



INHERITANCE TAXES AND TAX INCENTIVES FOR ESTATE PLANNING AND ADMINISTRATION IN NIGERIA

- It is important to state that an inheritance tax is a tax paid by a person who inherits money or property of a person who has died, whereas an estate tax is a levy on the estate of a person who has died.

- Without mincing words, estate duties albeit very similar are not equal to inheritance tax as Nigeria currently does not have a structured and statutory Inheritance Tax regime that is found in other jurisdictions. Inheritance tax as is found practiced in other jurisdictions such as the US, is such that the assets are usually not taxed as a whole but in the hands of the beneficiaries under her will. This means that a beneficiary who takes a property under a testator's will or in intestacy would pay a percentage of the value of the property as inheritance tax. Taxes of such nature vary in classification, form and scope across different jurisdictions. For example, the United States' estate tax finds its tax base in the estate of the deceased, while the United Kingdom's inheritance tax finds its tax base in the transfer of legacies to beneficiaries either by a Will or by the applicable rules of intestacy.

- In Nigeria it is germane to state that the repealed Capital Transfer Tax Act of 1979 (CTTA) was a federal legislation that imposed a tax on the devolution or transfer of assets upon the death of the owner of the property. Section 4 of the CTTA provides as follows:

"In respect of every person dying on or after 1st April 1979 there is here imposed on the value of all property passing on the death of such person capital transfer tax at the graduated rates specified in section 18 of this Act."

The provisions of the CTTA considered above, showed an intention to create and impose a tax quite similar to the estate tax earlier discussed, on the value of all property passing on the death of the deceased person. Now due to its repeal, the only other federal legislation on taxation of capital transfers is the Capital Gains Tax Act Cap. C1, LFN 2004 (CGTA).

- While the CGTA makes more elaborate provisions on the imposition and administration of tax on capital transfers effected by owners of properties in between two persons, it does not talk about any capital transfer tax in respect of transfers that occur upon or after the death of a tax payer.
- **Section 8(1)** of the Act states that a deceased's assets which he was competent to dispose of at the time of his death are deemed disposed by him on the date of his death and acquired by the personal representatives for a consideration equal to the last transfer value or the market value at the time of his death. The gains which accrue as a result of this deemed transfer are exempted from capital gains tax. Thus, the personal representatives or other persons on whom the deceased's assets devolve take the assets tax-free for the purpose of capital gains tax.
- **Section 8(4)** of the CGTA further provides that when a legatee or a beneficiary acquires the deceased's assets from the personal representatives, there will be no chargeable gain accruing to the personal representatives, and the legatee's acquisition of the assets is treated as if it had been the initial acquisition of the assets from the deceased by the personal representatives. The necessary implication of this is that the transfers of assets/wealth from the deceased to beneficiaries under a Will or by intestacy are not subject to capital gains tax. ***This if considered as some form of inheritance tax law could be considered as some sort of incentive.***
- In practice and despite the repeal of the Capital Transfer Tax Act 1979, some states, including Lagos, charge "Estate Duty", before grant of probate or letters of administration in respect of a deceased person's estate. This involves a 10% Estate fee (which varies from state to state) that is charged on the deceased estate whenever the administrators or executors processes the approval/authority to administer or execute the estate. In this case, the personal representatives pay the required percentage of the value of all the assets.

- The legality of these Estate duties especially due to the fact that Tax being a matter which is to be strictly governed by legislation leaves many pressing questions to be answered. The estate duty as charged by the probate registries is not found in any tax legislation. There are also no provisions in the laws of any state, High Court rules or probate rules of the states empowering the probate registries to charge the estate duty or any other percentile fee on a deceased's estate. It is my opinion that this issue also needs to be addressed by judicial pronouncements.

- Although there is no specific legislation imposing tax on the assets of the deceased or taxing the legacies received in the hands of legatees, the Personal Income Tax Act (PITA) provides for the treatment of the income accruing to a deceased person through his trade or business, providing that if such incomes accrue after his death, they are to be treated, for the purpose of personal income tax, as though he had earned the income on the last day he conducted business. This law therefore assesses the income earned by a deceased person as taxable income. Other few examples are;

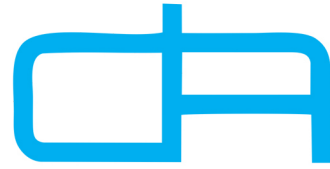
- **Section 31** of the PITA provides that in the operation of the pay as you earn scheme, if emoluments are paid by an employer to a deceased's next of kin, the employer is to deduct the applicable tax. **Section 1(b)** of the PITA also states that any income arising or due to a trustee of any settlements or trusts, or estates or to an executor of any estate of a deceased person are also liable to personal income tax, and may only be collected by the territory of which the tax authority is the relevant tax authority in relation to such settlement, trust or estate. **See Section 2(6) PITA**

- **Item 23 of the Third Schedule to the PITA** exempts from personal income tax, sums received by way of death gratuities or as consolidated compensation for death or injuries. As such any monies received as death gratuity from an employer will be taken tax-free for the purpose of personal income tax. Compensations received through a court award for wrongful death or injuries would also be taken by the estate of the deceased or the injured, as the case may be, tax-free for the purpose of personal income tax.

- It is my opinion that these alone do not amount to adequate incentives which could afford proper estate administration and planning alone as our statutes are not definitive on inheritance taxes truly so called. This leads to a lot of less than proper practices, an unhealthy and improper accumulation of wealth with minimal accountability especially due to a lack of a structured inheritance tax system in Nigeria. By a study by Deloitte it has opined that in a model inheritance tax regime backed up by specific statute, as is being practiced in developed countries, the following is seen[i]:

- A flat rate is usually charged on the excess of a threshold amount of estate of the donor or deceased
- Exemption of amount donated to charity from inheritance tax
- Inclusion of any money given to persons for a specific period prior to the death of the donor as part of their estate which is chargeable with the exemption of certain small gifts
- Applicability of inheritance tax only in the country in which the donor is resident. It is however opined that some policy recommendations that the government can absorb is to;
- Enact an holistic inheritance tax law regime to give appropriate legal backing with proper implementation taking cognizance of the societal and economic needs of the people.
- A proper registration of real estate properties as well as constant updates in the registry with adequate monitoring of transfer of assets by government by digitalized processes.
- Properly and promptly record population statistics of citizens as soon as they occur such as births and deaths and easy access via digitalized means

IN VIEW OF THE BENEFITS TO THE ECONOMY IN TERMS OF PROPER ACCOUNTABILITY, A STRUCTURED SYSTEM REGULATED BY STATUE AND THE REDUCTION IN CORRUPT PRACTICES AND IMPROPER ACCUMULATION OF WEALTH BY LESS THAN PROPER MEANS, THERE IS NEED FOR A MORE DEFINITIVE FRAME WORK APPLICABLE ACROSS ALL STATES OF THE COUNTRY IN ORDER TO ALLOW FOR BETTER ESTATE PLANNING AND ADMINISTRATION.



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