journals.unizik.edu.ng/jcpl/index ISSN: 2736-0342
NNAMDI AZIKIWE UNIVERSITY, AWKA
JOURNAL OF COMMERCIAL AND PROPERTY LAW

Implications of the Companies and Allied Matters Act, 2020 on the Taxation of Partnerships in Nigeria

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Abstract
In the ever-evolving landscape of business regulations, the Companies and Allied Matters Act of 2020 (CAMA 2020) brought about a seismic shift in the treatment of partnerships in Nigeria. This article delves into the implications of the new legal personality structure introduced by CAMA 2020 and its profound impact on the taxation of partnerships. Adopting a doctrinal research design, this paper analyzes various literature and legislation on the subject and found that the new legal personality regime introduced some radical changes into partnership business in Nigeria, necessitating a corresponding legal adaptation of extant tax laws. This paper concludes that the Federal Inland Revenue Service new approach toward taxing partnerships as a corporate entity should be embraced and relevant tax laws should be amended to reflect the legal personality status of partnerships.

Keywords: Partnerships, Taxation of Partnerships, Limited Liability Partnerships, Limited Partnerships, CAMA 2020.

1. Introduction

The intricate nature of Nigeria's business regulatory framework experienced a profound reshaping with the enactment of the Companies and Allied Matters Act, 2020.[1] This legislative milestone not only signified a departure from the historical foundations set by the Partnership Act of 1890 but also ushered in a new era of legal perspectives on partnership and its taxation. Prior to this new dispensation, the Partnership Act of 1890 (an English law relic), governed partnership business in Nigeria. The 1890 Act delineated three distinctive forms of partnerships: general partnerships, prevalent across Nigeria; limited partnerships, specific to Delta, Edo, Ekiti, Kwara, Lagos, Ogun, Ondo, Osun, and Oyo States; and limited liability partnerships, exclusive to Lagos State.[2] However, the subsequent enactment of CAMA 1990 only recognized general partnerships, which were required to be registered as business names.[3] While CAMA 1990 acknowledged general partnership, it remained silent on its pivotal elements such as relevant definitions, formation modalities, and legal requirements for operation.[4] This silence left a void in the comprehensive governance of partnership, particularly because its provisions in the 1990 Act were not distinct and rather subsumed under the provisions for business names. However, in 2009, the Lagos State government attempted to broaden partnership regulation by introducing the Partnership (Amendment) Law of Lagos State, but its applicability was confined to Lagos state.[5] This regulatory ambiguity persisted until the transformative advent of CAMA 2020.

As a significant development aligned with the federal government's "ease of doing business in Nigeria" initiatives, CAMA 2020 has now incorporated provisions for the establishment of distinct partnership forms. The legislative watershed, not only redefined the legal identity of partnerships but introduced

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[1] Hereinafter referred to as CAMA 2020.

[2] B A Bukar, 'Expanding the Scope of Business Activities under the Companies and Allied Matters Act: One-Person Companies and Partnerships in Focus, (2021) 8 (1) NAU.JCPL, 17.

[3] Denton ACAS Law, ' An Overview of Limited Partnerships and Limited Liability Partnerships under CAMA 2020' (21 December 2021) <https://www.dentonsacaslaw.com/en/insights/articles/2021/december/14/an-overview-of-limited-partnerships-and-limited-liability-partnerships-under-the-cama-2020#:~:text=Prior%20to%20the%20recent%20enactment, registered%20as%20a%20business%20name> accessed 4 January 2024.

[4] Bukar (n 2).

[5] Ibid.

two novel partnership structures: Limited Liability Partnership (LLP) and Limited Partnership (LP).[6] These innovations, coupled with the establishment of legal personality for partnerships,[7] fundamentally altered the landscape in which businesses operate and, notably, how they are taxed. This article navigates through this transformative legal terrain, scrutinizing the implications of the new legal personality structure on the taxation of partnerships in Nigeria in the aftermath of CAMA 2020. In doing so, it explores the nuances of LLPs and LPs, delving into their distinct features, formation requirements, and governance structures. The exploration further examines the attitude of some comparable jurisdictions such as the United States, the United Kingdom, and India, toward the concept of legal personality in determining the tax treatment of a partnership business, offering a better understanding of the evolving dynamics in Nigeria's partnership taxation framework.

2. Impact of CAMA 2020 on Partnerships in Nigeria

A partnership is defined by section 1 of the Partnership Act of 1890, as the association that exists among individuals engaged in a common business pursuit with the aim of achieving profits. Following the advent of the Companies and Allied Matters Act 2020, partnerships in Nigeria took a new wave; particularly with the introduction of the concept of legal personality and novel forms of business partnerships previously absent in Nigeria. Also, section 19 of CAMA restricts the maximum number of partners in a partnership to 20 except it is a cooperative society or carrying on the practice of law or accountancy. Essentially, as earlier noted, CAMA 2020 recognizes two types of partnerships: limited liability partnership and limited partnership. While it is arguable that the traditional "general partnership" under the relevant provisions for business names has not been expressly abolished by law;[8] CAMA 2020 set up a framework for "limited liability partnership (LLP)" and "limited partnership (LP)" under Part C and D respectively.

2.1 Limited Liability Partnership (“LLP”)

Limited Liability Partnership (LLP) combines elements of both a traditional partnership and a limited liability company.[9] It is a corporate body formed and incorporated as a legal entity separate from the partners. As a distinct legal entity from its partners, an LLP enjoys perpetual succession, ensuring that changes in partner composition do not affect its existence, rights, or liabilities.[10] Upon registration, an LLP gains legal status, enabling it to sue and be sued in its own name, own property, and utilize a common seal.[11] Under the LLP structure, partners are considered agents of the LLP, not of each other.[12] Importantly, partners bear no personal liability for obligations stemming from the LLP, except for their individual wrongful acts or omissions.[13] Also, creditors cannot pursue personal assets of partners to settle LLP debts; instead, liabilities are met from the LLP's property.[14] The partners' liability is limited to the amount invested in the partnership. Individuals and corporate bodies may be LLP partners, with certain eligibility criteria, including mental soundness and financial standing.[15] To establish an LLP, two or more individuals associated with lawful business must submit an incorporation document to the Corporate Affairs Commission (CAC). The CAC, upon satisfactory compliance, registers the LLP within 14 days and issues a certificate, providing prima facie evidence of incorporation; this is in addition to the requirement of “Limited Liability Partnership” or “LLP” as the last words of such partnership’s name.[16]

A distinctive feature of an LLP under the new dispensation of CAMA 2020 is the requirement of at least two designated partners, both of whom must be individuals, with one being a resident in Nigeria. In cases where corporate bodies are involved, they must appoint individuals as designated partners unless

6 Part C and D Companies and Allied Matters Act 2020 (CAMA 2020), respectively.
7 Section 746, CAMA 2020.
8 See Section 797(2), CAMA 2020.
9 Part C of CAMA 2020.
10 Section 746 of CAMA 2020.
11 Section 746, ibid.
12 Section 765, ibid.
13 Section 767 CAMA 2020
14 Ibid, section 766.
15 Ibid, section 747.
16 Ibid, section 754 and 757 (1).

there are already two individual partners serving in that capacity.[17] Designated partners bear the responsibility for all actions required by the Act on behalf of the LLP, encompassing the filing of documents, returns, statements, reports and are liable for penalties incurred due to non-compliance with the Act.[18] However, a partner in an LLP is mandated to provide prior written consent to act as a designated partner, and their details must be submitted to the Corporate Affairs Commission (CAC) within 30 days.[19] The specific designation of partners is also to be indicated in the incorporation document, unless the partnership agreement designates all partners as such. According to section 749(5), a person ceases to be a designated partner if they cease to be a partner. In the event of a vacancy or a sole designated partner, the LLP is required to appoint a designated partner within 30 days, or all partners will be deemed designated partners.[20]

Notably, in an LLP, the contribution of partners may be through tangible or intangible assets, movable or immovable property, cash, or contractual services, as detailed in Section 770 of CAMA 2020. The specific obligation of each partner to contribute aligns with the terms set forth in the LLP agreement.[21] Additionally, as indicated in section 774(1) CAMA, partners retain the option to transfer, either partially or wholly, their rights to share in the LLP's profits and losses, unless the partnership agreement imposes restrictions. Importantly, an LLP's existence may cease through voluntary or court-led winding up/dissolution under CAMA or by the Commission striking its name from the LLP register due to dormancy. Common users of LLPs include law firms, accounting firms, consulting firms, and businesses where partners actively participate in daily management.

2.2 Limited Partnership (LP)

A Limited Partnership (LP) is a hybrid structure combining features of a general partnership and a limited liability partnership (LLP), as defined in Part D of CAMA 2020. Unlike LLP, CAMA 2020 did not expressly state whether an LP has legal personality or not. Some scholars including Subai and Bukar have argued that an LP is not clothed with Legal Personality.[22] Subai's position is hinged on the assumption that an LP is an unincorporated partnership.[23] With respect, it is difficult to agree with the position that an LP is an unincorporated partnership considering that registration (incorporation) is mandatory for LP under CAMA 2020.[24] Bukar on his part based his position on the assumption that an LP is the same as a general partnership.[25] With respect, the provisions of CAMA 2020 clearly suggest that an LP is different from general Partnership. While a general partnership has no obligation to register as a partnership under Part C or D of CAMA 2020, it is mandatory for all LPs to be incorporated with the CAC under part D of CAMA 2020; failure to register results in the partnership being treated as a general partnership.[26] The registration process involves submitting a prescribed form to the Commission, stating the desired name. Once the requirements are met, the Commission issues a certificate of registration, serving as prima facie evidence of the partnership's existence from the date of incorporation.[27] Just as in the case of LLPs, a legally sanctioned LP must bear "Limited Partnership" or "LP" at the end of its name.[28] It is important to note that the provisions on limited liability partnership applies to limited partnership except where it is expressly inconsistent with the provisions of part D.[29] In view of the foregoing, it is arguable that an LP is clothed with some form of legal personality and thus, can sue or be sued in its corporate name, own and acquire property in its corporate. This is because

[17] Ibid, section 749.
[18] Ibid, section 750.
[19] Ibid, section 749(3) and (4).
[20] Ibid, section 751.
[21] CAMA 2020, section 771 (1).
[22] P Subai, *Company Law in Nigeria,* (Port- Harcourt: DOKs Consults and Consult LLP, 2023), 424; Bukar, (n 2) 20.
[23] Ibid, p 424.
[24] CAMA 2020, section 797(1).
[25] Bukar, (n 2) 21.
[26] Section 797, CAMA 2020.
[27] Section 789 and 799, ibid.
[28] Section 802 CAMA 2020.
[29] Section, 807, ibid.

the provisions of section 807 of CAMA implies that sections 746 and 756 of CAMA relating to limited liability partnership applies to limited partnerships.[30]

Every LP incorporated in Nigeria shall consist of not more than 20 persons (including individuals and corporate entities) and shall consist of at least one person called general partner, with exceptions for individuals of unsound mind or undischarged bankrupts.[31] The implication of this provision, read together with section 19 CAMA 2020, is that any association comprising more than 20 persons carrying on business for profit must register as a company in order for it to legally carry on such business, except those exempted under the Act.[32] Notably, general partners in an LP wield unlimited liability for debts and obligations of the firm while the liability of a limited partner is capped at their contributed amount unless when involved in the management of the LP.[33] Limited partners are generally not obligated to contribute beyond their agreed amount unless otherwise stated in writing. Upon entering the partnership, each limited partner must contribute a specified sum or agreed-upon property value.[34] In the event of the dissolution of a limited partnership, the general partners shall wind the affairs of the limited partnership unless the court otherwise directs.[35]

Limited partners in an LP are prohibited from managing the business, and their involvement could render them personally liable for all debts and obligations of the firm incurred while they partook in the management, as if they were general partners.[36] The death, bankruptcy, or lunacy of a limited partner does not lead to dissolution unless the court orders otherwise. Importantly, section 808 of CAMA 2020 explicitly stipulates the applicability of the provisions of the Partnership Act 1890 to Limited Partnerships. However, this application is contingent upon adherence to the provisions outlined in CAMA 2020 and is limited to instances where there is no inconsistency with the express provisions of CAMA 2020.[37] This recognition stems from the fact that LPs incorporate an element of general partnership within their structure (particularly the unlimited liability of the general partner). For context, a general partnership is a collaborative business structure where two or more individuals who mutually commit to jointly owning and managing a business.[38] In this arrangement, partners share liabilities for all assets, profits, as well as financial and legal liabilities associated with the enterprise, unlike limited liability partnership and limited partnership.

General partnerships are predominantly governed by the Partnership Laws of the states or the Partnership Act of 1890 in states without their own partnership laws. Consequently, where CAMA 2020 lacks provisions addressing specific aspects of general partnerships, the 1890 Act becomes applicable, provided such application aligns with the existing provisions of CAMA 2020. LPs are suitable when partners prefer sponsoring a joint venture without active involvement in daily business affairs.

3. Taxation of Partnerships before CAMA 2020

Generally, before CAMA 2020 taxation of partnerships differed from that of regular companies. This can be attributed, among other factors, to the absence of a separate legal personality from its partners for income tax purposes. Then partnerships in Nigeria were treated as having the same legal existence as sole proprietorships or business names, thus they were taxed through the tax transparent mechanism.[39] This implies that a partnership itself is not subject to tax, but individual partners were taxed on their

[30] This is more so as there is no provision in CAMA relating to limited partnership that is inconsistent with sections 746 and 756 of CAMA. Also, section 808 applies subject to all other provisions of CAMA including section 807.
[31] Section 795 (2) and (3) of CAMA 2020.
[32] Section 19(2) CAMA 2020 exempts cooperative societies, partnerships carrying on practice as legal practitioners, a firm with all members as accountants.
[33] Section 795(3), ibid
[34] Section 795 (4), ibid.
[35] Section 806(3), ibid.
[36] Section 806 (1) (b), ibid.
[37] Section 808 CAMA 2020.
[38] SPA Ajibade & Co, 'Registration of Limited Partnerships in Nigeria' <https://spaajibade.com/registration-of-limited-partnerships-in-nigeria-under-cama-2020/> accessed 4 January 2024.
[39] A Ololade, 'Taxation of Partners and Partnerships in Nigeria' (April 29, 2017) <https://ssrn.com/abstract=2965515> accessed 4 January 2024.

personal income. Consequently, the structure of a partnership agreement significantly influenced the calculation of partners' tax liabilities.[40]

Essentially, taxation of general partnerships in Nigeria was governed under the regulatory competence of the Personal Income Tax Act (PITA).[41] According to PITA, partnerships are considered aggregations of two or more sole traders.[42] Hence, the distribution of partnership income among partners follows principles applicable to sole traders. Partners are therefore assessed based on their allocated share of partnership profits. According to Ololade, the computation of partners' tax liabilities involves the initial calculation of partnership income, followed by its distribution among partners in accordance with the terms specified in the partnership agreement.[43] Subsequently, after considering applicable allowances and reliefs, the remaining balance is then subjected to tax under the relevant provisions of PITA.[44]

4. The Legal Personality Structure and the Taxation of partnerships after CAMA 2020

The prevailing definition of legal personality asserts that an entity endowed with it has the ability to possess property in its own right and can engage in legal actions, both as a plaintiff and a defendant, under its distinct name.[45] The concept further encompasses the entitlement of such an entity to acquire, sell, lease, and mortgage property autonomously. Legal personality is a safeguard against arbitrary deprivation of property without due legal process.[46] Another highlight of legal personality is the capacity of an entity to assume legal rights and responsibilities within a specific legal framework. This suggests the ability to enter contracts, initiate legal proceedings, and be subject to legal actions. Legal personality is a prerequisite for legal capacity, signifying the competence of any legal entity to modify rights and obligations.[47] Historically, under common law, legal personality comprised five essential rights: ownership of property (including currency), execution of contracts, litigation rights (enforcement of contracts), right to hire employees, and the formulation of self-governance rules (bye-laws).[48] Legal personality allows an entity to be recognized independently under the law, detached from its individual members.

In global tax jurisprudence, the term "legal personality" has been employed by many countries to distinguish an entity treated as a separate corporate taxpayer from one that is tax transparent.[49] In such countries, it is sometimes said that a corporation has legal personality whereas a partnership does not. The absence of legal personality for partnerships in many countries may have triggered a transparent approach for tax purposes. However, whether or not a partnership possesses legal personality does not intrinsically determine its tax status, though there are diverse approaches to this notion worldwide. In several countries such as Belgium, Spain, and various Latin American nations, partnerships are recognized as legal persons but are not taxed at the entity level or as corporations, with notable exceptions for certain entities with other identified corporation characteristics.[50] Conversely, in common law countries, partnerships are typically not considered legal persons and are not subject to corporate

[40] S Ojo, *Fundamental Principles of Nigerian Tax* (2nd ed., Sagribra Tax Publications 2009,) 425.
[41] Section 8 PITA, 2011 (as amended); section 71 of the Lagos State Partnership Law.
[42] Ibid.
[43] Ololade (n 39) 6.
[44] A Osho, A Agbeleye and O Ruth, 'Partnership Income Tax on Social and Economic Development in Nigeria' 10 (6) *Research Journal of Finance and Accounting,* 18.
[45] K Blanchard and W Gotshal & Manges, 'The Tax Significance of Legal Personality: A U.S. View' (Colloquium on Tax Policy and Public Finance NYUSL 2015), 9.
[46] In *Salomon v Salomon & Co Ltd* [1897] AC 22, a unanimous ruling upheld the doctrine of corporate personality, as contained in the English Companies Act 1862, such that creditors of an insolvent company could not sue the company's shareholders to collect the company's debts. See also, West's Encyclopedia of American Law, edition 2 (2008).
[47] S Dewey, "The Historic Background of Corporate Legal Personality," 35 *Yale Law Journal* 655 1926 cited in K Blanchard and W Gotshal & Manges, 'The Tax Significance of Legal Personality: A U.S. View' (Colloquium on Tax Policy and Public Finance NYUSL 2015), 8.
[48] Blanchard and Gotshal & Manges (n 45).
[49] Ibid, 2.
[50] A Easson and V Thuronyi, 'Tax Law Design and Drafting' in *Chapter 21, Fiscal Transparency* (International Monetary Fund 1998) 5.

tax.[51] Yet, for certain countries, mere semblance of a partnership to a corporation may result in the former being taxed at the entity level, despite lacking legal personality.[52]

When designing the income tax framework for entities, a crucial aspect is determining which entities should be taxed based on their legal personality structure and which qualify for flow-through treatment.[53] This determination is solely not based on the legal personality status of an entity because, even non-legal persons may sometimes be taxed as if they were, while legal persons may receive flow-through treatment. In systems applying a single enterprise tax on business entities or all legal persons, exceptions may exist for specific business arrangements, which may result in income allocation and flow-through treatment for such excluded entities.

4.1 The New Tax Treatment of Partnerships

The long awaited clarity on the appropriate tax treatment of LLP's in the wake of the new legal personality status soon made its way to Nigeria's corporate law landscape. Consequently, on 14 August 2023, the Federal Inland Revenue Service (FIRS), the federal tax regulatory body in Nigeria, issued an information circular on the tax treatment of LLPs.[54] This circular specifically aims to clarify the provisions of the Companies Income Tax Act (CITA) Cap. C21 LFN 2004 (as amended), Personal Income Tax Act (PITA) Cap.P8 LFN 2004 (as amended), Capital Gains Tax Act (CGTA) Cap. C1 LFN 2004 (as amended), Stamp Duties Act Cap.S8 LFN 2004 (as amended) and the Value Added Tax Act (VATA) Cap.V1 LFN 2004 (as amended), with respect to the taxing framework for Limited Liability Partnerships within the context of the newly established legal personality paradigm.

As noted earlier, prior to the FIRS circular, partnerships in Nigeria were subjected to a flow-through tax mechanism, only companies were chargeable to corporate tax based on section 9 of CITA. Instructively, section 108 of CITA defines a company as a corporation or company (other than a corporation sole) established by or under a law in force in Nigeria or elsewhere. However, the recent FIRS information circular now seeks to expand the scope of the definition of a company above to include LLPs among entities chargeable to corporate tax.[55] The implication of this is that all LLPs in Nigeria are now subject to corporate tax (to be governed by CITA) at the entity level and no longer under a flow-through mechanism in PITA, having been elevated as corporate bodies. Connotatively, LLPs are statutorily required to pay income tax on profits accrued in, derived from, brought into or received in Nigeria for each year of assessment, with applicable exemptions.[56] Profits that are taxable under CGTA, Petroleum Profits Tax Act (PPTA) or PITA are excluded from tax under this provision. This suggests that the incomes of partnerships (specifically LLPs) are no longer taxed through its partners but are to be paid as a distinct entity on profits generated in Nigeria for each year of assessment. Importantly, this extension of the corporate tax regime to LLPs align with the fact that Nigeria considers the concept of "legal personality" as fundamental in determining the tax treatment of entities.

Going further, with respect to withholding tax (WHT), LLPs are also obliged to, according to section 9(3) of CITA, "deduct withholding tax from any such 'distribution' or 'share of profits' and remit to the relevant tax authority in the currency of transaction."[57] Consequent to this, since LLPs have acquired corporate status through the instrumentality of its legal personality, distributable profits are now regarded as 'dividends' under corporate tax regime.[58] The tax deducted from the partners for such

[51] In the United Kingdom however, partnerships in Scotland are legal persons but are not taxable persons.
[52] Indonesia takes a unique approach, taxing partnerships as separate entities despite their lack of legal personality. On the other hand, Kazakhstan and Romania hold the position that partnerships are legal persons and are thus, subject to income tax as separate entities. China also taxes all enterprises as separate entities, regardless of legal personality. Estonia adopts an entity-level tax, applying it to general and limited partnerships, albeit with specific provisions for small general partnerships.
[53] Easson and Thuronyi (n 50).
[54] Federal Inland Revenue Service, 'Clarification on The Taxation of Limited Liability Partnership (LLP)', information Circular 2023/06. Available at < https://www.firs.gov.ng/tax-resources > Accessed 10 June 2024.
[55] Ibid, para 2, (4).
[56] According to the circular, exemptions applicable to companies also cover LLPs. For instance, the corporate income tax exemption applicable to small companies with an annual turnover below 25 million naira, under section 23(1)(n) CITA now also covers LLPs as corporate bodies.
[57] Federal Inland Revenue Service para 6.
[58] Ibid.

distribution becomes the final tax on that income.[59] Treating partnership distributions as dividends for tax purposes, akin to corporations, could lead to significant consequences. Such a shift might introduce administrative complexities and the risks of double taxation, undermining the primary advantage of partnerships. As a result, partners could face higher tax rates, impacting overall tax liability and potentially influencing the choice of business structure and the attraction of partnerships in comparison to other business entities. Therefore, necessary transitional procedures, including legislative amendments, should be undertaken to stall foreseeable difficulties that may arise with the proposed new tax regime.

The FIRS' circular also stipulates that LLPs are subject to statutory tax obligations of corporate entities, as outlined in section 55 of CITA including filing of returns, maintaining proper books of accounts, record-keeping of partners and employees, and compliance with other tax regulations.[60] Consequently, LLPs will now be obligated to prepare audited accounts, detailed tax computations, and file self-assessment forms, with attestations from directors or secretaries.[61] These compliance requirements can significantly impact on the administrative cost of running an LLP. However, this provision also holds the potential for enhanced transparency, as it aligns LLPs more closely with corporate governance standards, and recognizes their legal personality status.

Additionally, gains arising from the disposal of assets by LLPs are now expected to be collectible at the entity level (no longer on the divisible portion of each partner's interest in the disposed asset), at the rate of 10% as capital gains tax, under the CGTA. However, CGT shall not apply when assets specifically exempted by the provisions of CGTA are disposed of. This ensures that the LLP itself, rather than the partners, are liable to chargeable gains for disposal of LLP assets, because of its distinct legal personality. This departure from the divisible portion of each partner's interest in the disposed asset simplifies the taxation process and holds the LLP as a distinct legal entity accountable for capital gains. In the realm of Value Added Tax (VAT), LLPs making taxable supplies exceeding ₦25 million in a calendar year are required to also register for VAT, charge it on invoices, and file returns monthly in view of the provisions of section 2 of the Value Added Tax Act (VATA). Although CGT and VAT applied to partnerships prior to the FIRS circular, the provision for entity level computation and filing encourages greater administrative efficiency, streamlining the requisite compliance procedures.

Furthermore, the circular also expanded the scope of certain sectoral taxes. Under section 20(2)(b) of the National Agency for Science and Engineering Infrastructure (NASENI) Act, commercial companies and firms (covering the banking, mobile telecommunications, ICT, aviation, maritime, and oil and gas sectors), with turnover of ₦ 100,000,000, subject to the rate of 0.25% profit before tax, has been extended to include LLPs operating in the stated sectors.[62] Also, the provisions of section 1(2) of the Tertiary Education Trust Fund Act 2011 (as amended), requiring that Tertiary Education Tax (TET) chargeable at the rate of 3% of the assessable profit of a registered company with a gross turnover of ₦25 million or more, equally applies to LLPs at same rate.[63] This is an attempt by the circular to subject LLPs to the same tax treatment as companies. As a result, an LLP operating in any of the related sectors, though not a company, is liable to pay these taxes for the purpose of tax administration. This umbrella approach by the FIRS reiterates the importance the Nigerian tax regime places on the concept of separate legal personality, as a determinant for tax treatment of legal entities operating business. This points to the obvious result that entities that possess legal personality are to be treated as corporations for the purpose of taxation, irrespective of the commercial law governing such entities. To cushion the effect of the possible interpretational ambiguity, these sectoral taxes should be properly amended through legislative actions to effectively accommodate its expanded application to LLPs. Also, by the circular LLPs in Nigeria are also subject to the provision of section 4(1)(b) of the Nigeria Police Trust Fund

[59] Ibid.
[60] Ibid, para 5, (2).
[61] Ibid.
[62] Federal Inland Revenue Service para 3 (1).
[63] Ibid.

(NPTF) (Establishment) Act 2019[64] which imposes a levy of 0.005% of the net profit of companies operating business in Nigeria.

Under the UK corporate law, which influenced a significant part of Nigeria's corporate jurisprudence, LLPs are also endowed with the status of bodies corporate, possessing a legal personality distinct from that of the partners, as embodied in section 1(2) of the Limited Liability Partnerships Act 2000. However, it is crucial to note that if an LLP engages in trade or business with a profit motive, it is treated as tax transparent for income tax purposes.[65] Consequently, the members bear the tax burden on their respective shares of the LLP's profits rather than the LLP itself being subject to taxation. Conversely, an LLP not pursuing profit-oriented trade or business is subject to corporation tax and is not treated as transparent for tax purposes.[66]

In the United States, partnerships do not possess legal personality separate from the individuals or entities that form them and are treated as tax transparent for income tax purposes.[67] Notwithstanding this absence of legal personality, in the US entity classification for tax purposes, legal personality is not treated as a super factor.[68] Rather, in determining entities taxable under corporate tax, the corporate resemblance test is sometimes applied (especially for non-resident enterprises) which suggests that entities with sufficient corporate characteristics are treated as corporations for tax purposes.[69] Such hybrid entities with recognisable corporate features are thus granted the flexibility to choose between being taxed as corporations or partnerships.[70] This distinction underscores the unique tax treatment afforded to partnerships in contrast to corporations in the U.S. tax system.

Under the provisions of the Indian Income Tax Act, 1961, certain legal persons, particularly LLPs, are subject to a baseline income tax rate of 30%.[71] Unlike proprietorships, partnership firms maintain a distinct legal identity from their partners. Hence, a partnership firm in India is a separate corporate taxable entity for the purpose of income tax.[72] This highlights the fact that the concept of legal personality is at the core of the determinants of tax treatment of legal entities in India. Additionally, akin to LLPs and private limited companies, partnership firms are obligated to pay an alternate minimum tax of about 18.5% of the adjusted total income.[73] This underscores the specific tax framework that governs the treatment of partnership firms under the Income Tax Act in India. Nonetheless, global tax jurisprudence seems to sit in agreement with treating partnerships as tax transparent.

Certain arguments for taxing partnerships as entities have been canvassed to include the fact that it offers administrative simplicity and streamlines tax collection from a single entity. This approach simplifies the tax planning process for the partners, enabling them to benefit from a consistent tax treatment, regardless of their individual circumstances.[74] However, it comes with the drawback of taxing income at a flat rate, deviating from the individual partners' marginal rates. A core implication of the attempt to tax partnerships at the corporate level in Nigeria, is in the aspect of revenue sharing. If partnerships (particularly LLPs) are taxed under the corporate law regime in the CITA, based on the new dispensation, the revenue generated is to be shared between the federal government and the federating units. The decision to tax partnerships as entities also prompts considerations regarding treating them similarly to corporations in all respects. Some questions arise from this concern, such as whether

[64] Ibid, para 4.
[65] Z Andrew, 'LLs and Tax Transparency' (June 2020, *Tax Journal*) < https://www.taxjournal.com/articles/llps-and-tax-transparency>
[66] HM Revenue and Customs, 'LLP: Taxation' <https://www.gov.uk/hmrc-internal-manuals/partnership-manual/pm131450> accessed 15 January 2024.
[67] Easson and Thuronyi (n 50) 9.
[68] Ibid.
[69] G S Cooper and R K Gordon, 'Taxation of Legal Persons and their Owners' in Victor Thuronyi, Ed., *Tax Law Design and Drafting* (vol 2; International Monetary Fund: 1998) 8.
[70] Ibid.
[71] Income Tax Department, 'Tax Rates' <https://incometaxindia.gov.in/charts%20%20tables/tax%20rates.htm> accessed 21 January 2024.
[72] V Sharma and A Sharma, 'Cross Border Taxation of Partnerships' in Chapter 20 International Taxation - *A Compendium.*
[73] Ibid.
[74] Graeme S. Cooper and Richard K. Gordon (n 68) 10.

partnership distributions should be treated as dividends (in all concerns) and if rules governing transactions between corporations and shareholders should extend to partnerships. The answers may hinge on the preparedness of Nigeria's corporate regulatory landscape to choose a common legislative front for taxing corporations as well as establishing the weight its commercial law places on the concept of legal personality in determining, among other factors, the tax character of an entity. In all, although administrative circulars are mere regulatory guidelines and lack binding statutory flavor, it is an attempt at interpreting existing laws for clarity until contrary amendment of the relevant laws or judicial interpretation to the contrary.[75]

On the other hand, the taxation of LPs may pose some challenge in the future especially if the argument that it has legal personality finds support. While CAMA 2020 expressly clothes LLP with legal personality, it is silent on LP. For tax purposes, legal personality affects whether an entity is taxed under PITA or CITA. If it has legal personality, it will be taxed under CITA. However, if it lacks separate legal personality from its partners it will be taxed under PITA as the tax liability will be placed on the individual partners. In practice, LPs for tax purposes are still being taxed like general partnerships. However, if the import of section 807 of CAMA is fully appreciated, then LPs will be taxed under CITA as it will be treated as an entity with separate legal personality from its partners.

5. Conclusion

The CAMA 2020 has ushered in a transformative era for partnerships in Nigeria, reshaping their legal landscape by introducing innovative structures such as LLPs and LPs. Notably, the conferment of legal personality upon LLPs, a departure from traditional common law practices, has sparked discussions regarding its impact on taxation. Under the prior regulatory framework, partnerships were treated as transparent entities for tax purposes, falling under the PITA, though not all partnerships are affected. However, with the advent of legal personality for LLPs, the FIRS clarified the shift in tax treatment through its circular. This circular categorizes LLPs under corporate taxation, guided by the CITA. Consequently, LLPs are now obligated to pay income tax at the entity level on profits generated within Nigeria, marking a departure from the previous flow-through mechanism under PITA. The FIRS circular outlines specific provisions for LLP taxation, including exemptions for entities below a designated annual turnover threshold and delineates withholding tax obligations. While providing clarity, it is essential to recognize the non-binding nature of administrative circulars, emphasizing the need for legislative instruments, potentially through the Finance Act, to solidify these tax provisions into law. This shift aligns with global trends in specific jurisdictions, reflecting the dynamic nature of business regulation and taxation in Nigeria, necessitating vigilant attention and potential legislative adjustments for comprehensive clarity in the evolving partnership taxation landscape.

Legal personality is fundamental in determining tax liabilities of business entities in Nigeria. This could suggest that other forms of partnerships in Nigeria not clothed with distinct legal identity, particularly LPs and general partnerships, remain unmodified and are still subject to the tax treatment established under PITA. However, while it is clear that general partnerships do not possess legal personality and the partners are therefore subject to PITA, the case may not be exactly the same for LPs. This is so because section 807 of CAMA 2020 provides that all the provisions of CAMA 2020 relating to LLPs are applicable to LPs as long as they are not inconsistent with the express provisions of CAMA 2020 relating to the formation of LPs. It is argued that the provisions of section 746 and 756 of CAMA 2020 which cloths LLPs with legal personality are applicable to LPs because they are not inconsistent with the express provisions of Part D. This has direct implications on the taxation of LPs as it could in future shift the taxation of LP from PITA to CITA.

Considering the foregoing. It is recommended that there should be consequential amendment of extant tax laws to incorporate the taxation of LLPs into the corporate tax structure in Nigeria. Also, there is the need to amend Part D of CAMA 2020 to expressly clarify the legal personality status of LPs.

[75] *Easy-Ay Holdings Ltd v Federal Inland Revenue Service* TAT/LZ/VAT/029/2019; *Halliburton West Africa Ltd v Federal Board of Inland Revenue* FHC/L/1A/2005.