

NIGERIAN ENTERPRISES PROMOTION DECREE 1989



ARRANGEMENT OF SECTIONS

Section

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| <ol style="list-style-type: none"> 1. Enterprises exclusively reserved for Nigerians. 2. Definition of expressions used in section 1. 3. Minister and Securities and Exchange Commission to approve allotment, transfer, etc. 4. Provisions relating to section 3. 5. General provisions regarding approval of sale or transfer by the Minister or the Commission. 6. Workers' equity participation. 7. Inspectors of enterprises. 8. Power to seal up premises. 9. Additional penalty for contravention of the Decree. | <ol style="list-style-type: none"> 10. Supply of information. 11. Alteration of list of enterprises. 12. Penalty for acting as a front. 13. Offences and penalties. 14. Power of inspector to conduct prosecutions, etc. 15. Regulations and reports. 16. Right to petition. 17. Exclusion of rights. 18. Interpretation. 19. Repeal, savings and transfer of liabilities, etc. 20. Citation. |
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Decree No. 54

[29th December 1989]

Commence-
ment.

THE FEDERAL MILITARY GOVERNMENT hereby decrees as follows :—

1.—(1) Subject to subsection (2) of this section, all enterprises specified in the Schedule to this Decree are hereby exclusively reserved for Nigerian citizens or associations and accordingly no such enterprise shall be established in Nigeria by an alien on or after the commencement of this Decree.

Enterprises
exclusively
reserved for
Nigerians.

(2) Notwithstanding the provisions of subsection (1) of this section, an alien may be the owner of any enterprise specified in the Schedule to this Decree if the capitalisation involved is not less than ₦20,000,000.

(3) Nothing in this section shall, as from the commencement of this Decree, preclude the sale or transfer, in accordance with the provisions of this Decree, by any person of any of the enterprises affected by this section.

Definition of expressions used in section 1.

2. For the purposes of section 1 of this Decree, an enterprise shall be deemed to be an alien enterprise if the entire capital or proprietary interest, whether financial or otherwise in so far as it concerns any of the enterprises in the Schedule to this Decree, is owned and controlled by aliens.

Minister and Securities and Exchange Commission to approve allotment, transfer, etc.

3.—(1) As from the commencement of this Decree, no enterprise to which section 1 (1) of this Decree applies (whether or not operated by or as a company) which is being operated otherwise than by or as a public company shall be sold or in any other manner transferred to Nigerian citizens or associations unless the terms and other conditions of and pertaining to the sale or transfer have been approved by the Minister.

(2) As from the commencement of this Decree, no shares in or in respect of any enterprise to which section 1 (2) of this Decree applies which is an enterprise operated by or as a public company shall with a view to securing compliance (to any extent whatsoever) with the provisions of section 1 (2) of this Decree be sold or in any manner transferred to Nigerian citizens or associations unless the approval of the Securities and Exchange Commission (hereinafter referred to as "the Commission") has been obtained with respect to—

(a) the price at which the shares are to be sold or transferred and the timing of the sale ;

(b) the terms and other conditions pertaining to the sale or transfer, including the manner of the selection of the buyers or transferees or, where applicable, the manner of the allotment of the shares among the buyers or transferees ;

(c) any increase in the shares and the share capitals of private companies ; and

(d) any transfer of shares in private companies.

1968 No. 51.

(3) The provisions of this section shall have effect notwithstanding any requirement in any law (including, where applicable, the Companies Act 1968) and such law shall be construed subject to this Decree.

1988. No. 29.

(4) Without prejudice to subsection (3) of this section, the powers conferred on the Commission under the Securities and Exchange Commission Decree 1988 shall be construed as including power to grant approvals for the purposes of this Decree and any rules made by the Commission may be adapted or otherwise modified by the Commission for the purposes of this Decree.

(5) Notwithstanding anything to the contrary in this section, the Commission shall be charged with the function of determining the prices of shares in enterprises to which this Decree relates and in the case of public companies, there shall be an Allotment Committee of the Commission which shall consist of the following persons, that is—

(a) a representative of the Minister ;

(b) a representative of the Nigerian Stock Exchange ; and

(c) a representative of the appropriate issuing house.

Provisions relating to section 3.

4.—(1) Where approval of the Minister or, as the case may be, of the Allotment Committee of the Commission has not been obtained as required under section 3 of this Decree or if any application in relation thereto has been refused—

(a) any allotment, transfer, sale of shares and increase in share capital of any enterprise to which this Decree applies shall be void and shall be of no effect whatsoever ;

(b) any moneys accepted in relation to or connected with any of the transactions referred to in section 3 of this Decree shall forthwith be repaid without interest by the vendor or transferor.

(2) If any money referred to in subsection (1) of this section is not repaid within 14 days after the notification of the refusal to give the approval, the directors of the company concerned shall be personally jointly and severally liable to repay the money with interest at the rate of 5 *per cent* per annum from the expiration of the 14th day : Provided that—

(a) a director shall not be liable if he proves that the default in the repayment of the money is not due to misconduct or negligence on his part ; and

(b) all the moneys involved had been kept in a separate bank account to facilitate re-payment.

(3) The reference in subsection (2) of this section to “directors of a company” shall—

(a) in the case of a partnership be construed as a reference to the partners of the body concerned ; and

(b) in the case of any other unincorporated body, be construed as a reference to the person in which is vested the beneficial ownership of the enterprise concerned.

5.—(1) In considering applications for approval pursuant to section 3 of this Decree, the Minister, or, as the case may be, the Allotment Committee of the Commission shall have regard to the following provisions, that is—

(a) beneficial ownership of the enterprises affected should be as wide-spread as the circumstances of each case would justify and deliberate efforts shall be made to prevent the concentration of ownership in a few hands ;

(b) except in the case of owner-managers, no enterprises shall be sold or transferred to a single individual and in no case is a single individual to be allowed to have control of more than one enterprise ;

(c) where appropriate, allotment rules made or approved by the Minister or the Allotment Committee of the Commission shall be such that would ensure that—

(i) no individual holding more than 5 *per cent* of the equity of an enterprise or holding a portion of the equity valued at more than ₦50,000, whichever is the higher, is allotted any further portion of the equity in that enterprise ;

(ii) no individual shall be allotted more than 5 *per cent* of the equity of any enterprise or of any portion of the enterprise valued at more than ₦50,000, whichever is higher ;

(iii) no individual shall be allotted any portion of the equity of an enterprise that would make any holding of that individual of the equity of the enterprise concerned to exceed 5 *per cent* of the total equity of that enterprise or attain a value exceeding ₦50,000, whichever is higher ;

General provisions regarding approval of sale or transfer by the Minister or the Commission.

(d) consideration passing from the transferee to the seller or transferor and, where appropriate, all rights, including agency rights, sole representation and all other ancillary rights passing to the buyer or transferee shall be in a form acceptable to the Minister or the Commission.

(2) For the purposes of subsection (1) of this section, the Allotment Committee shall have regard to information as to the existing shareholding of individuals seeking to acquire further interests in enterprises to which this Decree relates.

worker'
equity
participation.

6. Notwithstanding the provisions of section 5 of this Decree, the Minister or the Allotment Committee of the Commission shall not approve the sale or transfer of any share in any enterprise except there is created for the employees of the enterprise through a trust deal to be known as workers' equity participation based on the following, that is—

(a) in the case of an enterprise specified in the Schedule to this Decree not less than 10 *per cent* shall be set aside as workers' equity participation ;

(b) in the case of all companies registered in Nigerian after the commencement of this Decree or where only a fraction of the share of the companies is sold not less than 10 *per cent* of the amount of sale shall be reserved for non managerial staff of such companies as workers' equity participation.

Inspectors of
enterprises.

7.—(1) Without prejudice to the operation of any enactment, there shall be appointed by the Minister from among members of the public service of the Federation inspectors of enterprise to exercise the functions conferred upon them by virtue of this Decree and shall be responsible to the Minister and to no other person or authority.

(2) The inspectors shall, subject to this Decree, have such powers and carry out such functions as the Minister may confer on them.

(3) Notwithstanding subsection (2) of this section for the purpose of carrying out any of their functions under this Decree the inspectors—

(a) shall have a right of access at all times as may be necessary to any building or premises where any enterprise is being carried on or which they reasonably suspect is being used for any purpose to which this Decree relates ;

(b) may inspect such building or premises, or business in order to determine whether or not the building or premises is being used, or as the case may be, the business is being carried on, for the purposes authorised by this Decree, and may require the production of all books of account or other documents and inspect them for ensuring that the provisions of this Decree are being complied with ; and

(c) shall be entitled to require from the directors or other officers of the enterprise such information and explanation as may be deemed necessary.

(4) Any person, who—

(a) without lawful excuse the proof of which shall lie on him—

(i) refuses to admit into his building or premises any inspector appointed under this section ; or

(ii) denies the inspector the right to inspect the building or premises or the business for the determination of the matter specified in subsection (3) (b) of this section ; or

(iii) refuses or neglects to give any information which any inspector may require from him ; or

(b) in respect of any request for information from any inspector, makes any statement which he knows to be false or which he has no reason to believe to be true ; or

(c) in any way obstructs any inspector in the discharge of such functions as may be conferred on him by this section,

shall be guilty of an offence under this Decree.

7.—(1) If the Minister is satisfied that—

(a) an alien has been engaging in any of the enterprises specified in the Schedule to this Decree contrary to the provisions of this Decree ; or

(b) that an alien enterprise is being carried on in contravention of section 2 of this Decree or any other provision of this Decree,

the Minister may direct an inspector to seal up any premises in which the offending enterprise is being carried on.

(2) Every police officer shall if called upon by an inspector, give all reasonable assistance necessary to effect the sealing up of any affected premises and to prevent unauthorised persons from having access to or interfering with the premises or any goods contained therein.

8.—(1) Where, on or after the Commencement of this Decree any alien continues to be the owner or part owner of any enterprise in contravention of section 1 of this Decree, it shall be lawful for the Minister to—

(a) take over or co-manage the enterprise ;

(b) sell or otherwise dispose of the enterprise ;

(c) appropriate the proceeds of such sale or disposal (if any) as he deems fit ;

(d) charge and defray the expenses incurred ; and

(e) distribute the proceeds of such sale or disposal (if any)—

(i) in the case of partnerships to the proprietors of the enterprise duly registered under the Registration of Business Names Act 1961 or any other applicable law ;

(ii) in the case of companies, to the share-holders of the company ; and

(iii) in any other case, in such manner as may be directed by the Minister,

and any expenses incurred by the Minister in relation to the exercise of any of the powers conferred by this subsection shall be a charge upon and be defrayed by the Minister from the proceeds of such sale or disposal.

(2) It shall be sufficient for the purposes of taking over any enterprise under subsection (1) (a) of this section—

(a) in the case of partnerships, if the certificate of registration or business permit of the enterprise is cancelled ;

(b) in the case of a company, if the certificate of registration or business permit of the company is cancelled ; and

Power to seal up premises.

Additional penalty for contravention of the Decree.

(c) in any other case, if the assets of the association are registered by the Registrar of Business Names, or as the case may be, the Registrar of Companies or any person duly authorised to do so, in the name of the Federal Military Government.

(3) In this section "business permits" means any business permit issued pursuant to section 8 of the Immigration Act 1963 or section 3 of the Industrial Development Co-ordination Decree 1988.

Supply of information.

9.—(1) The Minister may by instrument in writing request any person carrying on any enterprise to which this Decree relates to furnish such estimates, returns or other information as may be specified and he may by that instrument specify the time, manner and form in which such estimates, returns or information are to be furnished, and it shall be the duty of any such person to comply with the request.

(2) Any person, who—

(a) refuses or neglects to give any information which the Minister may require pursuant to subsection (1) of this section ; or

(b) in respect of the information so required makes any statement which he knows to be false or which he has no reason to believe to be true,

shall be guilty of an offence and shall on conviction be liable to a fine of ₦1,000 or to imprisonment for three years.

Alteration of list of enterprises.

10.—(1) The Minister may with the prior approval of the National Council of Ministers as from the commencement of this Decree or such other day as may be specified for the purposes of any particular order (or in respect of any enterprise) by an order published in the *Gazette*—

(a) alter the list of enterprises specified, respectively in the Schedule to this Decree by way of addition, substitution or deletion ;

(b) as respects section 5 (1) of this section vary the extent of the equity participation of Nigerian citizens or associations in the enterprise ;

(c) make such different provisions in relation to different enterprises or as respects different areas of the Federation, and impose such terms as he may deem necessary.

Offences and Penalties

Penalty for acting as a front.

11.—(1) Any person who—

(a) acts as a front or purports for the purpose of defeating or in a manner likely to defeat the object of this Decree, to be the owner or part owner of any enterprise ; or

(b) operates any enterprise for or on behalf of any alien who is under this Decree—

(i) not permitted to operate the enterprise ; or

(ii) disqualified from operating the enterprise ; or

(iii) not permitted to own or be part owner of such enterprise,

shall be guilty of an offence under this section, and shall be liable on conviction to a fine of ₦15,000 or to imprisonment for a term not less than 3 years and not exceeding 5 years or to both such fine and imprisonment.

(2) It shall not be lawful for any Nigerian citizen or association to employ, whether on full time or part time basis, any alien for the operation of any enterprise previously owned wholly or partly by that alien which the alien has disposed of pursuant to the provisions of this Decree, except with the prior written approval of the Minister of Internal Affairs after consultation with the Minister.

12.—(1) Any person found guilty of an offence under this Decree for which no penalty is provided shall upon conviction be liable to a fine of ₦15,000 or to imprisonment for a term not less than 3 years and not exceeding 5 years or to both such fine and imprisonment.

Offences and penalties.

(2) Where an offence under this Decree is committed by a body of persons—

(a) in the case of a body corporate, every director or officer of that body shall be deemed to be guilty of the offence ;

(b) in the case of a partnership or other association, every partner or officer of that body shall be deemed to be guilty of the offence.

(3) No person shall, however, be deemed to be guilty of an offence under subsection (2) of this section, if he proves to the satisfaction of the court that the offence was committed without his consent and that he exercised all due diligence to prevent the commission of the offence having regard to all the circumstances.

13. Subject to section 160 of the Constitution of the Federal Republic of Nigeria 1979, as amended, any inspector or any officer of the Ministry may in a court of competent jurisdiction prosecute an offender for an offence under this Decree.

Power of inspector to conduct prosecutions, etc.

Miscellaneous Provisions

14.—(1) The Minister may make regulations generally for the purpose of giving effect to the provisions of this Decree, and may in particular, without prejudice to the generality of the foregoing provision, make regulations—

Regulations and reports.

(a) prescribing the forms for returns and other information required, under this Decree ;

(b) prescribing the detailed powers and functions of inspectors ;

(c) prescribing the procedure for obtaining any information required under this Decree ;

(d) requiring returns to be made, within the period specified therein, by any enterprise to which this Decree applies ;

(e) prescribing any fees payable under this Decree ; and

(f) prescribing such other matters as may be referred to him by the National Council of Ministers.

(2) Any regulations made pursuant to subsection (1) of this section shall be presented to the National Council of Ministers for the approval of that Council together with any report and recommendations of the Minister, including any measures which the Minister proposes to take in relation thereto.

Right to
petition.

15. Any person aggrieved by any decision of the Minister or by the exercise of any power under this Decree shall have the right to forward a petition on such grievance to the President, Commander-in-Chief of the Armed Forces who may, notwithstanding anything to the contrary in this Decree, confirm or reverse the decision or take such further measures in relation to the petition as he may think just and reasonable.

Interpreta-
tion.

16.—(1) In this Decree, unless the context otherwise requires, the following expressions have the meanings respectively assigned to them—

“alien” means a person or association whether corporate or unincorporate other than a Nigerian citizen or association ;

“Commission” means the Securities and Exchange Commission continuing in being by section 1 of the Securities and Exchange Commission Decree 1988 ;

“company” means any company registered under the Companies Act 1968 or under any enactment replaced by that Act ;

“court of competent jurisdiction” means the Federal High Court ;

“enterprise” includes any industrial or commercial undertaking ;

“Minister” means the Minister charged with responsibility for industries ; and “Ministry” shall be construed accordingly ;

“Nigerian citizen or association” includes—

(a) a person who is a citizen of Nigeria by virtue of the Constitution of the Federal Republic of Nigeria 1979, as amended ;

(b) any person of African patrilineal descent, not being a citizen of Nigeria, who is a national of any country in Africa which is a member country of the Organisation of African Unity, and who continues to reside and carry on business in Nigeria, if the country of which he is a national also permits citizens of Nigeria to establish and operate business or enterprise in that country on the basis of reciprocity ; and

(c) any company registered under the Companies Act 1968, partnership, association or body (whether corporate or unincorporate), and except as otherwise prescribed under this Decree, the entire capital or other financial interest of which is owned wholly and exclusively by citizens of Nigeria ;

“ownership” in relation to any enterprise includes any proprietary interest in the enterprise beneficially, and any derivative of that word shall be construed accordingly ;

“prescribed” means prescribed by this Decree or by regulations ;

“share” includes stocks.

(2) The reference in this Decree to “equity participation of Nigerian citizens or associations” is a reference to stocks and shares which Nigerian citizens or associations have in such company which do not bear fixed interest or dividend.

18.—(1) The Nigerian Enterprises Promotion Decree 1977, is hereby repealed and the Nigerian Enterprises Promotion Board established under that Decree is consequentially dissolved.

Repeal,
savings and
transfer of
liabilities,
staff, etc.
1977 No. 3.

(2) Without prejudice to section 6 of the Interpretation Act 1964, the repeal of the enactment specified in subsection (1) of this section shall not affect anything done under or pursuant to that enactment.

(3) The rights, interests, obligations and liabilities of the Board existing before the commencement of this Decree under any contract or instrument, or in law or in equity apart from any contract or instrument, shall by virtue of this Decree be assigned to and vested in the Minister.

(4) Any such contract or instrument as is mentioned in subsection (3) of this section shall be of the same force and effect against or in favour of the Minister and shall be enforceable as fully and effectively as if instead of that Board the Minister has been named therein or had been a party thereto.

(5) The Minister shall be subject to all the obligations and liabilities to which the dissolved Board was subject immediately before this Decree and all other persons shall have the same rights, powers and remedies against the Minister as they had against the Board immediately before the commencement of this Decree.

(6) Any proceedings or cause of action pending or existing immediately before the commencement of this Decree by or against the Board in respect of any right, interest, obligation or liability of the Board may be continued or as the case may be, commenced and any determination of a court of law, tribunal or other authority or person may be enforced by or against the Minister to the same extent that such proceedings, cause of action or determination might have been continued, commenced or enforced by or against the Board established under the Nigerian Enterprises Promotion Decree 1977 if this Decree had not been made.

(7) All assets, funds, resources and other movable or immovable property which immediately before the commencement of this Decree were vested in the Board established by the Nigerian Enterprises Promotion Decree 1977 shall by virtue of this Decree and without further assurance, be vested in the Minister.

(8) Nothing in this Decree shall affect the shares held by Nigerian citizens or associations in any enterprise operated under the Decree repealed by this section.

(9) Notwithstanding the repeal of the enactment referred to in this section, if the Minister thinks it expedient that any vacancy in the Board should be filled by a person holding office at the commencement of this Decree in the Board dissolved by this section it may employ such person by way of transfer to the Ministry and the previous service in that Board by such person shall count as service for the purposes of any pensions subsequently payable by the Ministry.

19. This Decree may be cited as the Nigerian Enterprises Promotion Decree 1989.

Citation

SCHEDULE

Section 1

1. Advertising and public relations business.
2. All aspects of pool betting business and lotteries.
3. Assembly of radios, radiograms, record changers, television sets, tape recorders and other electric domestic appliances not combined with manufacture of components.
4. Blending and bottling of alcoholic drinks.
5. Blocks and ordinary tile manufacture for building and construction works.
6. Bread and cake making.
7. Candle manufacture.
8. Casinos and gaming centres.
9. Cinemas and other places of entertainment.
10. Commercial transportation (wet and dry cargo and fuel).
11. Commission agents.
12. Departmental stores and supermarkets.
13. Distribution agencies, excluding motor vehicles, machines and equipment and spare parts.
14. Electrical repair shops other than repair shops associated with distribution of electrical goods.
15. Estate agency.
16. Film distribution (including cinema films).
17. Hairdressing.
18. Ice-cream making when not associated with the manufacture of other dairy products.
19. Indenting and confirming.
20. Laundry and dry-cleaning.
21. Manufacturers' representatives.
22. Manufacture of suitcases, brief cases, handbags, purses, wallets, portfolios and shopping bags.
23. Municipal bus services and taxis.
24. Newspaper publishing and printing.
25. Office cleaning.
26. Passenger bus services of any kind.
27. Poultry farming.
28. Printing of stationery (when not associated with printing of books).
29. Protective agencies.
30. Radio and television broadcasting.
31. Retail trade (except by or within departmental stores and supermarkets).
32. Singlet manufacture.
33. Stevedoring and shorehandling.
34. Tyre retreading.
35. Travel agencies.

36. Wholesale distribution of local manufactures and other locally produced goods.
37. Establishments specialised in the repair of watches, clocks and jewellery including imitation jewellery for the general public.
38. Garment manufacture.
39. Grain Mill products including rice milling.
40. Manufacture of jewellery and related articles including imitation jewellery.

MADE at Lagos this 29th day of December 1989

GENERAL I. B. BABANGIDA,
*President, Commander-in-Chief
of the Armed Forces,
Federal Republic of Nigeria.*

EXPLANATORY NOTE

(This note does not form part of the above Decree but is intended to explain its purport)

The Decree, amongst other things—

(a) dissolves the Nigerian Enterprises Promotion Board established by the Nigerian Enterprises Promotion Decree 1977 and consequently vests all the powers in the Minister of Industries ;

(b) rescheduled all enterprises under one Schedule ; and

(c) allows for alien participation in enterprises in cases where the capitalisation involved is not less than ₦20,000,000.

**FINANCE (MISCELLANEOUS TAXATION PROVISIONS) (No. 2)
DECREE 1989**



Decree No. 55

[29th December 1989]

Commence-
ment.

THE FEDERAL MILITARY GOVERNMENT hereby decrees a follows :—

PART 1—INCOME TAX MANAGEMENT ACT 1961

1. The Income Tax Management Act 1961 (hereafter in this Decree referred to as "the 1961 Act") shall be amended as provided for in the following provisions of this Part of this Decree.

Amendment
of 1961 Act.

2.—(1) In section 20A of the 1961 Act, immediately after paragraph (f) of subsection (3) thereof, there shall be inserted a new sub-paragraph, that is—

Amendment
of section
20A.

"(g) a deduction of ₦2,000 in the case of a disabled person who uses special equipment and the services of an attendant in the course of a paid employment ; Provided that the amount of deduction under this subsection shall not exceed 10 *per centum* of the earned income of the person for that year."

3.—(2) Immediately after subsection (5) of section 21C thereof, there shall be inserted new subsection (6), that is—

Amendment
of section
21C.

"(6) Any reference to rent in this section shall be construed whenever necessary as including payments for the use or hire of any equipment, payments for charter vessels, ship or aircraft and all such other payments for the use of or hire of movable and immovable property."

4. Section 21D of the 1961 Act is hereby amended by substituting for subsections (4), (5) and (6) thereof the following new subsections, that is—

Amendment
of section
21D.

"(4) For the purpose of this section the relevant tax authority shall be determined in accordance with the provisions of section 2 of this Act, except in the case of savings interest where the relevant tax authority shall be that where the bank branch paying the interest is situated."

(5) The payer in subsection (1) of this section refers to any company (corporate or unincorporate) including Government ministries and departments, any person engaged in banking or charged with the administration of the Federal Savings Bank, parastatals, statutory bodies, institutions and other established organisations approved for the operations of Pay As You Earn System whether or not liable itself to tax under any enactment or law relating to taxation of income in Nigeria or elsewhere.

(6) The provisions of this section shall not apply to payments of interest by any person engaged in Banking where the interest is due and payable on savings account which is less than ₦50,000."

Deduction
of tax on
director's
fees.
1987 No. 12.

(5) Immediately after section 21EE of 1961 Act as inserted by the Finance (Miscellaneous Taxation Provisions) Decree 1987, there shall be inserted the following new section, that is—

"21EE (1) Where any payment of directors' fees becomes due or payable to any person, the payer at the date when the payment is made or credited whichever first occurs, shall deduct therefrom tax at the rate prescribed in subsection (2) of this section and shall forthwith pay over to the relevant tax authority the amount so deducted.

(2) The rate at which tax is to be deducted for the purpose of this section shall be 15 *per cent*.

(3) In accounting for the tax to be deducted to the relevant tax authority, the payer shall state in writing the following particulars, that is to say—

- (a) the gross amount of the payment ;
- (b) the name and address of the recipient ; and
- (c) the amount of tax being accounted for.

(4) For the purpose of this section, the relevant tax authority shall be determined in accordance with the provisions of section 2 of this Act.

(5) The "payer" in section (1) above refer to any Company (corporate or unincorporate) including Government Ministries and departments, parastatals, statutory bodies, institutions and other established organizations approved for the operation of Pay As You Earn System whether or not liable itself to tax under enactment or law relating to taxation of income in Nigeria or elsewhere."

Amendment
of Third
Schedule
1987 No. 12.

6. In sub-paragraph (pp) (ii) of the Third Schedule of the 1961 Act, as inserted by Finance Miscellaneous Taxation Provisions) Decree 1987, for the figure "50,000" appearing on line of the sub-paragraph, there shall be substituted the figure "100,000".

PART II—COMPANIES INCOME TAX ACT 1979

Amendment
of 1979 No.
28.

7. The Companies Income Tax Act 1979, (hereafter in this Decree referred to as "the 1979 Act") shall be amended as provided for in the following provisions of this Part of this Decree.

Addition of a
new section to
section 21 of
the 1979 Act.

8. There shall be inserted immediately after section 21 of the 1979 Act, the following new section, that is—

"Deduction
for Research
and Deve-
lopment.

21A—(1) Notwithstanding anything contained in section 20 of this Decree, for the purpose of ascertaining the profit or loss of any company for any period from any source chargeable with tax under this Decree, there shall be deducted the amount of reserve made out of the profits of that period by that company for research and development.

(2) The deduction to be allowed to any company under subsection (1) of this section for any year of assessment shall not exceed an amount which is equal to 10 *per centum* of the total profits of that company for that year as ascertained before any deduction is made under this section and section 21 of this Act."

9. Section 24 of the 1979 Act shall be amended as follows, that is—
(a) in subsection (9), lines 1 to 6 there shall be substituted the following, that is—

Amendment
of section 24
of the 1979
Act.

“(9) Where a trade or business carried on by a company is sold or transferred to a Nigerian company for the purposes of better organisation of that trade or business or the transfer of its management to Nigeria and any asset employed in such trade or business is so sold or transferred, if the Board is satisfied that one company has control over the other or that both are controlled by some other person or are members of a recognised group of companies, the Board may in its discretion direct that—” ;

(b) immediately after subsection (11), insert a new subsection, that is—

“(12) No merger, takeover, transfer or restructuring of the trade or business carried on by a company shall take place without having obtained the Board's direction under subsection (9) of this section and clearance with respect to any tax that may be due and payable under the Capital Gain Tax Act 1967.”

10. Section 28 of the 1979 Act is hereby amended by substituting for subsections (2) and (3) thereof the following new subsections, that is—

Amendment
of section
28 of the
1979 Act.

“(2) In addition to any levy made pursuant to subsection (1) of this section, there shall, as from the assessment year commencing on 1st January 1989, be levied and paid a special levy of fifteen *per cent* on excess profits of every company including banks and for the purpose of this subsection excess profits means the difference between total profits as computed in accordance with section 26 and standard profits as calculated in accordance with the provisions of subsection (3) of this section.

(3) For the purposes of subsection (2) of this section, “standard profits” means—

(a) in the case of every Nigerian Company—

(i) the addition of the amounts arrived at after applying the percentages specified below to the amount of capital employed at the end of the accounting period, that is to say—

| | | | | |
|------------------------------|----|----|----|----------|
| Paid-up Capital | .. | .. | .. | 40% |
| Capital or Statutory Reserve | .. | .. | .. | 20% |
| General Reserve | .. | .. | .. | 20% |
| Long Term Loan | .. | .. | .. | 20% ; or |

(ii) the amount of six million naira, whichever is greater;

(b) in the case of every company other than a Nigerian Company and as respect any year of assessment commencing on 1st January 1989—

(i) the amount of 15 *per cent* of the turnover of the company for that year being turnover attributable to any part of the operations of the company carried out in Nigeria ; or

(ii) the amount of six million naira, whichever is greater.”

11. Section 40 of the 1979 Act is hereby amended as follows, that is—

(a) for subsection (4) thereof there shall be substituted the following new subsection, that is—

Amendment
of section
40 of the
1979 Act.

“(4) Any company which fails to comply with the provisions of this section shall be liable to pay as penalty an amount of ₦5,000 every year the failure occurs and the provisions of this Decree relating to the collection and recovery of tax shall apply to the collection and recovery of such amount of penalty.” ;

(b) immediately after subsection (5) thereof, there shall be inserted a new subsection, that is—

“(6) For the purpose of this section—

(a) every company shall designate a representative who shall answer every query relating to the company's tax matters ;

(b) a person designated by a company pursuant to paragraph (a) of this subsection shall be from members of the person knowledgeable in the field of taxation as may be approved, from time to time, by the Board.”

Amendment
of section 59
of 1979 Act.

12. Section 59 of the 1979 Act is hereby amended by substituting for subsection (1) thereof the following new subsection, that is—

“(1) Where any interest other than interest on inter-bank deposits or royalty becomes due from one company to another company or to any person to whom the provisions of the Income Tax (Armed Forces and Other Persons) (Special Provisions) Act 1972 apply, the company making such payment shall, at the date when payment is made or credited, whichever first occurs deduct therefrom tax at the rate prescribed in subsection (2) of this section and shall forthwith pay over to the Board the amount so deducted”.

Amendment
to section
59A. of the
1979 Act.

13. In section 59A of the 1979 Act, immediately after subsection (5) thereof there shall be inserted a new subsection, that is—

“(6) Any reference to rent in this section shall be construed whenever necessary as including payments for the use or hire of any equipment, payments for charter vessels, ship or aircraft and all such other payments for the use of or hire of movable and immovable property.”

PART III—SALES TAX DECREE 1986

Amendment
of 1986 No 7.

14. The Sales Tax Decree 1986 (hereinafter referred to as “the 1986 Decree”) shall be amended as provided for in the following provisions of this Part of this Decree.

Amendment
of Schedule
1.

15. Schedule 1 to the 1986 Decree is hereby amended by substituting for paragraph 2 thereof (Taxable Goods) the following new paragraph, that is—

“2 Taxable Goods.

| | | |
|---------------------------------------------|---------|-----|
| 1. Beer | | 5% |
| 2. Wine Liquor and Spirits | | 10% |
| 3. Soft Drinks (including mineral water) .. | | 5% |
| 4. Cigarettes and Tobacco | | 5% |
| 5. Jewels and Jewelleries .. | | 5% |

6. Perfumes and Cosmetics (excluding toiletries) 5%
7. Electrical and Electronics Equipment (video Recorders Stereo Sets, Radio and television sets, Video Cassettes, Cameras, Airconditioners, Fans, Deep Freezers .. 5%
8. Carpets and Rugs (excluding Linoleum) .. 5%
9. Bottled Natural Water (Excluding Mineral Water) 5%

16. This Decree may be cited as the Finance (Miscellaneous Taxation Provisions) No 2 Decree 1989 and shall be deemed to have come into force on 1st January 1989.

Citation and commencement.

MADE at Lagos this 29th day of December 1989.

GENERAL I. B. BABANGIDA,
*President, Commander-in-Chief
of the Armed Forces,
Federal Republic of Nigeria*

EXPLANATORY NOTE

*(This note does not form part of the above Decree
but is intended to explain its purport)*

The Decree gives effect to financial measures approved by the Federal Military Government for the year 1989.