

# VALUE ADDED TAX ACT

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## VALUE ADDED TAX ACT

### **An Act to impose and charge Value Added Tax on certain goods and services and to provide for the administration of the tax and matters related thereto.**

[1993 No. 102, 2007 No. 53.]

[1st December, 1993]

[Commencement. ]

#### PART]

#### *Imposition, etc., of Value Added Tax*

##### **1. Imposition, etc., of Value Added Tax**

There is hereby imposed and charged a tax to be known as the Value Added Tax (in this Act referred to as "the tax") which shall be administered in accordance with the provisions of this Act.

##### **2. Taxable goods and services**

The tax shall be charged and payable on the supply of all goods and services (in this Act referred to as "taxable goods and services") other than those goods and services listed in the First Schedule to this Act.

[I 996 No. 31.]

##### **3. Goods and services exempt**

There shall be exempt from the tax the goods and services listed in the First Schedule to this Act.

[1996 No. 31. First Schedule.]

##### **4. Rate of tax**

The tax shall be computed at the rate of 5 percent on the value of all goods and services as determined under sections 5 and 6 of this Act, except that goods and services listed under Part III of the First Schedule to this Act shall be taxed at zero rate.

[1996 No. 31, 2007 No. 53, s. 3.]

##### **5. Value of taxable goods and services**

(1) For the purpose of this Act, the value of taxable goods and services shall be determined as follows, that is-

- (a) if the supply is for a money consideration, its value shall be deemed to be an amount which with the addition of the tax chargeable is equal to the consideration;
- (b) if the supply is for a consideration not consisting of money, the value of the supply shall be deemed to be its market value.

(2) Where the supply of taxable goods or services is not the only matter to which a consideration in money relates, the supply shall be deemed to be such part of the consideration as is properly attributed to it.

(3) For the purpose of this Act, the open market value of supply of taxable goods or services shall be taken to be the amount that would fall to be taken as its value under subsection (1) (b) of this section if the supply were for such consideration in money as could be payable by a person in a transaction at arm's length.

## **6. Value of imported goods**

The value of imported taxable goods for the purposes of this Act shall be the amount which is equal to the price of the goods so imported and shall include-

- (a) all taxes, duties and other charges levied either outside or by reason of importation into Nigeria, other than the tax imposed by this Act;
- (b) all costs by way of commission, parking, transport and insurance up to the port or place of importation.

## **PART II**

### *Administration*

## **7. Administration of the tax**

(1) The tax shall be administered and managed by the Federal Board of Inland Revenue (in this Act referred to as "the Board").

(2) The Board may do such things as it may deem necessary and expedient for the assessment and collection of the tax and shall account for all amounts so collected in accordance with the provisions of this Act.

## **8. Registration**

(1) A taxable person shall, within six months of the commencement of the Act or within six months of the commencement of business, whichever is earlier, register with the Board for the purpose of the tax.

[1996 No. 30.]

(2) Without prejudice to the provisions of section 32 of this Act, a taxable person who fails or refuses to register with the Board within the time specified in subsection (1) of this section shall be liable to pay as penalty an amount of-

- (a) ₦10, 000 for the first month in which the failure occurs; and
- (b) ₦5, 000 for each subsequent month in which the failure continues.

[1996 No. 30.]

## **9. Registration by Government Ministries, etc., as agents of the Board**

(1) Every Government Ministry, statutory body and other agency of Government shall register as agents of the Board for the purpose of collection of tax under this Act [1996 No. 31.]

(2) Every contractor transacting business with a Government Ministry, statutory body and other agency of the Federal, State or local government shall produce evidence of registration with the Board as a condition for obtaining a contract.

[1996 No. 31.]

## **10. Registration by non-resident companies**

(1) For the purpose of this Act, a non-resident company that carries on business in Nigeria shall register for the tax with the Board, using the address of the person with whom it has a subsisting contract, as its address for purposes of correspondence relating to the tax.

[LI996 No. 31.]

(2) A non-resident company shall include the tax in its invoice and the person to whom the goods or services are supplied in Nigeria shall remit the tax in the currency of the transaction.

[1996 No. 31.]

## **11. Records and accounts**

A person who is registered under section 8 of this Act (in this Act referred to as "a registered person") shall keep such records and books of all transactions, operations, imports and other activities relating to taxable goods and services as are sufficient to determine the correct amount of tax due under this Act.

### **PART III**

#### *Returns, remittances, recovery and refund of tax*

## **12. Payment of tax by taxable person**

(1) A taxable person shall pay to the supplier the tax on taxable goods and services purchased by or supplied to the person.

[2007 No. 53, s. 4.]

(2) The tax paid by a taxable person under subsection (1) of this section shall be known as input tax.

## **13. Remission of tax collected by Government Ministries, etc.**

(1) Every Ministry, statutory body or other agency of Government shall, at the time of making payment to a contractor, remit the tax charged on the contract to the nearest local Value Added Tax office.

[1996 No. 31.]

(2) The Service may, by notice, determine and direct the companies operating in the oil and gas sector which shall deduct V A T at source and remit same to the Service.

[2007 No. 53, s. 5 (a).]

(3) The remission shall be accompanied with a schedule showing the name and address of the contractor, invoice number, gross amount of invoice, amount of tax and month of return.

[1996 No. 31. Subsection (3), previously subsection (2), renumbered by 2007 No. 53, s. 5 (b).]

## **13A. Tax invoice**

(1) A taxable person who makes a taxable supply shall, in respect of that supply, furnish the purchaser with a tax invoice containing, *inter alia*, the following-

- (a) tax payers identification number;
- (b) name and address;
- (c) VAT registration number;
- (d) the date of supply;
- (e) name of purchaser or client;

- (f) gross amount of transaction; and
- (g) tax charged and rate supplied.

(2) A tax invoice shall be issued on supply whether or not payment is made at the time of supply.

[2007 No. 53, s. 6.]

#### **14. Collection of tax by taxable person**

(1) A taxable person shall on supplying taxable goods or services to his accredited distributor, agent, client or consumer, as the case may be, collect the tax on those goods or services at the rate specified in section 2 of this Act

(2) The tax collected by a taxable person under subsection (1) of this section shall be known as output tax.

#### **15. Taxable person to render returns**

(1) A taxable person shall render to the Board, on or before the 21<sup>st</sup> day of the month following that in which the purchase or supply was made, a return of all taxable goods and services purchased or supplied by him during the preceding month in such manner as the Board may, from time to time, determine.

[1996 No. 31, 2007 No. 53, s. 7 (a).]

(2) A person who imports taxable goods into Nigeria shall render to the Board returns on all the taxable goods imported by him into Nigeria.

(3) In this regard, any payment made to duly authorised Government agents shall be deemed to have been made to the Federal Inland Revenue Service.

[2007 No. 53, s. 7 (b).]

#### **16. Remission of tax**

(1) A taxable person shall, on rendering a return under subsection (1) of section 15 of this Act-

- (a) if the output tax exceeds the input tax, remit the excess to the Board; or
- (b) if the input tax exceeds the output tax, be entitled to a refund of the excess tax from the Board on production of such documents as the Board may, from time to time, require.

(2) An importer of taxable goods shall, before clearing those goods, pay to the Board the tax on those goods.

(3) *(Deleted by 2007 No. 53, s. 8.)*

#### **17. Allowable input tax, etc.**

(1) For purposes of section 13 (1) of this Act, the input tax to be allowed as a deduction from output tax shall be limited to the tax on goods purchased or imported directly for resale and goods which form the stock-in-trade used for the direct production of any new product on which the output tax is charged.

(1998 No. 18.)

(2) Input tax-

- (a) on any overhead, service, and general administration of any business which otherwise can be expended through the income statement (profit and loss accounts); and

[1998 No. 18.]

- (b) on any capital item and asset which is to be capitalised along with cost of the capital item and asset,

shall not be allowed as a deduction from output tax.

### **18. Effect of failure to render returns**

Where a taxable person fails to render returns or renders an incomplete or inaccurate returns, the Board shall assess, to the best of its judgment, the amount of tax due on the taxable goods and services purchased or supplied by the taxable person.

### **19. Effect of non-remittance of tax**

(1) If a taxable person does not remit the tax within the time specified in section 15 of this Act, a sum equal to five per cent per annum (plus interest at the commercial rate) of the amount of tax remittable shall be added to the tax and the provisions of this Act relating to collection and recovery of unremitted tax, penalty and interest shall apply.

(2) The Board should notify the taxable person or his agent of the tax due together with the penalty and interest and if payment is not made within thirty days of such notification, the Board may proceed to enforce payment as provided in section 15 of this Act.  
[2007 No. 53, s. 9.]

### **20. Recovery of tax**

(1) Any tax, penalty or interest which remains unpaid after the period specified for payment may be recovered by the Board through proceedings in the Value Added Tax Tribunal.

[1996 No. 32.]

(2) A taxable person who is aggrieved by an assessment made on the person may file an objection to the Federal Inland Revenue Service.

[1996 No. 32, 2007 No. 53, s. 10 (I).]

(3) An appeal before the Federal Inland Revenue Service shall be determined within 30 days.

[1996 No. 32, 2007 No. 53, s. 10 (1).]

(4) Appeal from the decisions of the Federal Inland Revenue Service shall be made to the Tax Appeal Tribunal.

[2007 No. 53, s. 10(2).]

(5) An appeal from the Tax Appeal Tribunal shall be made to the Federal High Court.

[2007 No. 53, s. 10(2).]

## **PART IV**

### *Value Added Tax Technical Committee*

### **21. Establishment and composition of the Value Added Tax Technical Committee**

There is hereby established a committee to be known as the Value Added Tax Technical Committee (in this Act referred to as "the Technical Committee") which shall comprise--

- (a) a chairman who shall be the chairman of the Federal Board of Inland Revenue;
- (b) all directors in the Federal Inland Revenue Service;
- (c) the legal adviser to the Federal Inland Revenue Service;

[1996 No. 31.]

- (d) a director in the Nigerian Customs Service; and
- (e) three representatives of the State Governments who shall be members of the Joint Tax Board.

## **22. Functions**

The functions of the Technical Committee shall be to-

- (a) consider all the tax matters that require professional and technical expertise and make recommendations to the Board;
- (b) advise the Board on the duties specified in section 7 of this Act; and
- (c) attend to such other matters as the Board may, from time to time, refer to it.

## **23. Proceedings**

Subject to such directions as the Board may, from time to time, give, the Technical Committee shall determine its quorum and otherwise regulate its own procedure.

## **24. Staff**

The Federal Inland Revenue Service may post to the Technical Committee such staff as the Technical Committee may require for the discharge of its functions.

## **PART V**

### *Offences and penalties*

## **25. Furnishing of false document, etc.**

A person who-

- (a) produces, furnishes or sends for the purpose of this Act or otherwise makes use for that purpose of a document which is false in any material particular; or  
[1996 No. 30.)
- (b) in furnishing an information to the Board, makes a statement which is false in any material particular,

is guilty of an offence and liable on conviction to a fine of twice the amount under-declared.

[1996 No. 30.)

## **26. Evasion of tax**

A person who-

- (a) participates in; or  
[1996 No. 30.)
- (b) takes steps with a view to make evasion of the tax by him or any other person, is guilty of an offence and liable on conviction to a fine of ₦30,000 or two times the amount of the tax being evaded, whichever is greater, or to imprisonment for a term not exceeding three years.

[1996 No. 30.)

## **27. Failure to make attribution**

A person required to make an attribution, who-

- (a) fails to do so; or

[1996 No. 30.]



- (b) having done so, fails to notify the Board, is liable to pay a penalty of N5,000.  
[1996 No. 30.]

### **28. Failure to notify change of address**

A person who fails to notify the Board of any change of address within one month of such change, is liable to pay a penalty of ₦ 5,000.

### **29. Failure to issue tax invoice**

A person who fails to issue a tax invoice for goods sold or services rendered, is guilty of an offence and liable on conviction to a fine of 50% of the cost of the goods or services for which the invoice was not issued.

### **30. Resisting, etc., an authorised officer**

A person who-

- (a) resists, hinders or obstructs or attempts to resist or hinder an authorised officer acting under section 39 of this Act; or
- (b) fails to comply fully with any requirement made under section 39 of this Act; or
- (c) makes any statement in response to a requirement made under section 5 of this Act which is false or incomplete; or
- [1996 No. 30.]
- (d) procures or attempts to procure by any means any other person to act as aforesaid,

is guilty of an offence and liable on conviction to a fine of N I 0,000 or imprisonment for a term of six months or to both such fine and imprisonment.

### **31. Issuing of tax invoice by an unauthorised person**

A person who, other than-

- (a) a person registered under this Act; or
- (b) a person authorised to do so under this Act,

issues an invoice purporting to be attributable to tax, is guilty of an offence and is liable on conviction to a fine of ₦ 10,000 or imprisonment for a term of six months.

### **32. Failure to register**

A taxable person who fails to register under this Act, is guilty of an offence and liable on conviction to a fine of ₦5,000 and, if after one month, the person is not registered, the premises where the business is carried on shall be liable to be sealed up.

[1996 No. 30.]

### **33. Failure to keep proper records and accounts**

A taxable person who fails to keep records and accounts of his business transactions to allow for the correct ascertainment of tax and filing of returns is liable to pay a penalty of ₦ 2,000 for every month in which the failure continues.

### **34. Failure to collect tax**

A taxable person, who fails to collect tax under this Act, is liable to pay as penalty 150% of the amount not collected, plus 5% interest above the Central Bank of Nigeria rediscount rate.

### **35. Failure to submit returns**

A taxable person who fails to submit returns to the Board, is liable to a fine of ₦ 5, 000 for every month in which the failure continues.

### **36. Aiding and abetting commission of offence, etc.**

(1) An officer of the Board or any other person who aids or abets the commission of any of the offences under this Act, is guilty of an offence and is liable on conviction to a fine of ₦50,000 or to imprisonment for a term of five years.

(2) Where a person's conduct during any specified period has involved the commission or omission by him of anyone or more of the foregoing offences under this Act, then whether or not the particulars of the offences are known, he shall, by virtue of this section, be guilty of an offence and liable to pay a fine of ₦ 10,000 or four times the amount of any tax that was, or was intended to be evaded by his conduct, whichever is greater, or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

### **37. Offence by body corporate, etc.**

Where an offence under this Act is committed by a body corporate or firm or other association of individuals-

- (a) every director, manager, secretary or other similar officer of the body corporate; or
- (b) every partner or officer of the firm; or
- (c) every person concerned in the management of the affairs of the association; or
- (d) every person who was purporting to act in any capacity as aforesaid, is severally guilty of that offence and liable to be proceeded against and punished for the offence in like manner as if he had himself committed the offence, unless he proves that the act or omission constituting the offence took place without his knowledge, consent or connivance.

## PART VI

### *Miscellaneous*

#### **38. Powers of Minister to vary Schedules**

The Minister may by order published in the *Gazette*-

- (a) amend the rate of tax chargeable; and  
[First Schedule.]
- (b) amend, vary or modify the list set out in the First Schedule to this Act.  
[1996 No. 31.]

#### **39. Power of inspection**

(1) An authorised officer may at any time enter without warrant any premises upon which he has reasonable grounds to believe that a person is carrying on business in order to ascertain whether this Act is being complied with (whether on the part of the occupier of the premises or any other person), and on entry he may carry out such inspections and make such requirements as may be specified by the Board.

(2) Where an authorised officer enters any premises in exercise of the power conferred on him by subsection (1) of this section, he may take with him such persons as he considers necessary for carrying out his functions under this Act.

#### **40. Distribution of revenue**

Notwithstanding any formula that may be prescribed by any other law, the revenue accruing by virtue of the operation of this Act shall be distributed as follows-

- (a) 15% to the Federal Government;
- (b) 50% to the State Governments and the Federal Capital Territory, Abuja; and
- (c) 35% to the Local Governments:

Provided that the principle of derivation of not less than 20% shall be reflected in the distribution of the allocation amongst States and Local Governments as specified in paragraphs (b) and (c) of this section.

[1999 No. 30, 2007 No. 53, s. 11.]

#### **41. Appointment of agent for manufacturer or importer**

(1) The Board may, by notice in writing, appoint any person to be the agent of any manufacturer or importer and the person so appointed shall be the agent of the manufacturer or importer for the purposes of this Act.

(2) An agent may be required to pay any tax which is or may become payable by the manufacturer or importer from any money which may be held by him for, or due by or to become due by him to the manufacturer or importer, as the case may be, and in default of such payment, the tax shall be recoverable from him.

(3) For the purpose of this section, the Board may require a person to give information as to any money, fund or other assets which may be held by him for, or of any money due from him to a manufacturer or an importer.

## 42. Signification

Anything required to be done by the Board under this Act may be signified under the hand of the chairman or any other senior officer assigned to do so by him.

## 43. Forms

The Board may, from time to time, specify the forms, statements and notices to be used under this Act.

## 44. Regulations

The Board may, with the approval of the Minister, make regulations for giving effect to the provisions of this Act.

## 45. Repeal

Subject to section 6 of the Interpretation Act, the Sales Tax Act is hereby repealed.

[Cap. 123.]

## 46. Interpretation

In this Act, unless the context otherwise requires-

**"agency of Government"** includes a Ministry, department, statutory body, public authority and an institution of the Federal, State and Local Government;

[1996 No. 31, 1998 No. 18.]

**"authorised officer"** means an officer who has been authorised by the Board to perform any function under or in pursuance of this Act;

**"Board"** means the Federal Board of Inland Revenue;

**"building"** means any house, including any garage, dwelling apartment, hospital and institutional building, factory, warehouse, theatre, cinema, store, mill building and similarly roofed structure affording protection and shelter, radio and television masts, transmission line, tower, vehicle and other similar structure but excludes mobile homes, caravans and trailers;

**"business"** includes any trade, commerce or manufacture or any concern in the nature of trade, commerce or manufacture;

**"chairman"** means the chairman of the Federal Board of Inland Revenue;

**"company"** means a company as defined under the Companies and Allied Matters Act and a corporate body that may be formed under any other written law and includes any association, whether incorporated in or outside Nigeria;

[Cap. C20.]

**"entertainment"** includes any exhibition and performance in which admission of people is subject to payment by such persons but does not include the following, that is-

- (a) play on stage and performance which are carried out by educational institutions, approved by the Minister for the time being responsible for education as part of learning;
- (b) sport, game or other cultural performance conducted under the superintendence of the Ministry charged with the responsibility for culture and social welfare;
- (c) entertainment of a charitable, educational, medical, scientific or cultural nature as may be approved in writing by the Board prior to the date of the entertainment for the benefit of the public; and
- (d) entertainment organised by a non-profit making, charitable, educational, medical, scientific or cultural society registered under the law where the entertainment is in furtherance of the objectives of the society as may be approved in writing by the Board to the date of the entertainment;

**"exported service"** means service performed by a Nigerian resident or a Nigerian company to a person outside Nigeria;

[2007 No. 53, s. 12.]

**"import"** means bringing in or carrying to be brought in goods and services from another country or from an export processing zone;

**"imported service"** means service rendered in Nigeria by a non-resident person to a person inside Nigeria;

[2007 No. 53, s. 12.]

**"importer"** means any person who imports taxable goods;

**"input tax"** has the meaning assigned to it in section 12 of this Act;

**"invoice"** means any document issued as an evidence of demand for payment;

**"manufacturer"** means any person who engages in the manufacture of goods and includes a person who has manufactured for him or on his behalf by others, goods made to his specification or design;

**"manufacturing"** means the process by which a commodity is finally produced, including assembling, bottling, repacking, mixing, blending, grinding, cutting, bending, twisting and joining or any other similar activity;

**"Minister"** means the Minister responsible for matters relating to Finance;

**"motel"** means premises on which accommodation, flats, service apartments, beach cottages, holiday cottages, game lodges are provided but excludes the following, that is-

- (a) premises run by a charitable or religious organisation registered under the relevant law for charitable or religious purposes;
- (b) premises operated by a medical institution approved by the Minister for the time being responsible for health for the use of the staff of that institution;

- (c) premises whose supply is under a lease or licence of not less than one month, unless by prior arrangement, the occupier may without penalty, terminate that lease or licence on less than one month's notice;

**"output tax"** has the meaning assigned to it in section 11 of this Act;

**"owner"** means in respect of any goods, aircraft, vessel, vehicle, plant or any other goods, a person, other than an officer acting officially, who holds out himself to be the owner, manufacturer, agent or the person in possession of or beneficially interested in, or having control of or power of disposition over the goods, aircraft, vessel, vehicle, plant or other goods;

**"registered person"** means any person registered under section 8 of the Act;

**"restaurant"** means any establishment carrying out the business of restaurant services, and includes cafeterias, fast-food outlets, snacks bars, food stalls at exhibitions or sports arenas and similar establishments but excludes-

- (a) an establishment operated for charitable or religious purposes;
- (b) an establishment run by an educational or training institution approved by the Minister for the use of the staff and students of those institutions; and
- (c) an establishment run by a medical institution approved by the Minister for the time being responsible for health for the use of the staff and students of the institution;

**"restaurant service"** means the supply of foods or beverages prepared for immediate consumption, whether or not such consumption is on the premises of the restaurant and including outside catering;

**"supplies"** means any transaction, whether it is the sale of goods or the performances of a service for a consideration, that is, for money or money's worth;

**"supply of goods"** means any transaction where the whole property in the goods is transferred or where the agreement expressly contemplates that this will happen and in particular includes the sale and delivery of taxable goods or services used outside the business, the letting out of taxable goods on hire or leasing, and any disposal of taxable goods;

**"supply of services"** means any service provided for a consideration;

**"tax"** means the Value Added Tax imposed and charged under section 1 of this Act;

**"tax period"** means one calendar month commencing from the beginning of the month to the end of that month;

**"taxable goods and services"** means the goods and services not listed in the First Schedule to this Act;

**"taxable person"** includes an individual or body of individuals, family, corporations sole, trustee or executor or a person who carries out in a place an economic activity, a person exploiting tangible or intangible property for the purpose of obtaining income therefrom by way of trade or business or a person or agency of Government acting in that capacity;

[1996 No. 30, 1996 No. 31, 2007 No. 53, s. 12.]

**"transaction at arm's length"** means a transaction on normal open market commercial terms;

**"vehicle"** includes for the purpose of this Act every description of conveyance for the transportation by land of human beings or goods;

**"vessel"** means a mode of transportation or conveyance by water of human beings or goods;

**"wholesaler"** means a person who obtains his stock predominantly from the manufacturers and sells in bulk to the retailers.

#### 47. Short title

This Act may be cited as the Value Added Tax Act.

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### SCHEDULES

#### FIRST SCHEDULE

##### *Goods and services exempt*

[Sections 2 and 3.]

[1996 No.31, 1998 No. 18, 2007 No. 53,s. 13.]

#### PART I

##### *Goods exempt*

1. All medical and pharmaceutical products.
2. Basic food items.
3. Books and educational materials.  
[1998 No. 18.]
4. Baby products.
5. Fertilizer, locally produced agricultural and veterinary medicine, farming machinery and farming transportation equipment.
6. All exports.  
[1996 No. 31.]

7. Plant, machinery and goods imported for use in the export processing zone or free trade zone:

Provided that 100 percent production of such company is for export otherwise tax shall accrue proportionately on the profits of the company.

[2007 No. 53, s. 13 (a).]

8. Plant, machinery and equipment purchased for utilisation of gas in down-stream petroleum operations.
9. Tractors, ploughs and agricultural equipment and implements purchased for agricultural purposes.

## PART II

### *Services exempt*

1. Medical services.
2. Services rendered by Community Banks, People's Bank and Mortgage Institutions.
3. Plays and performances conducted by educational institutions as part of learning.
4. All exported services.

[1996 No.31.]

## PART III

### *Zero-rated goods and services*

[2007 No. 53, s. 13 (b).]

1. Non-oil exports.
2. Goods and services purchased by diplomats.
3. Goods purchased for use in humanitarian donor funded projects.

**"humanitarian donor funded projects"** includes projects undertaken by Non-Governmental Organisations and religious and social clubs or societies recognised by law whose activity is not for profit and in the public interest.

## SECOND SCHEDULE

### *Establishment of the Value Added Tax Tribunal*

[Section 20 (2).]

1. The Minister may by notice in the Federal *Gazette*, establish a Value Added Tax Tribunal in each Zone of the Federal Inland Revenue Service.

[1999 No. 30.]

2. Each of the Zonal V A T Tribunals shall consist of not more than eight persons, none of whom shall be a serving public officer and one of whom shall be designated as chairman by the Minister.

3. The chairman of each of the Zonal V AT Tribunals-

(a) shall be a legal practitioner of not less than fifteen years' experience;

(b) shall preside over the proceedings of the Tribunal.

4. Members of each of the Zonal V AT Tribunals-

(a) shall be appointed by notice in the Federal *Gazette* by the Ministry from among persons appearing to him to have wide and adequate practical experience, professional knowledge, skills and integrity in the profession of law, accountancy or taxation in Nigeria, as well as persons that have shown capacity in the management of trade, business and retired senior public servant in tax administration;



- (b) shall hold office for a period of three years from the date of appointment and may resign at any time by a notice in writing addressed to the Minister;
- (c) shall cease to be a member upon the Minister determining that his office be vacated upon notice of such determination.

**5. Where the Minister is satisfied that a member-**

- (a) has been absent for two consecutive meetings without the written permission of the chairman of the Board; or
- (b) is incapacitated by illness; or
- (c) has failed to make any declaration and give notice of his direct or indirect financial interest in a case when any appeal by such case is pending before the Tribunal; or
- (d) has been convicted of any felony or of any offence under any enactment imposing tax on income or profit, the Minister shall make a determination that his office as a member is vacant.

**6. Where for some reason there is insufficient number of members to hear an appeal, the Minister may make an *ad hoc* appointment in writing for the purpose of hearing such appeal.**

**7. The Minister shall designate a serving public officer to be secretary to a Zonal V AT Tribunal and the official address of the secretary shall be published in the Federal *Gazette*.**

8. The members of the V A T Tribunal shall remain in office until new ones are sworn in.

9. Any taxable person who being a person aggrieved by an assessment or demand notice made upon him, may appeal against the assessment and notice to the Zonal V A T Tribunal where the taxable person is resident giving notice in writing through the Secretary to the Zonal V A T Tribunal within fifteen days after the date of service upon such taxable person of the assessment or demand notice and the appeal shall be heard by the Tribunal.

10. The Board, if aggrieved by the non-compliance of a taxable person to any provision of this Act, may appeal to the Zonal Tribunal where the taxable person is resident giving notice in writing through the Secretary to the Zonal V A T Tribunal.

11. Where a notice of appeal is not given within the period specified, the assessment or demand notices shall become final and conclusive and the Board may recover tax, interest and penalty, which remain unpaid from any taxable person through the proceeding at the Zonal Tribunal.

12. An award or judgment of the V A T Tribunal shall be enforced as if it were a judgment of the Federal High Court on registration of a copy of the award or judgment in the Registry of the Federal High Court by the party seeking to enforce the award or judgment.

[1998 No. 18.]

13. Notice of appeal against assessment shall contain-

- (a) the name and address of the taxable person;
- (b) the total amount of goods and services chargeable to tax in respect of each month;
- (c) any input tax;
- (d) net amount of tax payable;
- (e) the copy of assessment notice;
- (f) the precise grounds of appeal against the assessment; and
- (g) an address for service of any notice, process or other document to be given to the appellant and the Secretary to the Zonal Tribunal.

[1998 No. 18.]

14. The Board or a taxable person may discontinue an appeal at any time before the hearing of the appeal by giving notice in writing through the Secretary to the Zonal Tribunal.

15. The Zonal Tribunal shall meet as often as may be necessary to hear an appeal in any town and place in which the office of the Tribunal is situated.

16. At least five members may hear and determine an appeal.

17. The secretary to the Zonal Tribunal shall give seven days' notice to the parties to an appeal of the date and place fixed for the hearing of the appeal.

18. All notices and documents, other than the decisions of the Tribunal, may be signed under the hand of the Secretary. All appeals before the Tribunal shall be held *in camera*. Every taxable person so appealing shall be entitled to be represented at the hearing of the appeal by a legal practitioner, a qualified chartered accountant, or tax consultant.

19. The onus of proving the basis of grievance against an assessment or non-compliance with the provisions of the Law shall be on the appellant.

20. The Zonal Tribunal may upon hearing the appeal, confirm, reduce, increase or amend the assessment or make such orders thereon as it deems fit.

**21.** The Minister shall make rules regulating the practice and procedure of the V A T Tribunal and, until such rules are made, the practice and procedure of the Federal High Court shall apply with such modifications (whether by way of addition, alteration or omission) as the circumstances may require.

[1998 No. 18.]

**22.** Any case or proceeding relating to a matter for which the V A T Tribunal has jurisdiction pending before the Federal High Court on the commencement of this paragraph shall be continued and completed as if this Act had not been made.

**23.** (1) Following the decision of the VAT Tribunal, notice of the amount of the tax chargeable under the assessment as determined by the V A T Tribunal shall be served by the Board on the company or person in whose name the tax is chargeable.

(2) Notwithstanding that an appeal is pending, tax shall be paid in accordance with the decision of the V A T Tribunal within one month of notification of the amount of the tax payable in pursuance of subparagraph (1) of this paragraph.

**24.** (1) Any party aggrieved by the decision of the V A T Tribunal may appeal against the decision on a point of law to the Court of Appeal on giving notice in writing to the Secretary to the V A T Tribunal within thirty days after the date on which the decision was given setting out the grounds on which the decision is being challenged.

(2) On receipt of a notice of appeal under subparagraph (1) of this paragraph, the secretary to the V A T Tribunal shall compile the record of proceedings and judgment before the V A T Tribunal and shall cause them to be transmitted to the Chief Registrar of the Court of Appeal together with all the exhibits tendered at the hearing before the V A T Tribunal within thirty days after the date on which the decision was made.

**25.** The President of the Court of Appeal may make rules providing for the procedure in respect of appeals made under this Act and until such rules are made, the Court of Appeal Rules relating to the hearing of appeals shall apply to the hearing and determination of an appeal under this Act.

[1998 No. 18.]

## SUBSIDIARY LEGISLATION

### *list of Subsidiary Legislation*

1. Value Added Tax Tribunals Rules, 2003.
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## VALUE ADDED TAX TRIBUNALS RULES, 2003

### ARRANGEMENT OF RULES

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##### *Citation, Application, etc.*

#### RULE

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2. Citation and commencement.
3. Application.

#### ORDER 2

##### *Form and Commencement of Action*

1. Mode of beginning proceedings.
2. What shall accompany summons on notice.

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##### *interlocutory Applications*

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2. Application by motion.
3. Affidavits.
4. Affidavit to be served with motion.
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##### *B-Notice of Motion*

8. Notice of motion.

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9. Service of notice of motion.
10. Service on solicitor.
11. Order for service.
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*C-Evidence in Interlocutory Proceedings*

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*Parties*

*A-General*

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2. Persons could be joined jointly, severally or in the alternative as respondents.
3. Non-joinder.
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7. Act may be done by legal practitioner or agent.

*B-Alteration of Parties*

8. Court may make order enabling suit to proceed where there is change of interest.
9. Death of one of several respondents or of a sole or surviving respondent.

*C-Change of Counsel of Parties*

10. Party may change legal representatives.

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**V VALUE ADDED TAX TRIBUNALS RULES, 2003**

[S.1. 14 of 2003.]

[ ]

[Commencement.]

ORDER I

*Citation, Application, etc.*

**1 Interpretation**

In these Rules, unless the context otherwise requires-

"**Act**" means the Value Added Tax Act;

"**Accountant**" means a qualified Chartered Accountant;

"**applicant**" means a person who brings a complaint to the Tribunal;

"**Board**" means the Federal Board of Inland Revenue;

"**Chairman**" in relation to a meeting of members of the Tribunal, means a person appointed to be the Chairman in a zone in accordance with section 3 of Schedule 2 to the Act;



**"Issuing Office"** in relation to any appeal against an assessment or demand notice means the Federal Inland Revenue Local V AT Office from which the notice of assessment or demand notice was issued;

**"legal practitioner"** means any barrister and solicitor of the Supreme Court of Nigeria and includes any law officer to whom the Law Officers Act applies;

**"member"** means a person appointed under section 4, Schedule 2 to the Value Added Tax Act;

**"pre-hearing review"** means a review of the application that may be held at a time set before the hearing of the substantive application;

**"reply"** means a reply filed by the Respondent under Order 8 rule 2;

**"respondent"** means a person who is responding to the complaint of the applicant;

**"Secretary"** means the Secretary to the Zonal Value Added Tax Tribunal designated under section 7, Schedule 2 to the Value Added Tax Act;

**"tax consultant"** means a chartered tax practitioner who is a member of the Chartered Institute of Taxation of Nigeria; and

"Tribunal" means the Value Added Tax Tribunal.

## **2. Citation and commencement**

These Rules may be cited as the Value Added Tax Tribunal Rules, 2003 and shall come into force on the day section 21 of the Act is brought into force.

## **3. Application**

These Rules shall apply to all matters before the Tribunal.

### **ORDER 2**

#### *Form and Commencement of Action*

### **1. Mode of beginning proceedings**

Subject to the provisions of any enactment, proceedings under these Rules shall be commenced by summons on notice.

### **2. What shall accompany summons on notice**

Every application for a summons on notice shall be accompanied by a statement of claim which shall state-

- (a) the names and addresses of the applicant and respondent;
- (b) the subject matter of the claim and the reliefs sought;
- (c) the facts upon which the applicant relies in support of his application; and
- (d) a list of all documents annexed which the applicant intends to rely on.

## ORDER 3

### *Interlocutory Applications*

#### *A-Motions Generally*

#### **1. Time to apply**

Subject to these Rules, interlocutory applications may be made at any stage of an action.

#### **2. Application by motion**

Where by these Rules an application is authorised to be made to the Tribunal, such application may be made by motion.

#### **3. Affidavits**

Every motion shall be supported by an affidavit setting out the grounds on which the party moving intends to rely and no affidavit shall be used at the hearing unless it is duly filed.

#### **4. Affidavit to be served with motion**

Where service of a motion is required by these Rules or directed by the Tribunal, the motion shall be served together with all affidavits on which the party moving intends to rely.

#### **5. Hearing of motion**

A motion may be heard at any time while the Tribunal is sitting.

#### **6. Adjournment**

Hearing of any motion may from time to time be adjourned upon such terms as the Tribunal may deem fit.

#### **7. Motion to be on notice**

No motion shall be made without previous notice to the parties affected.

#### *B-Notice of Motion*

#### **8. Notice of motion**

There shall be two clear days between the service of a motion and the day named in the notice for the hearing of the motion unless the Tribunal gives special leave to the contrary.

#### **9. Service of notice of motion**

Notice of motion shall generally be served by officers of the Tribunal but may with the leave of the Tribunal be served by any other person.

#### **10. Service on solicitor**

Where a party is represented by a solicitor, service of notice of motion on the solicitor shall be deemed to be good service on the party involved.

#### **11. Order for service**

If at the hearing of any motion, the Tribunal is of the opinion that any person to whom notice has not been given ought to have or have had such notice, the Tribunal may adjourn the hearing in order that notice may be given upon such terms as the Tribunal may deem fit.

#### **12. Service with summons on notice**

The applicant may, by leave of the Tribunal, cause any notice of motion to be served upon the respondent with the summons on notice.

*C-Evidence in Interlocutory Proceedings*

#### **13. Oral evidence**

Oral evidence shall not be heard in support of any motion except by leave of the Tribunal.

#### **14. Evidence in addition to or in lieu of affidavits**

The Tribunal may, in addition to or in lieu of affidavits if it thinks it expedient, examine any witness *viva voce*, or receive documents in evidence, and may summon any person to attend to produce documents before it or to be examined or cross-examined before it in like manner as at the hearing of a suit.

#### **15. Notice to parties and interested parties**

Such notice as the Tribunal in each case considers reasonable shall be given to the persons summoned and to such persons (parties to the cause or matter or otherwise interested) as the Tribunal considers are entitled to inspect the documents to be produced, or to examine the person summoned or to be present at his examination, as the case may be.

#### **16. Affidavit not filed with motion paper**

Upon the hearing of any motion, the Tribunal may, on such terms as to costs and adjournment as it may deem fit, allow any additional affidavit to be used, after the affidavit has been duly filed and served on the opposite side.

### **ORDER 4**

#### *Affidavits*

##### **1. Evidence on motion**

Upon any motion or summons on notice being filed, evidence may be given by an affidavit, but the Tribunal or the Chairman in chambers may, on the application of either party, order the attendance for cross-examination of the person making the affidavit and where after such an order has been made, the person in question does not attend, his affidavit shall not be used as evidence unless by special leave of the Tribunal or Chairman of the Tribunal in chambers.

## **2. Title of affidavits**

Every affidavit shall be titled in the cause or matter in which it is sworn, but in every case in which there is more than one applicant or respondent, it shall be sufficient to state the full name of the first applicant and first respondent respectively, and indicate that there are other applicants or respondents.

## **3. Specific time for filing affidavits**

Where a specific time is fixed for filing affidavits, no affidavit filed after that time shall be used unless by leave of the Tribunal or its Chairman in chambers.

## **4. Affidavits to be used in chambers**

All affidavits which have been previously made and read in the Tribunal following any proceeding in a cause or matter may be used before the Chairman of the Tribunal in chambers.

## **5. Oaths Act, L.F.N. 2004 Cap. O1**

Where the Tribunal or its Chairman requires or orders any evidence to be given on oath or affirmation, provisions of the Oaths Act shall apply.

## **6. Exhibits**

Returns, assessments, demand notices, accounts, extracts from registers, particulars of creditors, debts and other documents referred to by affidavit, shall not be annexed to the affidavit or referred to in the affidavit as annexed but shall be referred to as exhibits.

## **ORDER 5**

### *Place of Instituting and Trial of Action*

#### **1. Place of trial of action**

Subject to the provisions of Order 5, Rule 2, the Zonal Headquarters of the Tribunals as stated in the *Gazette* shall be used for the institution, hearing and trial of causes of action.

#### **2. Hearing could be fixed in other towns that have office of Federal Inland Revenue Service**

If it appears to the Tribunal that it will be more convenient for such hearing to be fixed in some other town in which there is an office of the Federal Inland Revenue Service, it may give notice in writing to the applicant and respondent of its intention to fix the hearing in that other town.

#### **3. Fixture of hearing in another town subject to objection from parties**

Subject to the receipt of an objection in writing from either the applicant or respondent within fourteen days of the giving of the notice, the Tribunal may fix the place of hearing in that other town and given notice of this to the applicant and respondent.

## ORDER 6

### *Parties*

#### *A-General*

#### **1. Persons claiming jointly, severally or in the alternative may be applicants**

All persons may be joined in one action as applicants in whom any right to relief (in respect of or arising out of the same transaction or in a series of transactions) is alleged to exist whether jointly, severally or in the alternative, where, if such persons brought separate actions, any common question of law or fact would arise and judgment may be given for such one or more of the applicants that may be entitled to relief, for such relief as he or they may be entitled to without any amendment.

#### **2. Persons could be joined jointly, severally or in the alternative as respondents**

All persons may be joined as respondents against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative and judgment may be given against such one or more of the respondents as may be found to be liable according to their respective liabilities without any amendment.

#### **3. Non-joinder**

If it appears to the Tribunal, at or before the hearing of a suit that all the persons who may be entitled to or who claim some share or interest in the subject matter of the suit, or who may be likely to be affected by the result have not been made parties, the Court may adjourn the hearing of the suit to a fixture day, to be fixed by the Court and direct that such persons shall be made either applicants or respondents in the suit.

#### **4. Notice to persons authorised to be joined as applicants or respondents**

Where the Tribunal directs persons to be made applicants or respondents as in rule 3 of this Order, the Tribunal shall issue a notice to such persons which shall be served in the manner provided by these Rules for the service of a summons on notice or in such other manner as the Tribunal may direct; and on proof of the due service of such notice, the person so served, whether he appears or not, shall be bound by all proceedings in the cause but a person so served and failing to appear within the time limited by the notice for his appearance, may at any time before judgment in the suit, apply to the Tribunal for leave to appear and such leave may be given upon such terms (if any) as the Tribunal deems fit.

#### **5. Misjoinder of parties**

The Tribunal may, at any stage of the proceeding and on such terms as appear to the Tribunal to be just, order that the name or names of any party or parties whether as applicants or respondents, improperly joined, be struck out.

#### **6. Application to add or strike out party**

An application to add or strike out or substitute an applicant or respondent may be made to the Tribunal or the Chairman of the Tribunal in chambers at any time before trial by motion, summons on notice or in a summary manner at the trial of the action.

**7. Act may be done by legal practitioner or agent**

Where by these Rules an act may be done by any party in an action, that act may be done either by the party in person, or by his legal practitioner, or by his agent (unless an agent is expressly barred under these Rules or any written law in force in any part of Nigeria).

*B-Alteration of Parties*

**8. Court may make order enabling suit to proceed where there is change of interest**

(1) Where after the institution of a suit a change or transmission of interest or liability occurs in relation to any party to the suit or any party to the suit dies or becomes incapable of carrying on the suit, or if the suit in any way becomes defective or incapable of being carried on, any person interested may obtain from the Tribunal an order necessary for curing the defect, or enabling or compelling proper parties to carry on the proceedings.

(2) A person served with an order made pursuant to subrule (1) of this rule may, within such time as the Tribunal may by order direct apply to the Tribunal to discharge or vary the order.

**9. Death of one of several respondents or of a sole or surviving respondent**

(1) If there are two or more respondents, when one of them dies, the cause of action survives but does not survive against the surviving respondent or respondents alone.

(2) In the case of the death of a sole respondent, or sole surviving respondent, where the action survives, the applicant may make an application to the Tribunal, specifying the name, description and place of abode of any person whom the applicant alleges to be the legal representative of the respondent and who he desires to be made the respondent in his absence.

(3) The Tribunal shall thereupon enter the name of the legal representative in the suit in the place of the respondent and issue an order to him to appear on a day to be therein mentioned to defend the suit and the case shall thereupon proceed in the same manner as if the legal representative had originally been made a respondent and had been a party to the former proceedings in the suit.

*C-Change of Counsel of Parties*

**10. Party may change legal representatives**

(1) A party to any cause under these Rules who sues or defends by a counsel, may change the legal practitioner representing him without an order of the Tribunal for that purpose.

(2) Unless and until notice of the change in counsel is fixed in the Tribunal and copies of the notice are served on every other party to the case and on the former legal practitioner who represented the party, the former legal representative shall be considered as the legal practitioner representing the party until the final conclusion of the case.

(3) A copy of the notice endorsed with an affidavit stating that the notice has been duly filed in the registry shall also be filed.

(4) The party giving the notice may perform the duties prescribed by this order in person or by his new legal representative.

## ORDER 7

### *Service of Process*

#### *A-Service within Jurisdiction*

#### **1. What happens when an application for issue of summons is received?**

(1) On the receipt of an application for summons on notice under these Rules, the Secretary to the Tribunal shall endorse on the application the date of the receipt and enter the same in the register of Value Added Tax cases to be kept for that purpose.

(2) Where the Secretary is satisfied that the application complies with the requirements of Order 2, he shall proceed to prepare a summons on notice to be signed by the Chairman and cause same to be served on the respondent or respondents.

(3) If it appears to the Secretary that the application was not given within the time limit prescribed by section 9, Schedule 2 to the Value Added Tax Tribunals Act or does not specify the particulars required, the Secretary shall notify the applicant in writing on these.

#### **2. Modes of service of process**

Any notice of summons, orders, other proceedings, documents or written communication shall be given, served or issued to or upon-

- (a) the Secretary to the Tribunal at the official address of the Tribunal;
- (b) the Board of Federal Inland Revenue Service through the officer in charge of the issuing office or of such other office of the Federal Inland Revenue Service as may have been notified to the Secretary to the Tribunal and the applicant by the Board with regard to a given case;
- (c) an applicant or respondent through registered post to its address for service or by personal service on the principal officer or representative of the applicant or respondent in Nigeria.

#### **3. Substituted service**

Where it appears to the Tribunal that for any reason personal service cannot be effected or that any party is evading service of the Tribunal's processes, the Tribunal may on the application of one of the parties order for substituted service to be effected-

- (a) by advertisement in a newspaper circulating within the jurisdiction; or
- (b) by service of such notices, documents or written communication on the legal practitioner or his clerk where the party is represented by a legal practitioner; or
- (c) by delivery of the document to an adult person at the usual or last known place of residence or business of the party to be served; or
- (d) by delivery of the document to a person who is an agent of the party to be served.

### *B-Service out of Jurisdiction*

#### **4. Service of summons out of jurisdiction**

Service of summons or notice of summons may be allowed by the Tribunal or its Chairman in chambers where any person outside the jurisdiction is a necessary or proper party to an action properly brought against a party within the jurisdiction.

#### **5. Application for leave to be supported by affidavit**

Every application for leave to serve summons or notice of summons on the respondent out of the jurisdiction shall be supported by affidavit, showing that the applicant has a good cause of action, the place where the respondent could be found and the grounds upon which the application is made.

#### **6. Interpretation**

In this Order "**out of jurisdiction**" means out of the states covered by each Zonal Tribunal.

### *C-General Provisions*

#### **7. Where violence or threat prevents service of process**

Where a person charged with the service of any summons or document on any person is prevented from personally serving the summons or document due to threat or violence from the person or any other person acting in concert with him, it shall be sufficient to inform the persons to be served of the nature of the summons or document.

#### **8. Affidavit of service**

In all cases where service of any summons or document is effected by an officer of the Tribunal so designated, an affidavit of service sworn to by the officer shall be filed in that case file as it is *prima facie* evidence of service.

#### **9. Expenses of service**

The costs of and incidental to the execution of any process in a case before the Tribunal shall be paid by the applicant or respondent, whichever of them requires the execution, and the officer of the Tribunal designated to effect service shall not be bound to serve or execute any process, unless the fees and reasonable expenses that are necessary shall have been paid to the Tribunal and to him.

#### **10. Non-service days**

Service shall not be made on a Saturday, Sunday or public holiday, unless the Tribunal directs otherwise by order which must be endorsed on the document to be served.

### ORDER 8

#### *Appearance*

#### **1. Mode of entry of appearance**

(1) A respondent shall within 15 days after the service of the notice of summons and particulars of claim on him enter an appearance in the manner prescribed in subrule (2) of this rule.



(2) A respondent shall enter an appearance by delivering to the Secretary of the Tribunal a memorandum of appearance, a statement of defence to the action and copies of the documentary evidence referred to.

(3) All the documents shall be signed by the legal practitioner, qualified chartered accountant or tax consultant by whom the respondent appears or if the respondent appears in person, by the respondent.

(4) On the receipt of the necessary documents, the Secretary to the Tribunal shall enter the appearance in the Cause Book, stamp the copies of the memorandum of appearance with the official stamp showing the date on which he received the documents and deliver one sealed copy to the applicant or to his legal practitioner, chartered accountant or tax consultant representing him at the hearing before the Tribunal.

## **2. Respondent's address for service**

(1) A respondent appearing in person shall state in the memorandum of appearance an address for service which shall be within the jurisdiction.

(2) Where a respondent appears by a legal practitioner, chartered accountant or tax consultant, he shall state in the memorandum of appearance his place of business and an address for service within the jurisdiction and where any legal practitioner, chartered accountant or tax consultant, he shall also insert the name and place of business of the principal as the case may be.

## **3. Memorandum contains no address or fictitious address**

(1) If the memorandum of appearance does not contain an address for service, it shall not be accepted.

(2) If any address for service is found to be fictitious or misleading, the memorandum of appearance in which it is so stated may be set aside by the Tribunal or on the application of the applicant.

## **ORDER 9**

### *Default of Appearance*

#### **1. Case may be struck out for non-appearance of the applicant**

Where an applicant fails to appear in the Tribunal or is not represented on any of the dates when the case came up for hearing, the Tribunal may strike out the case.

#### **2. Applicant to show cause why case should be re-listed**

Where such a case is struck out by the Tribunal, for it to be relisted, the applicant or his representative has to come by way of motion on notice supported by affidavit showing cause why the case should be relisted.

#### **3. Result of default of appearance by the respondent**

Where the respondent has been duly served with the notice of summons and hearing notice and he fails to enter appearance within the stipulated time of 15 days, the applicant may apply for the case to be set down for hearing and upon the hearing, the Tribunal may

give a default judgment in favour of the applicant together with interest at the rate specified (if any) or if not so specified at the rate of six percent per annum to the date of judgment.

#### **4. Judgment by default may be set aside**

Where judgment is entered by the default of the non-appearance of the respondent at the trial, the Tribunal may set aside or vary the judgment upon such terms as may seem just following an application made by the respondent within seven days after the trial or within such longer period as the Tribunal may allow subject to good cause.

### ORDER 10

#### *Computation of Time*

##### **1. No extension of time by the consent of parties**

The parties to any case before this Tribunal shall not by consent enlarge or abridge any of the times fixed by the provisions of these Rules for taking any step, filing any document or giving any notice.

##### **2. Tribunal may extend time**

The Tribunal may, on such terms as it thinks just, by order extend or abridge the period within which a party is required or authorised by the provisions of the Act or these Rules or by any judgment, order or direction of the Tribunal, to do any act in any proceedings.

##### **3. When to apply for extension of time**

The Tribunal may extend any such period as is referred to in rule 2 above although the application for extension is not made until after the expiration of that period.

### ORDER 11

#### *Withdrawal and Discontinuance*

##### **1 Withdrawal of summons or motion**

An applicant who has taken out a summons or filed a motion in a pending case may withdraw the summons or motion at any time before the hearing, by filing a notice to that effect or at the hearing with the leave of the Tribunal.

##### **2. Withdrawal of appearance**

A respondent who has entered an appearance in a case may with the leave of the Tribunal withdraw the appearance at any time.

##### **3. Discontinuance of action without leave**

(1) The applicant in an action may, without the leave of the Tribunal, discontinue the action or withdraw any particular claim made by him against any or all the respondents not later than 14 days after the service of defence on him by serving a notice to that effect on the respondents involved.

(2) A respondent may, without the leave of the Tribunal, discontinue a counterclaim or withdraw any particular claim, defence or any part of it, not later than 14 days after service on him of a defence to the counterclaim by serving a notice to that effect on the applicant.

## ORDER 12

### *Admissions*

#### **1. Admission of case of the other party**

Any party may give notice by his pleadings or otherwise, in writing that he admits the truth of the whole or any part of the case of any other party.

#### **2. Settlement of documentary evidence**

(1) After pleadings have been settled and issues joined, the parties or their counsel will settle before the Secretary to the Tribunal all documents they wish to use at the trial, and leave with him two copies of each set of documents.

(2) No party will, without leave of the Tribunal, be allowed to use at the trial any document other than those already settled.

#### **3. Judgment on admission of facts**

(1) Where admissions of facts are made by a party either by his pleadings or otherwise, any other party to the action may apply to the Tribunal for such judgment or order as upon those admissions he may be entitled to, without waiting for the determination of any other question between the parties, and the Tribunal may give such judgment or make such order on the application as it thinks just.

(2) An application for an order under this rule may be made by motion or summons.

## ORDER 13

### *Settlement and Trial of Issues*

#### *A-Settlement of Issues*

#### **1. Settlement of issues at or during the hearing**

The Tribunal may, at any time before or at the hearing, if it thinks fit, on the application of any of the parties or of its own motion, proceed to ascertain and determine what are the material questions in controversy between the parties and may reduce the questions into writing and settle them in the form of issues which when settled may state questions of law on admitted facts, or questions of disputed facts or a mixture of both.

#### **2. Court may give direction on settlement of issues**

The Tribunal may, at any time if it thinks fit, give directions to the parties to prepare the issues and the issues so raised shall be settled by the Tribunal.

### **3. When the issues are to be settled**

The issues may be settled without any previous notice at any stage of the proceedings at which all the parties are present or at the hearing.

### **4. Notice to be given by Tribunal**

Where the Tribunal gives a direction for settlement of issues on its own motion, notice shall be given to the parties to attend the settlement of the issues.

#### *B-Trial of Question and Issues*

### **5. Directions as to pre-hearing review**

Where the Tribunal directs that it is appropriate to hold a pre-hearing review, the Secretary to the Tribunal shall give the parties 14 days' notice of the time and place of the pre-hearing review.

### **6. What happens at the pre-hearing review?**

The Tribunal shall at the pre-hearing review-

- (a) give directions necessary or desirable for securing the just, expeditious and economic conduct of the application; and
- (b) endeavour to ensure that the parties make all admissions and agreements as they ought reasonably to have made in relation to the proceedings.

### **7. Time of trial of questions or issues**

(1) The Tribunal may direct or order any question of fact or of law or partly of fact and of law which appears to be in issue in relation to the application to be tried or determined at a preliminary hearing.

(2) An order under this rule may be made on application by a party or by the Tribunal on its own motion.

(3) Applications by any party for the order shall be by motion on notice stating the question or issue sought to be tried.

### **8. Dismissal of action after decision of preliminary issue**

If it appears to the Tribunal that the decision of any question or issue arising in a case tried separately from the case substantially disposes of the case, the Tribunal may treat the preliminary hearing as the hearing of the case and dismiss the case or make such order or give such judgment as may be just.

### **9. Determination of question or issue subject to agreement by the parties**

If the parties so agree in writing, the Tribunal may determine the question or issue without an oral hearing and dispose of the application subject to agreement by the parties in writing that it could be so done by the Tribunal.

ORDER 14

*Proceeding relating to Evidence*

**1. Power to hear evidence on oath or affirmation**

The Tribunal where it requires any evidence be given an oath or affirmation, the provisions of the Oaths Act shall apply.

[L.F.N. 2004 Cap. 01.]

**2. Witnesses to be examined orally**

Subject to the provisions of these Rules and the Evidence Act, any fact required to be proved at the trial of an action brought before the Tribunal shall be proved by the examination of witnesses orally and in open court.

[L.F.N. 2004 Cap. EI4.]

**3. Evidence by affidavit**

The Tribunal may, at or before the trial of an action, order or direct that all or any of the evidence therein shall be given by affidavit.

**4. Office copies of documents admissible in evidence**

The Tribunal shall, at the hearing of any application brought before it, admit in evidence office copies of returns, correspondences, accounts, plans, records, writs and documents filed which it considers relevant to the application.

**5. Rules of evidence applicable where a witness gives oral evidence**

The rules of evidence regarding examination in chief, cross-examination and re-examination shall apply where a witness gives oral evidence at the Tribunal.

**6. Onus of proof on the applicant**

The onus shall be on the applicant to prove whether an assessment or demand notice is arbitrary, excessive or otherwise.

**7. Tribunal could order attendance to testify or produce document**

The Tribunal may at any stage of the trial order that a person attends for the purpose of testifying or producing a document.

ORDER 15

*Judgment and Orders*

**1. Delivery of judgment in open court**

The decision or judgment of the Tribunal shall be delivered in open court, unless the Tribunal otherwise directs for sufficient cause.

## **2. Notice when judgment is reserved**

If the Tribunal reserves judgment at the hearing, parties to the action shall be served with notice to attend and hear the judgment, unless the Tribunal at the hearing states the day on which judgment will be delivered, in which case there shall be no further notice.

## **3. When judgment shall be issued**

The judgment of the Tribunal shall be delivered after the Tribunal may have heard all witnesses in the case, including oral or written arguments from both parties or their representatives.

## **4. Minutes of judgment and its effect**

Minutes of every judgment, whether final or interlocutory, shall be made, and every such minute shall be the order of the Tribunal.

## **5. Time within which judgment shall be delivered**

The judgment of the Tribunal shall be delivered to the hearing of the parties, not later than thirty (30) days from the conclusion of the hearing of evidence and argument by both parties.

## **6. When formal order can be drawn up**

A formal order of a judgment shall be drawn up on the application of any of the parties.

### ORDER 16

#### *Appeals*

## **1. Any aggrieved party has right of appeal**

Any party aggrieved by the decision of the V AT Tribunal may appeal against the decision on points of law to the Federal High Court.

## **2. Notice of appeal**

Appeals shall be commenced on the giving and filing of notice of appeal in writing to the Secretary within 30 days after the date on which the decision was given, setting out the grounds on which the decision is being challenged.

## **3. Secretary to compile records of proceedings**

On the receipt of a notice of appeal, the Secretary to the Tribunal shall compile the record of proceedings and cause them to be transmitted to the Chief Registrar of the Federal High Court, together with all the exhibits tendered at the hearing before the V AT Tribunal within 30 days after the date that the appeal was filed.

## **4. Appeal against an assessment or demand notice**

Where there is an appeal against an assessment or a demand notice, the applicant shall specify-

- (a) the official number of the assessment or demand notice and the month/period of assessment for which it was made;

- (b) the amount of tax charged not deducted or not remitted;
- (c) the date on which the applicant was served the notice; and
- (d) the grounds of appeal.

**5. Board of Inland Revenue may revise assessment**

Notwithstanding the filing of a notice of appeal against an assessment or demand notice, the Board of Inland Revenue may revise the assessment in agreement with the applicant.

**6. Discontinuance of appeal by Tribunal**

If notice of such revised assessment is given in writing by both parties to the Secretary at any time before the hearing of the appeal, the appeal may with the permission of the Tribunal be treated as discontinued.

**7. Appeal to be motion**

Every application or appeal to the Tribunal under this Order shall be begun by originating motion.

**8. Evidence**

The evidence upon the hearing of the appeal shall be by affidavit, except in so far as the Tribunal at the hearing may direct oral evidence to be given.

**9. Stay of execution pending appeal**

Where any application is made to the Tribunal for a stay of execution under any judgment or decision appealed from, such application shall be made by motion on notice supported by affidavit setting forth the grounds upon which a stay of execution or of proceedings is sought.

**10. Court may grant or refuse order for stay**

- (1) The Tribunal may make or refuse an order for a stay of execution or of proceedings.
- (2) An order for stay may be made subject to such conditions as shall appear just, including the deposit in the Tribunal of any money adjudged due to any party in the judgment appealed from.

ORDER 17

*Costs*

**1. Costs at the discretion of Tribunal**

In every case brought before the Tribunal, the costs of the whole action, and of each particular proceeding therein, and the costs of every proceeding in the Tribunal, shall be at the discretion of the Tribunal as regards the person by whom they are to be paid.

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