

COMPANIES INCOME TAX (AMENDMENT) DECREE 1970



Decree No. 19

[See section 3 (2)]

Commence-
ment.

THE FEDERAL MILITARY GOVERNMENT hereby decrees as follows :—

1.—(1) After section 30 (9) of the Companies Income Tax Act 1961 there shall be inserted the following new subsections—

“Trade or
business
transferred
under Part
X of the
Companies
Decree
1968 etc.

1968 No.
51.

(10) Where, in pursuance of Part X of the Companies Decree 1968, a company (hereinafter in this subsection referred to as “the reconstituted company”) is incorporated under that Decree to carry on any trade or business previously carried on in Nigeria by a foreign company and the assets employed in Nigeria by the foreign company in that trade or business vest in the reconstituted company, then, if the Board is satisfied that the trade or business carried on by the reconstituted company immediately after the incorporation of that company under the Decree is not substantially different in nature from the trade or business previously carried on in Nigeria by the foreign company, the following provisions of this subsection shall have effect, that is—

(a) the provisions of subsections (3) and (4) of this section shall not apply to the trade or business carried on by the reconstituted company; and

(b) for the purposes of the Third Schedule the assets so vested in the reconstituted company shall be deemed to have been sold to it, on the day of the incorporation of that company, for an amount equal to the residue of the qualifying expenditure thereon on the day following the day on which the trade or business previously carried on in Nigeria by the foreign company ceased; and

(c) the reconstituted company shall not be entitled to any initial allowances as respects those assets and shall be deemed to have received all allowances given to the foreign company in respect of those assets under the Third Schedule and any allowances deemed to have been received by the foreign company under the provisions of this paragraph or subsection (9) of this section; and

Amend-
ment of
section 30
of the
Companies
Income
Tax Act
1961.

1961 No. 22.

(d) the amount of any loss incurred during any year of assessment by the foreign company in the said trade or business previously carried on by it in Nigeria, being a loss which has not been allowed against any assessable profits or income of that company for any such year under the provisions of section 31 (2) (a) or (b) of this Act or under the corresponding provisions of the Income Tax Act, shall be deemed to be a loss incurred by the reconstituted company in its trade or business during the year of assessment in which its trade or business commenced; and the amount of that loss shall, in accordance with paragraph (c) of subsection (2) of section 31 of this Act, be deducted from the assessable profits of the reconstituted company: Provided that no deduction in respect of the loss aforesaid shall be made unless it is claimed in writing by the reconstituted company within two years after the end of the year in which its trade or business commenced; and

(e) any deduction to which paragraph (d) of this subsection applies shall be made as far as possible from the amount, if any, of the assessable profits of the reconstituted company for the year of assessment in which its trade or business commenced, and, so far as it cannot be so made, then from the amount of the assessable profits of the next year of assessment, and so on.

In this subsection "foreign company" means a company incorporated outside Nigeria before 18th November 1968, and having on that date an established place of business in Nigeria.

Board may call for returns and information relating to certain assets, etc.

(11) For the purposes of subsections (9) and (10) of this section the Board may by notice require any person (including a company to which any assets have vested in pursuance of Part X of the Companies Decree 1968) to prepare and deliver to the Board any returns specified in the notice or any such information as the Board may require about the assets; and it shall be the duty of that person to comply with the requirements of any such notice within the period specified in the notice, not being a period of less than twenty-one days from the service thereof."

(2) The provisions of this section shall be deemed to have come into force on 18th November 1968, being the date of commencement of Part X of the Companies Decree 1968.

1968 No. 51.

Amendment of section 31 of the Companies Income Tax Act 1961.

1961 No. 22.

2.—(1) In Part VI of the Companies Income Tax Act 1961 (which makes provisions for ascertainment of assessable profits) and in—

(a) subsection (1) of section 31 thereof, after the words "provisions of this section" there shall be inserted the following words—

" , section 31A of this Act" ;

(b) subsection (2) of that section, after paragraph (b) there shall be inserted the following new paragraph, that is—

"(c) the amount of any loss which, under paragraph (d) of subsection (10) of section 30 is deemed to be a loss incurred by the company during the year of assessment in which its trade or business commenced, so however that any deduction in respect of that loss shall be made as provided under paragraph (e) of that subsection."

(2) In the said Part VI, after section 31 there shall be inserted the following new section, that is—

“Recon-
struction
investment
allowance.

31A.—(1) Subject to the provisions of this section, where—

(i) any asset in respect of which a company has incurred qualifying expenditure is damaged or destroyed in any part of Nigeria at any time during the period commencing on 16th July 1967 and ending with 15th January 1970, as a direct result of any military or other operations which in the opinion of the Board are connected with the civil war in Nigeria; and

(ii) the company, on or after 1st April 1969, incurs expenditure in acquiring a new asset as a replacement of the asset which is so damaged or destroyed,

there shall be allowed to that company a reconstruction allowance in respect of the expenditure incurred on the new asset (hereinafter in this section referred to as “an investment allowance”).

(2) An investment allowance shall be calculated at the rate of twenty-five per centum of the expenditure in respect of which it is made, and shall be in addition to an initial allowance under section 31 of this Act.

(3) Any provisions of the Third Schedule of this Act applicable to an initial allowance shall also apply to an investment allowance under this section, except that an investment allowance shall not be taken into account in ascertaining the residue of qualifying expenditure, in respect of an asset, for the purpose of the said Schedule.

(4) If in the case of any qualifying expenditure incurred on the new asset any such event as is mentioned in the next following subsection occurs within a period of five years beginning with the date on which the expenditure was incurred, no investment allowance shall be made in respect of the expenditure or if such allowance has been made before the occurrence of the event it shall be withdrawn.

(5) The events referred to in subsection (4) of this section are—

(a) any sale or transfer of the asset representing the expenditure made by the company incurring the expenditure otherwise than to a person acquiring the asset for a chargeable purpose or for scrap;

(b) any appropriation of the asset representing the expenditure made by the company incurring the expenditure to a purpose other than a chargeable purpose;

(c) any sale, transfer or other dealing with the asset representing the expenditure by the company incurring the expenditure, being a case where it appears that the expenditure was incurred in contemplation of the asset being so dealt with, and being a case where it is shown either—

(i) that the purpose of obtaining tax allowances was the sole or main purpose of the company for incurring the expenditure or for so dealing with the asset ; or

(ii) that the incurring of the expenditure and the asset being so dealt with were not bona fide business transactions, or were artificial or fictitious transactions, and were designed for the purpose of obtaining tax allowances.

(6) A company incurring any expenditure in respect of which an investment allowance has been made and has not been withdrawn shall give notice to the Board if, to the knowledge of the company, any of the events as is mentioned in subsection (5) of this section occurs at any time before the expiration of five years beginning with the date when the expenditure was incurred.

(7) Any notice of a sale or transfer given under subsection (6) of this section shall state the name and address of the person to whom the sale or transfer is made.

(8) Where an asset in respect of which an investment allowance has been made is sold or transferred it shall be the duty of the purchaser or transferee, and of the personal representatives of any such person on being required to do so by any officer duly authorised by the Board to give that officer all such information as he may require, and as they have or can reasonably obtain, about any sale or transfer of the asset representing the expenditure or about any other dealing with the asset.

(9) Any person who, without reasonable excuse, fails to comply with this section shall be guilty of an offence and liable on conviction to a penalty not exceeding fifty pounds plus the amount of tax lost by the granting of the investment allowance made in respect of the expenditure in question.

(10) All such additional assessments and adjustments of assessments shall be made as may be necessary in consequence of the withdrawal of any investment allowance, and may be so made at any time.

(11) For the purposes of this section—

“artificial or fictitious transactions” has the same meaning as in section 25 of this Act ;

“chargeable purpose” means the purpose of putting the assets to a use such that profits accrue or are intended to accrue therefrom and will be chargeable to tax ;

“initial allowance” has the same meaning as in the Third Schedule to this Act ;

“qualifying expenditure” has the same meaning as in the Third Schedule to this Act.”

3.—(1) This Decree may be cited as the Companies Income Tax (Amendment) Decree 1970 and shall apply throughout the Federation.

Citation,
extent and
commence-
ment.

(2) Except as provided in section 1 (2) of this Decree, this Decree shall be deemed to have come into effect on 1st April 1969 and shall have effect in respect of the year of assessment 1969-70 and subsequent years of assessment.

(3) In this Decree "year of assessment" has the same meaning as in the Companies Income Tax Act 1961.

(4) Nothing in this Decree shall be construed as enabling the conviction of any person for a criminal offence on account of any act or omission which did not constitute such an offence when it took place or as authorising the imposition of a heavier penalty than that in force when the offence was committed.

MADE at Lagos this 19th day of March 1970.

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

**INCOME TAX (FORMER EASTERN NIGERIA)
(SPECIAL PROVISIONS) DECREE 1970**



Decree No. 20

[1st December 1969]

Commence-
ment.

THE FEDERAL MILITARY GOVERNMENT hereby decrees as follows :—

1.—(1) Subject to the provisions of this Decree, where immediately before the commencement of this Decree any tax (including any penalty) payable under the Finance Law of the former Eastern Nigeria, (hereinafter in this Decree referred to as "the Law"), in respect of any year of assessment ending on or before 31st March 1968, has not otherwise been recovered from any person (including an employer) who is liable under that Law to pay or account for any such tax, then, the Federal Board of Inland Revenue (hereinafter in this Decree referred to as "the Board") may recover that tax from that person, anything in any other enactment to the contrary notwithstanding.

Recovery of
certain tax
due to the
former
Eastern
Nigeria, etc.

L. of E.N.
1963, Vol. 3
Cap. 53.

(2) For the purposes of subsection (1) above—

(a) the Board may exercise any power or duty of the Commissioner of Internal Revenue under the Law and the Board may, in accordance with the Law, delegate any of its functions thereunder to any of its officers; and

(b) the Board may sue for any such tax in a court of competent jurisdiction in any part of the Federation.

(3) Accordingly, the Law shall have effect with such modifications, adaptations, qualifications and exceptions as may be necessary for giving effect to the provisions of subsections (1) and (2) above, and notwithstanding the generality of the foregoing, any references in the Law to—

(a) a person employed in or having an official duty with the administration of the Law shall include references to an officer of the Board ;

(b) the "Board of Commissioners of Appeal" shall be construed as references to the "body of Appeal Commissioners" established under the Companies Income Tax Act 1961 and having jurisdiction to hear an appeal against an assessment made under the Personal Income Tax (Lagos) Act 1961 ;

1961 No. 22.

(c) "the Eastern Nigeria Gazette" and "the Eastern Nigeria Public Press" shall be construed as references to "the Federal Gazette" and "any daily newspaper" respectively.

1961 No. 23.

Extension of
time within
which to
make certain
assessments.

2. Section 21 of the Law (which fixes the period within which an assessment or an additional assessment should be made) shall, so far as it relates to any tax to which section 1 of this Decree applies, have effect as if a period of nine years after the expiration of the year of assessment were substituted for the reference to a period of six years after the expiration of the year of assessment.

Tax to be
paid into
Consolidated
Revenue
Fund of the
Federation
etc.

3.—(1) Any tax recovered by the Board pursuant to this Decree shall be paid into the Consolidated Revenue Fund of the Federation and credited to a special account to be established for that purpose in accordance with such directions as may be given by the Accountant-General of the Federation.

1967 No. 26.

(2) Any sum credited to the said special account shall be held by the Federal Military Government for the purposes of the Governments of the States created out of the former Eastern Nigeria and, notwithstanding section 2 (2) of the Interim Administrative Councils (Amendment) Decree 1967, any such sum may be applied for the benefits of those States in such shares as the Federal Executive Council may prescribe.

Notice of
liability or
account-
ability.

4.—(1) Every person liable or accountable for any tax to which section 1 above applies who, within three months after the publication of this Decree, has not received any notice or demand note from the Board in respect of the tax shall, within fourteen days after the expiry of that period, give notice to the Board that he is so liable or accountable.

(2) If any person, without reasonable excuse, fails to give such notice as aforesaid he shall be guilty of an offence under this section and shall be liable on conviction to a fine of £100 or to imprisonment for two years or to both.

Citation,
extent and
commence-
ment.

5.—(1) This Decree may be cited as the Income Tax (Former Eastern Nigeria) (Special Provisions) Decree 1970, and shall apply throughout the Federation.

(2) This Decree shall be deemed to have come into force on 1st December 1969.

MADE at Lagos this 19th day of March 1970.

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