

THE CAPITAL GAINS TAX DECREE 1967



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SCHEDULE

Provisions of certain income tax Acts applied to Capital Gains Tax.

Decree No. 44

[1st April 1967]

Commence-
ment.

THE FEDERAL MILITARY GOVERNMENT hereby decrees as follows :—

CAPITAL GAINS TAX—GENERAL

1.—(1) Subject to the provisions of this Decree there shall be charged a tax to be called capital gains tax for the year of assessment 1967-68 and for subsequent years of assessment in respect of any capital gains, that is to say, gains accruing to any person on or after 1st April 1967 on a disposal of assets.

Taxation of
capital gains.

(2) Every such gain shall, except so far as otherwise expressly provided, be a chargeable gain.

2.—(1) The rate of capital gains tax shall be twenty per cent.

Capital gains
tax.

(2) Capital gains tax shall be chargeable at the rate mentioned in subsection (1) above on the total amount of chargeable gains accruing to any person in a year of assessment after making such deductions as may be allowed under this Decree in the computation of such gains.

(3) Capital gains tax to be assessed on any person under this Decree shall be computed and charged in accordance with the provisions of this Decree.

3. Subject to any exceptions provided by this Decree, all forms of property shall be assets for the purposes of this Decree whether situated in Nigeria or not, including—

Chargeable
assets.

(a) options, debts and incorporeal property generally ;

(b) any currency other than Nigerian currency ; and

(c) any form of property created by the person disposing of it, or otherwise coming to be owned without being acquired ;

and without prejudice to the foregoing provisions, this section shall have effect, notwithstanding that—

(i) the property is an eligible property within the meaning of the Income Tax (Rents) Act 1965 or the Act repealed by that Act ; or

1965 No. 8.

(ii) the property is an asset in respect of which qualifying expenditure had been incurred under the Fifth Schedule of the Income Tax Management Act 1961, the Third Schedule of the Companies Income Tax Act 1961 or the Petroleum Profits Tax Act 1959.

1961 No. 21.

1961 No. 22.

1959 No. 15.

4. Without prejudice to the foregoing provisions of this Decree, as respects any chargeable gains accruing in the year 1967-68 or a later year of assessment from a disposal of assets situated outside Nigeria—

Assets
situated
outside
Nigeria.

(a) where the disposal of assets is by an individual—

(i) who is in Nigeria for some temporary purpose only and not with any view or intent to establish his residence in Nigeria ; and

(ii) if the period or sum of the periods for which he is present in Nigeria in that year of assessment exceeds 182 days ; or

(b) where the disposal is by any trustee of any trust or settlement and the seat of administration of the trust or settlement is situated outside Nigeria during the whole of that year of assessment ; or

1961 No. 22.

(c) where the disposal is by a company, which is not a Nigerian Company within the meaning of section 2 of the Companies Income Tax Act 1961, that is to say, a company whose activities are managed and controlled outside Nigeria during the whole of that year of assessment,

capital gains tax shall be charged on the amounts (if any) received or brought into Nigeria in respect of any chargeable gains, such amounts being treated as gains accruing when they are received or brought into Nigeria.

Exclusion of losses.

5. In the computation of chargeable gains under this Decree the amount of any loss which accrues to a person on a disposal of any asset shall not be deductible from gains accruing to any person on a disposal of such asset.

GAINS CHARGEABLE TO TAX

Disposal of assets.

6.—(1) Subject to any exceptions provided by this Decree there is, for the purposes of this Decree, a disposal of assets by a person where any capital sum is derived from a sale, lease, transfer, an assignment, a compulsory acquisition or any other disposition of assets, notwithstanding that no asset is acquired by the person paying the capital sum, and in particular—

(a) where any capital sum is derived by way of compensation for any loss of office or employment ;

(b) where any capital sum is received under a policy of insurance and the risk of any kind of damage or injury to, or the loss or depreciation of, assets ;

(c) where any capital sum is received in return for forfeiture or surrender of rights, or for refraining from exercising rights ;

(d) where any capital sum is received as consideration for use or exploitation of any asset ; and

(e) without prejudice to paragraph (a) above, where any capital sum is received in connection with or arises by virtue of any trade, business, profession or vocation.

(2) In this section and elsewhere in this Decree—

(a) "capital sum" means any money or money's worth which is not excluded from the consideration taken into account in the computation under section 12 below ; and

(b) references to a disposal of assets include, except where the context otherwise requires, references to a part disposal of assets, and there is a part disposal of assets—

(i) where an interest or right in or over the assets is created by the disposal, as well as where it subsists before the disposal ; and

(ii) where, on a person making a disposal, any description of property derived from the assets remains undisposed of.

Disposal of assets: provisions as to consideration.

7.—(1) Subject to the provisions of this Decree, a person's acquisition of an asset and the disposal of it to him shall, for the purposes of this Decree, be deemed to be for a consideration equal to the market value of the asset—

(a) where he acquires the asset otherwise than by way of a bargain made at arm's length ; or

(b) where he acquires the asset wholly or partly for a consideration that cannot be valued, or in connection with his own or another's loss of office or employment or diminution of emolument, or otherwise in consideration for or recognition of his or another's services or past services in any office or employment or of any other service rendered or to be rendered by him or another ; or

(c) where he acquires the asset as trustee for creditors of the person making the disposal.

(2) Where a person disposes by way of a gift of an asset acquired by him by way of a gift or otherwise (not being an acquisition on a devolution on death) the person acquiring the asset on that disposal shall, for all purposes of this Decree, so far as relates to the interest taken by him, be deemed to have acquired the asset—

(a) in a case where the amount of the consideration for which the asset was last disposed of by way of a bargain made at arm's length is ascertainable, for a consideration equal to that amount ; and

(b) in any other case, for a consideration equal to the market value of the asset on the date of that disposal.

In this subsection "gift" does not include a *donatio mortis causa*.

(3) In relation to any asset held by a person as nominee for another person, or as trustee for another person absolutely entitled as against the trustee, or for any person who would be so entitled but for being an infant or other person under disability (or for two or more persons who are or would be jointly so entitled), this Decree shall apply as if the property were vested in, and the acts of the nominee or trustee in relation to the asset were the acts of, the person or persons for whom he is the nominee or trustee (acquisitions from or disposals to him by that person or persons being disregarded accordingly).

(4) The conveyance or transfer by way of security of an asset or of an interest or right in or over it, or transfer of a subsisting interest or right by way of security in or over an asset (including a re-transfer on redemption of the security), shall not be treated for the purposes of this Decree as involving any acquisition or disposal of the asset.

(5) Where a person entitled to an asset by way of security or to the benefit of a charge or incumbrance on an asset deals with the asset for the purpose of enforcing or giving effect to the security, charge or incumbrance his dealings with it shall be treated for the purposes of this Decree as if they were done through him as nominee by the person entitled to it subject to the security, charge or incumbrance ; and this subsection shall apply to the dealings of any person appointed to enforce or give effect to the security, charge or incumbrance as receiver and manager or judicial factor as it applies to the dealings of the person entitled as aforesaid.

(6) An asset shall be treated as having been acquired free of any interest or right by way of security subsisting at the time of any acquisition of it, and as being disposed of free of any such interest or right subsisting at the time of the disposal ; and where an asset is acquired subject to any such interest or right the full amount of the liability thereby assumed by the person acquiring the asset shall form part of the consideration for the acquisition and disposal in addition to any other consideration,

(7) Where an asset is acquired by a creditor in satisfaction of his debt or part thereof, the asset shall not be treated as disposed of by the debtor or acquired by the creditor for a consideration greater than its market value at the time of the creditor's acquisition of it, and if a chargeable gain accrues to the creditor on a disposal by him of the asset the amount of the chargeable gain (where necessary) shall be reduced so as not to exceed the chargeable gain which would have accrued if he had acquired the property for a consideration equal to the amount of the debt or that part thereof.

Death.

8.—(1) On the death of an individual any assets of which he was competent to dispose of shall for the purposes of this Decree be deemed to be disposed of by him at the date of his death and acquired by the personal representatives or other person on whom the assets devolve for a consideration equal to—

(a) in a case where the amount of the consideration for which the asset was last disposed of by way of a bargain made at arm's length is ascertainable, that amount; and

(b) in any other case the market value of the asset at that date.

(2) The gains which accrue in consequence of subsection (1) of this section shall not be chargeable to capital gains tax under this Decree.

(3) In relation to property forming part of the estate of a deceased person the personal representatives shall for the purposes of this Decree be treated as being a single and continuous body of persons (distinct from the persons who may from time to time be the personal representatives), and that body shall be treated as having the deceased's residence and domicile at the date of death.

(4) On a person acquiring any asset as legatee—

(a) no chargeable gain shall accrue to the personal representatives, and

(b) the legatee shall be treated as if the personal representatives' acquisition of the asset had been his acquisition of it.

(5) In this section references to assets of which a deceased person was competent to dispose of are references to assets of the deceased which (otherwise than in right of a power of appointment) he could, if of full age and capacity, have disposed of by his will assuming that all the assets were situated in Nigeria and, if he was not domiciled in Nigeria, that he was domiciled in Nigeria.

(6) If not more than two years after a death any of the dispositions of the property of which the deceased was competent to dispose of whether by will, or under the law relating to intestacies, or otherwise, are varied by deed of family arrangement or similar instrument, this section shall apply as if the variations made by the deed or other instrument were effected by the deceased, and no disposition made by the deed or other instrument shall constitute a disposition for the purposes of this Decree.

(7) In this section—

"legatee" includes any person taking under a testamentary disposition or on an intestacy or partial intestacy whether he takes beneficially or as trustee, and a donatio mortis causa shall be treated as a testamentary disposition and not as a gift;

"personal representatives" means—

(a) the executor, original or by representation, or administrator for the time being of a deceased person under any law in force in Nigeria;

(b) persons having in relation to the deceased under the law of another country any functions corresponding to the functions for administration purposes under any law in force in Nigeria of personal representatives as defined under paragraph (a) above,

and references to personal representatives as such shall be construed as references to the personal representatives in their capacity as having such functions as aforesaid.

9.—(1) A person shall not be chargeable to tax under this Decree in respect of any acquisition and the disposal of land by reference to a disposal to an authority exercising or having compulsory powers, if that person had neither—

Compulsory
acquisition of
land.

(a) acquired the land at a time when he knew or might reasonably have known that it was likely to be acquired by the authority; nor

(b) taken any steps by advertisement or otherwise to dispose of the land or to make his willingness to dispose of it known to the authority, or others.

(2) In this section "authority exercising or having compulsory powers" means, in relation to any disposal of land, an authority, a person or body of persons acquiring the land compulsorily under the Public Lands Acquisition Act, the Land and Native Rights Act or any other enactment, or law of a country other than Nigeria, or who has or have been, or could be, authorised to acquire it compulsorily for the purposes for which it is acquired, or for whom another authority, person or body of persons has or have been, or could be, authorised so to acquire it.

Cap. 167.
Cap. 96.

10.—(1) Subject to the provisions of this section where a person disposes of shares in a company and immediately before the disposal either—

Disposal of
land effected
indirectly.

(a) the company is or has control of a land-owning company, and is under the control of not more than 5 persons, and in which he has a substantial interest; or

(b) the company or a company of which it has control, has a substantial interest in a land-owning company under the control of not more than five persons of which he and persons connected with him have control;

then he shall be chargeable to tax under this Decree by reference to his disposal of the shares, whenever he acquired them, and notwithstanding that he acquired them as legatee.

(2) Where, but for this section, a person would not be chargeable to tax under this Decree by reference to a disposal of shares in a company, then—

(a) he shall not be chargeable unless chargeable gains would have accrued to the company, being a land-owning company, or to a land-owning company referred to in paragraph (a) or (b), as the case may be, of subsection (1) above, on the company disposing of its land at market value at the time of his disposal and any such land-owning company disposing likewise of the land of that company; and

(b) he shall not, if a gain accrues to him on that disposal, be chargeable by reference to it to tax on an amount greater than the amount of the chargeable gains which would have so accrued, or such part of that amount as is attributable to the shares disposed of by him.

(3) For the purposes of this section, "chargeable gains" means gains chargeable to tax by reference to a disposal of shares in a company.

(4) In this section "land-owning company" means a company not carrying on a trade or dealing in or developing land, but entitled to land, being chargeable assets, to a value equal to or exceeding one-fifth of the net value of all its assets (that is to say, their value less the value of the debts and liabilities of the company); and for this purpose the value of the said land shall be taken to be the value of the company's interest free of any liability charged thereon, and to include the value of interests which the company has unconditionally contracted to acquire, but not that of interests which the company has unconditionally contracted to dispose of.

For the purposes of this subsection "value" in relation to a company's land means market value, and the net value of a company's assets is the net value they would have on a sale in the open market of the company's business as a going concern.

(5) For the purposes of this section a person shall be deemed to have a substantial interest in a company if one-tenth or more in market value of the issued shares in the company is held by him or is held partly by him and partly by persons connected with him.

(6) In this section "share", in relation to a company not limited by shares (whether or not it has a share capital) shall include the interest of a member of the company as such, whatever the form of that interest, and this section shall apply in relation to any disposal of rights attached to or forming part of a share as if the rights included in the disposal and those not included were separate shares.

11. For the purposes of this Decree any asset acquired or disposed of by any person chargeable to capital gains tax shall be subject to section 24(4) below be deemed to have been so acquired or disposed of at the date of the contract to acquire or dispose of the asset or at a date at which there is an enforceable right to acquire or a binding duty to dispose of the asset or any right or interest therein, and in particular—

(a) where any contract is to be performed subject to any condition the date of acquisition or disposal of asset shall be deemed to be the date when the condition is satisfied, but where a consideration of such a contract does not depend solely or mainly on the value of the asset at the time the condition is satisfied, the acquisition or disposal shall be treated as if the contract had never been conditional, in which case the date of the acquisition or disposal of asset shall be the date of the contract;

(b) where an option is conferred by virtue of any contract, the date of the acquisition or disposal of asset shall be the date when the option is exercised.

CAPITAL GAINS : COMPUTATION

12. In the computation of any chargeable gains under this Decree such gains as may be chargeable to tax shall, subject to the provisions of this Decree, be the difference between the consideration accruing to any person on a disposal of assets and any sum to be excluded from that consideration, and there shall be added to that sum the amount of the value of any expenditure allowable to such person on such disposal by virtue of this Decree.

13.—(1) There shall be excluded from the consideration for a disposal of assets taken into account in the computation of the gain accruing on that disposal any money or money's worth charged to income tax as income of, or taken into account as a receipt in computing income or profits or gains or losses of the person making the disposal for the purposes of the Income Tax

Date of acquisition or disposal, etc.

Computation of capital gains.

Exclusion from consideration for disposals of sums chargeable to income tax.

Management Act 1961, the Company's Income Tax Act 1961 or the Petroleum Profit Tax Act 1959, which Acts are hereafter jointly referred to as "the Income Tax Acts".

1961 No. 21.
1961 No. 22.
1959 No. 15.

(2) Subsection (1) above shall not be taken as excluding from the consideration for the disposal of an asset any money or money's worth which is taken into account in the making of a balancing charge under the Income Tax Acts.

14.—(1) In the computation of capital gains the sums allowable as a deduction from the consideration accruing to a person on the disposal of an asset shall be restricted to—

General provision as to allowable expenditure.

(a) the amount or value of the consideration, in money or money's worth given by him or on his behalf wholly, exclusively and necessarily for the acquisition of the asset, together with the incidental costs to him of the acquisition or, if the asset was not acquired by him, any expenditure wholly, exclusively and necessarily incurred by him in providing the asset ;

(b) any amount of an expenditure wholly, exclusively and necessarily incurred on the asset by him or on his behalf for the purposes of enhancing the value of the asset being expenditure reflected in the state or nature of the asset at the time of the disposal ;

(c) the amount of any expenditure wholly, exclusively and necessarily incurred on the asset by him or on his behalf in establishing, preserving or defending his title to, or a right over, the asset ; and

(d) the incidental costs to him of making the disposal.

(2) For the purposes of this section and any other provision of this Decree the incidental costs to the person making the disposal of the acquisition of the asset or of its disposal shall consist of expenditure wholly, exclusively and necessarily incurred by him for the purposes of the acquisition or, as the case may be, the disposal, being fees, commission or remuneration paid for the professional services of any surveyor or valuer, or auctioneer, or accountant, or agent, or legal adviser and costs of transfer or conveyance (including stamp duties) together—

(a) in the case of the acquisition of an asset, with costs of advertising to find a seller ; and

(b) in the case of a disposal, with costs of advertising to find a buyer and costs reasonably incurred in making any valuation or apportionment required for the purposes of the computation of the capital gains, including in particular, expenses reasonably incurred in ascertaining market value where required under this Decree.

15.—(1) There shall be excluded from the sum allowable under section 14 as a deduction in the computation under this Decree any expenditure allowable as a deduction in computing the profits or gains or losses of a trade, business, profession or vocation for the purposes of income tax or allowable as a deduction in computing any other income or profits or gains or losses for the purposes of the Income Tax Acts and any expenditure which, although not so allowable as a deduction in computing any losses, would be so allowable but for an insufficiency of income or profits or gains : and this section applies irrespective of whether effect is or would be given to the deduction in computing the amount of tax chargeable or by discharge of payment of tax or in any other way.

Exclusion of expenditure deductible for income tax purposes.

(2) Without prejudice to the provisions of subsection (1) above there shall be excluded from the sums allowable under section 14 as a deduction, in

the computation under this Decree any expenditure which, if the assets, or all the assets to which the computation relates, were, and had at all times been, held or used as part of the fixed capital of a trade or business the profits or gains of which were (irrespective of whether the person making the disposal is a company or not) chargeable to income tax would be allowable as a deduction in computing the profits or gains or losses of the trade for the purposes of income tax.

(3) The foregoing provisions of this section shall not require the exclusion from the sums allowable as a deduction in the computation under this Decree of any expenditure as being expenditure in respect of which capital allowances are granted under the Income Tax Acts.

Special provisions as to deductions allowable: insurance premiums.

16. Without prejudice to section 14 above there shall be excluded from the sums allowable as a deduction in the computation under this Decree of the gain accruing to a person on the disposal of an asset any premiums or other payments made under a policy of insurance against the risks of any kind of damage or injury to, loss or depreciation of, any asset.

COMPUTATION: MISCELLANEOUS

Part disposal.

17.—(1) Where there is a part disposal of an asset within the meaning of section 6 (2) above and generally wherever on the disposal of an asset any description of property derived from that asset remains undisposed of, the sums representing the amount or value of the consideration for the acquisition of the asset (in this Decree referred to as the cost of acquisition of the asset) together with any amount of expenditure wholly, exclusively and necessarily incurred on the asset for the purposes of enhancing the value of the asset as are attributable to the asset shall, both for the purposes of the computation under this Decree and in relation to the property which remains undisposed of, be apportioned.

(2) Apportionment shall be made by reference—

(a) to the amount or value of the consideration for the disposal on the one hand (call that amount or value A), and

(b) to the market value of the property which remains undisposed of on the other hand (call that market value B),

and accordingly the fraction of the said cost or sums allowable as a deduction in computing under this Decree the amount of the gain accruing on the disposal shall be $\frac{A}{A+B}$ and the remainder shall be attributed to the property

which remains undisposed of.

(3) Where there is a disposal of an interest or right in or over a chargeable asset created by the disposal or where it subsists before the disposal, and on the making of the disposal any description of property derived from the asset remains undisposed of, there shall be apportioned the amount or value of the consideration in money or money's worth given by him or on his behalf wholly and exclusively for the acquisition of the asset together with the incidental costs to him of the acquisition or any expenditure wholly or exclusively incurred by him in providing the asset as against the market value of the property.

Consideration due after time of disposal.

18.—(1) If the consideration, or part of a consideration, taken into account in the computation of capital gains under this Decree is payable by instalments over a period beginning not earlier than the time when the disposal is made, being a period exceeding 18 months, the chargeable gain

accruing on the disposal shall be regarded for all the purposes of this Decree as accruing in proportionate parts in the year of assessment in which the disposal is made and in each of the subsequent years of assessment down to and including the year of assessment in which the last instalment is payable.

(2) The proportionate parts to be recorded as accruing in the respective years of assessment shall correspond to the proportions of the amounts of the instalments of consideration payable in those respective years of assessment.

(3) The time in the year or accounting period when any such part of a chargeable gain is deemed to accrue under this section shall be the last day in that year of assessment.

(4) Subsection (1) above shall not apply to any part of the consideration which has effectively passed to the person making the disposal by way of a loan made to that person by the other party to the transaction.

(5) In the computation of chargeable gains under this Decree consideration for the disposal shall be brought into account without any discount for postponement of the right to receive any part of it and, in the first instance, without regard to a risk of any part of the consideration being irrecoverable, or to the right to receive any part of the consideration being contingent; and if any part of the consideration so brought into account is subsequently shown to the satisfaction of the Board to be irrecoverable, such adjustment, whether by way of discharge, or repayment of tax or otherwise, shall be made as is required in consequence.

19.—(1) If an asset, whether under a policy of insurance or otherwise, is lost or destroyed, and a capital sum received by way of compensation for the loss or destruction is applied within 3 years of receipt in acquiring another asset in replacement of the asset lost or destroyed, the owner shall if he so claims be treated for the purposes of this Decree—

Assets lost or destroyed.

(a) as if the consideration for the disposal of the old asset were (if otherwise of a greater amount) of such amount as would secure that on the disposal neither a loss nor a gain accrues to him, and

(b) as if the amount of the consideration for the acquisition of the new asset were reduced by the excess of the amount of the capital sum received by way of compensation or under the policy of insurance, together with any residual or scrap value, over the amount of the consideration which he is treated as receiving under paragraph (a) of this subsection.

(2) A claim shall not be made under subsection (1) above if part only of the capital sum is applied in acquiring the new asset but if all of that capital sum except for a part which is less than the amount of the gain (whether all chargeable gain or not) accruing on the disposal of the old asset is so applied, then the owner shall if he so claims be treated for the purposes of this Decree—

(a) as if the amount of the gain so accruing were reduced to the amount of the said part (and, if not all chargeable gain, with a proportionate reduction in the amount of the chargeable gain), and

(b) as if the amount of the consideration for the acquisition of the new asset were reduced by the amount by which the gain is reduced under paragraph (a) of this subsection.

20.—(1) Where a single bargain comprises two or more transactions whereby assets are disposed of, those transactions shall be treated for the purposes of computing capital gains as a single disposal.

Bargains comprising two or more transactions.

(2) Where separate considerations are agreed or purported to be agreed for any two or more transactions comprised in one bargain (whether transactions whereby assets are disposed of or not) those considerations shall be treated as altogether constituting an entire consideration for the transactions and shall be apportionable between them accordingly.

(3) Where any apportionment under this section shall result in lesser consideration than that agreed (or purported to be agreed) in the bargain being attributable to the disposal of the assets, the separate considerations agreed (or purported to be agreed) in respect of those assets shall be deemed to be the consideration for which those assets are disposed of.

Artificial or
fictitious
transactions.

21.—(1) Subject to the provisions of this Decree where the Board is of the opinion that any disposition is an artificial or fictitious transaction or where any transaction which reduces or would reduce the amount of any capital gains tax is artificial or fictitious the Board shall disregard such disposition and may direct that such adjustments shall be made with respect to the liability of any person for the payment of capital gains tax as it considers appropriate so as to counteract the reduction of liability to capital gains tax effected or reduction which would otherwise be effected, by the transaction and any person concerned with such transaction shall be assessable accordingly.

(2) Any person in respect of whom any direction is made under this section shall have a right of appeal in like manner as though for the purposes of this Decree such direction were an assessment to capital gains tax.

(3) For the purposes of this section—

(a) "disposition" includes any trust, grant, covenant, agreement or arrangement;

(b) transactions between connected persons (within the meaning of section 24 below) shall be deemed to be artificial or fictitious if in the opinion of the Board those transactions have not been made on terms which might fairly have been expected to have been made by persons engaged in the same or similar activities dealing with one another at arm's length; and

(c) in relation to any direction made under this section the provision of this Decree as to appeals against an assessment shall have effect as if such direction were an assessment.

Valuation:
market value.

22.—(1) For the purposes of computing capital gains, unless the context otherwise requires, "market value" in relation to any assets (whether chargeable assets or not) means the prices which those assets might reasonably be expected to fetch on a sale in the open market.

(2) In estimating the market value of any asset no reduction shall be made in the estimate on account of the estimate being made on the assumption that the whole of the assets is to be placed on the market at one and the same time.

(3) In re-estimating the market value of any assets acquired, if the market value exceeds the consideration actually paid by the acquirer, the assets shall be deemed to have been acquired for the amount actually paid by the acquirer.

Transactions
between
connected
persons.

23.—(1) This section shall apply where a person acquires an asset and the person making the disposal is connected with him.

(2) Without prejudice to the generality of section 7 of this Decree the person acquiring the asset and the person making the disposal shall be treated as parties to a transaction otherwise than by way of a bargain made at arm's length.

(3) In a case where any asset mentioned in subsection (1) above is subject to any right or restriction enforceable by the person making the disposal, or by a person connected with him, then (the amount of the consideration for the acquisition being, in accordance with subsection (2) of this section, deemed to be equal to the market value of the asset) that market value shall be—

(a) what its market value would be if not subject to the right or restriction, minus—

(b) the market value of the right or restriction or the amount by which its extinction would enhance the value of the asset to its owner, whichever is the less :

Provided that if the right or restriction is of such a nature that its enforcement would or might effectively destroy or substantially impair the value of the asset without bringing any countervailing advantage either to the person making the disposal or a person connected with him or other right to acquire the asset or, in the case of immovable property, is a right to extinguish the asset in the hands of the person giving the consideration by forfeiture or merger or otherwise, that market value of the asset shall be determined, and the amount of the gain accruing on the disposal shall be computed, as if the right or restriction did not exist.

This subsection shall not apply to a right of forfeiture or other right exercisable on breach of a covenant contained in a lease of land or other property, and shall not apply to any right or restriction under a mortgage or other charge.

24.—(1) Any question whether a person is connected with another shall for the purposes of this Decree be determined in accordance with this section (any provision that one person is connected with another being taken to mean that they are connected with one another).

Meaning of
"connected
persons".

(2) A person is connected with an individual if that person is the individual's husband or wife, or is a relative, or the husband or wife of a relative, of the individual or of the individual's husband or wife.

(3) A person, in his capacity as trustee of a settlement, is connected with any individual who in relation to the settlement is a settlor, and with any person who is connected with such an individual.

(4) A person is connected with any person with whom he is in partnership, and with the husband or wife or a relative of any individual with whom he is in partnership.

(5) A company is connected with another company—

(a) if the same person has control of both, or a person has control of one and persons connected with him, or he and persons connected with him, have control of the other ; or

(b) if a group of two or more persons has control of each company, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person with whom he is connected.

(6) A company is connected with another person, if that person has control of it or if that person and persons connected with him together have control of it.

(7) Any two or more persons acting together to secure or exercise control of a company shall be treated in relation to that company as connected with one another and with any person acting on the directions of any of them to secure or exercise control of the company.

(8) In this section "relative" means brother, sister, ancestor or lineal descendant.

Location of
assets.

25. For the purposes of this Decree—

(a) the situation of rights or interests (otherwise than by way of security) in or over immovable property is that of the immovable property,

(b) subject to the following provisions of this subsection, the situation of rights or interests (otherwise than by way of security) in or over tangible movable property is that of the tangible movable property,

(c) subject to the following provisions of this section, a debt, secured or unsecured, is situated in Nigeria if and only if the creditor is resident in Nigeria,

(d) shares or securities issued by any governmental, municipal, local or native authority, or by any body created by such an authority, are situated in the country of that authority or place where the authority is situated,

(e) subject to paragraph (d) above, registered shares or securities are situated where they are registered and, if registered in more than one register, where the principal register is situated,

(f) a ship or aircraft is situated in Nigeria if and only if the owner is then resident in Nigeria, and an interest or right in or over a ship or aircraft is situated in Nigeria if and only if the person entitled to the interest or right is resident in Nigeria,

(g) the situation of good-will of a trade, business or professional asset is at the place where the trade, business or profession is carried on,

(h) patents, trade-marks and designs are situated where they are registered, and if registered in more than one register, where each register is situated, and copy-right, franchises, rights and licences to use any copy-right material, patent, trade-mark or design are situated in Nigeria if they, or any rights derived from them, are exercisable in Nigeria,

(i) a judgment debt is situated where the judgment is recorded.

Supplemen-
tal.

26.—(1) No deduction shall be allowable in a computation under this Decree more than once from any sum or from more than one sum.

(2) Reference in this Decree to sums taken into account as receipts or as expenditure in computing profits or gains or losses for the purposes of income tax shall include references to sums which would be so taken into account but for the fact that any profits or gains of a trade, profession, employment or vocation are not chargeable to income tax or that losses are not allowable for those purposes.

(3) In this Decree references to income or profits charged or chargeable to tax include references to income or profits taxed or as the case may be taxable by deduction at source.

(4) For the purposes of any computation under this Decree any necessary apportionments shall be made of any consideration or of any expenditure and the method of apportionment adopted shall, subject to the express provisions of this Decree, be such method as appears to the Board or on appeal to the Appeal Commissioners or the High Court of a territory to be just and reasonable.

EXEMPTIONS AND RELIEFS

27.—(1) Subject to subsection 2 of this section a gain shall not be chargeable if it accrues to—

Exemption
for charities
etc.

(a) an ecclesiastical, charitable or educational institution of a public character ;

(b) any statutory or registered friendly society ;

(c) any co-operative society registered under the Co-operative Societies Act ; or

Cap. 39.

(d) any trade union registered under the Trade Unions Act ;

Cap. 200.

in so far as the gain is not derived from any disposal of any assets acquired in connection with any trade or business carried on by the institution or society and the gain is applied purely for the purpose of the institution or society as the case may be.

(2) If any property to which subsection (1) above relates which is held on trust ceases to be subject to such trust—

(a) the trustees shall be treated as if they had disposed of, and immediately re-acquired, the property for a consideration equal to its market value, any gain on the disposal being treated as not accruing to the institution or society ; and

(b) if and so far as any of that property represents, directly or indirectly, the consideration for the disposal of assets by the trustees, any gain accruing on that disposal shall be treated as not having accrued to such institution or society,

and, notwithstanding anything in this Decree limiting the time for making assessments, any assessment to capital gains tax chargeable by virtue of paragraph (b) above may be made at any time not more than three years after the end of the year of assessment in which the property ceases to be subject to such trusts.

28.—(1) There shall be exempt from capital gains tax any gains accruing to any local or native authority.

Statutory
bodies, etc.

(2) Gains accruing to any of the bodies mentioned in this subsection shall be exempt from capital gains tax, that is to say—

(a) gains accruing to any company, being a purchasing authority established by or under any law in Nigeria, empowered to acquire any commodity in Nigeria for export from Nigeria ; or

(b) gains accruing to any corporation established by or under any law for the purpose of fostering the economic development of any part of Nigeria in so far as the gains are not derived from the disposal of any assets acquired by the corporation in connection with any trade or business carried on by it or from the disposal of any share or other interest possessed by the corporation in a trade or business carried on by some other person or authority.

Retirement
benefits
schemes.

29.—(1) A gain shall not be a chargeable gain—

1961 No. 21.

(a) if accruing to a person from any disposal of investment held by him as part of any superannuation fund but so that where part only of that fund is approved under section 17 of the Income Tax Management Act 1961 the gain shall be exempt from being a chargeable gain to the same extent only as income derived from the assets would be exempt under that section ;

(b) if accruing to a person from his disposal of investment held by him as part of any national provident fund or other retirement benefits schemes established under the provisions of any Act or Decree for employees throughout Nigeria,

and such gain shall be exempt from tax under this Decree in the same manner as an investment income of any of those funds is exempt under paragraph (w) of the Third Schedule of the Income Tax Management Act 1961.

(2) No chargeable gain shall accrue to any person on the disposal of a right to, or to any part of any sum payable out of any superannuation fund.

(3) In this section, "superannuation fund" means a pension, provident or other retirement benefits fund, society or scheme approved by the Joint Tax Board under section 17 (1)(f) of the Income Tax Management Act 1961.

Decorations.

30. A gain shall not be a chargeable gain if it accrues on the disposal by any person of a decoration, awarded for valour or gallant conduct which he acquires otherwise than for consideration in money or money's worth.

Stocks and
shares, etc.

31.—(1) Gains accruing to a person from a disposal by him of stocks and shares or other Nigerian government securities shall not be chargeable gains under this Decree.

(2) This section shall have effect without prejudice to section 10 above.

(3) In this section, "Nigerian government securities" include Nigerian treasury bonds, savings certificates and premium bonds issued under the Savings Bonds and Certificates Act, 1962.

1962. No. 18.

Replacement
of business
assets.

32.—(1) If the consideration which a person carrying on a trade obtains for the disposal of, or of his interest in, assets (in this section referred to as "the old assets") used, and used only, for the purposes of the trade throughout the period of ownership is applied by him in acquiring other assets, or an interest in other assets (in this section referred to as "the new assets") which on the acquisition are taken into use, and used only, for the purposes of the trade and the old assets and new assets are within one, and the same one, of the classes of assets listed in this section, then the person carrying on the trade shall, on making a claim as respects the consideration which has been so applied, be treated for the purposes of this Decree—

(a) as if the consideration for the disposal of, or of the interest in, the old assets were (if otherwise of a greater amount or value) of such amount as would secure that on the disposal neither a loss nor a gain accrues to him, and

(b) as if the amount or value of the consideration for the acquisition of, or of the interest in, the new assets were reduced by the excess of the amount or value of the actual consideration for the disposal of, or of the interest in, the old assets over the amount of the consideration which he is treated as receiving under paragraph (a) above,

but neither paragraph (a) nor paragraph (b) above shall affect the treatment for the purposes of this Decree of the other party to the transaction involving the old assets or of the other party to the transaction involving the new assets.

(2) Subsection (1) of this section shall not apply if part only of the amount or value of the consideration for the disposal of, or of the interest in, the old assets is applied as described in that subsection but if all of the amount or value of the consideration except for a part which is less than the amount of the gain (whether all chargeable gain or not) accruing on the disposal of, or of the interest in, the old assets is so applied, then the person carrying on the trade, on making a claim as respects the consideration which has been so applied, shall be treated for the purposes of this Decree—

(a) as if the amount of the gain so accruing were reduced to the amount of the said part (and, if not all chargeable gain, with a proportionate reduction in the amount of the chargeable gain), and

(b) as if the amount or value of the consideration for the acquisition of, or of the interest in, the new assets were reduced by the amount by which the gain is reduced under paragraph (a) of this subsection,

but neither paragraph (a) nor paragraph (b) above shall affect the treatment for the purposes of this Decree of the other party to the transaction involving the old assets or of the other party to the transaction involving the new assets.

(3) This section shall only apply if the acquisition of, or of the interest in, the new assets takes place, or an unconditional contract for the acquisition is entered into, in the period beginning twelve months before and ending twelve months after the disposal of, or of the interest in, the old assets, or at such earlier or later time as the Board may by notice in writing allow :

Provided that, where an unconditional contract for the acquisition is so entered into, this section may be applied on a provisional basis without waiting to ascertain whether the new assets or the interest in the new assets, is acquired in pursuance of the contract, and, when that fact is ascertained, all necessary adjustments shall be made by making assessments or by repayment or discharge of tax, and shall be so made notwithstanding any limitation in this Decree on the time within which assessments may be made.

(4) If two or more persons are carrying on a trade in partnership, this section shall not apply in relation to any one of them unless he is, under this Decree, to be treated both as making disposal of a share in, or in the interest in, the old assets, and as acquiring a share in, or in the interest in, the new assets ; and if those shares are different, that partner's share shall be taken for the purposes of this section to be the smaller share.

(5) This section shall not apply unless the acquisition of, or of the interest in, the new assets was made for the purpose of their use in the trade, and not wholly or partly for the purpose of realising a gain from the disposal of, or of the interest in, the new assets.

(6) The classes of assets for the purpose of this section are as follows—
Class 1. Assets within the heads A and B below

A. Except where the trade is a trade of dealing in or developing land, or of providing services for the occupier of land in which the person carrying on the trade has an estate or interest—

(a) any building or part of a building and any permanent or semi-permanent structure in the nature of a building, occupied (as well as used) only for the purposes of the trade, and

(b) any land occupied (as well as used) only for the purposes of the trade.

B. Fixed plant or machinery which does not form part of a building or of a permanent or semi-permanent structure in the nature of a building.

Class 2

Ships.

Class 3

Aircraft.

Class 4

Goodwill.

(7) If, over the period of ownership or any substantial part of the period of ownership, part of a building or structure is, and any part is not, used for the purposes of a trade, this section shall apply as if the part so used, with any land occupied for purposes ancillary to the occupation and use of that part of the building or structure, were a separate asset, and subject to any necessary apportionments of consideration for an acquisition or disposal of, or of an interest in, the building or structure and other land.

(8) If the old assets were not used for the purposes of the trade throughout the period of ownership this section shall apply as if a part of the asset representing its use for the purposes of the trade having regard to the time and extent to which it was, and was not, used for those purposes, were a separate asset which had been wholly used for the purposes of the trade and this subsection shall apply in relation to that part subject to any necessary apportionment of consideration for an acquisition or disposal of, or of the interest in, the asset.

(9) This section shall apply in relation to a person who, either successively or at the same time, carries on two trades which are in different localities, but which are concerned with goods or services of the same kind, as if, in relation to old assets used for the purposes of the one trade and new assets used for the purposes of the other trade, the two trades were the same.

(10) This section shall apply with the necessary modifications in relation to a business, profession, vocation or employment as it applies in relation to a trade, and in this section the expressions "trade", "business", "profession", "vocation", and "employment" have the same meanings as in the Income Tax Acts, but not so as to apply the provisions of the Income Tax Acts as to the circumstances in which, on a change in the persons carrying on a trade, a trade is to be regarded as discontinued, or as set up and commenced.

(11) The provisions of this Decree fixing the amount of the consideration deemed to be given for the acquisition or disposal of assets shall be applied to this section.

(12) Without prejudice to the provisions of this Decree providing generally for apportionments, where consideration is given for the acquisition or disposal of assets some or part of which are assets in relation to which a claim under subsection (1) or subsection (2) of this section applies, and some or part of which are not, the consideration shall be apportioned in such manner as is just and reasonable.

Life
assurance
policies.

33.—(1) This section has effect as respects any policy of assurance or contract for a deferred annuity on the life of any person.

(2) No chargeable gain shall accrue on the disposal of, or of an interest in, the rights under any such policy of assurance or contract except where the person making the disposal is not the original beneficial owner and acquired the rights or interests for a consideration in money or money's worth.

(3) Subject to subsection (2) above, the occasion of the payment of the sum or sums assured by a policy of assurance or of the first instalment of a deferred annuity, and the occasion of the surrender of a policy of assurance or of the rights under a contract for a deferred annuity, shall be the occasion of a disposal of the rights under the policy of assurance or contract for a deferred annuity, and the amount of the consideration for the disposal of a contract for a deferred annuity shall be the market value at that time of the right to that and further instalments of the annuity.

34.—(1) The rights of the insured under any insurance effected in the course of a capital redemption business shall constitute an asset on the disposal of which a gain may accrue to the person making the disposal but subject to that neither the rights of the insurer nor the rights of the insured under any policy of insurance whether the risks insured relate to property or not shall constitute an asset on the disposal of which a gain may accrue.

Rights under policies of insurance, other than life assurance policies.

(2) Notwithstanding subsection (1) above sums received under a policy of insurance of the risk of any kind of damage to, or the loss or depreciation of assets are for the purposes of this Decree and in particular for the purposes of section 6 of this Decree sums derived from the assets.

(3) In this section—

(a) "capital redemption business" means the business (not being life assurance business or industrial assurance business) of effecting and carrying out contracts of insurance, whether effected by the issue of policies, bonds or endowment certificates or otherwise, whereby, in return for one or more premiums paid to the insurer a sum or a series of sums is to become payable to the insured in the future;

(b) "industrial assurance business" means the business of effecting and carrying out contracts of insurance in connection with any industrial assurance whereby in return for one or more premiums paid to the insurer a sum or a series of sums is to become payable to the insured in the future; and

(c) "policy of insurance" does not include a policy of assurance on human life.

35.—(1) Subject to subsection (2) below, sums obtained by way of compensation or damages for any wrong or injury suffered by an individual in his person or in his profession or vocation shall not be chargeable gains within the meaning of this Decree; and the foregoing provision of this subsection shall extend to compensation or damages for personal or professional wrong or injury including wrong or injury for libel, slander or enticement.

Personal injury.

(2) Sums obtained by way of compensation for loss of office shall not, however, be chargeable gains, except where the amount of such compensation or damages exceeds £5,000 in any year of assessment.

36.—(1) This section applies to a gain accruing to an individual so far as attributable to the disposal of, or of an interest in—

Principal private residences.

(a) a dwelling-house or part of a dwelling-house which is, or has at any time in his period of ownership been, his only or main residence, or

(b) land which he has for his own occupation and enjoyment with that residence as its garden or grounds up to an area (inclusive of the site of the dwelling-house) of one acre or such larger area as the Board may in any particular case determine, on being satisfied that, regard being had to the size and character of the dwelling-house, the larger area is required for the reasonable enjoyment of it (or of the part in question) as a residence.

In the case where part of the land occupied with a residence is and part is not within this subsection, then (up to the permitted area) that part shall be taken to be within this subsection which, if the remainder were separately occupied, would be the most suitable for occupation and enjoyment with the residence.

(2) The gain shall not be a chargeable gain if the dwelling-house or part of a dwelling-house has been the individual's only or main residence throughout the period of ownership, or throughout the period of ownership except for all or any part of the last twelve months of that period.

(3) So far as it is necessary for the purposes of this section to determine which of two or more residences is an individual's main residence for any period,—

(a) the individual may conclude that question by notice in writing to the Board given within two years from the beginning of that period, or given by the end of the year 1967-68, if that is later, but subject to a right to vary that notice by a further notice in writing to the Board as respects any period beginning not earlier than two years before the giving of the further notice,

(b) subject to paragraph (a) above, the question shall be concluded by the determination of the Board, which may be as respects either the whole or specified parts of the period of ownership in question,

and notice of any determination of the Board under paragraph (b) above shall be given to the individual who may appeal to the appeal commissioners against that determination within thirty days of service of the notice.

(4) This section shall not apply in relation to a gain unless the acquisition of, or of the interest in, the dwelling-house or the part of a dwelling-house was made for the purpose of residing in it and not wholly or partly for the purpose of realising a gain from the disposal of it, and shall not apply in relation to a gain so far as attributable to any expenditure which was incurred after the beginning of the period of ownership and was incurred wholly or partly for the purpose of realising a gain from the disposal.

(5) Apportionments of consideration shall be made wherever required by this section and, in particular, where a person disposes of a dwelling-house only part of which is his only or main residence.

Chattels sold
for £500 or
less in a year.

37.—(1) Subject to this section a gain accruing on a disposal of an asset which is tangible movable property shall not be a chargeable gain if the total amount or value of the consideration for the disposal does not in a year of assessment exceed £500.

(2) The amount of capital gains tax chargeable in respect of a gain accruing on a disposal of an asset which is tangible movable property for a consideration the total amount or value of which exceeds £500 shall not exceed half the difference between the amount of that consideration and £500.

For the purposes of this subsection the capital gains tax chargeable in respect of the gain shall be the amount of tax which would not have been chargeable but for that gain.

(3) If two or more assets which have formed part of a set of articles of any description all owned at one time by one person are disposed of by that person, and—

(a) to the same person, or

(b) to persons who are acting in concert or who are, in terms of section 24 above, connected persons, whether on the same or different occasions, the two or more transactions shall be treated as a single transaction disposing of a single asset, but with any necessary apportionments of the reductions in tax under subsection (2) of this section, and this subsection shall also apply where the assets, or some of the assets, are disposed of on different occasions on the first of April, 1966, but not so as to make any gain accruing on that date a chargeable gain.

(4) If the disposal is of a right or interest in or over tangible movable property—

(a) in the first instance subsections (1) and (2) of this section shall be applied in relation to the asset as a whole, taking the consideration as including the market value of what remains undisposed of, in addition to the actual consideration ;

(b) where the sum of the actual consideration and that market value exceeds £500 the limitation and the amount of tax in subsection (2) above shall be of half the difference between that sum and £500 multiplied by the fraction equal to the actual consideration divided by the said sum.

(5) The foregoing provisions of this section shall apply in relation to a gain accruing on a disposal of two or more assets (not necessarily forming part of a set of articles of any description) which are tangible movable properties in the same manner as they apply in relation to a gain accruing on a disposal of an asset, or two or more assets which formed part of a set of articles, if in a year of assessment the total amount or value of the consideration is £500 or more.

(6) This section shall not apply in relation to a disposal of currency of any description.

38. A mechanically propelled road vehicle constructed or adapted for the carriage of passengers shall not be an asset for the purposes of this Decree unless it is a vehicle of a type not commonly used as private vehicle and is unsuitable to be so used.

Motor-cars.

39. Subject to the provisions of this Decree where a person disposes, by way of a gift, of an asset acquired by him by way of a gift or otherwise, (not being an acquisition on a devolution on death), the person making the disposal shall not be chargeable to capital gains tax under this Decree by reference to that disposal.

Gifts.

In this section, "gift" has the same meaning as in section 7 (2) above.

40.—(1) Gains shall not be chargeable gains if the gains accrue to a diplomatic body, and such gains shall be exempt from capital gains tax under this Decree in the same manner as the income of a diplomatic body is exempt from income tax under paragraphs (b) and (i) of the Third Schedule of the Income Tax Management Act 1961 and sections 9, 10 and 11 of the Diplomatic Immunities and Privileges Act 1962, and those provisions shall be construed accordingly.

Diplomatic representatives etc.

1961 No. 21.
1962 No. 42.

(2) In this section "diplomatic body" includes a diplomatic representative, a foreign envoy, a foreign consular officer and an employee of any foreign state, or any organisation the members of which are foreign Powers to which section 11 of the Diplomatic Immunities and Privileges Act 1962 applies.

41.—(1) For the purposes of giving relief on double taxation, in relation to capital gains tax and tax on chargeable gains charged under the law of any

Double taxation relief.

1961 No. 21.
1961 No. 22.

country outside Nigeria, in sections 22, 23 and 24 of the Income Tax Management Act 1961 and sections 36 and 37 of the Companies Income Tax Act 1961 (double taxation relief and unilateral relief) for references to income and profits there shall be substituted references to capital gains, and for references to income tax there shall be substituted references to capital gains tax, meaning (as the context may require) tax charged under any law in force in Nigeria or tax charged under the law of a country outside Nigeria; and the enactments mentioned as aforesaid in this subsection shall apply accordingly.

(2) Any arrangement set out in an order made under the said section 24 of the Income Tax Management Act 1961 and section 37 of the Companies Income Tax Act 1961, after the commencement of this Decree shall, so far as they provide (in whatever terms) for relief from tax chargeable in Nigeria on capital gains by virtue of this section have effect in relation to capital gains tax.

(3) So far as by virtue of this section capital gains tax charged under the law of a country outside Nigeria may be brought into account under the said provisions of the Income Tax Management Act 1961 and the Companies Income Tax Act 1961 as applied by this section, that tax, whether relief is given by virtue of this section in respect of it or not, shall not be taken into account for the purposes of those provisions of the Income Tax Management Act 1961 and the Companies Income Tax Act 1961 as they apply apart from this section.

(4) Section 24 (3) of the Income Tax Management Act 1961 and section 37 (3) of the Companies Income Tax Act 1961 (which relate to disclosure of information for purposes of double taxation) shall without prejudice to the foregoing provisions of this section apply in relation to capital gains tax as they apply in relation to income tax.

Relief in
respect of
delayed
remittances
of gains.

42.—(1) A person charged or chargeable for any year of assessment in respect of chargeable gains accruing to him from the disposal of assets situated outside Nigeria may claim that the following provisions of this section shall apply on showing that—

- (a) he was unable to transfer those gains to Nigeria, and
- (b) that inability was due to the laws of the country where the income arose, or to the executive action of its government, or to the impossibility of obtaining foreign currency in that territory, and
- (c) the inability was not due to any want of reasonable endeavours on his part.

(2) If he so claims then for the purposes of capital gains tax—

- (a) there shall be deducted from the amounts on which he is assessed to capital gains tax for the year in which the chargeable gain accrued to the claimant the amount as respects which the conditions in paragraphs (a), (b) and (c) above are satisfied, so far as applicable, but
- (b) the amount so deducted shall be assessed to capital gains tax on the claimant (or his personal representatives) as if it were an amount of chargeable gains accruing in the year of assessment in which the said conditions cease to be satisfied.

(3) No claim under this section shall be made in respect of any chargeable gain more than six years after the end of the year of assessment in which that gain accrues.

(4) The personal representatives of a deceased person may make any claim which he might have made under this section if he had not died.