1st April and ending on 31st March in the following calendar year, and "the year of assessment 1967-68" means the year of assessment which commenced on 1st April 1967 and ends on 31st March 1968.

13.—(1) This Decree may be cited as the Super Tax Decree 1967, and shall apply throughout the Federation.

Citation,
application
and com-
mencement.

(2) This Decree shall be deemed to have come into force on 1st April 1967 and shall have effect as respects the year of assessment 1967-68 and each subsequent year of assessment.

SCHEDULE

Section 11

PROVISIONS OF THE ACT OF 1961 APPLIED TO SUPER TAX COMPANIES INCOME TAX ACT 1961 (1961 No. 22)

Part II	..	..	..	..	(administration) except sections 4 (8), 5 (1), and 6 to 13.
Part VI	..	..	..	..	(ascertainment of total profits).
Sections 36 and 37 (as modified by section 10 of this Decree)	..	..	..	..	(double taxation relief).
Sections 45 to 48	..	..	..	..	(returns etc.).
Section 50	..	..	..	..	(additional assessments).
Sections 53 and 54	..	..	..	..	(revision of assessment in case of objection, etc.).
Part XI	..	..	..	..	(appeals).
Part XII	..	..	..	..	(collection, recovery and repayment of tax).
Part XIII	..	..	..	..	(offences and penalties).
Section 76	..	..	..	..	(conduct of proceedings in Magistrate's Courts).
Third Schedule	..	..	..	..	(capital allowances).

MADE at Lagos this 1st day of November 1967.

MAJOR-GENERAL Y. GOWON,
*Head of the Federal Military Government,
Commander-in-Chief of the Armed Forces,
Federal Republic of Nigeria*

THE FINANCE (MISCELLANEOUS TAXATION) DECREE 1967



ARRANGEMENT OF SECTIONS

Sections

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. Revival of provisos to certain enactments and repeal of 1961 No. 72. 2. Amendment of section 9 of the Income Tax Management Act 1961. 3. Amendment of section 22 of the Companies Income Tax Act 1961. 4. Amendment of section 34 of Companies Income Tax Act 1961. 5. New sections relating to dividends inserted in Companies Income Tax Act 1961. | <ol style="list-style-type: none"> 6. Amendment of section 50 of the Companies Income Tax Act 1961. 7. Amendment of section 57 of the Companies Income Tax Act 1961. 8. Amendment of section 31 of the Personal Income Tax (Lagos) Act 1961. 9. Minor amendments of enactments. 10. Citation, commencement, extent and saving. |
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SCHEDULE :

Minor Amendments.

Decree No. 47

[See section 10]

Commence-
ment.

THE FEDERAL MILITARY GOVERNMENT hereby decrees as follows :—

1.—(1) The provisos to each of the following enactments, that is to say,—

(a) subsection (1) of section 5 of the Customs and Excise Management Act 1958 ;

(b) subsection (5) of section 4 of the Companies Income Tax Act 1961 ;

(c) subsection (5) of section 3 of the Personal Income Tax (Lagos) Act 1961,

Revival of
provisos to
certain
enactments
and repeal
of 1961
No. 72.
1958 No. 55.
1961 No. 22.
1961 No. 23.
1961 No. 72.

shall, on the commencement of this Decree, be revived and have effect as if the Finance (Removal of Restrictions) Act 1961 had not been passed, and that enactment shall accordingly be repealed so however that the provisos as so revived shall be construed as if there were substituted therein for references to "Minister" references to "Commissioner".

(2) Unless otherwise precluded under a proviso revived by subsection (1) above, the Commissioner for Finance may give a written direction, order or instruction under each of the enactments mentioned in paragraphs (a), (b) and (c) of that subsection.

2. At the end of section 9 (1) of the Income Tax Management Act 1961 (which relates to the taxation of Nigerian dividends in the hands of certain shareholders) there shall be added the following proviso :

Amendment
of section 9
of the
Income Tax
Manage-
ment Act
1961.
1961 No. 21.

"Provided that any dividend paid by a Nigerian company and satisfied by the issue of shares of the company paying the dividend shall not give rise to income in the hands of any shareholder entitled to such dividend."

3. At the end of section 22 of the Companies Income Tax Act 1961 (which relates to profits of a company from certain dividends) there shall be added the following proviso :

Amendment
of section 22
of the
Companies
Income Tax
Act 1961.
1961 No. 22.

"Provided that any dividend paid by a Nigerian company and satisfied by the issue of shares of the company paying the dividend shall be excluded from the profits of any other company which is a shareholder in such company."

4. Section 34 of the Companies Income Tax Act 1961 (which relates to the taxation of Nigerian dividends) is amended as follows—

Amendment
of section 34
of Companies
Income Tax
Act 1961.
1961 No. 22.

(a) for subsection (1) there shall be substituted the following subsection—

"(1) In respect of every dividend paid or credited by a Nigerian company to its shareholders, being—

1952 No. 10.
Cap. 87.
1959 No. 15.

(a) a dividend paid out of the profits derived by the company wholly from its pioneer enterprise or petroleum operations and exempted from tax, in the hands of a shareholder of the company, under the Aid to Pioneer Industries Act 1952, the Industrial Development (Income Tax Relief) Act, or the Petroleum Profits Tax Act 1959 ; or

(b) a dividend to which the proviso to section 22 of this Act applies ; the company shall issue to the shareholder a certificate setting out the amount of the dividend to which the shareholder is entitled and describing the profits out of which the dividend is paid, and the company shall not deduct tax from any such dividend on payment thereof.

In this subsection "pioneer enterprise" has the same meaning as in the Aid to Pioneer Industries Act 1952 or, as the case may be, the Industrial Development (Income Tax Relief) Act, and "petroleum operations" has the same meaning as in the Petroleum Profits Tax Act 1959." ;

(b) in subsection (2) for the words from the beginning of the subsection to "setting out" there shall be substituted the words—

"In respect of every dividend paid or credited by a Nigerian Company to its shareholders not being a dividend specified in the preceding subsection the company shall, before or at the time when the dividend is paid or credited by the company, deduct tax at the rate specified in section 32 of this Act and shall issue to each of its shareholders a certificate setting out" ;

(c) after subsection (2) there shall be inserted the following subsections—

"(2A) Where, under subsection (2) of this section, a company has made a deduction of tax from a dividend—

(a) paid by the company out of the amount of any profits which the company has received as dividends from another company, being dividends which are not included in the assessable profits of the first-mentioned company ; or

(b) paid by the company out of the amount of any profits or gains derived by it which are exempt from or not liable to tax under this Act,

(not being a dividend specified in subsection (1) of this section) the company shall,—

(i) within twenty-one days after the end of the month in which the deduction was made, pay to the Board an amount equal to the deduction ;

(ii) before the expiration of two months after the end of the year of assessment in which the deduction was made or within such further period as the Board may allow, prepare and deliver to the Board a statement with respect to the deduction, in a form authorized by the Board, signed by or on behalf of the company.

(2B) Where an amount payable under this section to the Board by a company remains unpaid after the expiration of the period within which, by this section, it is required to be paid, the amount shall for the purposes of this Act be deemed to be tax due from the company and may be sued for and recovered accordingly." ;

(d) after subsection (5) there shall be inserted the following new subsection—

"(6) Nothing in this section shall be construed as requiring a company to deduct tax from a dividend that is not paid in money."

5. After section 34 of the Companies Income Tax Act 1961 there shall be inserted the following new sections—

New sections relating to dividends inserted in Companies Income Tax Act 1961.

1961 No. 22.

"Dividend not paid in money not to be paid until payment made to Board on account of tax.

34A. Where a dividend is paid by a Nigerian company to a shareholder and the company would but for subsection (6) of section 34 of this Act be required—

(a) under subsection (2) of that section, to make a deduction of tax from the dividend, and

(b) under subsection (2A) of that section, to pay over to the Board any tax so deducted from the dividend,

the company shall not pay or credit or distribute the dividend to any shareholder until the tax which, but for subsection (6) of the said section, would have been required to be deducted in respect of the dividend has been paid to the Board.

"Liability for failure to make deduction of tax from certain dividends.

34B—(1) Where, in breach of subsection (2) of section 34 of this Act, a Nigerian company fails to deduct tax from any dividend paid by it, being a dividend paid out of any amount of profits or gains mentioned in paragraph (a) or (b) of subsection (2A) of section 34 of this Act, the company shall be liable, in addition to any other penalty to which it may be liable, to pay to the Board—

(a) an amount equal to the tax which it ought to have deducted from that dividend; and

(b) an additional amount calculated at the rate of ten per centum.

(2) Where, in respect of a dividend paid by a Nigerian company without a deduction of tax, the company has paid to the Board an amount by virtue of paragraph (a) of subsection (1) of this section, that company may recover the amount from the shareholder to whom the dividend was paid."

6. At the end of subsection (1) of section 50 of the Companies Income tax Act 1961 (which relates to the making of assessments or additional assessments where there is discovery etc. by the Board) there shall be added the following proviso:

Amendment of section 50 of the Companies Income Tax Act 1961.

1961 No. 22.

"Provided that where any form of fraud, wilful default or neglect has been committed by or on behalf of any company in connection with any tax imposed under this Act or under the Income Tax Act, the Board may at any time and as often as may be necessary assess such company at such amount or additional amount as may be necessary for the purpose of making good any loss of tax attributable to the fraud, wilful default or neglect."

Cap. 85.

Amendment
of section 57
of the
Companies
Income Tax
Act 1961.
1961 No. 22.

7. After subsection (7) of section 57 of the Companies Income Tax Act 1961 (which relates to procedure before Appeal Commissioners etc.) there shall be inserted a new subsection as follows :—

“(7A) At the hearing of any appeal, if the representative of the Board proves to the satisfaction of the Appeal Commissioners or the court hearing the appeal in the first instance that—

(a) the appellant has, (contrary to subsection (1) of section 44 of this Act) for the year of assessment concerned, failed to prepare and deliver to the Board the statement mentioned in that subsection ;

(b) the appeal is frivolous or vexatious or is an abuse of the appeal process, or

(c) it is expedient to require the appellant to pay an amount as security for prosecuting the appeal,

the Appeal Commissioners or, as the case may be, the court may adjourn the hearing of the appeal to any subsequent day and order the appellant to deposit with the Board, before the day of the adjourned hearing an amount, on account of the tax charged by the assessment under appeal, equal to the tax charged upon the appellant for the preceding year of assessment, or one half of the tax charged by the assessment under appeal, whichever is the lesser, and if the appellant fails to comply with the order, the assessment against which it has appealed shall be confirmed and the appellant shall have no further right of appeal whatsoever with respect to that assessment.”

Amendment
of section 31
of the
Personal
Income Tax
(Lagos) Act
1961.
1961 No. 23.
Cap. 85.

8. At the end of subsection (1) of section 31 of the Personal Income Tax (Lagos) Act 1961 (which relates to the making of assessments or additional assessments where there is discovery etc. by the Board) there shall be added the following proviso :

“Provided that where any form of fraud, wilful default or neglect has been committed by or on behalf of any taxable person in connection with any tax imposed under this Act or under the Income Tax Act, the Board may at any time and as often as may be necessary assess such taxable person at such amount or additional amount as may be necessary for the purpose of making good any loss of tax attributable to the fraud, wilful default or neglect.”

Minor
amendments
of enact-
ments.

9. The amendments specified in the Schedule to this Decree, being amendments of a minor character, shall be made in the enactments specified in that Schedule.

Citation,
commence-
ment,
extent and
saving.

10.—(1) This Decree may be cited as the Finance (Miscellaneous Taxation) Decree 1967, and save as hereinafter provided shall apply throughout the Federation ; and subject to the provisions of this section this Decree shall be deemed to have come into force on 1st October 1967, so however that in respect of the foregoing and—

(a) in so far as sections 1, 6, 8, 9 and the Schedule relate to the Personal Income Tax (Lagos) Act 1961 they shall have effect in Lagos only, and

1961 No. 23.

(b) to the extent to which sections 6 and 8 relate to the Income Tax Act, the Companies Income Tax Act 1961 and the Personal Income Tax (Lagos) Act 1961 those sections and each of them shall be deemed to have had effect as from the respective dates of commencement of the said Acts:

Cap. 85.
1961 No. 22.
1961 No 23.

and save where any direction, order or instruction is given by the Commissioner for Finance in accordance with the provisions of section 1 (2) thereof, this Decree shall, as from 1st October 1967 aforesaid, have effect in relation to the year of assessment 1967-68 and every subsequent year of assessment, (the expression "year of assessment" as used herein meaning the period of twelve months beginning on 1st April in one calendar year, and ending on 31st March in the following calendar year, and the expression "the year of assessment 1967-68" having the meaning of the financial year ending on 31st March 1968).

(2) Nothing in this Decree shall be construed so as to constitute as an offence under this Decree, any act or omission which took place before the coming into force of this Decree and which at the time of commission or omission, as the case may be, was not an offence under any other enactment.

SCHEDULE

Section 9

MINOR AMENDMENTS

INCOME TAX MANAGEMENT ACT 1961 (1961 No. 21)

Enactment

Amendment

Section 16

In subsection (2) for the words from the beginning of the subsection to "may by notice" there shall be substituted the words "The Federal Executive Council may by notice".

Third Schedule

In paragraph (e), in sub-paragraph (iv), for the words from the beginning of the sub-paragraph to "consents," there shall be substituted the words "where the Federal Executive Council by notice so approves,".

COMPANIES INCOME TAX ACT 1961 (1961 No. 22)

Section 26

In subsections (2) and (3) for the words "The Commissioner" there shall be substituted the words "The Federal Executive Council".

Section 36

In subsection (1) for the words "under this section for any year" there shall be substituted the words "under this Act for any year".

- Section 53 In subsection (1) for the words "forty-two days" there shall be substituted the words "thirty days", and the proviso shall be omitted.
- Section 56 In subsection (1), for the words "thirty days" there shall be substituted the words "forty-two days", and the proviso shall be omitted.
In subsection (2), in paragraph (e), after the words "against the assessment" there shall be inserted the words "but such grounds shall be limited to the grounds stated by the appellant in its notice of objection".
- Section 59 In subsection (1), the proviso shall be omitted.

PERSONAL INCOME TAX (LAGOS) ACT 1961
(1961 No. 23)

- Section 15 In paragraph (d) for the words "the Commissioner by Order may prescribe", there shall be substituted the words "the Federal Executive Council may by Order prescribe".
- Section 34 In subsection (1), for the words "forty-two days" there shall be substituted the words "thirty days", and the proviso shall be omitted.
- Section 40 In paragraph (b), for the words "; and" there shall be substituted a full stop, and paragraph (c) shall be omitted.

MADE at Lagos this 1st day of November 1967.

MAJOR-GENERAL Y. GOWON,
*Head of the Federal Military Government,
Commander-in-Chief of the Armed Forces,
Federal Republic of Nigeria*