

The following Bill, which will in due course be presented to the House of Representatives for enactment, is published for general information

PETROLEUM PROFITS TAX ORDINANCE, 1959

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A BILL FOR

AN ORDINANCE TO IMPOSE A TAX UPON PROFITS FROM THE WINNING OF PETROLEUM IN NIGERIA, TO PROVIDE FOR THE ASSESSMENT AND COLLECTION THEREOF AND FOR PURPOSES CONNECTED THEREWITH.

Title.

[1st January, 1958]

Commencement.

BE IT ENACTED by the Legislature of the Federation of Nigeria as follows:—

Enactment.

PART I—PRELIMINARY

1. (1) This Ordinance may be cited as the Petroleum Profits Tax Ordinance, 1959, and shall be deemed to have come into operation on the 1st day of January, 1958.

Short title commencement and application.

(2) This Ordinance shall have effect throughout the Federation.

Interpretation.

2. In this Ordinance, unless the context otherwise requires—
 “accounting period”, in relation to a company engaged in petroleum operations, means—

(a) a period of twelve months commencing on the date of the first sale of or bulk disposal of chargeable oil by or on behalf of the company, whichever event shall be the earlier, or commencing on such date within the calendar month in which such event occurs as may be selected by the company with the approval of the Board ; or

(b) such shorter period commencing as aforesaid and ending either on a date selected by the company with the approval of the Board or on the date when the company ceases to be engaged in petroleum operations ; or

(c) each subsequent period of twelve months during which the company is engaged in petroleum operations ; or

(d) any period of less than twelve months, being a period commencing on the day following the end of any such period of twelve months and ending on the date when the company ceases to be engaged in petroleum operations, as the case may be, and in the event of any dispute with respect to the date of the first bulk disposal of chargeable oil the Chief Inspector of Mines of the Federation shall determine the same and no appeal shall lie therefrom ;

“adjusted profit” means adjusted profit for the purpose of section 9 ;

“assessable profits” means assessable profits for the purpose of section 9 ;

“assessable tax” means assessable tax ascertained under section 16 ;

“Board” means the Federal Board of Inland Revenue established and constituted in accordance with section 3 of the Income Tax Administration Ordinance, 1958, which shall be deemed to have been established and constituted on the 1st day of January, 1958, and the powers and duties conferred upon the Board by this Ordinance shall be deemed to have been so conferred on that day ;

“casinghead petroleum spirit” means any liquid hydro-carbons obtained in Nigeria from natural gas by separation or by any chemical or physical process but before the same has been refined or otherwise treated ;

“chargeable oil”, in relation to a company engaged in petroleum operations, means any one or more of the following, namely, casinghead petroleum spirit, crude oil or natural gas as the case may be, won or obtained by the company from such operations ;

“chargeable profits” means chargeable profits for the purpose of section 9 ;

“chargeable tax” means chargeable tax ascertained under section 17 and imposed under this Ordinance ;

“company” means any body corporate incorporated under any law in force in Nigeria or elsewhere ;

“crude oil” means any oil (other than oil extracted by destructive distillation from coal, bituminous shales or other stratified deposits) won in Nigeria either in its natural state or after the extraction of water, sand or other foreign substance therefrom but before any such oil has been refined or otherwise treated ;

“disposal” and “disposed of”, in relation to chargeable oil owned by a company engaged in petroleum operations, mean or connote respectively—

(a) delivery, without sale, of chargeable oil to, and

(b) chargeable oil delivered, without sale, to, a refinery or to an adjacent storage tank for refining by the company ;

"High Court" means the High Court in Nigeria within whose jurisdiction—

(a) in relation to any offence under this Ordinance, the place is situated where such offence is, for the purposes of this Ordinance, deemed to have occurred ;

(b) in relation to any suit for tax or appeal against an assessment of tax, the place is situated where the return under section 27 was submitted or where the assessment of the tax was made as the case may be ;

(c) in relation to any direction under section 26 (2), the place is situated from which the direction was issued ; and

(d) in relation to any claim or other matter which is subject to appeal in like manner as an assessment, or to which the provisions of section 34 apply with any modifications, the place is situated from which the claim or other matter was refused by the Board ;

"loss" means a loss ascertained in like manner as an adjusted profit ;

"Minister" means the Minister charged with responsibility for matters relating to taxes on incomes and profits ;

"natural gas" means gas obtained in Nigeria from bore holes and wells and consisting primarily of hydro-carbons ;

"Nigeria" includes the submarine areas beneath the territorial waters of Nigeria and the submarine areas beneath any other waters which are or at any time shall in respect of mines and minerals become subject to the legislative competence of the Legislature of the Federation ;

"oil mining lease" means a lease granted to a company, under the Mineral Oils Ordinance, for the purpose of winning petroleum or any assignment of such lease ;

"oil prospecting licence" means a licence granted to a company, under the Mineral Oils Ordinance, for the purpose of winning petroleum, or any assignment of such licence ;

"person" includes a company and any unincorporated body of persons ;

"petroleum" means any mineral oil or relative hydro-carbon and natural gas existing in its natural condition in strata in Nigeria, but does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation ;

"petroleum operations" means the winning or obtaining and transportation of petroleum or chargeable oil in Nigeria by or on behalf of a company for its own account by any drilling, mining, extracting or other like operations or process, not including refining at a refinery, in the course of a business carried on by the company engaged in such operations, and all operations incidental thereto and any sale of or any disposal of chargeable oil by or on behalf of the company ;

"profits" means profits for the purpose of section 9 ;

"resident in Nigeria", in relation to a company, means a company the control and management of the business of which are exercised in Nigeria ;

"royalties" means and includes—

(a) the amount of any rent as to which there is provision for its deduction from the amount of any royalties under an oil prospecting licence or oil mining lease ; and

(b) the amount of any royalties payable under any such licence or lease less any such rent deducted from those royalties;
 "tax" means chargeable tax.

PART II—ADMINISTRATION

3. Subject to the provisions of this Ordinance—

(a) the due administration of this Ordinance and the tax shall be under the care and management of the Board who may do all such acts as may be deemed necessary and expedient for the assessment and collection of the tax and shall account for all amounts so collected in a manner to be prescribed by the Minister;

(b) whenever the Board shall consider it necessary with respect to any tax due, the Board may acquire, hold and dispose of any property taken as security for or in satisfaction of any tax or of any judgment debt due in respect of any tax and shall account for any such property and the proceeds of sale thereof in a manner to be prescribed as aforesaid;

(c) the Board may sue and be sued in its official name and, subject to any express provision under any subsidiary legislation or otherwise, the Board may authorise any person to accept service of any document to be sent, served upon or delivered to the Board and to represent the Board in any proceedings;

(d) subject to such conditions as the Board may specify the Board may by notice in the Gazette direct that any information, return or documents required to be supplied, forwarded or given to the Board may be supplied to such other person whether within or without Nigeria as the Board may direct;

(e) the Board may by notice in the Gazette or in writing authorise any person within or without Nigeria to—

(i) perform or exercise, on behalf of the Board, any power or duty conferred upon the Board other than the powers or duties specified in the First Schedule, and

(ii) receive any notice or other document to be given, delivered or served upon the Board under or in consequence of this Ordinance or any subsidiary legislation made thereunder;

(f) in the exercise of the powers and duties conferred upon the Board, the Board shall be subject to the authority, direction, and control of the Minister and any written direction, order or instruction given by him after consultation with the Chairman of the Board shall be carried out by the Board:

Provided that the Minister shall not give any direction, order or instruction in respect of any particular company which would have the effect of requiring the Board to raise an additional assessment upon such company or to increase or decrease any assessment made or to be made or any penalty imposed or to be imposed upon or any relief given or to be given to or to defer the collection of any tax, penalty or judgment debt due by such company, or which would have the effect of altering the normal course of any proceedings, whether civil or criminal, relating either to the recovery of any tax or penalty or to any offence relating to tax;

(g) every claim, objection, appeal, representation or the like made by any person under any provision of this Ordinance or of any subsidiary legislation made thereunder shall be made in accordance with such Ordinance and legislation; and

Powers
and duties
of the
Board.

First
Schedule.

(h) in any claim or matter or upon any objection or appeal under this Ordinance, any act, matter or thing done by or with the authority of the Board, in pursuance of any provisions of this Ordinance shall not be subject to challenge on the ground that such act, matter or thing was not or was not proved to be in accordance with any direction, order or instruction given by the Minister.

4. (1) Anything required to be done by the Board, in relation to the powers or duties specified in the First Schedule, may be signified under the hand of the Chairman of the Board, or of an officer of the Federal Inland Revenue Department who has been authorised by the Board to signify from time to time anything done or to be done by the Board in respect of such powers or duties.

Significa-
tion and
execution
of powers,
duties, etc.
First
Schedule.

(2) Any authorisation given by the Board under or by virtue of this Ordinance shall be signified under the hand of the Chairman of the Board unless such authority is notified in the Gazette.

(3) Subject to subsection (1), any notice or other document to be given under this Ordinance shall be valid if—

(a) it is signed by the Chairman of the Board or by any person authorised by him; or

(b) such notice or document is printed and the official name of the Board is duly printed or stamped thereon.

(4) Every notice, authorisation or other document purporting to be a notice, authorisation or other document duly given and signified, notified or bearing the official name of the Board, in accordance with the provisions of this section, shall be deemed to be so given and signified, notified or otherwise without further proof, until the contrary is shown.

5. (1) Every person having any official duty or being employed in the administration of this Ordinance shall regard and deal with all documents, information, returns, assessment lists and copies of such lists relating to the income, chargeable profits or items thereof of any company, as secret and confidential.

Official
secrecy, etc.

(2) Every person having possession of or control over any documents, information, returns or assessment lists or copies of such lists relating to tax or petroleum operations or the amount and value of chargeable oil won by any company, who at any time communicates or attempts to communicate such information or anything contained in such documents, returns, lists, or copies to any person—

(a) other than a person to whom he is authorised by the Minister to communicate it; or

(b) otherwise than for the purpose of this Ordinance or of any Ordinance or law, relating to a tax upon income, in force in any part of Nigeria, shall be guilty of an offence which shall be deemed to have been committed in Lagos.

(3) No person appointed under or employed in carrying out the provisions of this Ordinance shall be required to produce in any court any return, document or assessment, or to divulge or communicate to any court any matter or thing coming under his notice in the performance of his duties under this Ordinance except as may be necessary for the purpose of carrying into effect the provisions of this Ordinance, or in order to institute a prosecution, or in the course of a prosecution for any offence committed in relation to tax.

(4) Where under any law in force in any territory outside Nigeria provision is made for the allowance of relief from income tax and similar taxes in respect of the payment of income tax and similar taxes in Nigeria or for the exemption of income from income tax and similar taxes in respect of income subject to income tax and similar taxes in Nigeria, the obligation as to secrecy imposed by this section shall not prevent the disclosure to the authorised officers of the Government in that territory of such facts as may be necessary to enable the proper relief or exemption to be given in cases where relief or exemption is claimed from income tax and similar taxes in Nigeria or from income tax and similar taxes in that territory. For the purposes of this subsection tax (as defined in this Ordinance) shall be regarded as a tax similar to an income tax.

(5) Notwithstanding anything contained in this section the Board may permit the Director of Federal Audit or any officer duly authorised in that behalf by him to have such access to any records or documents as may be necessary for the performance of his official duties. The Director of Federal Audit or any such officer shall be deemed to be a person employed in carrying out the provisions of this Ordinance for the purpose of this section.

Rules and forms.

6. (1) The Minister may from time to time make rules generally for the carrying out of the provisions of this Ordinance.

(2) The Board may from time to time specify the form of returns, claims, statements and notices under this Ordinance.

Service and signature of notices.
Cap. 94.

7. (1) Except where it is provided by this Ordinance that service shall be effected either personally or by registered post the provisions of section 46 of the Interpretation Ordinance shall apply to the service of a notice, if such notice is addressed in accordance with the provisions of subsection (3) of this section.

(2) Where a notice is sent by registered post it shall be deemed to have been served on the day succeeding the day on which the addressee of the registered letter containing the notice would have been informed in the ordinary course of events that such registered letter is awaiting him at a post office, if such notice is addressed in accordance with the provisions of subsection (3):

Provided that a notice shall not be deemed to have been served under this subsection if the addressee proves that no notification, informing him of the fact that the registered letter was awaiting him at a post office, was left at the address given on such registered letter.

(3) A notice to be served in accordance with subsection (1) or (2) shall be addressed—

(a) in the case of a company incorporated in Nigeria, to the registered office of the company, and

(b) in the case of a company incorporated outside Nigeria, either to the individual authorised to accept service of process under the Companies Ordinance at the address filed with the Registrar of Companies, or to the registered office of the company wherever it may be situated.

Cap. 38.

(4) Any notice to be given, sent or posted under this Ordinance may be served by being left at the appropriate office or address determined under subsection (3) unless such address is a registered post office box number.

**PART III—IMPOSITION OF TAX AND ASCERTAINMENT OF
CHARGEABLE PROFITS**

8. There shall be levied upon the profits of each accounting period of any company engaged in petroleum operations during that period a tax to be charged, assessed and payable in accordance with the provisions of this Ordinance.

Charge of tax.

9. (1) Subject to any express provisions of this Ordinance, in relation to any accounting period the profits of that period of a company shall be taken to be the aggregate of—

Ascertainment of profits, adjusted profit, assessable profits and chargeable profits.

(a) the gross proceeds of sale of all chargeable oil sold by the company in that period,

(b) the value of all chargeable oil disposed of by the company in that period, and

(c) all income of the company of that period incidental to and arising from any one or more of its petroleum operations.

(2) For the purposes of subsection (1) (b) the value of any chargeable oil so disposed of shall be taken to be the aggregate of—

(a) the value of that oil as determined, for the purpose of royalty, in accordance with the provisions of the oil prospecting licence or oil mining lease by virtue of which that oil was recovered or won by the company :

Provided that where there are no such provisions, then the value of that oil shall be determined by agreement between the company concerned and the Governor-General or in the event of a failure to reach any such agreement the matter shall be referred to arbitration in the same manner as any other matter may be referred to arbitration under such licence or lease,

(b) any cost of extraction of that oil deducted in determining its value as referred to in paragraph (a), and

(c) any cost incurred by the company in transportation and storage of that oil between the field of production and the place of its disposal.

(3) The adjusted profit of an accounting period shall be the profits of that period after the deductions allowed by subsection (1) of section 10 and any adjustments to be made in accordance with the provisions of section 12.

(4) The assessable profit of an accounting period shall be the adjusted profit of that period after any deduction allowed by section 14.

(5) The chargeable profits of an accounting period shall be the assessable profits of that period after the deduction allowed by section 15.

10. (1) In computing the adjusted profit of any company of any accounting period from its petroleum operations there shall be deducted all outgoings and expenses wholly and exclusively incurred, whether within or without Nigeria, during that period by such company for the purpose of those operations, including but without otherwise expanding or limiting the generality of the foregoing—

Deductions.

(a) any rents (other than rents included in the definition in this Ordinance of royalties) incurred by the company for that period in respect of land or buildings occupied for its petroleum operations or compensation incurred under an oil prospecting licence or an oil mining lease for disturbance of surface rights or for any other like disturbance ;

(b) sums incurred by way of interest upon any money borrowed by such company, where the Board is satisfied that the interest was payable on capital employed in carrying on its petroleum operations ;

(c) any expense incurred for repair of premises, plant, machinery, or fixtures employed for the purpose of carrying on petroleum operations or for the renewal, repair or alteration of any implement, utensil or articles so employed ;

(d) debts directly incurred to the company and proved to the satisfaction of the Board to have become bad or doubtful in the accounting period for which the adjusted profit is being ascertained notwithstanding that such bad or doubtful debts were due and payable prior to the commencement of that period ;

Provided that:—

(i) the deduction to be made in respect of a doubtful debt shall not exceed that portion of the debt which is proved to have become doubtful during that accounting period, nor in respect of any particular debt shall it include any amount deducted under the provisions of this paragraph in determining the adjusted profit of a previous accounting period ;

(ii) all sums recovered by the company during that accounting period on account of amounts previously deducted in respect of bad or doubtful debts shall, for the purposes of subsection (1) (c) of section 9, be treated as income of that company of that period ;

(iii) it is proved to the satisfaction of the Board that the debts in respect of which a deduction is claimed were either—

(a) included as a profit from the carrying on of petroleum operations in the accounting period in which they were incurred, or

(b) advances made in the normal course of carrying on petroleum operations not being advances on account of any item falling within the provisions of section 11 ;

(e) (i) any expenditure directly incurred in connection with drilling an appraisal or development well but excluding any expenditure which is qualifying plant or building expenditure for the purpose of the Second Schedule, and excluding any sums deductible in ascertaining the tax under the provisions of section 17 and any expense or deduction, in respect of a liability incurred, which is deductible under any other provision of this section ;

(ii) for the purposes of this paragraph any such well shall not include a well which, by reference to good oilfield practice, would fall to be regarded as an exploration well ;

(iii) where a deduction may be given under this section in respect of any such expenditure that expenditure shall not be treated as qualifying petroleum expenditure for the purpose of the Second Schedule ;

(f) any contribution to a pension, provident or other society, scheme or fund which may be approved, with or without retrospective effect, by the Board subject to such general conditions or particular conditions in the case of any such society, scheme or fund as the Board may prescribe :

Provided that any sum received by or the value of any benefit obtained by such company, from any approved pension, provident or other society, scheme or fund, in any accounting period of that company shall, for the purposes of subsection (1) (c) of section 9, be treated as income of that company of that accounting period ;

(g) such other deductions as may be prescribed by any rule made under this Ordinance.

(2) Where a deduction has been allowed to a company under this section in respect of any liability of the company and such liability or any part thereof is waived or released the amount of the deduction or the part thereof corresponding to such part of the liability shall, for the purposes of subsection (1) (c) of section 9, be treated as income of the company of its accounting period in which such waiver or release was made or given.

11. (1) Subject to the express provisions of this Ordinance, for the purpose of ascertaining the adjusted profit of any company of any accounting period from its petroleum operations, no deduction shall be allowed in respect of—

Deductions
not
allowed.

(a) any disbursements or expenses not being money wholly and exclusively laid out or expended, or any liability not being a liability wholly or exclusively incurred, for the purpose of those operations ;

(b) any capital withdrawn or any sum employed or intended to be employed as capital ;

(c) any capital employed in improvements as distinct from repairs ;

(d) any sum recoverable under an insurance or contract of indemnity ;

(e) rent of or cost of repairs to any premises or part of premises not incurred for the purpose of those operations ;

(f) any amounts incurred in respect of any income tax, profits tax or other similar tax whether charged within Nigeria or elsewhere ;

(g) the depreciation of any premises, buildings, structures, works of a permanent nature, plant, machinery or fixtures ;

(h) any payment to any provident, savings, widows' and orphans' or other society, scheme or fund, except such payments as are allowed under subsection (1) (f) of section 10 ;

(i) any royalty or other sums deductible in ascertaining the tax under the provisions of section 17.

(2) (a) Notwithstanding the provisions of subsection (1) (b) of section 10, in computing the adjusted profit of any company of any accounting period no deduction shall be allowed in respect of sums incurred by way of interest during that period upon any borrowed money where such money was borrowed from a second company if during that period—

(i) either company has an interest in the other company, or

(ii) both have interests in another company either directly or through other companies, or

(iii) both are subsidiaries of another company.

(b) For the purposes of this subsection—

(i) a company shall be deemed to be a subsidiary of another company if and so long as an interest in it is held by that other company either directly or through any other company or companies ;

(ii) an interest means a beneficial interest in issued share capital (by whatever name called) ; and

(iii) the Board shall disregard any such last mentioned interest which in their opinion is insignificant or remote, or where in their opinion that interest arises from a normal market investment and the companies concerned have no other dealings or connection between each other.

Exclusion of certain profits, etc.

12. Where a company engaged in petroleum operations is engaged in the transportation of chargeable oil by ocean going oil-tankers operated by or on behalf of the company from Nigeria to another territory then such adjustments shall be made in computing an adjusted profit or a loss as shall have the effect of excluding therefrom any profit or loss attributable to such transportation.

Artificial transactions, etc.

13. (1) Where the Board is of 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 or fictitious, the Board may disregard any such disposition or direct that such adjustments shall be made as respects liability to tax as the Board considers appropriate so as to counteract the reduction of liability to tax effected, or reduction which would otherwise be effected, by the transaction and the companies concerned shall be assessable accordingly. In this subsection the expression "disposition" includes any trust, grant, covenant, agreement or arrangement.

(2) For the purpose of this section, the following transactions shall be deemed to be artificial or fictitious, namely, transactions between persons one of whom has control over the other or between persons both of whom are controlled by some other person which, in the opinion of the Board, have not been made on the terms which might fairly have been expected to have been made by independent persons engaged in the same or similar activities dealing with one another at arm's length.

(3) Nothing in this section shall prevent the decision of the Board in the exercise of any discretion given to the Board by this section from being questioned in an appeal against an assessment in accordance with Part VIII of this Ordinance and on the hearing of any such appeal the Court may confirm or vary any such decision including any directions made under this section.

Assessable profits and losses.

14. (1) Subject to the provisions of this section, the assessable profits of any company of any accounting period shall be the amount of the adjusted profit of that period after the deduction of the amount of any loss incurred by that company during any previous accounting period.

(2) A deduction under subsection (1) shall be made so far as possible from the amount, if any, of the adjusted profit of the first accounting period after that in which the loss was incurred, and, so far as it cannot be so made, then from the amount of the adjusted profit of the next succeeding accounting period and so on.

(3) Within five months after the end of any accounting period of a company, or within such further time as the Board may permit in writing in any instance, the company may elect in writing that a deduction or any part thereof to be made under this section shall be deferred to and be made in the succeeding accounting period, and may so elect from time to time in any succeeding accounting period.

Chargeable profits and capital allowances.

15. (1) The chargeable profits of any company of any accounting period shall be the amount of the assessable profits of that period after the deduction of any amount to be allowed in accordance with the provisions of this section.

(2) There shall be computed the aggregate amount of all allowances due to the company under the provisions of the Second Schedule for the accounting period.

Second
Schedule.

(3) In calculating the amount of the deduction to be allowed under this section for the accounting period, the limitation imposed by subsection (4) shall be applied to ensure that the amount of any tax chargeable on the company for that period shall be not less than fifteen per cent of the tax which would be chargeable on the company for that period if no deduction were to be made under this section for that period.

(4) The amount to be allowed as a deduction under subsection (1) in respect of the said allowances shall be—

(a) the aggregate amount computed under subsection (2), or

(b) a sum equal to eighty-five per cent of the assessable profits of the accounting period less one hundred and seventy per cent of the total amount of the deductions allowed under section 17 for that period, whichever is the less.

(5) Where the total amount of the allowances computed under subsection (2) cannot be deducted under subsection (1) owing to there being an insufficiency of or no assessable profits of the accounting period or to the limitation imposed by subsection (4), such total amount or the part thereof which has not been so deducted as the case may be, shall be added to the aggregate amount to be computed under subsection (2) for the following accounting period of the company, and thereafter shall be deemed to be an allowance due to the company, under the provisions of the Second Schedule for that following accounting period.

Second
Schedule.

PART IV.—ASCERTAINMENT OF ASSESSABLE TAX AND OF CHARGEABLE TAX

16. The assessable tax for any accounting period of a company shall be an amount equal to fifty per cent of its chargeable profits of that period.

Assessable
tax.

17. (1) The chargeable tax for any accounting period of a company, to be charged, assessed and paid by the company under the provisions of this Ordinance, shall be the amount of its assessable tax for that period after the deductions allowed by this section.

Chargeable
tax.

(2) Subject to the provisions of subsection (6), there shall be deducted from the assessable tax of the company for that period—

(a) all royalties the liability for which was incurred by the company during that period in respect of chargeable oil won during that period; and

(b) all sums the liability for which was incurred by the company during that period to any Government in Nigeria or to any provincial or local authority in Nigeria, by way of any duty, tax (other than the tax imposed by this Ordinance), or any rate, impost, fee or other like charge:

Provided that where any such sums are incurred for the purpose of obtaining a service, facility or right to enjoy any facility, such service, facility or right being of a kind available to the public on like payment, then such sums shall not be so deducted.

(3) Notwithstanding the provisions of subsection (2) (b), no deduction shall be allowed in respect of customs duties on goods (including articles, materials or any other thing) imported by the company—

(a) for resale or for the personal consumption of employees of the company, or

(b) where, with respect to such goods, goods (of a like quality to those so imported) are produced in Nigeria and are available (at the time the imported goods were ordered by the company) for sale to the public at prices less than or equivalent to the cost to the company of the imported goods, including in such cost any sums paid by the company for the transport thereof to a port in Nigeria and the customs duties paid thereon.

(4) Where the total amount of any royalties and sums allowed to be deducted under the provisions of this section for any accounting period of a company exceeds the assessable tax, or where there is no assessable tax for that period, such excess or such total amount, as the case may be, shall be carried forward for deduction from the assessable tax of the company for the next following accounting period of the company and so on until, in respect of that excess or that total amount, a deduction has been made or deductions amounting in the aggregate to that excess or total amount have been made.

(5) Where a deduction has been allowed to the company under this section in respect of any royalties or other sums or where there has been allowed to the company under subsection (4) a deduction and—

(a) such royalties or sums or any part of any royalties or sums, forming part of any such deduction, are or is repaid or refunded to the company, or

(b) the liability of the company for the payment of such royalties or sums or any part thereof is waived or released,

then, with respect to any amount so repaid, refunded, waived or released, the aggregate of the deductions, allowed to the company under subsection (1) for the accounting period of the company during which the liability for such royalties or other sums was incurred, shall be reduced by that amount or if there is no assessable tax for that period or if such aggregate is less than that amount then the aggregate of the deductions, allowed to the company under subsection (1) for the next accounting period of the company, shall be reduced by that amount or by any balance thereof, as the case may be, and so on until the reduction or reductions total that amount, and whenever necessary such additional assessment or assessments to tax shall be made upon the company to give effect to this subsection, and the provisions of this Ordinance as to notice of assessment, objection, appeal and other proceedings under this Ordinance shall apply to such assessment or assessments and to the tax charged thereunder.

(6) Where in any accounting period of a company engaged in petroleum operations the company is engaged in transportation of chargeable oil by oil-tankers, as mentioned in section 12, or has any source of income or profits of a kind not chargeable to tax under this Ordinance, then any sums, the liability for which was incurred by the company during that period and which are attributable to such transportation, oil-tankers or source (such sums being sums which would but for this subsection be allowed to be deducted under this section) shall not be allowed to be deducted under the provisions of this section.

PART V.—PERSONS CHARGEABLE

18. (1) Any person (other than a company) who engages in petroleum operations either on his own account or jointly with any other person or in partnership with any other person with a view to sharing the profits arising from those operations shall be guilty of an offence.

(2) Where two or more companies are engaged in petroleum operations either in partnership, in a joint adventure or in concert under any scheme or arrangement, the Minister may make rules for the ascertainment of the tax to be charged and assessed upon each company so engaged.

(3) Any such rules may modify the provisions of this Ordinance in such manner as the Minister may think fit and may if necessary, provide for the apportionment of any profits, outgoings, expenses, liabilities, deductions, qualifying expenditure and the tax chargeable upon each company, or may provide for the computation of any tax as if the partnership, joint adventure, scheme or arrangement were carried on by one company and apportion that tax between the companies concerned or may accept some other basis of ascertaining the tax chargeable upon each of the companies which may be put forward by those companies and such rules may contain provisions which have regard to any circumstances whereby such operations are partly carried on for any companies by an operating company whose expenses are reimbursed by those companies.

(4) Any such rules may be expressed to be of general application for the purposes of this section and Ordinance or of particular application to a specified partnership, joint adventure, scheme or arrangement.

(5) Any such rules may be amended or replaced from time to time with or without retrospective effect.

(6) The effect of any such rules shall not impose a greater burden of tax upon any company so engaged in any partnership, joint adventure, scheme or arrangement than would have been imposed upon that company under this Ordinance if all things enjoyed, done or suffered by such partnership, joint adventure, scheme or arrangement had been enjoyed, done or suffered by that company in the proportion in which it enjoys, does or suffers those things under or by virtue of that partnership, joint adventure, scheme or arrangement.

19. (1) A company not resident in Nigeria which is or has been engaged in petroleum operations (hereinafter in this section referred to as a "non-resident company") shall be assessable and chargeable to tax, either directly or in the name of its manager, or in the name of any other person who is resident in Nigeria, employed in the management of the petroleum operations carried on by such non-resident company, as such non-resident company would be assessed and charged if it were resident in Nigeria.

Companies not resident in Nigeria.

(2) The person in whose name a non-resident company is assessable and chargeable to tax shall be answerable—

(a) for all matters required to be done by virtue of this Ordinance for the assessment of the tax as might be required to be done by such non-resident company if it were resident in Nigeria; and

(b) for paying any tax assessed and charged in the name of such person by virtue of subsection (1).

20. The manager or any principal officer in Nigeria of every company which is or has been engaged in petroleum operations shall be answerable for doing all such acts as are required to be done by virtue of this Ordinance for the assessment and charge to tax of such company and for payment of such tax.

Manager of companies, etc., to be answerable.

21. (1) Where a company is being wound up or where in respect of a company a receiver has been appointed by any Court, by the holders of any debentures issued by the company or otherwise, the company may be assessed

Company wound up, etc.

and charged to tax in the name of the liquidator of the company, the receiver or any agent in Nigeria of the liquidator or receiver and may be so assessed and charged to tax for any accounting period whether before, during or after the date of the appointment of the liquidator or receiver.

(2) Any such liquidator, receiver or agent shall be answerable for doing all such acts as are required to be done by virtue of this Ordinance for the assessment and charge to tax of such company and for payment of such tax.

(3) Such liquidator or receiver shall not distribute any assets of the company to the shareholders or debenture holders thereof unless he has made provision for the payment in full of any tax which may be found payable by the company or by such liquidator, receiver or agent on behalf of the company.

22. Where a company which is or was engaged in petroleum operations transfers a substantial part of its assets to any person without having paid any tax, assessed or chargeable upon the company, for any accounting period ending prior to such transfer and in the opinion of the Board one reason for such transfer by the company was to avoid payment of such tax then that tax as charged upon the company may be sued for and recovered from that person in a manner similar to a suit for any other tax under section 40 subject to any necessary modification of that section.

23. Every person answerable under this Ordinance for the payment of tax on behalf of a company may retain out of any money in or coming to his hands or within his *de facto* control on behalf of such company so much thereof as shall be sufficient to pay such tax, and shall be and is hereby indemnified against any person whatsoever for all payments made by him in accordance with the provisions of this Ordinance.

PART VI—ACCOUNTS AND PARTICULARS

24. (1) Every company which is or has been engaged in petroleum operations shall for each accounting period of the company, make up accounts of its profits or losses, arising from those operations, of that period and shall prepare the following particulars—

(a) computations of its estimated adjusted profit or loss and of its estimated assessable profits of that period;

(b) in connection with the Second Schedule, a schedule showing—

(i) the residues at the end of that period in respect of its assets,

(ii) all qualifying petroleum expenditure incurred by it in that period,

(iii) the values of any of its assets (estimated by reference to the provisions of that schedule) disposed of in that period, and

(iv) the allowances due to it under that schedule for that period;

(c) a computation of its estimated chargeable profits of that period;

(d) a statement of all royalties and other sums, deductible under section 17, the liabilities for which were incurred during that period;

(e) a statement of all amounts repaid, refunded, waived or released, as referred to in subsection (5) of section 17, to it during that period; and

(f) a computation of its estimated tax for that period.

(2) Every company which is or has been engaged in petroleum operations shall, with respect to any accounting period of the company, within five months after the expiration of that period or within five months after the date of publication of this Ordinance in the Gazette upon enactment (whichever is later) deliver to the Board a copy of its accounts (bearing an auditor's certificate) of that period, made up in accordance with the provisions of

Avoidance
by
transfer.

Indemnification of
representative.

Preparation and delivery
of accounts
and
particulars.

Second
Schedule.

subsection (1), and copies of the particulars referred to in that subsection relating to that period. Such copy of those accounts and each copy of those particulars (not being estimates) shall contain a declaration, which shall be signed by a duly authorised officer of the company or by its liquidator, receiver or the agent of such liquidator or receiver, that the same is true and complete and where such copies are estimates each copy shall contain a declaration, similarly signed, that such estimate was made to the best of the ability of the person signing the same.

25. The Board may give notice in writing to any company which is or has been engaged in petroleum operations when and as often as to the Board may seem necessary requiring it to furnish within such reasonable time as may be specified by such notice fuller or further information as to any of the matters either referred to in section 24 or as to any other matters which the Board may consider necessary for the purposes of this Ordinance.

Board may call for further information

26. (1) For the purpose of obtaining full information in respect of any company's petroleum operations the Board may give notice to such company requiring it within the time limited by such notice, which time shall not be less than twenty-one days from the date of service of such notice, to complete and deliver to the Board any information called for in such notice and in addition or alternatively requiring an authorised representative of such company or its liquidator, receiver or the agent of such liquidator or receiver, to attend before the Board or its authorised representative on such date or dates as may be specified in such notice and to produce for examination any books, documents, accounts and particulars which the Board may deem necessary.

Power to call for returns, books, etc.

(2) If a company assessable to tax under the provisions of this Ordinance fails or refuses to keep books or accounts which, in the opinion of the Board are adequate for the purpose of ascertaining the tax, the Board may by notice in writing require it to keep such records, books and accounts as the Board considers to be adequate in such form and in such language as the Board may in the said notice direct and, subject to the provisions of subsections (3) and (4), the company shall keep records, books and accounts as directed.

(3) An appeal shall lie from any direction of the Board made under this section to a judge of the High Court.

(4) On hearing such appeal the judge may confirm or modify such direction and any such decision shall be final.

27. (1) Not later than five months after the commencement of each accounting period of twelve months (expiring after the publication of this Ordinance in the Gazette upon enactment) of any company engaged in petroleum operations, the company shall submit to the Board a return, the form of which the Board may prescribe, of its estimated tax for such period.

Returns of estimated tax.

(2) If at any time during any such accounting period the company having made a return as provided for in subsection (1) is aware that the estimate in such return requires revision then it shall submit a further return containing its revised estimated tax for such period.

28. Where it is shown by any company to the satisfaction of the Board that for some good reason the company is not able to comply with the provisions of section 24 within the time limited by that section or any notice given to it under section 25 or 26, within the time limited by any such notice, the Board may grant in writing such extension of that time as the Board may consider necessary.

Extension of periods for making returns.

PART VII—ASSESSMENTS

29. (1) The Board shall proceed to assess every company with the tax for any accounting period of the company as soon as may be after the expiration of the time allowed to such company for the delivery of the accounts and particulars provided for in section 24.

(2) Where a company has delivered accounts and particulars for any accounting period of the company, the Board may—

(a) accept the same and make an assessment accordingly; or

(b) refuse to accept the same and proceed as provided in subsection (3) upon any failure as therein mentioned and the like consequences shall ensue.

(3) Where, for any accounting period of a company, the company has failed to deliver accounts and particulars provided for in section 24 within the time limited by that section or has failed to comply with any notice given to it under the provisions of section 25 or 26 within the time specified in such notice or within any extended time provided for in section 28 and the Board is of the opinion that such company is liable to pay tax, the Board may estimate the amount of the tax to be paid by such company for that accounting period and make an assessment accordingly, but such assessment shall not affect any liability otherwise incurred by such company by reason of its failure or neglect to deliver such accounts and particulars or to comply with such notices. Nothing in this subsection shall affect the right of the Board to make any additional assessment under the provisions of section 30.

30. (1) If the Board discovers or is of the opinion at any time that, with respect to any company liable to tax, tax has not been charged and assessed upon the company or has been charged and assessed upon the company at a less amount than that which ought to have been charged and assessed for any accounting period of the company, the Board may within six years after the expiration of that accounting period and as often as may be necessary assess such company with tax for that accounting period at such amount or additional amount as in the opinion of the Board ought to have been charged and assessed, and may make any consequential revision of the tax charged or to be charged for any subsequent accounting period of the company and where such revision results in a greater amount of tax to be charged than has been charged or would otherwise be charged an additional assessment or an assessment for any such subsequent accounting period shall be made accordingly, and the provisions of this Ordinance as to notice of assessment, objection, appeal and other proceedings under this Ordinance shall apply to any such assessment or additional assessment and to the tax charged thereunder.

(2) For the purpose of computing under subsection (1) the amount or the additional amount of tax for any accounting period of a company which ought to have been charged, all relevant facts consistent with subsection (3) of section 35 shall be taken into account even though not known when any previous assessment or additional assessment on the company for that accounting period was being made or could have been made.

31. (1) Assessments of tax shall be made in such form and in such manner as the Board shall authorize and shall contain the names and addresses of the companies assessed to tax or of the persons in whose names any companies (with the names of such companies) have been assessed to tax, and in the case of each company for each of its accounting periods, the particular accounting period and the amount of the chargeable profits of and assessable tax and chargeable tax for that period.

Board to
make
assessments.

Additional
assessments.

Making of
assessment,
etc.

(2) When any assessment requires to be amended or revised, a form of amended or revised assessment shall be made in a manner similar to that in which the original of that assessment was made under subsection (1) but showing the amended or revised amount of the chargeable profits, assessable tax and chargeable tax.

(3) A copy of each assessment, and of each amended or revised assessment shall be filed in a List which shall constitute the Assessment List for the purpose of this Ordinance.

32. (1) The Board shall cause to be served personally on or sent by registered post to each person whose name appears on an assessment in the Assessment List a notice of assessment stating its accounting period and the amount of its chargeable profits, assessable tax and chargeable tax charged and assessed upon the company, the place at which payment of the tax should be made, and informing such company of its rights under subsection (2).

Notices of
assessment,
etc.

(2) If any person in whose name an assessment was made in accordance with the provisions of this Ordinance disputes the assessment that person may apply to the Board, by notice of objection in writing, to review and revise the assessment so made on him. Such application shall be made within twenty-one days from the date of service of the notice of such assessment and shall state the amount of chargeable profits of the company of the accounting period in respect of which the assessment is made and the amount of the assessable tax and the tax which such person claims should be stated on the notice of assessment.

(3) The Board, upon being satisfied that owing to absence from Nigeria, sickness or other reasonable cause, the person in whose name the assessment was made was prevented from making the application within such period of twenty-one days shall extend the period as may be reasonable in the circumstances.

(4) After receipt of a notice of objection referred to in subsection (2) the Board may within such time and at such place as the Board shall specify require the person giving the notice of objection to furnish such particulars as the Board may deem necessary, and may by notice within such time and at such place as the Board shall specify require any person to give evidence orally or in writing respecting any matters necessary for the ascertainment of the tax payable, and the Board may require such evidence if given orally to be given on oath or if given in writing to be given by affidavit.

(5) In the event of any person assessed who has objected to an assessment made upon him, agreeing with the Board as to the amount of tax liable to be assessed, the assessment shall be amended accordingly, and notice of the tax payable shall be served upon such person.

(6) If an applicant for revision under the provisions of subsection (2) fails to agree with the Board the amount of the tax, the Board shall give such applicant notice of refusal to amend the assessment as desired by such applicant, and may revise the assessment to such amount as the Board may determine and give such applicant notice of the revised assessment and of the tax payable together with notice of refusal to amend the revised assessment and, wherever requisite, any reference in this Ordinance to an assessment or to an additional assessment shall be treated as a reference to an assessment or to an additional assessment as revised under the provisions of this subsection.

Errors and defects in assessment and notice.

33. (1) No assessment, warrant or other proceeding purporting to be made in accordance with the provisions of this Ordinance shall be quashed, or deemed to be void or voidable, for want of form, or be affected by reason of a mistake, defect or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of this Ordinance or any Ordinance amending the same, and if the company assessed or intended to be assessed or affected thereby is designated therein according to common intent and understanding.

(2) An assessment shall not be impeached or affected —

(a) by reason of a mistake therein as to—

(i) the name of a company liable or of a person in whose name a company is assessed, or

(ii) the amount of the tax ;

(b) by reason of any variance between the assessment and the notice thereof,

if in cases of assessment the notice thereof be duly served on the company intended to be assessed or on the person in whose name the assessment was intended to be made on a company, and such notice contains, in substance and effect, the particulars on which the assessment is made.

PART VIII—APPEALS

34. (1) Any person (being a company or a person in whose name a company is assessed) being aggrieved by an assessment made upon him, who has failed to agree with the Board in the manner provided in subsection (5) of section 32, may appeal against the assessment to the High Court upon giving notice in writing to the Board within twenty-one days after the date of service upon such person of notice of the refusal of the Board to amend the assessment as desired.

(2) Notwithstanding the lapse of such period of twenty-one days, any person may appeal against the said assessment if he shows to the satisfaction of the judge that, owing to absence from Nigeria, sickness or other reasonable cause he was prevented from giving notice of appeal within such period, and that there has been no unreasonable delay on his part.

(3) Every company appealing shall appoint an authorised representative who shall attend before the court in person on the day and at the time fixed for the hearing of its appeal, but if it be proved to the satisfaction of the judge that owing to absence from Nigeria, sickness or other reasonable cause any duly appointed representative is prevented from attending in person at the hearing of the company's appeal on the day and at the time fixed for that purpose, the judge may postpone the hearing of the appeal for such reasonable time as he thinks necessary for the attendance of the appellant's representative, or he may admit the appeal to be made by any other agent, clerk or servant of the appellant, on its behalf or by way of written statement.

(4) Twenty-one clear days' notice shall, unless rules made hereunder otherwise provide, be given to the Board of the date fixed for the hearing of the appeal.

(5) The onus of proving that the assessment complained of is excessive shall be on the appellant.

(6) The judge may confirm, reduce, increase or annul the assessment or make such order thereon as to him may seem fit.

Appeals to High Court against assessments.

(7) Notice of the amount of tax payable under the assessment as determined by the judge shall be served by a duly authorised representative of the Board either personally or by registered post to, the appellant.

(8) Notwithstanding anything contained in section 39, if in any particular case the judge from information given at the hearing of the appeal is of the opinion that the tax may not be recovered, he may on application being made by or on behalf of the Board require the appellant to furnish within such time as may be specified security for payment of the tax and if such security is not given within the time specified the tax assessed shall become payable and recoverable forthwith.

(9) All appeals shall be heard *in camera*, unless the judge shall, on the application of the appellant, otherwise direct.

(10) The costs of the appeal shall be in the discretion of the judge hearing the appeal and shall be a sum fixed by the judge.

(11) (a) The Chief Justice of the High Court may make rules providing for the method of tendering evidence before a judge on appeal, the conduct of such appeals and the procedure to be followed by a judge upon stating a case for the opinion of the Federal Supreme Court.

(b) Pending the making of any rules under this subsection, the Income Tax Appeals (Lagos) Rules, 1957 (or any rules replacing those rules) shall apply to any appeal or to any such procedure for the purposes of this section and Ordinance with any necessary modifications.

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of 1957:

(12) An appeal against the decision of the judge shall lie to the Federal Supreme Court—

(a) at the instance of the appellant where the decision of the judge is to the effect that the correct assessment of tax is in the sum of five hundred pounds or upwards, and

(b) at the instance of the Board where the decision of the judge is in respect of a matter in which the Board claimed that the correct assessment of tax was in the sum of five hundred pounds or upwards.

35. (1) Where no valid objection of appeal has been lodged within the time limited by section 32 or 34, as the case may be, against an assessment as regards the amount of the tax assessed thereby, or where the amount of the tax has been agreed to under subsection (5) of section 32, or where the amount of the tax has been determined on objection or revision under subsection (6) of section 32, or on appeal, the assessment as made, agreed to, revised or determined on appeal, as the case may be, shall be final and conclusive for all purposes of this Ordinance as regards the amount of such tax, and if the full amount of the tax in respect of any such final and conclusive assessment is not paid within the appropriate period or periods prescribed in this Ordinance, the provisions thereof relating to the recovery of tax, and to any penalty under section 38, shall apply to the collection and recovery thereof subject only to the set-off of the amount of any tax repayable under any claim, made under any provisions of this Ordinance, which has been agreed to by the Board or determined on any appeal against a refusal to admit any such claim.

Assessment to be final and conclusive.

(2) Where an assessment has become final and conclusive any tax overpaid shall be repaid.

(3) Nothing in section 32 or in this Part shall prevent the Board from making any assessment or additional assessment to tax for any accounting period which does not involve re-opening any issue on the same facts which has been determined for that accounting period, under subsection (5) or (6) of section 32 by agreement or otherwise or on appeal.

PART IX—COLLECTION, RECOVERY AND REPAYMENT OF TAX

Procedure in cases where objection or appeal is pending.

36. Collection of tax shall in cases where notice of an objection or an appeal has been given remain in abeyance, any pending proceedings for any instalment thereof being stayed, until such objection or appeal is determined but the Board may in any such case enforce payment of that portion of the tax (if any) which is not in dispute.

Time within which payment is to be made.

37. (1) Subject to the provisions of section 36, tax for any accounting period of twelve months shall be payable in four instalments in accordance with this section, the first three instalments being payments on account of tax estimated to be chargeable by reference to the latest return submitted in accordance with section 27.

(2) The first instalment shall be due and payable not later than the last day of the ninth month of such accounting period and shall be twenty-five per cent of the amount of tax estimated to be payable for such accounting period and calculated in accordance with the taxpayer's latest return pursuant to section 27.

(3) The second instalment shall be due and payable not later than the last day of the accounting period and shall be fifty per cent of the amount of tax estimated to be payable for such accounting period and calculated in accordance with the taxpayer's latest return pursuant to section 27 less so much thereof as has already been paid under subsection (2) or is the subject of proceedings.

(4) The third instalment shall be due and payable not later than the last day of the third month following the expiry of the accounting period and shall be seventy-five per cent of the amount of tax estimated to be payable for such accounting period and calculated in accordance with the taxpayer's latest return pursuant to section 27 less so much thereof as has already been paid under subsections (2) and (3) or is the subject of proceedings.

(5) Any instalments on account of tax estimated to be chargeable shall be treated as tax charged and assessed for the purposes of sections 38 and 40.

(6) The final instalment shall be due and payable within twenty-one days after the service of the notice of assessment of tax for such accounting period, and shall be the amount of the tax assessed by such assessment less so much thereof as has already been paid under subsections (2), (3) and (4) or is the subject of proceedings.

38. (1) If any instalment of tax due and payable pursuant to section 37 is not paid within the appropriate time limit prescribed in section 37—

(a) a sum equal to five per cent of the amount of the instalment of tax due and payable may, if the Board thinks fit, be added thereto, and the provisions of this Ordinance relating to the collection and recovery of tax shall apply to the collection and recovery of such sum;

(b) the Board shall cause to be served a demand note upon the company assessed or upon the person in whose name the company is assessed; and if payment is not made within one month from the date of the service of such demand note, the Board may proceed to enforce payment as hereinafter provided;

(c) a penalty imposed under this subsection shall not be deemed to be part of the tax paid for the purpose of any of the provisions of this Ordinance, other than those relating to enforcement and collection of any tax.

Penalty for non-payment of tax and enforcement of payment.

(2) Any company or person in whose name the company is assessed who without lawful justification or excuse, the proof whereof shall lie on the company or such person assessed, fails to pay the tax within the period of one month prescribed in subsection (1) (b), shall be guilty of an offence.

(3) The Board may, for any good cause shown, remit the whole or any part of the penalty due under subsection (1).

39. Where payment of tax in whole or in part has been held over pending the result of a notice of objection or of appeal, the tax outstanding under the assessment as determined on such objection or appeal as the case may be shall be payable forthwith as to any part thereof in proceedings stayed pending such determination and as to the balance thereof within one month from the date of service on the company assessed, or on the person in whose name the company is assessed, of the notification of the tax payable, and if such balance is not paid within such period the provisions of section 38 shall apply.

Collection of tax after determination of objection or appeal.

40. (1) Tax may be sued for and recovered in a court of competent jurisdiction at the place at which payment should be made, by the Board in its official name with full costs of suit from the company assessed to such tax or from the person in whose name the company is assessed to such tax as a debt due to the Government of the Federation.

Suit for tax by the Board.

(2) For the purposes of this section a court of competent jurisdiction shall include a magistrate's court, which court is hereby invested with the necessary jurisdiction, if the amount claimed in any suit does not exceed the amount of the jurisdiction of the magistrate concerned with respect to personal suits.

(3) In any suit under subsection (1) the production of a certificate signed by any person duly authorised by the Board giving the name and address of the defendant and the amount of tax due by the defendant shall be sufficient evidence of the amount so due and sufficient authority for the court to give judgment for the said amount.

41. (1) If any person who has paid tax for any accounting period alleges that any assessment, made upon him or in his name for that period, was excessive by reason of some error or mistake in the accounts, particulars or other written information supplied by him to the Board for the purpose of the assessment, such person may at any time, not later than six years after the end of the accounting period in respect of which the assessment was made, make an application in writing to the Board for relief.

Relief in respect of error or mistake.

(2) On receiving any such application the Board shall inquire into the matter and subject to the provisions of this section shall by way of repayment of tax give such relief in respect of the error or mistake as appears to the Board to be reasonable and just.

(3) No relief shall be given under this section in respect of an error or mistake as to the basis on which the liability of the applicant ought to have been computed where such accounts, particulars or information was in fact made or given on the basis or in accordance with the practice of the Board generally prevailing at the time when such accounts, particulars or information was made or given.

(4) In determining any application under this section the Board shall have regard to all the relevant circumstances of the case, and in particular shall consider whether the granting of relief would result in the exclusion from

charge to tax of any part of the chargeable profits of the applicant, and for this purpose the Board may take into consideration the liability of the applicant and assessments made upon him in respect of other years.

(5) No appeal shall lie from a determination of the Board under this section, which determination shall be final and conclusive.

Repayment
of tax.

42. (1) Save as is otherwise in this Ordinance expressly provided no claim for the repayment of any tax overpaid shall be allowed unless it is made in writing within six years next after the end of the accounting period to which it relates and if the Board disputes any such claim it shall give to the claimant notice of refusal to admit the claim and the provisions of section 34 shall apply with any necessary modifications.

(2) The Board shall give a certificate of the amount of any tax to be repaid under any of the provisions of this Ordinance or under any order of a court of competent jurisdiction and upon the receipt of the certificate the Accountant-General of the Federation shall cause repayment to be made in conformity therewith.

PART X.—OFFENCES AND PENALTIES

Penalty
for
offences.

43. (1) Any person guilty of an offence against this Ordinance or of any rule made thereunder for which no other penalty is specifically provided, shall be liable to a fine of five hundred pounds, and where such offence is one under subsection (1) of section 18, or is a failure to submit a return under section 27 or is a failure, arising from the provisions of Part VI, to deliver accounts, particulars or information or to keep records required, a further sum of ten pounds for each and every day during which such offence or failure continues, and in default of payment to imprisonment for six months, the liability for such further sum to commence from the day following the conviction, or from such day thereafter as the court may order.

(2) Any person who—

(a) fails to comply with the requirements of a notice served on him under this Ordinance; or

(b) having a duty so to do, fails to comply with the provisions of section 24; or

(c) without sufficient cause fails to attend in answer to a notice or summons served on him under this Ordinance or having attended fails to answer any question lawfully put to him; or

(d) fails to submit any return required to be submitted by section 27 in accordance with that section or in accordance with that section and section 28;

shall be guilty of an offence.

(3) Any offence in respect of which a penalty is provided by subsection (1) shall be deemed to occur in Lagos.

44. (1) Every person who without reasonable excuse—

(a) makes up or causes to be made up any incorrect accounts by omitting or understating any profits or overstating any losses of which he is required by this Ordinance to make up accounts; or

Penalty for
making
incorrect
accounts,
etc.

(b) prepares or causes to be prepared any incorrect schedule required to be prepared by section 24 by overstating any expenditure or any incorrect statement required to be prepared by section 24 by overstating any royalties or other sums or by omitting or understating any amounts repaid, refunded, waived or released; or

(c) gives or causes to be given any incorrect information in relation to any matter or thing affecting his liability to tax,

shall be guilty of an offence and shall be liable to a fine of two hundred pounds and double the amount of tax which has been undercharged in consequence of such incorrect accounts, schedule, statement or information or would have been so undercharged if the accounts, schedule, statement or information had been accepted as correct.

(2) No person shall be liable to any penalty under this section unless the complaint concerning such offence was made at any time within six years after the end of the accounting period in respect of which the offence was committed.

(3) The Board may compound any offence under this section, and may before judgment stay or compound any proceedings thereunder.

(4) Any offence under this section shall be deemed to occur in Lagos.

45. (1) Any person who—

(a) for the purpose of obtaining any deduction, rebate, reduction or repayment in respect of tax for himself or for any other person, or who in any return, account, particulars or statement made or furnished with reference to tax, knowingly makes any false statement or false representation, or forges or fraudulently alters or uses, or fraudulently lends, or allows to be used by any other person any receipt or token evidencing payment of the tax under this Ordinance; or

(b) aids, abets, assists, counsels, incites or induces any other person—

(i) to make or deliver any false return or statement under this Ordinance;

(ii) to keep or prepare any false accounts or particulars affecting tax;

or

(iii) unlawfully to refuse or neglect to pay tax,

shall be guilty of an offence and shall be liable to a fine of two hundred pounds and treble the amount of tax for which the person assessable is liable under this Ordinance for the accounting period in respect of or during which the offence was committed, or to imprisonment for six months, or to both such fine and imprisonment.

(2) The Board may compound any offence under this section and with the leave of the court may before judgment stay or compound any proceedings thereunder.

(3) Any offence under this section shall be deemed to occur in Lagos.

46. (1) Any person who—

(a) being a member of the Board charged with the due administration of this Ordinance or any assistant employed in connection with the assessment and collection of the tax who—

(i) demands from any person an amount in excess of the authorised assessment of the tax payable;

(ii) withholds for his own use or otherwise any portion of the amount of tax collected;

False
statements
and returns.

Penalties
for
offences by
authorised
and unauthorised
persons.

(iii) renders a false return, whether verbal or in writing, of the amounts of tax collected or received by him ;

(iv) defrauds any person, embezzles any money, or otherwise uses his position so as to deal wrongfully either with the Board or any other individual ; or

(b) not being authorised under this Ordinance to do so collects or attempts to collect the tax under this Ordinance,

shall be guilty of an offence and be liable to a fine of three hundred pounds or to imprisonment for three years or both.

(2) Any offence under this section shall be deemed to occur in Lagos.

47. The institution of proceedings for, or the imposition of, a penalty, fine or term of imprisonment under this Ordinance shall not relieve any person from liability to payment of any tax for which he is or may become liable.

48. No prosecution in respect of an offence under section 5, 44, 45 or 46 may be commenced except at the instance of or with the sanction of the Board.

49. The provisions of this Ordinance shall not affect any criminal proceedings under any other Ordinance or law.

PART XI.—MISCELLANEOUS

50. No tax shall be charged under the provisions of the Income Tax Ordinance or any other Ordinance in respect of any income or dividends paid out of any profits which are taken into account, under the provisions of this Ordinance, in the calculation of the amount of any chargeable profits upon which tax is charged, assessed and paid under the provisions of this Ordinance.

51. (1) If the Governor-General by order declares that arrangements specified in the order have been made with the Government of any territory outside Nigeria with a view to affording relief from double taxation in relation to tax imposed under the provisions of this Ordinance and any tax of a similar character imposed by the laws of that territory, and that it is expedient that those arrangements should have effect, the arrangements shall have effect notwithstanding anything in any enactment.

(2) The Governor-General may make rules for carrying out the provisions of any arrangements having effect under this section.

(3) An order made under the provisions of subsection (1) may include provisions for relief from tax for accounting periods commencing or terminating before the making of the order and provisions as to income (which expression includes profits) which is not itself liable to double taxation.

(4) Where, before the publication of this Ordinance in the Gazette upon enactment, any order has been made under the provisions of section 33 of the Income Tax Ordinance and the arrangements specified in that order, with any modifications, are expressed to apply to a tax in a territory outside

Tax to be payable notwithstanding any proceedings for penalties.

Prosecution to be with the sanction of the Board.

Saving for criminal proceedings.

Restrictions on effect of the Income Tax and other Ordinances. 92.

Double taxation arrangements with other territories.

Nigeria and to income tax in Nigeria and to any other taxes of a substantially similar character either imposed in that territory or Nigeria or imposed by either Contracting Party to any such arrangements after those arrangements came into force and—

(a) such order was made before the 1st day of January, 1958, then, for the purposes of this Ordinance, that order shall be deemed to have been made under this section on that day and those arrangements shall have effect, in Nigeria, as respects tax for any accounting period; or

(b) such order was made on a day after the year 1957, then, for the purposes of this Ordinance, that order shall be deemed to have been made under this section on that day and the arrangements specified therein shall have effect, in Nigeria, as respects tax for any accounting period beginning on or after the date when those arrangements come into force and for the unexpired portion of any accounting period current at that date;

and where any arrangements, to which this subsection applies, contain a provision for exchange of information with the Commissioner of Income Tax or the Commissioner as defined in section 2 of the Income Tax Ordinance then the order, with respect to those arrangements, as deemed to have been made under this section, shall be deemed to provide for such exchange with the Chairman of the Board as respects tax.

(5) The Governor-General may by order replace or vary any order deemed to have been made under this section for the purposes of this Ordinance, without otherwise affecting such last mentioned order for the purpose of any other Ordinance.

52. (1) The provisions of this section shall have effect where, under arrangements having effect under section 51, foreign tax payable in respect of any income in the territory with the Government of which the arrangements are made is to be allowed as a credit against tax payable in respect of that income in Nigeria; and in this section the expression "foreign tax" means any tax payable in that territory which, under the arrangements, is to be so allowed, and "income" means that part of the profits of any accounting period which is liable to both tax and foreign tax, before the deduction of any tax, foreign tax, credit therefor or relief granted under subsection (6).

(2) The amount of the credit admissible to any company under the terms of any such arrangements shall be set off against the tax chargeable upon that company in respect of the income, and where that tax has been paid the amount of the credit may be repaid to that company or carried forward against the tax chargeable upon that company of any subsequent accounting period.

(3) The credit for an accounting period shall not exceed whichever is the less of the following amounts, that is to say—

(a) the amount of the foreign tax payable on the income, or

(b) the amount of the difference between the tax chargeable under this Ordinance (before allowance of credit under any arrangements having effect under section 51) and the tax which would be so chargeable if the income were excluded in computing profits.

Cap. 92.

Method of calculating relief to be allowed for double taxation.

(4) Without prejudice to the provisions of subsection (3), the total credit to be allowed to a company for any accounting period for foreign tax under all arrangements having effect under section 51 shall not exceed the total tax which would be ultimately borne by that company, for that accounting period, if no such credit had been allowed.

(5) Where the income includes a dividend and under the arrangements foreign tax not chargeable directly or by deduction in respect of the dividend is to be taken into account in considering if any, and if so what, credit is to be given against tax in respect of the dividend, the amount of the income shall be increased by the amount of the foreign tax not so chargeable which falls to be taken into account in computing the amount of the credit.

(6) Where the amount of the foreign tax attributable to the income exceeds the credit therefor computed under subsection (3), then the amount of that income, to be included in computing profits for any purpose of this Ordinance other than that of subsection (3), shall be taken to be the amount of that income increased by the amount of the credit therefor after deduction of the foreign tax.

(7) Where—

(a) the arrangements provide, in relation to dividends of some classes, but not in relation to dividends of other classes, that foreign tax not chargeable directly or by deduction in respect of dividends is to be taken into account in considering if any, and if so what, credit is to be given against tax in respect of the dividends; and

(b) a dividend is paid which is not of a class in relation to which the arrangements so provide,

then, if the dividend is paid to a company which controls, directly or indirectly, not less than half of the voting power in the company paying the dividends, credit shall be allowed as if the dividend were a dividend of a class in relation to which the arrangements so provide.

(8) Any claim for an allowance by way of credit shall be made not later than three years after the end of the accounting period, and in the event of any dispute as to the amount allowable the Board shall give to the claimant notice of refusal to admit the claim which shall be subject to appeal in like manner as an assessment.

(9) Where the amount of any credit given under the arrangements is rendered excessive or insufficient by reason of any adjustment of the amount of any tax payable either in Nigeria or elsewhere, nothing in this Ordinance limiting the time for the making of assessments or claims for repayment of tax shall apply to any assessment or claim to which the adjustment gives rise, being an assessment or claim made not later than three years from the time when all such assessments, adjustments and other determinations have been made, whether in Nigeria or elsewhere, as are material in determining whether any, and if so what, credit falls to be given.

(10) Where a company is not resident in Nigeria throughout an accounting period no credit shall be admitted in respect of any income included in the profits of that company of that period.

53. At any time after the enactment of this Ordinance the Governor-General may by order delete any of the powers or duties specified in the First Schedule or include therein additional powers or duties and may do so by amendment of such Schedule or by substituting a new Schedule therefor.

FIRST SCHEDULE

(ss. 3(e), 4 and 53).

POWERS OR DUTIES TO BE PERFORMED OR EXERCISED BY THE BOARD ALONE

The powers or duties specified in or imported into the following sections of this Ordinance (other than such part of any powers or duties as consist of a power or duty to make enquiries or other incidental or preparatory powers or duties of a like nature) shall only be performed or exercised by the Board, who shall have no power to authorise any other person to perform the same, namely, powers or duties in sections 3 (b), (d) and (e), 6 (2), 10 (1) (f), 11 (2) (b) (iii), 13, 25 (2), 27 (1), 31 (1), 41, 44, 45 and 48.

SECOND SCHEDULE (ss 10, 15 and 24)

CAPITAL ALLOWANCES

ARRANGEMENT OF PARAGRAPHS

Paragraph

1. Interpretation.
2. Provisions relating to qualifying petroleum expenditure.
3. Owner and meaning of relevant interest.
4. Sale of Buildings, etc.
5. Initial allowances.
6. Annual Allowances.
7. Asset to be in use at end of accounting period.
8. Balancing allowances.
9. Balancing charges.
10. Residue.
11. Meaning of "disposed of".
12. Value of an asset.
13. Apportionment.
14. Part of an asset.
15. Extension of meaning of "in use".
16. Exclusion of certain expenditure.
17. Asset used or expenditure incurred partly for the purpose of petroleum operations.
18. Disposal without change of ownership.

1. For the purposes of this Schedule, unless the context otherwise requires:—

Interpre-
tation.

"concession" includes an oil exploration licence, an oil prospecting licence, an oil mining lease, any right, title or interest in or to petroleum oil in the ground and any option of acquiring any such right, title or interest;

"lease" includes an agreement for a lease where the term to be covered by the lease has begun, any tenancy and any agreement for the letting or hiring out of an asset, but does not include a mortgage, and all cognate expressions including "leasehold interest" shall be construed accordingly and—

(a) where, with the consent of the lessor, a lessee of any asset remains in possession thereof after the termination of the lease without a new lease being granted to him, that lease shall be deemed for the purposes of this Schedule to continue so long as he remains in possession as aforesaid; and

(b) where, on the termination of a lease of any asset, a new lease of that asset is granted to the lessee the provisions of this Schedule shall have effect as if the second lease were a continuation of the first lease; "qualifying expenditure" means, subject to the express provisions of this Schedule, expenditure incurred in an accounting period which is—

(a) capital expenditure (hereinafter called "qualifying plant expenditure") incurred on plant, machinery or fixtures;

(b) capital expenditure (hereinafter called "qualifying building expenditure"), other than expenditure which is included in paragraph (a) or (c) of this definition, incurred on the construction of buildings, structures or works of a permanent nature; or

(c) capital expenditure (hereinafter called "qualifying petroleum expenditure") other than expenditure which is included in paragraph (a) of this definition, incurred in connection with, or with a view to petroleum operations on—

(i) the acquisition of, or of rights in or over, petroleum deposits, or the purchase of information relating to the existence and extent of such deposits;

(ii) searching for or discovering and testing petroleum deposits, or winning access thereto; or

(iii) the construction of any works or buildings which are likely to be of little or no value when the petroleum operations for which they were constructed cease to be carried on:

Provided that, for the purpose of this definition, qualifying expenditure shall not include any sum which may be deducted under the provisions of section 17 of the Ordinance.

For the purposes of this definition of qualifying expenditure, where expenditure is incurred by a company before its first accounting period and such expenditure would have fallen to be treated as qualifying expenditure (ascertained without the qualification contained in the foregoing proviso) if it had been incurred by the company on the first day of its first accounting period, and

(i) that expenditure is incurred in respect of an asset owned by the company then such expenditure shall be deemed to be qualifying expenditure incurred by it on that day; or

(ii) that expenditure is incurred in respect of an asset which has been disposed of by the company before the beginning of its first accounting period then any loss suffered by the company on the disposal of such asset shall be deemed to be qualifying petroleum expenditure incurred by the company on that day and be deemed to have brought into existence an asset

owned by the company in use for the purposes of petroleum operations carried on by the company, and any profit realised by the company on such disposal shall be treated as income of the company of its first accounting period for the purposes of paragraph (a) (iii) of section 9 of the Ordinance.

2. (1) For the purposes of this Schedule where—

(a) (i) qualifying petroleum expenditure has been incurred on the purchase of information relating to the existence and extent of petroleum deposits or on searching for or on discovering and testing such deposits or winning access thereto and such expenditure has been incurred for the purposes of petroleum operations carried on by the company incurring the expenditure during an accounting period of the company, or

(ii) expenditure has been incurred before its first accounting period and such expenditure would have been treated as such qualifying petroleum expenditure (ascertained without the qualification contained in the proviso in the definition of qualifying expenditure) if it had been incurred in that first accounting period; and

(b) such expenditure has not brought into existence an asset,

then such expenditure (ascertained in the case of sub-paragraph (1) (a) (ii) without such qualification) shall be deemed to have brought into existence an asset owned by the company incurring the expenditure and in use for the purposes of such petroleum operations.

(2) For the purposes of this Schedule, an asset in respect of which qualifying petroleum expenditure has been incurred by any company for the purposes of petroleum operations carried on by it during any accounting period of the company, and which has not been disposed of, shall be deemed not to cease to be used for the purposes of such operations so long as such company continues to carry on such operations.

(3) So much of any qualifying petroleum expenditure incurred on the acquisition of rights in or over petroleum deposits and on the purchase of information relating to the existence and extent of such deposits as exceeds the total of the original cost of acquisition of such rights and of the cost of searching for, discovering and testing such deposits prior to the purchase of such information shall be left out of account for the purposes of this Schedule: Provided that where the company which originally incurred such costs was a company which carried on a trade or business consisting, as to the whole or part thereof, in the acquisition of such rights or information with a view to the assignment or sale thereof, the price paid on such assignment or sale shall be substituted for the aforementioned costs.

3. (1) For the purposes of this Schedule, where an asset consists of a building, structure or works, the owner thereof shall be taken to be the owner of the relevant interest in such building, structure or works.

(2) Subject to the provisions of this paragraph, in this Schedule the expression "the relevant interest" means, in relation to any expenditure incurred on the construction of a building, structure or works, the interest in such building, structure or works to which the company which incurred such expenditure was entitled when it incurred the expenditure.

Provisions relating to qualifying petroleum expenditure.

Owner and meaning of relevant interest.

(3) Where, when a company incurs qualifying building expenditure or qualifying petroleum expenditure on the construction of a building, structure or works, the company is entitled to two or more interests therein, and one of those interests is an interest which is reversionary on all the others, that interest shall be the relevant interest for the purposes of this Schedule.

4. Where capital expenditure has been incurred on the construction of a building, structure or works and thereafter the relevant interest therein is sold, the company which buys that interest shall be deemed, for all the purposes of this Schedule except the granting of initial allowances, to have incurred, on the date when the purchase price became payable, capital expenditure on the construction thereof equal to the price paid by it for such interest or to the original cost of construction, whichever is the less: Provided that—

(a) where such relevant interest is sold before the building, structure or works has been used, the foregoing provisions of this paragraph shall have effect with respect to such sale with the omission of the words "except the granting of initial allowances" and the original cost of construction shall be taken to be the amount of the purchase price on such sale;

(b) where any such relevant interest is sold more than once before the building, structure or works is used, the provisions of sub-paragraph (a) shall have effect only in relation to the last of those sales.

5. Subject to the provisions of this Schedule, where, in any accounting period of a company, the company owning any asset has incurred in respect thereof qualifying expenditure wholly and exclusively for the purposes of petroleum operations carried on by it, there shall be due to that company for the accounting period in which that asset is first used for the purposes of such operations an allowance (in this Schedule called an "initial allowance") at the appropriate rate *per cent*, set forth in the Table to this Schedule, of such expenditure.

6. (1) Subject to the provisions of this Schedule, where, in any accounting period of a company, the company owning any asset has incurred in respect thereof qualifying expenditure wholly and exclusively for the purposes of petroleum operations carried on by it, whether or not an initial allowance may be due to it in respect of that qualifying expenditure, there shall be due to that company for each accounting period in which that asset was used for the purposes of such operations, an allowance (hereinafter called "an annual allowance") at the appropriate rate *per cent* specified in sub-paragraph (2), of the residue of such expenditure at the end of the accounting period; Provided that where the accounting period is a period of less than one year any such allowance for that accounting period shall be proportionately reduced.

(2) The said rate shall, in the case of—

- (i) qualifying building expenditure, be ten *per cent* of such expenditure;
- (ii) qualifying petroleum expenditure, be such a rate *per cent*, not being less than fifteen *per cent*, as shall be determined by the Board to be just and reasonable having regard to the rate of exhaustion of the petroleum deposits in connection with which such expenditure has been incurred; and

Sale of buildings, etc.

Initial allowances.

Table.

Annual allowances.

(iii) qualifying plant expenditure, be such a rate *per cent* as shall be determined by the Board to be just and reasonable having regard to the working life of the asset and to the estimated value thereof at the end of such working life :

Provided that—

(a) in determining the said rate in the case of qualifying petroleum expenditure, the Board may have regard to the rate of exhaustion of other petroleum deposits in Nigeria, being deposits from which the company incurring the expenditure has the right to extract the deposits or in respect of which such company has any title to acquire such a right ;

(b) in determining the said rate in the case of qualifying petroleum expenditure, or qualifying plant expenditure, the Board shall disregard any initial allowance which is due in respect of such expenditure.

7. An initial or an annual allowance in respect of qualifying expenditure incurred in respect of any asset shall only be due to a company for any accounting period if at the end of such accounting period it was the owner of that asset and the asset was in use for the purposes of the petroleum operations carried on by it.

Asset to be in use at end of accounting period.

8. Subject to the provisions of this Schedule, where in any accounting period of a company, the company owning any asset in respect of which it has incurred qualifying expenditure wholly and exclusively for the purposes of petroleum operations carried on by it, disposes of that asset an allowance (hereinafter called "a balancing allowance") shall be due to that company for that accounting period of the excess of the residue of that expenditure, at the date such asset is disposed of, over the value of that asset at that date ; Provided that a balancing allowance shall only be due in respect of such asset if immediately prior to its disposal it was in use by such company for the purposes of the petroleum operations for which such qualifying expenditure was incurred.

Balancing allowances.

9. Subject to the provisions of this Schedule, where in any accounting period of a company, the company owning any asset in respect of which it has incurred qualifying expenditure wholly and exclusively for the purposes of petroleum operations carried on by it, disposes of that asset, the excess (hereinafter called "a balancing charge") of the value of that asset, at the date of its disposal, over the residue of that expenditure at that date shall, for the purposes of paragraph (a) (iii) of section 9 of the Ordinance, be treated as income of the company of that accounting period : Provided that a balancing charge in respect of such asset shall only be so treated if immediately prior to the disposal of that asset it was in use by such company for the purposes of the petroleum operations for which such qualifying expenditure was incurred and shall not exceed the total of any allowances due under the provisions of this Schedule, in respect of such asset.

Balancing charges.

10. The residue of qualifying expenditure, in respect of any asset, at any date, shall be taken to be the total qualifying expenditure incurred on or before that date, by the owner thereof at that date, in respect of that asset, less the total of any initial or annual allowances due to such owner, in respect of that asset, before that date.

Residue.

Meaning
of "dis-
posed of".

11. Subject to any express provision to the contrary, for the purposes of this Schedule—

(a) a building, structure or works of a permanent nature is disposed of if any of the following events occur—

(i) the relevant interest therein is sold; or

(ii) that interest, being an interest depending on the duration of a concession, comes to an end on the coming to an end of that concession; or

(iii) that interest, being a leasehold interest, comes to an end otherwise than on the company entitled thereto acquiring the interest which is reversionary thereon; or

(iv) the building, structure or works of a permanent nature are demolished or destroyed or, without being demolished or destroyed, cease altogether to be used for the purposes of petroleum operations carried on by the owner thereof;

(b) plant, machinery or fixtures are disposed of if they are sold, discarded or cease altogether to be used for the purposes of petroleum operations carried on by the owner thereof;

(c) assets in respect of which qualifying petroleum expenditure is incurred are disposed of if they are sold or if they cease to be used for the purposes of the petroleum operations of the company incurring the expenditure either on such company ceasing to carry on all such operations or on such company receiving insurance or compensation monies therefor.

Value of
an asset.

12. (1) The value of an asset at the date of its disposal shall be the net proceeds of the sale thereof or of the relevant interest therein, or, if it was disposed of without being sold, the amount which, in the opinion of the Board, such asset or the relevant interest therein, as the case may be, would have fetched if sold in the open market at that date, less the amount of any expenses which the owner might reasonably be expected to incur if the asset were so sold.

(2) For the purpose of this paragraph, if an asset is disposed of in such circumstances that insurance or compensation monies are received by the owner thereof, the asset or the relevant interest therein, as the case may be, shall be treated as having been sold and as though the net proceeds of the insurance or compensation monies were the net proceeds of the sale thereof.

Apportion-
ment.

13. (1) Any reference in this Schedule to the disposal, sale or purchase of any asset includes a reference to the disposal, sale or purchase of that asset, as the case may be, together with any other asset, whether or not qualifying expenditure has been incurred on such last-mentioned asset, and, where an asset is disposed of, sold, or purchased together with another asset, so much of the value of the assets as, on a just apportionment, is properly attributable to the first-mentioned asset shall, for the purposes of this Schedule, be deemed to be the value of, or the price paid for, that asset, as the case may be. For the purposes of this sub-paragraph, all the assets which are purchased or disposed of in pursuance of one bargain shall be deemed to be purchased or disposed of together, notwithstanding that separate prices are or purport to be agreed for each of those assets or that there are or purport to be separate purchases or disposals of those assets.

(2) The provisions of sub-paragraph (1) shall apply, with any necessary modifications, to the sale or purchase of the relevant interest in any asset together with any other asset or relevant interest in any other asset.

14. Any reference in this Schedule to any asset shall be construed whenever necessary as including a reference to a part of any asset (including an undivided part of that asset in the case of joint interests therein) and when so construed any necessary apportionment shall be made as may, in the opinion of the Board, be just and reasonable.

Part of an asset.

15. (1) For the purposes of this Schedule, an asset shall be deemed to be in use during a period of temporary disuse.

Extension of meaning of "in use".

(2) For the purposes of paragraphs 5, 6 and 7—

(a) an asset in respect of which qualifying expenditure has been incurred by the owner thereof for the purposes of petroleum operations carried on by him shall be deemed to be in use for the purposes of such operations, between the dates hereinafter mentioned, where the Board is of the opinion that the first use to which the asset will be put by that owner incurring such expenditure will be for the purposes of such operations ;

(b) the said dates shall be taken to be the date on which such expenditure was incurred and the date on which the asset is in fact first put to use : Provided that where any allowances have been given in consequence of this sub-paragraph (2) and the first use to which such asset is put is not for the purposes of such operations, all such additional assessments shall be made as may be necessary to counteract the benefit obtained from the giving of any such allowances .

16. (1) Subject to the express provisions of this Schedule, where any company has incurred expenditure which is allowed to be deducted under any provision (other than a provision of this Schedule) of this Ordinance, such expenditure shall not be or be treated as qualifying expenditure.

Exclusion of certain expenditure.

(2) Where any company has incurred expenditure upon any ocean going oil-tanker plying between Nigeria and any other territory that expenditure shall not be treated as qualifying expenditure.

17. (1) The following provisions of this paragraph shall apply where either or both of the following conditions apply with respect to any asset—

(a) the owner of the asset has incurred in respect thereof qualifying expenditure partly for the purposes of petroleum operations carried on by him and partly for other purposes ;

(b) the asset in respect of which qualifying expenditure has been incurred by the owner thereof is used partly for the purposes of petroleum operations carried on by such owner and partly for other purposes.

Asset used or expenditure incurred partly for the purpose of petroleum operations.

(2) Any allowances which would be due or any balancing charges which would be treated as income if both such expenditure were incurred wholly and exclusively for the purposes of such petroleum operations and such asset were used wholly and exclusively for the purposes of such operations shall be computed in accordance with the provisions of this Schedule.

(3) So much of the allowances and charges computed in accordance with the provisions of sub-paragraph (2) shall be due or shall be so treated, as the case may be, as in the opinion of the Board is just and reasonable having regard to all the circumstances and to the provisions of this Schedule.

Disposal
without
change of
ownership.

18. Where an asset in respect of which qualifying expenditure has been incurred by the owner thereof has been disposed of in such circumstances that such owner remains the owner thereof, then, for the purposes of determining whether and, if so, in what amount, any annual or balancing allowance or balancing charge shall be made to or on such owner in respect of his use of that asset after the date of such disposal,

(a) qualifying expenditure incurred by such owner in respect of such asset prior to the date of such disposal shall be left out of account; but

(b) such owner shall be deemed to have bought such asset immediately after such disposal for a price equal to the residue of such qualifying expenditure at the date of such disposal, increased by the amount of any balancing charge or decreased by the amount of any balancing allowance made as a result of such disposal.

TABLE (Paragraph 5)

<i>Qualifying Expenditure in respect of :</i>	<i>Rate Per Centum</i>
Qualifying Building Expenditure	20
Qualifying Petroleum Expenditure	25
Qualifying Plant Expenditure	40

Objects and Reasons

The purpose of this Bill is to ensure that if mineral oil deposits prove to be adequate the development of a flourishing oil industry shall be facilitated by a realistic fiscal policy. The foundation of such a policy has been under consideration by the Federal Government in the light of profit sharing arrangements made in other parts of the world, and discussions with Regional Governments have been followed by the reports of internationally known experts to supplement the opinions of Government's own advisers. While the Bill implements a 50/50 profit sharing arrangement between Nigeria and the oil companies who invest effort and capital in the search for and exploitation of Nigeria's oil resources, its main object is to prescribe, in addition to the normal procedural and revenue safeguarding provisions, the factors which are to be taken into account in such an agreement, and in particular the times at which and periods over which the extremely heavy capital expenditure incurred and to be incurred by oil companies in exploration for and exploitation of oil resources shall be allowed against any profits earned. Although rents in accordance with oil licences and leases are payable irrespective of oil production, and although royalties will be payable under oil mining leases irrespective of profits, one object of this Bill is to provide that some taxation based on the profits of oil production will take place at the earliest possible date notwithstanding the heavy capital allowances to be made in respect of past expenditure. This is doubly difficult to achieve since it is estimated that in respect of the company most engaged in oil exploration in Nigeria in the past, which is now producing some oil, there will still be a lapse of a few years before any possibility of the profit from oil production exceeding the kind of current expenses which all countries allow against profits of oil production apart from past expenditure in exploration. Some time will still therefore elapse before tax under the Ordinance proposed by this Bill on profits of oil production will be payable in addition to rents and royalties. The purpose of the Bill is however to make demonstrably fair and equitable taxation provisions notwithstanding any change which may take place in the scale of oil production, and to indicate such provisions to those who are interested in entering the field as well as those already engaged in petroleum operations.

In outline of its main points therefore, the Bill accordingly provides (Clause 15) that while capital expenditure incurred in exploration and exploitation (*vide* the Second Schedule together with the definition of petroleum operations in Clause 2) is to be allowed against profits, such capital allowances shall be limited to ensure a liability of at least 15 per cent of the tax payable if no such allowances were due (Clause 15 (2)). Clauses 16 and 17 provide for the implementation of a 50/50 profit sharing basis: against half of the chargeable profits, royalties payable under any oil licence or lease are to be offset, and, with certain exceptions, any additional duties, taxes or fees levied against the company concerned. The effect in broad terms will be that the 50/50 agreement will take effect having regard to all imposts levied in Nigeria, but any company affected will be limited in respect of the proportion of allowances for capital expenditure which it may take into account from time to time.

Part I contains formal matters and definitions peculiar to the Ordinance, while Part II contains administrative matters analogous with the Income Tax Ordinance.

Part III (Clause 9) relates profits to gross proceeds of sale of oil and to the valuation of oil which is not sold but delivered to a refinery, while Clauses 10 and 11 deal with deductions therefrom.

Clause 14 deals with the deduction of losses which are computed before giving capital allowances. The effect of Clause 15 has been referred to in an earlier paragraph of this statement. Part IV leads to the computation of chargeable tax.

Part V contains important provisions relating to companies. In particular, it is necessary to provide that only companies be engaged in petroleum operations, and not individuals and necessary to make some provision for the interpretation of inter-company arrangements peculiar to the industry, and Clause 18 so provides.

Part VI to IX deal with formal matters relating to accounts, assessments, appeals and collection of tax and are to a considerable extent based on the Income Tax Ordinance, and Part X specifies offences and penalties specific to this Ordinance.

(Bills 602)

F. S. OKOTTE-EBOH,
Minister of Finance
Federation of Nigeria