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EFFECTS OF MULTIPLE INTERPRETATIONS OF COMMENCEMENT PROVISIONS IN THE NIGERIAN INCOME TAX LAWS ON ASSESSABLE PROFITS OF TAXPAYERS

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Abstract

Nigerian Tax legislations are typically complex and are sometimes presumed to be ambiguous; and attempts to interpret the provisions or even apply them in practice have often met with divergent outcomes. A typical case relates to the provisions in Nigerian Income Tax Laws for computing assessable profits in the third tax year of a new business which have been subjected to multiple interpretations among tax experts culminating in different amounts of assessable profits in practice. This paper discusses the various interpretations to the provisions relating to the third tax year. Simulated adjusted profits of twelve new businesses were generated for the first four years of existence and the assessable profits for the third year of assessment computed using three interpretational approaches under different scenarios of dates of commencement and accounting year-ends. Paired Sample t-test and Analysis of Variance are used to test for differences in mean assessable profits. With F-ratio of 10.924 being significant at 1% level, the study indicates that assessable profits for the third tax year significantly differed among the approaches. The paper concludes that multiple interpretation to the commencement provisions for calculating assessable profits in the third tax year leads to significant disparity in computed assessable profits and promotes inequity in the distribution of tax burden among taxpayers. The study propounds the Clear Letters Theory and recommends for uniform adoption, the preceding fiscal year of government in computing assessable profits in the third tax years ofnew businesses in Nigeria.

Keywords: Income tax laws, Basis period, Commencement provisions, Assessable profits, Tax burden, Collectible tax revenue, Clear letter theory.

INTRODUCTION

Tax laws are typically complex and sometimes misconstrued to be ambiguous, giving rise to misconceptions and multiple interpretations of essential provisions of the Acts. For instance, the long standing problem of multiple interpretations of special statutory provisions for computing assessable profits in the third tax-year of a new business has remained unresolved. Under the Nigerian Income Tax Laws, chargeable 'persons' are liable to pay tax on profits/income arising from business activities executed within an operating period. Expectedly, the accounting year-ends of all businesses do not coincide with the government fiscal year, and there are no statutory provisions compelling business entities to end their accounting periods on a particular date. The implication of this discretion is the existence of many accounting year-ends for businesses against the single fiscal year of government covering January 1 to December 31 each year. This raises the question of how to determine the profits/income of a business accounting year to be assessed to tax in a particular fiscal year of government. To this end, the Nigerian tax laws specifically provides that the profits/income of a business in the immediate preceding year (PYB) should be assessed to tax in the current tax year - Section 29(1&2) of Company Income TaxAct, (CITA), 2007 and Section 23(1&2) of PITA, 2011.

This rule is however, not sustainable in the early years of a new business, and in circumstances where a business changed its accounting year-end, or even where a business ceased operation permanently. Conscious of these complications, the income tax statutes in Nigeria made special provisions for resolving such matters. One of such provisions relates to the computation of assessable profits/income of a new business as contained in both CITA 2007, and PITA, 2011. Regrettably, some of these special provisions, particularly the provisions on the computation of third year assessable profits/income of a new business, have either not been properly understood or are wrongly taught and applied by tax instructors and tax administrators in Nigeria. Consequently, misinterpretations and misapplications of these provisions have given rise to situations where the length of the basis period in the third tax year is not up to the required twelve (12) months, and many scholars and tax administrators have resorted to rationalizing various methods for remedying an avoidable problem (Ariwodola, 2000; Tabansi-Ochiogy, 2001; Ojo, 2003; Nwezeaku, 2005; ICAN, 2009;Aguolu, 2009 and ICAN, 2012). This becomes more worrisome when publications and pronouncements by tax administrators and some professional accountancy bodies are involved in accentuating this problem. A misinterpretation/misapplication of the third-year rule will no doubt, affect the basis period for determining capital allowances on qualifying expenditures and for granting loss reliefs under the laws. This practice further constitutes a breach of the cannons of certainty of amount to be subjected to tax and may result to disparity in computed assessable profits with far reaching consequences on government collectible tax revenue while imposing different financial burden on taxpayers.

The attitudes of the courts to interpretation of tax laws seem to run counter to multiple/differential treatments of profits in a way that miss the intent of the law, neither does any judicial pronouncement favour any presumptuous means of circumventing the clear letters of the law.Although the Federal Inland Revenue Service and the State Internal Revenue Service are vested with responsibility for tax administration in Nigeria, their statutory duties are to apply the tax laws as they are without any attempts to cure or circumvent any perceived defects therein.

A few studies have condemned the various methods (grossing up, repetition, aggregation, etc) resorted to in practice for remedying the avoidable problem (Onochie, 2002; Okezie, 2003). Other scholars have clearly reported that the use of preceding year of a business accounting ending someday other than the 31st day of December in computing assessable profits for the third tax year of a new business is not generally feasible and sustainable due to abnormalities that the application introduces in the length of the basis (Nwezeaku, 2005; Fagbemigun, 2017).As at date, authors of tax test books are interpreting and applying the provisions for the third tax-year differently; hence there is yet no consensus on the correct interpretation among them. Perhaps, the preponderance of works that advocate for the use of PYB of Business accounting year-end in the third tax-year of new businesses, seem to discourage efforts at finding out the correctness of the applications, and on determining whether the different interpretations adopted would yield the same revenue to the government, and whether such differential applications would not create disparity in tax burden of taxpayers in Nigeria. These issues form the central problem of this study.

The main purpose of this paper, therefore, is to determine the correct interpretation and application of the provisions for ascertaining the third year assessable profits of new businesses in Nigeria and the effect of multiple interpretations of the provisions on their assessable profits.

REVIEW OF RELATED LITERATURE

Conceptual Framework

Tax and Tax Law

A tax is a compulsory contribution levied on 'persons', property, income, and transactions in the support of

government. The demand for the payment is backed up by law and taxpayers are compelled to oblige payment even though there is no direct and specific quid pro quo relationship between the amount of tax paid and the quantum of government services consumed by the taxpayer (Bowman, 1995; Tretola, 2006).

Tax law refers to the body of law that governs the obligation or liability of a 'person' to pay tax to the government. It covers the rules that establish the incidence/burden of tax and the tax base (that is, who and what is subject to tax), including rules relating to the administration and enforcement of the tax system.

Nigeria, like other countries of the world, has a vast body of taxation laws enacted by the legislature (National Assembly), interpreted by the courts and tax tribunals, and administered through administrative guidelines and practice statements issued by tax authorities. These tax legislations operate subject to the 1999 Constitution of the Federal Republic of Nigeria, and represent a challenging subject due to their voluminous nature, technical complexity and constant reform.

Interpretation of Tax Law: the Attitude of the Courts and Tax Appeal Tribunals.

Statutory interpretation involves decoding or 'wrestling' with the words and their meanings used in the statute/law. There are four basic rules or cannons of statutory interpretation identified in literature – the literal rules, the golden rule, the mischief rule and the purposive approach (Heen, 1997; Lee, 1999; Lowy, 2004; Tretola, 2006; Stepstone, 2015; Ranka, 2016). While the literal approach requires that the provisions of the law be interpreted in accordance with the intention of the law maker by giving the words used in the language their ordinary and natural meaning, the golden rule allows the courts/tribunals to take into account the consequences of a particular interpretation by modifying the ordinary meaning of the words to overcome absurdity in the literal meaning of the word. The Mischief rule, which is applied where there are ambiguities in legislation, allows the courts/tribunals to determine the reason or purpose for passing the Act by the Parliament (the mischief to which the Act is directed) and adopts an interpretation that advances the purpose of the Act. The Purposive approach was signaled by the High Court in Cooper Brooks (Wollongong) Pty Ltd. V. Commissioner of Taxation (1980) 147 CLR 297 as a shift from the literalist approach. The principle canvassed in the Purposive rule is to ascertain what Parliament intended having regard to the context, and avoiding injustice where the provision is either open to two constructions or the operation is capricious/irrational.

The doctrine of literal interpretation had long been documented in the case of Cape Brandy Syndicate V. Inland Revenue Commission (1921) 12TC 358. In this case, the Rowlatt J. ruled that:

> *In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity abouta tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied andsubsequent legislation, if it proceeded on an erroneous construction of previous legislation, cannot alter the previous.*

Clarifying the above court decision, Lord Atkinson added that where the interpretation of a statute is obscured or ambiguous, or readily capable of more than one interpretation, light may be thrown on the true view to be taken of it by the aim and provisions of subsequent statute. The provisions of the income tax laws relating to the third year of assessment for a new business have remained clear and unaltered since 1961 and 1975 when the Personal Income and Company Income tax laws were respectively first enacted in Nigeria. These provisions have neither proceeded from any erroneous constructs nor contained any obscure or ambiguous words that make them justifiably susceptible to more than one correct interpretation. Therefore, the plain words of the statute should be adopted, not by inference or by analogy. The Tax Appeal Tribunal, Lagos Zone, in October 2015, relied on the literal rule in reaching a decision on the case of Shell Petroleum Development Company Vs Federal Inland Revenue Service, while interpreting S.10(1)(g) and S.13(2) of the Petroleum Profit TaxAct on the deductibility of expenses.Also, in Oando Plc Vs FIRS, the court relied strictly on the literal rule to interpret S.19 of

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CITA on the taxability of excess dividend by giving the words used in the language their ordinary and natural meaning.

The application of general rule or practice should not override the clear letters of the law even when such rules are made through circulars issued by the Revenue Authorities (Ekenam, 2016). The position of the Court in the case of FIRS Vs American International Assurance Co (Nig.) Plc confirms that taxpayers are free to challenge information in the Revenue's circulars that are not strictly in accordance with tax statutes. The statutory duty of the revenue officials and even taxpayers is to apply the law as it stands or to point out the defects. The tax officials and taxpayers cannot cure the defects in tax laws nor devise some means of circumventing them. Care should therefore be exercised in interpreting tax laws to ensure that the language of the law is not stretched in favour of the State or narrowed down in favour of the taxpayer (Onochie, 2002).

In this paper, the literal rule is considered most appropriate in resolving the multiple rules adopted in interpreting the provisions for the third year basis period for new businesses. This is because the words/language used in S.29(3)(c) of CITA and S.24(c) of PITA are clear and unambiguous, and consistent with context. Therefore, the application of the ordinary and grammatical meaning of the words does not give rise to any abnormal or irrational basis period for computing assessable profits/income in the third tax-year, nor does it lead to committing illegality while resolving abnormality associated with taxing new businesses in all conceivable scenarios used in this study.

Assessable Profits/Income and Basis Period

Assessable profits of a chargeable 'person' are its adjusted profits or part thereof that is assessed to income tax in a tax year. Adjusted profits are computed based on the accounting year of a business while the assessable profits are determined and assessed to tax in the basis period of a tax year.

Basis period is the time period within which an assessment is raised on a taxpayer for the purpose of establishing the correct amount of tax liability in a particular tax year (Nwezeaku, 2005; Ezejelue & Ihendinihu, 2006; Aguolu, 2009). Business activities of every taxpayer must necessarily be concluded and the income or profits/losses resulting from such activities duly ascertained and reported before such income or profits/losses could be assessed for tax purposes. Again, every business has its own accounting year-end and the accounting period for a business may not be the same with the government fiscal year. The basis period therefore provides feasible and definitive period for tax assessment, and outlines equitable basis upon which differences in accounting periods of business entities are resolved and their tax liabilities computed on a common ground.

Areview of the provisions in the Nigerian tax laws, (and in particular, section 29 of CITAand sections 23 and 24 of PITA) indicates the existence of two types of basis period that are applicable to a “person” liable to income tax in Nigeria. They are the Normal Basis Period and the Abnormal Basis Period.

Normal Basis Period (Preceding Year Basis)

The Normal Basis Period - otherwise called the Preceding Year Basis (PYB) - is provided for under section 29(1 &2) of CITA, 2007 for corporate taxpayers and section 23(1 & 2) of PITA, 2011 for individual taxpayers. Section 29(1) of CITAprovides that:

> *The profits of any company for each year of assessment from such source of its profits (hereinafter referred to as “the assessable profits”) shall be the profits of the year immediately preceding the year of assessment from each such source.*

Section 23(1) of PITA similarly provides that:

> *Theincome ofany individual for each year ofassessment from each source ofhis income (hereinafter referred to as"assessable income") shall be the amount of the income of the year immediately preceding the year of assessment from each such source, notwithstanding that hemay have ceased to possess that source or that the source may have ceased to produce income.*

A correct and proper interpretation of the Year of Assessment (YOA) provided under section 29(1) of CITA and section 23(1) of PITAabove is given in S.105(1) of CITAand S.108 of PITAas *a period of 12 months commencing on 1st January.*

However, section 29(2) of CITA and section 23(2) of PITA provide an alternative way of maintaining the preceding year basis but the rule is only for ascertaining assessable profits/income of **taxpayers whose accounting year-end is not on December 31.** Thus, section 29(2) of CITAstates that:

> *When the Board is satisfied that acompany hasmade or intends to make up accounts to its trade or business to someday other than the 31st day of December, it may direct that the assembled profits of that company shall becomputed on the amount of the profits of the year ending onthe day in the year preceding the year of assessment…*

A similar provision is stipulated under section 23(2) of PITA for any individual who makes or intends to make up his accounts of a trade, business, profession or vocation carried on by him to someday other than the 31st day of December.

Therefore the normal basis period is applicable to an existing business that has been carrying on its business and without any threat to its going concern status or alteration to its accounting date. For a normal basis period to apply, three basic conditions must be satisfied viz.:

a) Thelength of the basis period must be equal to twelve(12) months; it should not be more than or less than twelve(12)months.
b) It is the only accounting period ending in a preceding fiscal or tax year – it will have only one permanent year-end.
c) It must have commenced on the day after the last account ended – there should be no overlapping or coinciding periods, or gap between the basis periods, hence the next basis period must commence on the day immediately after the end of the last basis period – there is an element of continuity.

Where any of the above conditions is not met, the preceding year basis of assessment cannot be used in computing the assessable profits/income, hence the Abnormal Basis of assessment will apply.

Abnormal Basis Period (The Actual Year Basis)

Abnormal basis period refers to special provisions in the tax laws for determining the period from which assessable profits/income should be computed in circumstances where any of the conditions for normal basis of assessment (i.e. PYB) is notsatisfied. The following four circumstances give rise to abnormal basis period:

- Commencement of a new business.
- Change in government fiscal year
- Change in business accounting date
- Cessation of a business.

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For the purpose of this paper, we shall restrict our discussion to commencement provisions with emphasis on issues relating to the third tax year.

Commencement Provisions for Computing Assessable Profits under CITAand PITA

The statutory provisions for computing assessable profits/income for a new business in its first three years of existence are contained in S.29(3)(a – e) of CITAand these are deliberately restated here as follows:

a) *For the first year the assessable profits shall be the profits of that year.*

b) *For the second year the assessable profits shall, unless such notice as hereinafter mentioned is given, be the amount of the profits of one year from the date of the commencementofthe trade or business asdetermined for the purposes ofparagraph (a) of thissubsection.*

c) *For the third year the assessable profits shall, unless such notice as hereinafter mentioned is given, becomputed in accordancewith subsection (1) of this section.*

d) *Acompany shall beentitled on giving notice in writing to the Board within two years after the end of the second year, to require that the assessable profits both for the second year and the third year (but not for one or other only of those years) shall be the profits of the respective years ofassessment:*

   Provided thatthe companymay, bynotice in writing given to the Boardwithin twelve months after the end of the third year, revoke the notice and in such case, the assessable profits both for the secondyearandthethird year shall becomputedasif the first notice hadneverbeengiven:

   Provided thatif the basis period for the secondorthird year is the period ofnine months fromApril 1 to December 1, 1980, the profits ofthatbasis period shall be grossedupas iftheywere the profits oftwelve months.

e) *Where such notice as aforesaid has been given or revoked, such additional assessments or such reductions of assessments or repayments of tax shall be made asmaybenecessary to give effect to paragraphA(d) of this subsection:*

   Provided thatif the companyfails to agreewith the Boardas to the amount of any reduction ofanassessmentorrepaymentoftax, the Boardshall give notice to the companyofrefusal to admit such reduction or repayment andtheprovisions of Part XI of this Act shall apply accordingly with any necessary modifications as though suchnotice wereanassessment.

The above commencementprovisions in CITAare materially the same with those in S.24(a-e) of PITA.

Multiple Interpretation of Commencement Provisions: ACritique of Existing Practices.

It should be noted that there is uniformity in interpretation and practice regarding the commencement rules for computing assessable profits in the first and second tax-years as provided in S.29(3)(a & b) above. But the provisions for the third tax year provided in S.29(3)(c) of CITAand S.24(c) of PITA, have been subject to multiple interpretations without any consensus on the correct interpretation.

For any interpretation given to the commencement provisions for computing assessable profits in the third tax-year to be properly evaluated, two important clarifications must be borne in mind. Firstly, S.29(1) of CITAand S.23(1) of PITArefer to Government fiscal year covering a twelve month account from January

1to December 31 of the year immediately preceding the year of assessment. Secondly, S.29(2) of CITA and S.23(2) of PITA relates to the basis period when the business ends its accounting date on someday other the 31st day of December . . . in the year preceding the year of assessment. Therefore, any reference to any of these sections should be restricted to that section and should not be presumed to include the other. This appears to be the major source of misconception that has given birth to multiple interpretations to the third year rule, and thereby yielding irrational/unrealizable/abnormal lengths in basis periods.

Many authors and tax administrators have resorted to rationalizing the use of various approaches like grossing up, repetition, aggregation, and PYB of business accounting year ending any other day than on 31st December, as remedies for this avoidable problem. (Ariwodola, 2000; Tabansi-Ochiogy, 2001; Ojo, 2003; Nwezeaku, 2005; ICAN, 2009; Aguolu, 2009; ICAN, 2012). No doubt, these self-generated/imposed approaches are outside the clear mandate of tax laws in Nigeria. Nwezeaku (2005) identified Grossing up the period to 12 months and Repetition of the second year assessment as two viable options for remedying situations where no twelve month accounts have been prepared to end on a date in the preceding year of assessment. He however noted that scholars are not entirely agreed on the best method to be adopted to resolve the problem.

Fagbemigun (2017) rightly cited the provisions of S.29(1) and S.29(3)(c) of CITA, and noted that it may not be possible to obtain a realistic basis period for the third year when the month of commencement is after the month chosen as the permanent year-end.Accordingly, he stated that the general practice is to apply the repetitive rule which requires that the basis period for the second tax year be repeated in the third tax year. But this practice neither accurately fixes the letters of the law to its spirit nor ascertains the true intentions of the legislature from the words employed in sections 29(1) and 29(3)(c) of CITA.

Again, the use of second tax-year assessable profits in the third tax-year (the repetition rule) has no legal backing. The legal provision for the second tax year is specific {that is, S.29(3)(b) of CITA and S.23(3)(b) of PITA} and the two laws made no provisions for these sections to be applied to any other tax year. This explains why Onochie (2002) stated that:

> *there is nostatutory provisions under the Nigerian tax laws supporting the standard of ICAN requiring the use of basis periods of second year for the third year assessment. The legal provision for the second year is specific and there is nowhere the law states that it can be used also for the third year of assessment.*

The use of PYB of the accounting year of business in the third tax-year is not the standard of the Act. Okezie (2003) rejected the usage of twelve month accounts ending on someday other than 31st day of December in the preceding year for the third tax-year, stating that the rules for taxation ofnew business as provided in S.24(c) are specific, simple and non-ambiguous. He concluded that the Repetition Rule and Grossing-up Rule should be rejected since they are not the standard of the Act.

Transitional provisions in tax laws cannot be applied or generalized outside the transition period. Reliance on the provisions of S.29(1)(a & b) and S.29(3)(d) of CITA to justify the application of grossing-up and/or repetition rule is inappropriate because they were transitional provisions to resolve issues arising from change in government fiscal year. Prior to March 31st, 1980, the fiscal year of government was a twelve(12) month period from April 1 to March 31. With effect from 1980, the fiscal year of government was changed to run from January 1 to December 31 each year. The transitional provision in S.29(1)(a & b) states that:

> *. . . in respect of any company which made up its accounts to any date between January 1 and March 31, 1980, such that the profits to be assessed to tax:*
>
> *a) In 1980 year of assessment, shall be the profits of the period from the beginning of the accounting year to 31st December, 1979.*
>
> *b) In 1981 tax year, shall be the profits for January 1 to the end of the company's accounting year in1980.*

S.29(3)(d) equally states that:

> *if the basis period for the second or third year is the period of nine months from 1 April to 31 December, 1980, the profits of that basis period shall be grossed-up as if they were the profits of twelve months.*

These provisions cannot be generalized or even be applied to situations outside the year and the accounting period specified (that is, January 1 to March 31, and April 1 to December 31, 1980), neither can the provisions be extended by implication. (see *Municipal Council of Hinabangan, Samar (1964) G.R. No. L-18924)*

Statutory requirements for Apportionment of Profits are not necessary and legal remedies for abnormality in length of basis period in the third tax year. S.29(6) of CITA (which is substantially the same as S.30 of PITA) states that:

*Where in the case of any trade or business it is **necessary,** in order to arrive at the profits of any year of assessment or other period, to allocate or apportion to specific periods the profits or loss of any period for which accounts have been made up, or to aggregate any such profits or loss or apportioned parts thereof, it shall be **lawful** to make such allocation, apportionment or aggregation, and any apportionment under this section shall be made in proportion to the number of days in the respective periods, unless the Board, having regard to any special circumstances otherwise directs.*

Although Onochie (2002) had relied on this provision to allocate twelve(12) month profits to the third tax year, it is absolutely **unnecessary** to rely on this provisions as remedy for abnormality in lengths of basis period in the third tax year for two reasons. Firstly, the section provides legal backing for resolving complications arising from coinciding, overlapping and gap in basis period in abnormal situations. Secondly, any reliance on the provisions for Apportionment of Profits to allocate, apportion and aggregate profits must comply with express provisions of tax laws in other to be **lawful** and should never be used as grounds for breaching the clear provisions of S.29(3)(c) of CITA and S.24(c) of PITA. To do so will amount to striving to create ambiguity where none exists, and committing illegality while attempting to resolve abnormality in length of basis period. Therefore it is absolutely unnecessary to interpret S.29(6) of CITA as applicable to the clear and definitive provisions in S29(3)(c) which clearly specified the application of the rule in S.29(1) of CITA in the third tax-year of a new business. Similarly, it is unlawful to apply apportionment provisions in S.30 of PITAto the clear and unambiguous provisions in S24(c) which specifically requires the application of S.23(1) of PITA in computing assessable profits for the third tax-year of a new business.

These divergent interpretations/applications have created gaps in tax practice and raised more questions than answers with policy implications. One wonders whether the commencement provisions relating to the third tax year are actually ambiguous, and whether multiple interpretations/applications of the commencement provisions will not affect the basis period for computing assessable profits under the income tax laws. What then is the correct interpretation and application of the provisions for ascertaining the third year assessable profits of a new business? Towhat extent does mean assessable profits for the third tax-year of a new business computed using PYB of business accounting year-end and PYB of government fiscal year differ? What is the difference in

mean assessable profits for the third tax-year of a new business computed using PYB of business accounting year-end and repetition rule? What is the difference in mean assessable profits ascertained for the third tax-year of a new business using PYB of government fiscal year and repetition rule? Towhat extent does computed mean assessable profits for the third tax-year of a new business differ among the three interpretational approaches? Will such multiple interpretations/applications not have any material effect on government collectible tax revenue andon the tax liabilities/burden of taxpayers in Nigeria?

This study therefore provides empirical evidence for addressing these questions and for achieving the following specific objectives:

1. To determine the correct interpretation and application of the provisions for ascertaining the third year assessable profits of a new business.
2. To investigate the existence of any significant difference in mean assessable profits for the third tax-year of a new business computed using PYB of business accounting year-end and PYB of government fiscalyear.
3. To determine the difference in computed mean assessable profit for the third tax-year of a new business calculated based on PYB of business accounting year-end and repetition rule.
4. To evaluate the differences in mean assessable profits for the third tax-year of a new business computed using PYB of government fiscal year and repetition rule.
5. To determine whether the mean assessable profits for the third tax-year of a new business significantly differed among the three interpretational approaches adopted.

Accordingly, the following formulated hypotheses were tested:

$H0_1$: There is no significant difference in the mean assessable profits for the third tax-year of a new business computed using PYB of business accounting year-end and PYB of government fiscal year.

$H0_2$: The mean assessable profit for the third tax-year of a new business computed using PYB of business accounting year-end and repetition rule doesnotdiffer significantly.

$H0_3$: The difference in the mean assessable profit ascertained using PYB of government fiscal year and repetition rule is notsignificant.

$H0_4$: There is no significant difference in the mean assessable profits for the third tax-year of a new business computed using the three interpretational approaches.

METHODOLOGY

A full case study methodology based on Literal Rule of statutory interpretation was adopted in arriving at the correct interpretation of the provisions of S.29(3)(c) of CITA and S.24(c) of PITA. This case study approach is consistent with Court decisions in *Cape Brandy Syndicate v Inland Revenue Commission (1921), Inland Revenue Commissioners vs. Duke of Westminister (1936), and Aderawos Timber Trading Co. Ltd. v. FBIR (1966). Burton (2005) equally adopted a similar approach based on the full Federal Court decision in Grollo Nominees Pty Ltd. v FCT.*

Also, financial statements of twelve (12) new businesses (marked A to L) in Abia State were collected for the first four years and their Profits-Before-Tax extracted and adjusted for tax purposes to provide base data for the

study. Seven different commencement dates were simulated to generate multiple cases/scenarios, and each scenario assigned different year-end. These scenarios were generated in such a way as to cover the end of the twelve months in a year which may be used in computing the assessable profits of any new business under the Nigerian Income TaxActs. Using the data generated, the assessable profits/income for the third tax years under each scenario were computed for each business using the following three interpretational approaches/options to section 29(3)(c) of CITAand section 24(c) of PITAwith results shown in the Appendix:

a) Approach/Option 1:PYB of Accounting year-end of the business – that is, the 12 months profits/income ending "someday other than the 31st December . . . in the year preceding the year of assessment", as provided for in section 29(2) of CITA and S.23(2) of PITA. This option is adopted by many tax instructors/authors.

b) Approach/Option 2: PYB of government fiscal year – the amount of profits/income from January 1 to December 31 of the previous year as provided in S.29(1) of CITAand S.23(1) of PITA. This option is in adherence to the provisions of S.29(3)(c) of CITA and S.24(c) of PITA and the court decisions and literal rule that formed the framework for our interpretation. This interpretation is, however, adopted by very few tax instructors/authors.

c) Approach/Option 3: Repetition Rule – this requires that the basis period used in the second year (the profits/income earned in the 1st twelve months of commencement of business) be repeated in the third tax year. This option is suggested by ICAN as remedy for ***option 1*** where "no twelve month accounts have been prepared to end on a date in the preceding assessment year" (ICAN, 2009:230).

Assessable profits/income were computed under each Approach/Option, resulting to 252 valid data points. Paired sample t-test was used to compare the mean differences between each pair of options while Analysis of Variance was used to test for the overall significant difference in the mean assessable profits generated among the three options.

RESULTS AND DISCUSSIONS

We present below, the correct interpretation of the provisions for computing third year assessable profits/income of a new business and empirical evidence of the effect of multiple interpretation on the computed assessable profits/income.

Correct Interpretation to the Rule for the Third Tax Year of a New Business.

Research Question 1: *What is the correct interpretation and application of the provisions for ascertaining the third year assessable profits of anew business?*

Following the literal rule of interpretation and the case study methodology, we provide justifications/grounds for the correct interpretation and application of the third year provisions as follows:

1) S.29(3)(c) of CITAreferred to S.29(1) of CITA, while S.24(c) of PITAreferred to S.23(1) of PITAas basis period for the third tax year. Both subsections under reference specifically relate to a 12 month account ending on December 31.

2) S.29(3)(c) of CITA did not make any reference to S.29(2) of CITAneither did S.24(c) of PITA make any reference to S.23(2) of PITA. It has been established that if a provision specifically deals with a subject matter, the general provision or a residual provision cannot be invoked for that subject as held in CIT vs Roadmaster Industries of India (P) Ltd (2009) 315 – ITR-66 (P&H).

3) Specific references to S.29(1) by S.29(3)(c) of CITA cannot be presumed to include S.29(2) of CITA. Similarly, the reference to S.23(1) by S.24(c) of PITA cannot also be presumed to cover S.23(2) of PITA. In both references, the PYB of business accounting date ***ending someday other than 31st day of December*** was **never** mentioned or intended; but the references required the application of the government fiscal year provided for under subsection 1 of the sections referred to in both Acts. As decided in Marinduque Iron Mines Agents Inc. vs. the Municipal Council of Hinabangan, Samar (1964) G.R. No. L-18924, the provisions of a taxing Act are not to be extended by implication.

4) S.105(2) of CITAon Interpretation states that: *Any reference in this Act to any section, Part or Schedule not otherwise identified is a reference to that section, Part or Schedule of this Act.* Thus references to S.23(1) by S.24(c) of PITA and S.29(1) by S.29(3)(c) of CITA shall be restricted as reference to subsection (1) as specified and not subsection (2).It would therefore be inconsistent with the clear letters of the law to presume, read in or imply that the purport of S.29(3)(c) of CITAand S.24(c) of PITA has any connection with PYB of business accounting date ***ending someday other than 31st day of December.*** S.105(2) of CITA is consistent with the decision in C.I.T. vs. Rajasthan Financial Corporation (2007) 295-ITR-195(Raj FB) where it was held that if the construction of a statutory provision on its plain reading leads to a clear meaning, such a construction has to be adopted without any external aid. Therefore, no one can be taxed by implication. Acharging section must be construed strictly. If a person has not been brought within the ambit of the charging section by clear words, he cannot be taxed under it at all. See *CWT vs. Ellis Bride Gymkhana and others (1998) 229 ITRI. In Nigerian Breweries Plc Vs. FIRS,* the TaxS.27 Appeal Tribunal, while relying on the literal rule, affirmed that S.27 of CITA was inapplicable in determining whether expenses incurred outside Nigeria on another company's behalf would not be allowable deductions under the Act. Thus, TATheld that buying commission and handling charges, being expenses incurred wholly, exclusively, necessarily and reasonably in the production of profits, were allowable deductions under S.24 of CITA.

5) Use of PYB of government fiscal year in the third tax year perfectly satisfies the three basic conditions for normal basis period and provides clarity and certainty in the computation of assessable profits for the third tax year in all possible scenarios of date of commencement and year-ends of a new business. Thus, in no circumstance will the application of PYB of government fiscal year in the third tax year lead to basis periods that are less than 12 months. Consistent with the ruling in Smita Subhash Sawant vs. Jagdeshwari Jagdish Amin AIR (2016) S.C. 1409 at 1416, if the language of statute is plain, simple, clear and unambiguous, then the words of the Statute have to be interpreted by giving them their natural meanings. In Citibank Nigeria Ltd. Vs. FIRS, the TAT followed the Literal rules of interpretation of S.9(1)(g) of CITA in deciding that gains arising from trading in the Federal Government bonds fall within the ambit of S.9(1)(g) of CITA. Recourse to construction of statute is only necessary when there is ambiguity, obscurity or inconsistency therein and not otherwise. No words shall be added, altered, or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute. Compare Options 1 and 2 in the Appendix.

6) Also, the use of PYB of government fiscal year in the third tax year does not require any grossing up processes to determine the appropriate assessable profits for any tax year even in situations when the taxpayer's options (right of election) for the computation of assessable profits for the second and third tax years are exercised under the provisions of S.29(3)(d & e) of CITA and S.24(d & e) of PITA.

7) No conditionality is required to be satisfied when applying the normal preceding year covering January 1 to December 31 in the third tax year as provided for in S.29(3)(c) of CITAand S.24(c) of PITA. But the application of PYB of business accounting date ending someday other than 31st day of December is subject to the directive or approval of the Board (see S.29(2) of CITA and S.23(2) of PITA. Also

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Apportionment of Profits under S.29(6) of CITA or S.30 of PITA requires written request/notice by the chargeable "person" in other to be acceptable/valid.

Therefore, the PYB of government fiscal year represents the proper and correct interpretation/application of the relevant provisions of both CITA and PITA for computing assessable profits in the third tax year of a new business and, not the accounting year of the business ending someday other than 31st December.

Illustrations highlighting third year basis periods using three interpretational approaches are presented in the Appendix based on the methodology earlier described. These illustrations equally provide evidence that the use of PYB of business accounting date ***ending someday other than 31st day of December*** (Option 1) for the third tax year is not generally feasible, realizable and sustainable, while PYB of government fiscal year (Option 2) consistently showed no case of abnormality.

Mean Assessable Profits of the Third Tax Year of a New Business under Three Different Interpretational Approaches.

Table 1 presents the descriptive statistics of the assessable profits under the three options and thus provides answers to research questions 2 to 5 for this study.

Table 1: Descriptive Statistics of 3rd Year Assessable Profits Under the three Options

Approach/Option	N	Minimum	Maximum	**Mean**	Std. Deviation
1. PYB of Biz Accounting year-end	84	6430	346000	**68214.29**	71625.844
2. PYB of Govt. Fiscal Year	84	7750	382810	**115381.58**	85596.090
3. Repetition Rule	84	8975	491833	**124704.65**	93278.573
Valid N (listwise)	84				

Source: Computed with data extracted from financial statements of 12 selected new business entities in Abia State.

The three interpretational approaches/options generated different mean assessable profits/income in the third tax year. The Repetition Rule, with mean assessable profit of N124,704.65, has the highest dispersion from the means with a standard deviation of N93,278.57, followed by the PYB of Government fiscal year with a mean of N115,381.58 and standard deviation of N85,596.09. The implication is that the Repetition Rule imposes the greatest burden on taxpayers while the least mean assessable profit of N68,214.29 was generated through the use of PYB of business Accounting date (option 1) potentially resulting to losses in tax revenue collectible by government. The application of the correct interpretation (Option 2) has a moderating effect on tax burden and government collectiblerevenue.

The cardinal rule in addressing taxes, which should be noted here, is that the government and the taxpayer are bound by the principle of justice and fair play. The language employed in the statue is the determinative factor of legislative intention. So, considerations of hardship, injustice and equity are entirely out of place in interpreting a taxing statue (see Ajmera Housing Corporation and Another vs. C.I.T. (2010)326 - ITR – 642-(SC).

Test of Significant Difference in the Means of the Third Year Assessable Profits under the Three Interpretational Approaches.

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A paired sample t-test of the approaches/options was carried out and the results shown in Table 2 provide data for testing H0[1] to H0[3].

Table 2: Result of Paired Sample t-test of the Three Interpretation Approaches/ Options

Paired Samples Test

	Paired Differences				t	df	Sig. (2-tailed)
	Mean	Std. Deviation	Std. Error Mean	95% ConfidenceInterval of the Difference Lower Upper			
Pair1 PYB ofBizAccounting year-end (Option 1)-PYB of Govt. Fiscal Year (Option 2)	47167.298	76587.492	8356.380	63787.802 30546.793	5.644	83	.000
Pair2 PYBof BizAccounting year-end (Option1) Repetition Rule (Option 3)	56490.369	80713.658	8806.582	74006.307 38974.431	6.415	83	.000
Pair3 PYB of Govt. Fiscal Year(Option 2) Repetition Rule (Option 3)	9323.071	54219.535	5915.836	21089.432 2443.289	1.576	83	.119

Source: Computed with data extracted from financial statements of 12 selected new business entities in Abia State.

H0[1]: *There is no significant difference in the mean assessable profit for the third tax-year of a new business computed using PYB of business accounting year-end and PYB of government fiscal year.*

Table 2 shows that the paired sample t-test for Options 1 and 2 yielded a t-value of 5.644 at 1% level of significance. This shows that third year assessable profits calculated based on the application of PYB of business accounting year-end and the PYB of government fiscal year differed significantly from each other. The study therefore rejects the null hypothesis and concludes that there is significant difference in the mean assessable profits for the third tax-year of a new business computed using PYB of business accounting year-end and PYB of government fiscal year.

H0[2]: *The mean assessable profits for the third tax-year of a new business computed using PYB of business accounting year-end and repetition rule do not differ significantly.*

Similarly, with a t-value of 6.415 being significant at 1% in table 2, the comparative assessable profits ascertained using option 1 and option 3 equally indicated significant disparity from each other. Accordingly, the null hypothesis is rejected and we conclude that the mean assessable profits for the third tax-year of a new business computed using PYB of business accounting year-end and the repetition rule differ significantly.

H0[3]: *The difference in the mean assessable profits ascertained using PYB of government fiscal year andrepetition rule is notsignificant.*

Table 2 indicates that the paired sample t-test result for Options 2 and 3 yielded a t-value of 1.576 with a probability of .119. Since the probability is greater than 0.05, we accept the null hypothesis and conclude that the difference in the mean assessable profit ascertained using PYB of government fiscal year andrepetition rule is not significant.

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H0[4]: *There is nosignificant difference in the meanassessable profits for the third tax-year ofa new business computedusing the three interpretational approaches.*

An overall evaluation of the disparity of the mean assessable profits computed using the three different approaches is shown in table 3.

Table3: Analysis of Variance on the Assessable Profits under three Interpretation Options.

	Sum of Squares	df	Mean Square	F	Sig.
Between Groups	154079391779.103	2	77039695889.552	10.924	.000
Within Groups	1756101082328.548	249	7052614788.468		
Total	1910180474107.651	251			

Source: Computed with data extracted from financial statements of 12 selected new business entities in Abia State.

Table 3 is an ANOVA result evaluating overall disparity in the mean assessable profits computed using the three interpretational approaches. With F-ratio of 10.924 at 1% level of significance, we reject the null hypothesis and conclude that the mean assessable profits for the third tax year significantly differed among the three interpretational approaches adopted to S.29(3)(c) of CITA and S.24(c) of PITA.

SUMMARY, CONCLUSION AND RECOMMENDATIONS

Summary:
The results from this study are summarized as follows:

1. The PYB of governmentfiscal year is the correct basis period for the third tax-year ofnew businesses under the provisions of CITA2007 and PITA2011.
2. The Repetitive Rule imposes the greatest burden on taxpayers.
3. The PYB of business accounting year-end leads to loss of tax revenue to government.
4. The governmentfiscal year-endhas a moderating effect onboth parties – it is neither stretched in favour of the governmentnor narrowed down in favour of the taxpayer.
5. Multiple interpretations of commencementprovisions in income tax laws could lead to disparity in tax burden andcollectible tax revenue to government.

Conclusion:
The adoption of multiple interpretations to the provisions relating to the third tax year of a new business is inappropriate andcontravenes the essential attributes ofagood tax systemoncertainty, equity and

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equality. The attitude of the courts and Tax Appeal Tribunals in interpreting tax laws remains a guiding compass for ensuring that presumptions and intendments are not brought to bear with the interpretation/application of any clear letters of tax laws. The paper therefore concludes that the preceding fiscal year of government covering January 1 to December 31 is the correct interpretation to the provisions of S.29 (3)(c) of CITAand S.24(c) of PITA, and that this interpretation provides the right basis period for computing the assessable profits/income in the third tax year of a new business under the Nigerian tax laws.

Recommendations:

Based on the above findings, the paper recommends that:

1. The application of more than one interpretation/application of the provisions of income tax laws in Nigeria should be avoided to ensure certainty and equity in Nigerian tax system.

2. The PYB of government fiscal year (Option2) should be uniformly applied (as a consensus position) in ascertaining the third year assessable profits/income of new businesses in Nigeria. By adopting this interpretation a balance in the potential effects of the multiple options on government collectible tax revenue and tax burden on chargeable 'persons' would have been equitably struck without stretching the interpretation in favour of the State or narrowing it down in favour of the taxpayer.

3. A new theory to aid better understanding and interpretation of tax laws be adopted. This suggested theory (called the Clear Letters Theory) states that, *in interpreting and applying provisions of tax laws, primary regard must be placed on the clear wordings /letters of the relevant statute without devising any presumptuous means of circumventing them. The letters of the law should be applied as it stands, and its purport should neither be stretched in favour of the State nor skewed against the taxpayer. Thus, any misapplication or misinterpretation of the clear words ofa tax law is amistake of themind, andnotof the law.*

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Appendix:

Basis Period of the three Approaches for the Third Tax-Yearofa New Business that started on 01/07/00 with Year-end Fixed at the End of Various Months of the Year.

Third Tax Year	Year-end	BASIS PERIOD USING PYB of Accounting year-end outside Dec. 31 (Approach/Option 1)	PYB of Government Fiscal Year(Jan 1 to Dec. 31) (Approach/Option 2)	Repetition Rule (First 12 months) (Approach/Option 3)
2002	31/01	01/02/00 – 31/01/01*	01/01/01 – 31/12/01	01/07/00 – 30/06/01
2002	28/02	01/03/00 – 28/02/01*	01/01/01 – 31/12/01	01/07/00 – 30/06/01
2002	31/03	01/04/00 – 31/03/01*	01/01/01 – 31/12/01	01/07/00 – 30/06/01
2002	30/04	01/05/00 – 30/04/01*	01/01/01 – 31/12/01	01/07/00 – 30/06/01
2002	31/05	01/06/00 – 31/05/01*	01/01/01 – 31/12/01	01/07/00 – 30/06/01
2002	30/06	01/07/00 – 30/06/01	01/01/01 – 31/12/01	01/07/00 – 30/06/01
2002	31/07	01/08/00 – 31/07/01	01/01/01 – 31/12/01	01/07/00 – 30/06/01
2002	31/08	01/09/00 – 31/08/01	01/01/01 – 31/12/01	01/07/00 – 30/06/01
2002	30/09	01/10/00 – 30/09/01	01/01/01 – 31/12/01	01/07/00 – 30/06/01
2002	31/10	01/11/00 – 31/10/01	01/01/01 – 31/12/01	01/07/00 – 30/06/01
2002	30/11	01/12/00 – 30/11/01	01/01/01 – 31/12/01	01/07/00 – 30/06/01
2002	31/12	01/01/01 – 31/12/01	01/01/01 – 31/12/01	01/07/00 – 30/06/01

* Basis period is abnormal as it falls before 01/07/00 when business started and the actual length of the period is less than 12 months.