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Capital allowance claim: Should taxpayers complain? (2)

…Is it the intention of Government…that agro-allied and/or manufacturing companies should lose the benefit of a capital allowance claim up to 100% because of dividend declaration that is higher than taxable profit?

Restriction of capital allowance

Paragraph 24 (7) of the Second schedule to CITA provides that: “the amount of capital allowance to be deducted from assessable profits in any year of assessment shall not exceed 66-2/3 per cent of such assessable profits of a company, but any company in agro-allied industry or which is engaged in trade or business of manufacturing shall not be affected by the restriction under this sub-paragraph”.

The import of the above Paragraph is that every company other than those in the agro-allied and manufacturing industries is required to restrict claim of capital allowance to ensure that they pay tax of certain amount to the government in every tax year, provided they have assessable profits.

The agro allied and manufacturing industries are two economic sectors that have been adjudged critical to Nigeria's rapid industrialization but whose potentials have become sabotaged due to the propensity for rent seeking from the resource sector resulting in non-implementation or ineffective implementation of defined policies for agro-allied and manufacturing industries. A non-performing or below average performing power sector has also triggered the closure and relocation of many operations of companies in the manufacturing sector completely out of Nigeria to neighbouring West African countries with secured and stable supply of power and from those countries, these companies export their products to the Nigerian market. With the shutdown of such operations in Nigeria, a natural opportunity cost are jobs previously held by Nigerians, which may no longer be required or probably available much cheaper in the new location.

The point must nevertheless be stressed that the capacity of the agro-allied industry to provide, for instance, remunerative employment to the teeming unemployed Nigerians is 4 times the capacity of the manufacturing sector to provide same in the same period. Thus, for every one job created by the manufacturing sector, the nation can expect 4 at least from the agro-allied industry.

No doubt, for companies in the agro-allied and manufacturing industries the non-restriction of capital allowance claim is a form of incentive to encourage increased investment in such industries. However, when such companies pay dividend and are assessed to dividend tax[1](DT), the non-restriction of capital allowance by companies engaged in manufacturing and agro allied businesses becomes a disincentive when compared to companies in other industries, particularly when FIRS insists that capital allowances have to be claimed before comparing total/taxable profit to dividend declared.

This is because while companies in other industries stand the risk of losing capital allowances of up to 66-2/3 per cent of their assessable profits, the agro allied and manufacturing companies stand the risk of losing up to 100 percent of their assessable profits in capital allowances in the tax year in which they pay DT, thus defeating the purpose of the incentive provision. Again, is this the intention of Government by reason of a contrary or contradictory provision that agro-allied and/or manufacturing companies should lose the benefit of a capital allowance claim up to 100% because of dividend declaration that is higher than taxable profit?

Based on the foregoing, it becomes pertinent to ask if it is really the intention of the law not to allow companies that have made huge investment in capital expenditures enjoy the benefits of such investment by way of capital allowance claim that reduce their tax burden. In other words, can a taxpayer, who is paying minimum tax/dividend tax restrict its capital allowance claim in order to enjoy the relief of its capital allowance in the future in order to have the desired effect on its tax payable, tax charge and ETR?

Where FIRS continues to hold the view that the taxpayer should claim its available capital allowance fully even when paying DT or MT, then the following salient questions must be raised:

- Are dividend tax and minimum tax anti-avoidance rules or disincentives to companies with huge capital expenditure?
- Are the rules aimed at possibly subjecting taxpayers to multiple taxation?
- Is the intention of the law to grant relief to tax payers on one hand and on the other hand take away the relief?
- Is the aim of the law to encourage or discourage returns on investments to shareholders?
- Is the non-restriction of capital allowances to 662/3percent by manufacturing and agro allied businesses a double edged sword?

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[1] Dividend tax arises where the dividend paid out as profit in any year is less than the company's total (taxable) profits for the related tax year