

Nigeria

Current as of May 2011 | Comments related to any information in this note should be addressed to [Elaine Scudder](#).

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I. Summary

A. Types of Organizations

Nigeria is a Federal Republic. The country's legal system is based on the English legal tradition. The law governing voluntary not-for-profit organizations in Nigeria is a product of English common law. Statutory law governs the creation of not-for-profit companies. Other not-for-profit organizations, such as unincorporated associations, charitable trusts, cooperatives, friendly societies, political parties, and trade unions also exist in Nigeria. Because cooperatives, friendly societies, and trade unions are mutual benefit organizations, they will not be discussed further in this Note, nor will the Note address political parties. Rather, the Note will focus on:

- An association with incorporated trustees; and
- A company limited by guarantee.

B. Tax Laws

Nigerian companies are taxed under the [Companies Income Tax Act](#) (CITA). CITA exempts from tax the profits of companies engaged in certain public benefit activities, so long as the profits are not derived from

trade or a business undertaking. Profits of companies established to promote sporting activities are also exempt. Nigerian companies may make tax-deductible donations to certain public benefit organizations that are listed in the Fifth Schedule to CITA. Donations made by individuals, on the other hand, are not tax deductible. Nigerian not-for-profit companies are subject to a value added tax (VAT).

II. Applicable Laws

- [Constitution of the Federal Republic of Nigeria \(1999\)](#)
- [Companies and Allied Matters Act \(CAMA\)](#)
- [Companies Income Tax Act](#) (CITA)
- [Criminal Code Act](#)
- [Taxes and Levies \(Approved List for Collection\) Act 1998](#)
- [Value Added Tax Act \(1993\)](#)
- VAT Amendment Act (2007)
- Federal Inland Revenue Service (Establishment) Act 2007

III. Relevant Legal Forms

A. General Legal Forms

Association with Incorporated Trustees

An association of persons, which appoints one or more trustees and pursues registration under Part C of the Companies and Allied Matters Act, is called an association with incorporated trustees. Upon registration, the trustee or trustees become a body corporate and has/have perpetual succession as well as the power to sue and be sued on behalf of the association. There are essentially two forms of associations with incorporated trustees. The first form occurs where the trustees are appointed by any community of persons bound together by customs, religion, kinship or nationality. The second form is identified by the fact that the trustees are appointed by any body or association of persons established for any religious, educational, literary, scientific, social, development, cultural, sporting, or charitable purpose. [\[CAMA §673\]](#)

Individuals not qualified to be appointed as trustees include infants, persons of unsound mind, those who have undischarged bankruptcies and persons convicted of any offence involving dishonesty within a period of five years of the proposed appointment. [\[CAMA §675\]](#) In addition, the Corporate Affairs Commission, which oversees the registration of incorporated trustees, requires that individuals applying for incorporation as trustees undergo a police background check.

Company Limited by Guarantee

A company limited by guarantee is formed for the promotion of commerce, art, science, religion, sports, culture, education, research, charity, or other similar objects. The income and property of the company is applied solely towards the promotion of its objects. No portion of the company's income or property may be paid or transferred directly or indirectly to the members of the company except as permitted by the CAMA. [\[CAMA §26\(1\)\]](#)

Common Law Charitable Trust

The unincorporated charitable trust formed under traditional common law rules also exists in Nigeria. A trust may be formed by the settlor *inter vivos* or by testamentary will.

Because the charitable trust is a generic creature of the common law, rather than of specific Nigerian statutory law, it will not be discussed further in this Note.

Unincorporated Association

The Constitution of the Federal Republic of Nigeria states “Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to ... "any association for the protection of his interests" [[Constitution of the Federal Republic of Nigeria §40](#)]. Thus, with certain derogations, (i.e., those contained in [§45 of the Constitution of the Federal Republic of Nigeria](#)), people may come together to form unincorporated associations. Such unincorporated associations are not eligible for tax benefits. Because the information relevant to making an equivalency determination will necessarily be contained in the governing documents of each unincorporated association, these types of associations will not be discussed further in this Note.

B. Public Benefit Status

Nigeria does not grant a special public benefit status to organizations that engage in public benefit activities. However, the public benefit character of certain organizations that engage in public benefit activities is recognized through the grant of tax preferences (please refer to Section V(B) below).

IV. Specific Questions Regarding Local Law

A. Inurement

Association with Incorporated Trustees

No portion of the income and property of a body or an association with incorporated trustees may be paid or transferred directly or indirectly, by way of dividend, bonus, or otherwise to the members of the association. [[CAMA §686\(1\)](#)] Associations with incorporated trustees may pay their employees reasonable remuneration for services rendered. [[CAMA §686\(2\)](#)]

Active members of the managing council or governing board of an association with incorporated trustees may not take within the organization a salaried position or any other position that is paid by fees. [[CAMA §686\(2\)\(a\)](#)] Members of the managing/governing bodies may, however, be reimbursed for expenses incurred in connection with the work of the association and be paid a reasonable rent for properties leased to the organization. [[CAMA §686\(2\)\(b\)](#)]

Company Limited by Guarantee

No portion of the income and property of a company limited by guarantee may be paid or distributed, directly or indirectly, to its members except as permitted under the CAMA. [[CAMA §26\(1\)](#)] A company limited by guarantee may not have as its object carrying on business for the purpose of making profits for distribution to its members. [[CAMA §26\(4\)](#)] The CAMA makes the carrying on of business for the purpose of distributing profits an offense punishable by a fine. [[CAMA §26\(5\)](#)] Any provision in the memorandum

or articles or any resolution of the company purporting to give any person a right to participate in the divisible profits of the company other than as a member is void. [\[CAMA §26\(3\)\]](#)

B. Proprietary Interest

Association with Incorporated Trustees

Upon incorporation, the property of the association vests in the trustees. [\[CAMA §679\(2\)\]](#) The trustees of the association acquire, hold, and dispose of the property of the association for the purposes of the association. [\[CAMA §679\(1\)\]](#) The powers vested in the trustees are exercised subject to the directions of the association or its governing council. [\[CAMA §685\]](#)

Company Limited by Guarantee

A company limited by guarantee does not issue shares [\[CAMA §26\(2\)\]](#), and so does not create ownership rights in any persons, legal or natural. A company in which persons may be granted a proprietary interest will be designated as a ‘company limited by shares’ or an ‘unlimited company.’ [\[CAMA §21\(1\)\]](#) Any provision in the memorandum, articles, or any resolution of the company that purports to divide the company’s undertaking into shares or interests is void. [\[CAMA §26\(3\)\]](#)

C. Dissolution

Association with Incorporated Trustees

Upon dissolution, an association with incorporated trustees must transfer any property remaining after the satisfaction of all debts and liabilities to other institutions having similar objects. These institutions will be determined by the members of the association at or before the time of dissolution. [\[CAMA §691\(4\)\]](#) No property may be paid to or distributed among the members of the association. [\[Id.\]](#) If, for some reason, the remaining property cannot be transferred to institutions with similar objects, the remaining property will be transferred to “some charitable object.” [\[CAMA §691\(5\)\]](#)

Company Limited by Guarantee

Upon dissolution, a company limited by guarantee must transfer any property remaining after the discharge of all its debts and liabilities to another company limited by guarantee with similar objects, or must apply the remaining property to some charitable object. [\[CAMA §26\(10\)\]](#) The company or charity receiving the property must be determined by the members prior to dissolution. [\[Id.\]](#) None of the property remaining after a company limited by guarantee discharges its debts and liabilities may be distributed among its members. [\[Id.\]](#)

D. Activities

1. General Activities

Association with Incorporated Trustees

The application for the registration of an association of incorporated trustees must state the aims and objectives of the association, which must be for the advancement of any purpose that is:

- religious,
- educational,
- literary,
- scientific,
- social,
- development,
- cultural,
- sporting, or
- charitable.

[\[CAMA §674\(1\)\(b\)\]](#)

Company Limited by Guarantee

A company limited by guarantee is established to promote:

- commerce,
- art,
- science,
- religion,
- sports,
- culture,
- education,
- research,
- charity, or
- other similar objects.

[\[CAMA §26\(1\)\]](#)

It is important to note that the Nigerian Criminal Code Act, which is applicable in the southern states of Nigeria, prohibits certain societies as unlawful, based on their activities. Societies of persons are unlawful if formed for any of the following purposes:

- levying war or encouraging or assisting any person to levy war on the Government or the inhabitants of any part of Nigeria;
- killing or injuring or encouraging the killing or injuring of any person;
- destroying or injuring or encouraging the destruction or injuring of any property;
- subverting or promoting the subversion of the Government or its officials;
- committing or inciting to acts of violence or intimidation;
- interfering with, or resisting, or encouraging interference with or resistance to the administration of the law; or
- disturbing or encouraging the disturbance of peace and order in any part of Nigeria.

In addition, a society will be deemed unlawful if declared by an order of the President to be a society dangerous to the good government of Nigeria or of any part thereof. [See [Criminal Code Act §62](#)]

2. Public Benefit Activities

The activities listed in the Companies Income Tax Act for purposes of tax exemption and deductibility of donations indicate which types of activities are considered to be of public benefit. These include activities that:

- are ecclesiastical,
- are charitable,
- are educational, or
- promote sports.

[\[CITA §§19\(1\)\(c\) and \(d\)\]](#)

3. Economic Activities

Association with Incorporated Trustees

An association with incorporated trustees may engage in economic activities. There is no statutory provision that prevents it from doing business directly or through a for-profit subsidiary. Income derived from economic activities is subject to tax at the regular rate. There are no tax rules that distinguish between commercial or economic activities related or unrelated to the core objects of the association.

Company Limited by Guarantee

A company limited by guarantee may not be incorporated with the object of carrying out business for the purpose of making profits for distribution to its members. [\[CAMA §26\(4\)\]](#) In addition, [§26 \(1\) of CAMA](#), requires that a company limited by guarantee apply its income and property "solely towards the promotion of its objects," which must be the promotion of "commerce, art, science, religion, sport, culture, education, research, charity or other similar objects."

4. Political Activities

There is no statutory prohibition that prevents Nigerian not-for-profit organizations from engaging in advocacy or from endorsing candidates for public office. It seems possible that the provisions of [§62 of the Criminal Code Act](#) [See above at IV(D)(1) describing unlawful societies] could be used to prohibit some organizations from engaging in political activities. Companies limited by guarantee may not directly or indirectly make a donation of property or funds to a political party or association for any political purposes. [\[CAMA §38\(2\)\]](#)

E. Discrimination

[Section 15\(2\) of the Constitution of the Federal Republic of Nigeria \(1999\)](#) prohibits discrimination on the basis of place of origin, sex, religion, status, ethnic or linguistic association or ties. Furthermore, the Constitution states that every citizen shall have equality of rights, obligations and opportunities before the law. [\[Constitution §17\(2\)\(a\)\]](#) The Constitution requires the government to direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels. [\[Constitution §18\(1\)\]](#) The government shall provide free, compulsory and universal primary education where practicable. [\[Constitution §18\(3\)\(a\)\]](#)

At the same time, the rights enumerated above are non-justiciable. Moreover, they apply only to state actors and do not apply to private or non-governmental entities.

F. Control of Organization

In general, no restriction exists on the control of not-for-profit organizations by other organizations or persons. It is possible that a Nigerian not-for-profit may be controlled by a for-profit entity or by a foreign grantor.

V. Tax Laws

A. Approved List of Taxes

Subject to the provisions of the Constitution of the Federal Republic of Nigeria, 1999, the Taxes and Levies (Approved List for Collection) Act 1998 No. 21 ("Approved List of Taxes Law") is the most comprehensive and authoritative legislation on taxes that can be collected by each level of government - i.e., Federal, State, or Local Government - in Nigeria. [\[1\]](#)

B. Tax Exemptions

In Nigeria, certain types of income are exempt from income tax. Exempt income includes:

- the profits of any company [\[2\]](#) engaged in ecclesiastical, charitable, or educational activities of a public character in so far as such profits are not derived from a trade or business carried on by such company; and
- the profits of any company formed for the purpose of promoting sporting activities where such profits are wholly expendable for such purpose. [\[CITA §23\(1\)\(c\) and \(d\)\]](#)

Nigerian not-for-profit companies may also apply to the President for an order exempting them from all or any profits from any source. [\[CITA §23\(2\)\]](#)

The Federal Inland Revenue Service (FIRS) recently issued guidelines stating that:

All NGOs are expected to register with the nearest Integrated Tax Office (ITO) of FIRS with the following documents:

- i) A copy of registration certificate issued by Corporate Affairs Commission (CAC);
- ii) Certified copy of Memorandum or Constitution, Rules and Regulations governing the NGO;
- iii) List and Profiles of the Trustees/Board Members nominated; one of the Trustees/Board member must be a serving government official from relevant MDA responsible for the activity of the NGO;
- iv) Copy of the current Tax Clearance Certificate (TCC) of each of the Trustees. [Paragraph 5 of the *Guidelines On The Tax Exemption Status Of Non-Governmental Organisations* issued on August 27, 2010, pursuant to Section 8(1)(t) of the Federal Inland Revenue Service (Establishment) Act 2007].

Paragraph 6 of the *Guidelines* stipulates that in line with section 55 of CITA, it is mandatory for every NGO to file a tax return every year at the ITO where it was registered. An NGO seeking clarification on its tax exemption status can direct its inquiry the ITO where it was registered. [\[Guidelines at Para 7.1\]](#)

C. Deductibility of Donations to Nigerian NGOs by Individuals and Corporations Based in Nigeria

The laws of Nigeria do not provide for the deductibility of donations made by individuals to Nigerian not-for-profit organizations.

Companies are taxed at a rate of 30%. A tax benefit, in the form of an allowable deduction, is available to any Nigerian company that makes a donation to certain Nigerian funds and institutions. Specifically, the amount of any donation made by a company to any of the Nigerian funds and institutions specified in the Fifth Schedule of CITA may be deducted. The amount of the deduction for any year of assessment may not exceed 10% of the total profits for the company during that year. [CITA §25(3)] The Council of Ministers may alter this limitation on the amount of the deduction by order in the Federal Gazette [CITA §25(3)]

Institutions to which tax deductible donations may be made include the ecclesiastical, charitable, benevolent, educational and scientific institutions, established in Nigeria, which are specified in the Fifth Schedule to the Companies Income Tax Act. [CITA 23(1)(c)]

The Finance Minister is empowered to amend the listing in the Schedule "in any manner whatsoever." [CITA §25(6)]

D. Value Added Tax

In 1993, VAT was introduced in Nigeria; the current rate is 5%. [3] Nigerian not-for-profit organizations are not exempt from payment of VAT. However, VAT will not be assessed on the provision of certain goods and services, including:

- medical and pharmaceutical products;
- basic food items;
- books and educational materials;
- baby products;
- commercial vehicles and commercial vehicle parts;
- fertilizer, agricultural and veterinary medicine, farming machinery and farming transportation equipment;
- all exports;
- medical services;
- services rendered by Community Banks, People's Bank and Mortgage Institutions;
- plays and performances conducted by educational institutions as part of learning;
- all exported services;
- plant and machinery imported for use in the Export Processing Zone;
- plant, machinery and equipment purchased for utilization of gas in downstream petroleum operations; and
- tractors, ploughs and agricultural equipment and implements purchased for agricultural purposes. [Value Added Tax Act 1993 §3 and Schedule] [Value Added Tax Act and Schedule, as amended]

E. Double Tax Treaties

No double taxation treaty exists between the United States and Nigeria.

VII. Knowledgeable Contact

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Footnotes

[1] The list of taxes and levies for collection by the three tiers of government, as approved and published by the Joint Tax Board (J.T.B.), includes, but is not limited to:

1. Taxes collectible by the Federal Government:
 - Companies income tax;
 - Withholding tax on companies;
 - Petroleum Profit Tax;
 - Value-added Tax (VAT);
 - Education tax;
 - Capital-gains tax - Abuja residents and corporate bodies;
 - Stamp duties involving a corporate entity;
 - Personal income tax in respect of:
 - armed forces personnel;
 - police personnel;
 - residents of the Federal Capital Territory, Abuja;
 - external affairs officers; and,
 - non-residents.
2. Taxes/Levies collectible by state governments:
 - Personal income tax;
 - Pay-As-You-Earn (PAYE);
 - direct (self and government) assessment;
 - withholding tax (individuals only);
 - Capital gains tax;
 - Stamp duties (instruments executed by individuals);
 - Pools betting, lotteries, gaming and casino taxes;
 - Road taxes;
 - Business premises registration and renewal levy;
 - urban areas (as defined by each state);
 - rural areas;
 - registration Nigerian Naira (NGN) 2,000 per annum;
 - renewal NGN 1,000 per annum;
 - Development levy (individuals only) not more than NGN 100 per annum on all taxable individuals;
 - Naming of street registration fee in state capitals;
 - Right of occupancy fees in state capitals;
 - Rates in markets where state finances are involved.
3. Taxes/Levies collectible by local governments:
 - Shops and kiosk rates;
 - Tenement rates;
 - On and off liquor license;
 - Slaughter slab fees;
 - Marriage, birth, and death registration fees;
 - Naming of street registration fee (excluding street capitals);
 - Right of occupancy fees (excluding state capitals);
 - Market/motor park fees (excluding market where state finance are involved);
 - Domestic animal license;
 - Bicycle, truck, canoe, wheelbarrow, and cart fees;
 - Cattle tax;
 - Merriment and road closure fees;
 - Radio/television (other than radio/television transmitter) licenses and vehicle radio license (to be imposed by the local government in which the car is registered);
 - Wrong parking charges;
 - Public convenience, sewage, and refuse disposal fees;

- Customary, burial ground, and religious places permits; and,
- Signboard/advertisement permit.

[\[Parts I, II, and III of the Schedule to the Approved List of Taxes Law\]](#)

Legal challenges on the taxing powers of the various tiers of government, especially with respect to which tier of the government has the authority to charge and collect value added tax (VAT), lottery, and gaming fees licenses, etc., are pending in some courts of law.

Of note, Section 8(q) of the Federal Inland Revenue Service (Establishment) Act 2007 enjoins the FIRS to issue a unique taxpayer identification number (TIN) to every company, enterprise, and individual. A Federal Government order contained in the government notice on the Value Added Tax Act 1993 dated May 25, 2007 also ordered all current existing bank account holders to have a TIN. The use of TIN became mandatory February 1, 8 for all taxpayers dealing with FIRS and for the payment of taxes to all Collecting Banks.

[2] For purposes of the CITA, the term ‘company’ means any company or corporation (other than a "corporation sole") established by or under any law in force in Nigeria or elsewhere. Therefore, it appears that only not-for-profit organizations established as companies limited by guarantee or associations with incorporated trustees (the trustees of which are a body corporate) will be entitled to tax exemption under CITA §§23(1) (c) and (d) or §23(2). Because the tax exemption is only available to companies, not-for-profit organizations such as charitable trusts formed under the common law and unincorporated associations are not eligible to receive tax exemption.

[3] The Value Added Tax Act 1993 set Nigeria’s VAT rate at 5%. The VAT Amendment Act 2007 removed the fixed rate of 5% and gave the Minister of Finance the power to determine the VAT rate. The Minister of Finance exercised the authority granted and raised the VAT rate to 10%. The Minister of Finance later rescinded his decision, and the rate reverted to 5%.