"AN APPRAISAL OF INCOME TAX ENFORCEMENT PROCEDURES UNDER THE NIGERIAN TAX SYSTEM"

BY

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BEING A THESIS SUBMITTED TO THE SCHOOL OF POSTGRADUATE STUDIES, AHMADU BELLO UNIVERSITY, ZARIA, IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF THE DEGREE OF MASTER OF LAWS -LL.M

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MAY 2014.

DECLARATION

I hereby declare that this Thesis entitled, **"**An Appraisal of Income Tax Enforcement Procedures under the Nigerian Tax System" has been written by me and that it is a record of my own research work. It has never been presented in any previous research work for the award of Degree of Master of Laws -LLM. All quotations and references are indicated with specific acknowledgements.

Mohammed Abdulkadir MUSA

CERTIFICATION

This thesis entitled, **"**An Appraisal of Income Tax Enforcement Procedures under the Nigerian Tax System" meets the regulations governing the award of the Degree of Master of Laws -LL.M of Ahmadu Bello University, Zaria and is approved for its contribution to legal knowledge and literary presentation.

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DEDICATION

With sincere gratitude to Almighty ***Allahu Subhanahu Wa-Ta'ala,*** this thesis is dedicated to my parents, Mallam Dahiru Muhammad Bakura and Malama Hauwa'u Alh. Hali Dabo Bakura.

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LIST OF ABBREVIATIONS

A.C	-	Appeal Cases
All N.L.R	-	All Nigerian Law Reports
Cap	-	Chapter
CITA	-	Companies Income Tax Act
CRFN	-	Constitution of the Federal Republic of Nigeria
Etc	-	et cetera
FBIR	-	Federal Board of Inland Revenue
i.e	-	that is
IRS	-	Internal Revenue Service
LNN	-	Laws of Northern Nigeria
LFN	-	Laws of the Federation of Nigeria
LWN	-	Laws of Western Nigeria
NLR	-	Nigerian Law Reports
P	-	Page
PAYE	-	Pay-As-You-Earn
PITA	-	Personal Income Tax Act
S.	-	Section
SBIR	-	State Board of Internal Revenue
U.K	-	United Kingdom
U.S	-	United States
VAT	-	Value Added Tax

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ABSTRACT

The imposition, collection and administration of income tax in Nigeria are basically statutory, which had undergone significant reforms with the object of providing solutions to the lingering problems of enforcement procedures. The existing body of literature on taxpayer compliance developed over the years in Nigeria. Nigeria made considerable investment in tax legislative reforms, taxpayer education programs, tax enforcement strategies, and sophisticated system of tax administration using new technologies. However, what prompted this research work is that despite those reforms, reviews and changes in the legislation compared to its counterparts, Nigeria faced quite different challenges and constraints that require careful consideration in designing appropriate and effective tax system. In particular, the tax system in Nigeria must foster sustainable economic growth, ensuring that the necessary revenue collections are made to provide for political stability, investment in infrastructure and improved standards of living. The method of acquiring data and information used in this research work was doctrinal, where two main sources of acquiring data, i.e. primary source, which consist of statutes and case laws and secondary source which consists relevant information from leading authorities, textbooks on tax laws and practices, writings and articles of scholars, magazines, opinions of jurists, journals, periodicals, seminar papers, as well as internet/websites, etc. were also used. the findings of the research work were that; (i) Nigeria has both limited administrative resources and expertise, (ii) Tax administration is generally weak, with widespread evasion, corruption and coercion, (iii) Furthermore, taxpayers tend to have low levels of literacy, low tax morale and negative attitudes towards government, (iv) The cash economy, and its inherent opportunities for engagement in fraud and tax evasion, often plays a major role. (v) There is also conflict of tax jurisdiction between the Federal Government and states, and lack of public enlightenment. The central aim of this research appraised the income tax enforcement procedures, and the objectives identified and highlighted their problems and prospects, with particular reference to the relevant Nigerian Tax Laws. The research work finally provided workable suggestions and recommendations to the identified problems to enhance an effective and efficient tax administration in Nigeria. The findings of this research work explored recent issues, challenges and recent ideas of judges/decisions of courts in respect of income Tax under the Nigerian Tax System and Fiscal policies which, if appropriately utilized, will bring enormous change and enhance the Nigerian tax system generally. It also improved the existing enforcement procedures of the Nigerian tax system both at the Federal, states and local levels.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Study

Income tax is one of the major sources of revenue to all governments world-wide, including Nigeria. It is levied by governments to raise revenue that will help in the administration of governmental policies. The role of each government is, first, to provide good governance. Good governance, on the other hand, simply means provision of basic infrastructures, to meet the basic needs of citizens in an atmosphere where peace and security are guaranteed. Revenues generated through income tax enable government to maintain law and order and other socio-economic, political and cultural activities. In order to attain this, every government must put in place a rational income tax system where tax payments are made by every tax-payer and the canons of taxation upheld.

Over the years, the Nigerian tax system has undergone significant changes. The tax laws have been reviewed with the aim of repealing the obsolete taxing laws to enhance effective means for procedures of enforcing the payment of income tax to meet up with the current demands of the Nigerian fiscal programmes and to reduce tax evasion and tax avoidance in the Nigerian tax system.

Nigerian tax system is basically and purely statutory. The tax system, therefore, featured wide range of statutes by which the Nigerian government, as a whole, seeks to

charge and collect taxes for public expenditures. Hence, there has been a requirement that if at all government was to interfere with property, pry into a man's affairs and take his money, then, this must be on clear statutory authority[1]. This requirement is premised on the need to protect the individual from the state[2]. It is trite that, any tax which is not prescribed by law is illegal and unenforceable. It was held, in the case of *Seven up Bottling Company v. Lagos State Internal Revenue Board,*[3] that:

> *It has often been the view of the Courts here and elsewhere that if a person sought to be taxed comes within the letter of the law, then such a person must be taxed. On the other hand, if the tax authority seeking to recover tax from a person is unable to bring him within "the letter of the law", the person will be free, however apparently within the spirit of the law his case ought to otherwise appear to be.*

Taxes can only derive legitimacy to the extent that they are recognized within the country's legal structure. To reinforce this position, the Federal Supreme Court was apt, as it stated thus, *"No tax can be imposed on the subject without words in an Act of Parliament clearly showing an intention to lay a burden on him."*[4]

The Constitution[5] guaranteed the existence of fiscal federalism, as well as, the taxing powers of each federating unit in Nigeria. The Constitution[6] recognizes the fiscal jurisdiction of those three levels of government, i. e. Federal, States and Local

[1] Ayua, I.A. Nigerian Tax Law, Spectrum Law Publishing, Ibadan, 1993, p. 46
[2] Abdurrazaq, M.T. Nigerian Revenue Law, Malthouse Ltd., Ibadan, 1999, p.37
[3] [2000] 3 NWLR p. 565-591
[4] Authority v. Regional Tax Board, Attorney-General of the Western State of Nigeria and Adelaja [1967] NCLR 452-464.
[5] The 1999 Constitution, 2010 as amended,
[6] ibid

Government[7].The functions and powers of the Federal Government are listed in the Exclusive Legislative List[8], while those of the states are in the concurrent list[9].

The Federal Inland Revenue Service (Establishment) Act[10], the Personal Income Tax (Amendment) Act,[11] as well as, the Companies Income (Amendment) Tax Act[12] and other tax laws and regulations, established different bodies for the three levels of government that were empowered with the assessment, collection, enforcement and due administration of taxes in Nigeria[13]. Section 1 of the Federal Inland Revenue Service (Establishment) Act[14], established a body to be known as the Federal Inland Revenue Service (FIRS), whose operational arm is to be known as Federal Board of Inland Revenue (FBIR), whose objects are contained in section 2 of the Act[15]. Section 2 of the Act provides: *"The object of the service shall be to control and administer the different taxes and laws specified in the first schedule or other laws made or to be made from time to time by the National Assembly Government of the Federation and to account for all taxes collected[16]."*

Section 8 of the Act,[17] provided the functions of the service, which includes assessment, collection, account and enforcement of payment of taxes as may be due to the government or any of its agencies, carrying out the examination with investigation,

[7] Abdurrazaq, M.T. op cit p.37
[8] Item 59 of Part I, Second Schedule to the 1999 Constitution, 2010 as amended,
[9] Items 1, 2, 7 and 9 of Part II, Second Schedule, ibid
[10] No. 13 of 2007
[11] No. 21 of 2011
[12] The Companies Income Tax (amendment) Act, 2004 as amended.
[13] Salami, A. Taxation, Revenue Allocation and Fiscal federalism in Nigeria,: Issues, Challenges and Policy Options, Economic Annals, vol. LVI, No. 189 of 2011.
[14] The Federal Inland Revenue Service (Establishment) Act No. 13 of 2007
[15] ibid
[16] ibid
[17] ibid

with a view to enforcing compliance with the provisions of the Act, in collaboration with the relevant law enforcement agencies, adopt measure to identify, trace, freeze, confiscate or seize proceeds derived from tax fraud or evasion, etc.

State taxes are to be collected and administered by a body established under Section 87 of PITA[18] to be known as State Internal Revenue Service (SIRS) whose operational arm is to be known as State Board of Internal Revenue (SBIR).

Section 90 of the same Act[19] established the Local Government Revenue Committee (LGRC), whose responsibility is the assessment, collection, account and enforcement of all taxes, rates and levies, within the jurisdiction of that level. Section 86 of the PITA[20] provided the establishment of Joint Tax Board whose task, amongst others, is to assist the FIRS and SIRS in effective administration of income taxes in Nigeria; while Section 92 of the same Act[21] established the Joint States Revenue Committee for each state, that were empowered to implement the decisions of the JTB, advice the state and local governments on revenue matters and harmonize tax administration.

All this arrangement is aimed at shaping effective machinery for collection and administration of income taxes in Nigeria. However, the taxpayers try numerous ways, legal or illegal to avoid payment of taxes that are due for payment, while the tax authorities in trying to enforce the payment of such taxes also apply some procedures and, sometimes use it arbitrarily. Lord Morton, in the case of *Chapman*

[18] Personal Income Tax (Amendment) Act, No. 21 of 2011
[19] ibid
[20] ibid
[21] ibid

vs. Chapman, described the struggle between the legislature and the taxpayers as undignifying game of chess, *"Parliament imposes a charge: the (tax) adviser finds a way to avoid it. Parliament enacts anti-avoidance legislation, some advisers device a more elaborate avoidance."*

Some taxpayers believed payment of tax to the government as just a way of enriching the selected few political elites who have fortified themselves with powers unquestionable. While others believed that they are not getting enough from the government in return for what they are paying; lots more believed that government is so rich that imposing tax on the people is another way of exploiting the innocent citizens. The excuses for non-compliance with tax obligations are enormous. The imposition, collection and administration of income tax in Nigeria is done by the relevant tax authorities arbitrarily and, sometimes, in excess of jurisdiction and the problems still persist, which undermine the smooth and effective enforcement of income tax in the Nigerian tax system. These and many more issues of concern inspired the current researcher to carefully select this topic entitled, ***"An Appraisal of Income Tax Enforcement Procedures under the Nigerian Tax System"***. The central aim of this research appraised the income tax enforcement procedures, and the objectives identified and highlighted their problems and prospects, with particular reference to the relevant Nigerian Tax Laws. The research work, finally, provided workable suggestions and recommendations to the identified problems, to enhance an effective and efficient tax administration in Nigeria. This is to standardize the effective enforcement of income tax

and bridge the gaps and loopholes in the income tax enforcement procedures so that all income taxes that are lost annually can be effectively recovered.

1.2 Statement of Research Problem

The enforcement of income tax by the relevant tax authorities through the laid down procedures are always marred with problems. The existence of those problems led to numerous reforms of the Nigerian tax policy and repeal of the Nigerian tax laws. The identified problems of this research work are as follows:

i. There has always been arbitrary use of powers as well as abuses of procedures of enforcement of income tax by the relevant tax authorities. This can be seen on how the tax officials levy distress, effect search and seizure of the delinquent taxpayer's property, sale of the taxpayer's property, non-refund of the balance of proceeds of sale, without due regard and compliance with the set out conditions of doing that. For example, most of the major companies especially in oil and gas business have foreign ownership and in many instances, incomes generated by the parent company and their Nigerian subsidiaries are often subjected to overlapping tax regimes, one in the country in which the income is earned by the subsidiary and the other in the country in which the parent company does its

business. The case of *Halliburton West Africa Ltd vs. FBIR*[22] is a good example, where the act of tax authorities has been challenged as being contrary to the provisions of the tax laws. Another example is the case of *Aluminium Industries Aktien Gesellschaft vs. FBIR,* where the non-resident company granted a loan to its wholly-owned Nigerian subsidiary 'Alumaco'. The contract agreement was concluded in Switzerland and the terms were that both the principal and the interest were payable in Swiss francs in Switzerland. The Inspector of Taxes assessed the interest to tax under section 17 CITA, 1961 and the company went on appeal. The Supreme Court held that the right to payment was in Swiss francs in Switzerland and allowed the appeal. The Supreme Court held:

> *The source of the obligation was the agreement made in Zurich, between the Appellant Company and the Aluminium Manufacturing Company of Nigeria Ltd. and the obligation itself under that agreement was for Aluminium Manufacturing Company of Nigeria Ltd to repay the principal and the interest on the loan to the appellant company in Zurich Swiss currency. Hence neither the source of the obligation nor the obligation itself arose in Nigeria but was in Switzerland. That been so on that ground we must decide that the claim for tax could not be brought within the first deeming provision of section 17 of the CITA, 1961 which only deems interests to be derived from Nigeria and so liable to tax if there is a right to payment of that interest in Nigeria.*

The Lagos Zone of the Tax Appeal Tribunal, in its judgment, in the case of *Halliburton Energy Services Nigeria Limited vs. Federal Inland Revenue Service*[23] also stated

[22] (2006) 7 C.L.R.N. 138
[23] (2006) 7 C.L.R.N. 138

"that levying money for, or to the use of the Crown by pretense of prerogative, without consent of Parliament is illegal…." It was evident in that case that the Tribunal refused the attempt by the FIRS to violate the dual internationally recognized principles pursuant to which countries assert their jurisdiction to tax, i.e. the source and the residence basis, which, also, form the basis of the allocation of taxing rights under the Organization for Economic Cooperation and Development (OECD) Model Convention on Taxation of Income and Capital.

ii. Corruption by the taxing authorities and taxpayers eroded the income tax system in the Nigeria, as both the taxpayers and taxing authorities are involved in this evil trade. Many taxpayers do not want to pay the correct tax even in the face of clear information available to the taxing authorities about their true earnings and income they prefer to pay far less than they ought to. For example, the House Committee on Finance reported that, "over the years Nigerian government has lost billions of naira in fraudulent and underhand dealings corruptly designed by some banks to evade tax which is in addition to being massively shortchanged by banks saddled with responsibility of collecting and remitting taxes"[24]. It was also disclosed by the Committee that some banks created exemption rules for themselves in total disregard of the provisions of the tax laws[25]. The Committee summed it up that, "there is poor quality of returns, discrepancies in data submitted, outright refusal to present documentary evidence and blanket violation of existing laws, false

[24] Musa Abdullahi Krishi and Ibrahim Kabiru Sule, Reps Uncovered Massive Tax Fraud in Banks, in: Daily Trust, Monday August 26, 2013, p. 4
[25] ibid

declaration, late remittances and or outright failure to remit taxes and manipulation and distortion of relevant information are discovered from banks and other giant companies, which made the government to lose huge revenue. In some cases, the tax authorities demand bribe in order to reduce tax liabilities of the taxpayers, without demanding for that, which results in enormous losses of revenue as both the taxing authorities and tax payer continue to face or witness cases of diverting and converting personal income taxes collected into private use without trace"[26]. An example is the recent finding of the House Committee on Finance which has been probing tax remittances to government coffers by banks between 2006 and 2013. In their statement, the committee states, *"The commercial banks have dubiously turned taxes collected on behalf of the government into another venture"*[27].

iii. The judicial arm of government is also not helping the effective enforcement of income tax, as there is the problem of delay in litigating tax matters due to long court processes which discourages taxing authority from taking litigation as an option for enforcing income tax in Nigeria. There is problem of inadequate prosecution of the defaulting taxpayers, as well as, awarding light punishments and penalties on the defaulting taxpayers. The tax officials very rarely use the criminal penalties. Only few tax payers have been convicted and imprisoned for giving incorrect information, for aiding, abetting, assisting, counseling, inciting or

[26] ibid
[27] ibid

inducing a tax payer to make or deliver false returns even where such fraudulent intent is established. The tax authorities mostly opt for civil litigation to recover taxes than to prosecute defaulting tax payers, even though criminal prosecution does not debar them from recovering delinquent taxes through civil actions. The tax authorities prepare compromise than allowing the case to take its faith.

iv. Another problem of income tax enforcement is how to put customers that transact business through e-banking. This is a serious problem in the Nigerian tax sector. The e-commerce has made it almost impracticable for the Revenue Authority to drag the traders in all the components of e-commerce into the income tax net. This is because, if they are unlinkable to a particular fixed base, it may be very difficult to hold them liable to tax. Electronic banking is the method of transacting modern banking business through the use of automated processes and electronic devices such as computers, telex, internet, Automated Teller Machine and other electronic media[28]. E-banking is of two categories *viz*: non-network-based electronic banking and network-based electronic banking. The former requires the physical presence of customer at the point of service (either at the banking hall or at the location of an electronic service machine); while the latter does not. Rather, it entails the use of electronic information technology networks for the transmission and decoding of information anywhere and does not require the physical presence of the customer. In other words, transactions

[28] Goldface-Irokalibe I. J - Law of Banking in Nigeria , Malthouse Press Ltd, Lagos, 2007, p 203

may be carried out from anywhere in the world[29]. But then, the problem remains, how can a Nigerian tax authority assess and charge a transaction that is made outside Nigeria, especially through ATM machine even though the source is generated in Nigeria. As far as income tax is concerned, a customer of a bank (corporate or individual) may be liable to income tax in the country of source but definitely not in a country of residence. This is so because he does not need to be present at all in a country, let alone having sufficient presence or fixed base there. It, therefore, means that a customer that transacts banking business by network-based electronic banking may not be caught up by provision of section 13(2) CITA, which makes having a fixed base of business in Nigeria a pre-requisite for liability to companies' income tax.

v. There is, also, constant abuse of the use of tax clearance certificate as a means of, or procedure of enforcing the payment of income taxes, by both the tax authorities and the tax payers. For example, there are cases of forging tax certificates, as well as, demanding money to produce same to the defaulting tax payers. For example, there is a pending case where the FIRS accused Air Nigeria of presenting counterfeit companies income tax clearance certificate to secure expatriate quotas for its workers[30]. That is why the procedure of the use of tax clearance certificate cannot be effectively implemented.

[29] ibid
[30] Quoted in Thisday Newspaper of March 2013

The condition of the Nigerian tax system, therefore, still needs restructuring and adequate reform, so as to solve the above stated problems. Therefore, this research work provided workable solutions to the enumerated problems of research.

1.3 Aim and Objectives of the Study

The central aim of this work appraised the following;

a. The Nigerian Income tax enforcement procedures, as it affects the Nigerian tax system.

While the main objectives of this research work discussed the following;

a. The general concept of taxation, i. e. it explained the meaning, nature and purpose of taxation, as well as the meaning of income and capital for the purpose of taxation and its importance in the country's fiscal policy, and the meaning of procedure and or enforcement as the terms relates to income taxation.

b. The structure and working bodies empowered by law to administer and enforce the payment of income taxes under the Nigerian tax laws and analyzed the enforcement procedures of income tax in Nigeria, which include enforcement through distrain, monetary penalties, search and seizure, litigation, tax clearance certificate, sale of delinquent tax property to upset delinquent taxes, etc.

c. Lastly, suggested some workable recommendations to the identified problems, for the purpose of enhancing the enforcement of income tax in Nigeria.

This standardized the effective enforcement of income tax and bridges the gaps and loopholes in the income tax enforcement procedures so that the billions of naira that are lost annually by the Nigerian government due to the above mentioned problems of income tax enforcement procedures can be effectively overcome, and the Nigerian tax system can be standardized to an international level. In view of the concise discussion forwarded on the above on analysis of enforcement procedures of income tax under the Nigerian tax system, therefore, it is concluded that this thesis served as a starting point and pave the way for future research.

1.4 Research Questions

The central aim and set objectives of the research work answered the research questions set below:

i. it is trite that Nigerian tax system is marred with problems, does the identified problems lie with the entire tax system, Nigerian tax laws, the enforcement procedures used or the taxing authorities themselves, or combination of all?

ii. To what extent does the problems affected tax enforcement and administration under the Nigerian Tax System?

1.5 Justification of the Study

The findings of this research work explored recent issues, challenges and the way forward in respect of income tax under the Nigerian Tax System and fiscal policies which, if utilized, will bring enormous change and enhance the Nigerian tax system, generally. It, also, improved the existing enforcement procedures of the Nigerian tax system, both at the Federal, states and local levels. It, further, contributed positively to legal knowledge of income tax laws, regulations and procedures to taxing authorities, lecturers and students of taxation and provided materials for future research on the subject.

1.6 Scope of the Research

The scope of this research work centered on law of taxation. Therefore, this work covered Nigerian tax laws and regulations. Reference has, however, been made to the tax laws of other jurisdictions such as United States, United Kingdom, some African and Asian countries, to draw useful lessons and make the Nigerian Tax system globally competitive.

1.7 Literature Review

In order to capture the overall meaning, nature and extent of income tax laws and their enforcement procedures as it affects the Nigerian tax system and fiscal policies, emphasis was placed on current statutes, cases, materials and other means

of research, both at municipal and foreign levels. For example, statutes, case laws, textbooks, articles, journals, seminar papers, internet sources, etc. were used and acknowledged. The research, therefore, contained the views, opinions and ideas of enormous writers, on the field of taxation. The following existing literatures are, therefore, acknowledged.

The study started with the work of Asada[31]. Quoting Chambers Encyclopedia and the work of Davies, Asada defined tax as, *"the legal demand made by any level of government of the taxable citizens of that country, to pay a compulsory levy or money on income, goods or services into the coffees of the government for the benefits of the citizens of that country*"[32]. He further discussed the meaning and essence of income tax. According to him, no comprehensive definition is given as to the meaning of the word *"income*" in the Nigerian taxing status. According to him, the Personal Income Tax Decree simply or evasively defines income as including any amount deemed to be income under the decree. He further looked at the definitions of income given in cases of *London County Council vs. A.G*.[33] and *Coltness Iron Co. vs. Black*[34] where Lord McNaughton and Lord President offered definition of income

[31] Asada, D. "The Administration of Personal Income Tax in Nigeria: Some Problem Areas," Extracted from http://dspace.Unijos.edu.ng/bitstream/10485/263/1/CJ106-119, pdf. Extracted on 26-07-2012
[32] ibid
[33] (1881) 9 TC 287
[34] (1925) 10 RC p. 113

given in the case of *Whitley vs. Inland Revenue Commissioner*[35] and commented that the term "income" is far from being precise.

Asada, further, discussed the nature and imposition of personal income tax where he states that personal income tax is a form of taxation which taxes employees and self-employed persons. He stated that, income of a person or individual which emanates from any of the sources indicated arises in Nigeria or abroad, whether or not it is remitted into Nigeria or received abroad and is not brought into Nigeria. Asada discussed an area which is very relevant to this work, i.e. the administrative machinery of personal income. According to him, the problem of income taxation in Nigeria is the administration of the tax system, bothering on tax collection, assessment, wide spread of corruption and absence of competent administrators. He, further, maintained that the need to improve the administration of our tax system cannot be over emphasized. He quoted Ayua as saying:

> *…Apart from the achievements of additional revenue by improving tax administration, it improves tax equity by enhancing equal treatment of tax payers as well as upholding the egalitarian idea of a direct tax system based on the ability to pay. Improvement in the Nigerian tax administration will enable the tax structure to play its part in the economic development of the country*[36].

He stated that, the Joint Tax Board is charged with the imposition and due administration of personal income tax in Nigeria. However, Asada identified a

[35] Cited in Oxford Motors Ltd. V. Minister of National Revenue (1959) CTC 195
[36] Ayua, I. A. The Nigerian Tax Law, Spectrum Law Publishing, Ibadan, Nigeria, 1996

problematic area of dispute between the Joint Tax Board and Federal Board of Inland Revenue in respect of company taxation. He, further, discussed on the problems of enforcement procedures of income tax in Nigeria, which is the basis of the current research. According to him, the assessment and collection of personal income tax from taxable persons have been difficult and suggested that tax collection is one of the fundamental problems in income tax administration, and proposed for a traditional method of tax collection. He, further, stated that the problem of tax collection has more with the self-employed rather than collection and remittance of employed and registered tax payers. There are difficulties inherent in the assessment of the self-employed. According to him, the procedure of assessment requires the self-employed taxpayer to collect return form, fill and submit to the relevant tax authority which gives a tax payer the opportunity to under-assess his/her income. He, further, stressed that there is a problem of lack of coordination between various government departments. Apart from that he stressed that there is lacuna in the tax laws that causes most of the problems of enforcement of income tax in Nigeria. According to Asada, the mode of enforcement of personal income tax by the tax force is unheard of, as, it is uncivilized method of enforcement. The work did not provide the solutions to those problems. Hence, the current work recommended solutions to those problems.

The book by Ayua[37] was acknowledged in this work. Ayua quoted Phillips[38] as saying, *"it is the view of many people that the loss of revenue caused by the widespread of tax evasion and avoidance in the country is due largely to our inefficient and inept tax administration"*[39]. It was against the above statement, Ayua examined the Nigerian tax administrative provisions and identified some major weaknesses that are inherent in the administrative machinery, particularly, problems which the tax administrators faces in the administration of tax laws and made suggestions for improving tax administration in Nigeria. In trying to achieve the above goals, Ayua, discussed at length the powers and functions of the FBIR, its establishment and constitution[40]. He, further, highlighted the joint tax board[41] and the body of appeal commissioners[42]. He discussed their respective powers and duties. From page 276 to page 297 of his book,[43] Ayua dealt, extensively, with procedures of income tax assessment, collection and some procedures of enforcement. According to him, the shortcomings, in connection with tax administration, are that of enforcing payment of tax. He maintained that, it is in pursuance of ensuring payment of income tax that both the PITA and CITA categories various offences and punishments for violation of tax laws and regulations.

37 Ayua, I.A. Nigerian Tax Law, Spectrum law publishing, Ibadan, 1996.
38 Phillips, A. O. Nigeria's Companies Income Tax, The Nigerian Journal of Economic and Social Studies, Vol. 3, Nov., 1968, p. 333
39 Ayua, J. A. op cit, pp. 271-272
40 Ibid, pp. 273-274
41 Ibid pp. 274-276
42 Ibid p. 276
43 Ibid

He, further, maintained that, in order to enforce payment of tax in Nigeria, the PITA laid down income tax offences and penalties which include monetary penalties, legal proceedings, distraint of property and sale of seized property. However, the fine is too small and is not commensurate with the type of offence it is designed to deter, and the penalty provisions overlap and, in some places, inconsistent in terms of the severity of the penalties and are thus defective in form. According to him, another shortcoming has been attributed to the attitude of tax officials, more especially towards the enforcement of the penalty provisions. He quoted Layade as saying:

> *We (tax officials) very rarely use the criminal penalties. No one is known to have been convicted and imprisoned for giving incorrect information, for aiding, abetting, assisting, counseling, inciting or inducing a tax payer to make or deliver false returns even where such fraudulent intent is established. Issuing best of judgement assessment is not an effective substitute for evoking the penalty provisions…. For failure to comply with the requirements of a notice served on taxpayer, but as it is hard, as (tax officials) have been bitten. Are (they) really helping taxpayer compliance?*[44].

As such, even though the law provided sanctions for those taxpayers who violate tax laws, those provisions are not used by the tax officials to enforce payment of taxes. Ayua, also, identified a problem of personnel and maintained that, most of the tax officials are poorly educated and trained and, are therefore, ill-equipped to do the

[44] Quoted in Layade, P.S.A Tax Evasion, in Fifth Annual Senior Officers' Conference of FBIR

job properly. Ayua[45] exhaustively discussed the issue of income tax in Nigeria in part one of his work. He discussed the issues of distribution of taxing power in Nigeria, as well as, the legislative sources of income tax laws in Nigeria. He, as well, discussed the legal basis of personal income tax. However, the work stated only three methods of the enforcement procedures of income tax in Nigeria, i. e. through penalties, distress and litigation and, did not discuss their problems. This current work, therefore, covered those loopholes.

The work by Obaje[46] was, also, acknowledged in this work. Even though the work is restricted to capital gains tax, it was found material to the current work. In that work, author discussed the definition, of taxation and its classification. He, further, highlighted the nature and jurisdiction of capital gains tax. He, furthermore, discussed computation, collection and administration of capital gains tax. He touched the Capital Gains Tax Act, where he stated that the Act created offences and penalties for non-compliance. He mentioned some offences that include making incorrect return, aiding and abetting of false statements, excessive assessment, embezzlement and other criminal conducts by the tax authorities. However, he lamented that the penalties need to be reviewed as some of the penalties are such that the offender can bear without pain. For example, making incorrect return attracts only a fine of ₦ 200:00 while excessive embezzlement attracts only a token

[45] Ayua, I. A. The Nigerian Tax Law, Spectrum Law Publishing, Ibadan, Nigeria, 1996
[46] Obaje, E. Capital Gains Tax in Nigeria, Canadian Social Science Journal, Vol. 8(3), 87-93

of N 600:00. He further discussed the reasons for poor performance of capital gains tax in Nigeria. He attributed it, while quoting Oserogho[47] that, the principal problem is that of lack of data or record keeping, and that the law allows the government to charge and collect tax on gain, but there is no provision in the event of loss, which caused the taxpayer to bear his loss alone. He, further, argued that capital gains tax is a problem of double or multiple taxation itself as the value is expected to produce. Lastly, he proposed the need of effective capital gains tax in Nigeria. The current work looked at the itemized problems and addressed same, accordingly.

The work by John[48] was acknowledged and was found very material to this study. In his work, John stated that, administration is crucial to tax policy and quoted Tanzi and Pellihio as saying[49], *"Poor tax administration will change the way taxation affects the traditional objectives of government policy, namely, allocation of resources, redistribution of income and stabilization*"[50]. He, further, made a lengthy discussion of a decentralized revenue collection and administration, where he said, 'giving decentralized governments a degree of revenue autonomy allows them to be more responsive to their citizens because that lets them adjust the size of their budgets, not just allocate transferred funds, and establish how the costs of services

[47] Oserogho, E.O. Legal Alert: Capital Gains Tax and you retrieved from http://oseroghoassociates.com-on 5/5/2012

[48] John, L. M. Developing Options for the Administration of Local Taxes; An International Review, A Paper Presented at the World Bank Workshop Titled, Innovations in Local Revenue Mobilization, Washington D. C., June 24, 2003

[49] Tanzi, v. and Pellichio, A The Reform of Tax Administration, International Monetary Fund Working Paper 95/22 Washington DC: IMF, p. 2 in; John, L. M. ibid, 2003, p. 42

[50] John, L. M. op cit, p. 52

will be distributed'. He, further, maintained that decentralized administration maximizes local revenue policy control, administration itself being an element of revenue autonomy. He made reference to the Nigerian tax administration, where he stated that Nigeria provides sub national tax administration, but argued that the results are less satisfactory than in countries like United States, Canada, Australia and Brazil.

According to him, in Nigeria, much federal revenue goes to states and local authorities. He added that the Value Added Tax (VAT) is also shared with the sub national governments, partly, by formula and, partly, by place of collection. States and local governments collect what are called internally generated funds; therefore, only some minor taxes are adopted and collected on states or local level[51]. He stated that the states collect their taxes, including those adopted by federal law, with their own State Board of Internal Revenue (SBIR), Local Government Revenue Committees administer the minor revenue sources assigned to them. Since 1998, each state has had a Joint State Revenue Committee that includes the chair of the state service and the chairs of the local revenue committees that is responsible for harmonizing taxation within the state. The Personal Income Tax (Amendment) Act[52] established a Joint Tax Board, which comprises the chairman of the Federal Inland Revenue Service (FIRS), the National Tax Collection Agency, and a member from each state,

[51] John, L. M. op cit, p. 52
[52] No. 21 of 2011

whose purpose is to promote uniformity in the application of the personal income tax across the states. He pointed out some shortcomings of the sub-national governments, where he stated that they lack adequate systems to track collections, master lists of taxpayers, and adequate staff. That, while they can track companies through the national value added tax registration numbers, they have no identification number system for individuals.

He, however, commented that all levels of administration face problems of low compliance, bribery and corruption, shortage of qualified staff and inadequate resources, poor records management, and absence of internal controls. He, further, highlighted problems associated with collection and enforcement of property tax, as opposed to income or consumption taxes. He maintained that, the difficulty and the cost of administering an equitable property tax are exaggerated by those more familiar with income and consumption taxes, than with property taxation. According to him, the property tax required assessment of the tax base, not an accounting of transaction records. Another problem of enforcement and collection of property tax, he states, is that the property tax has powerful enemies. He maintained that people with property wealth usually have political power and normally used that power to thwart taxes aimed at their holdings. The third problem of enforcement, he identified, is that, since property owners have few options of avoidance, evading a real Property Tax requires collusion with government officials, rather than

concealment and accounting tricks; that, it cannot be done independently by the taxpayer. John concluded his paper, by providing some workable recommendations that will enhance tax generation, collection and enforcement in centralized and decentralized administrations. However, he raised many topical issues and problems relating to procedures of assessment, collection and enforcement of taxes such as functions of State Board of Internal Revenue, Federal Board of Inland Revenue, Joint Tax Board, Local Government Tax Committee, double taxation issues, low compliance issues, issues of bribery and corruption, shortage of qualified staff, inadequate resources and poor records, which he did not address, nor provide how those issues and or problems can adequately be tackled. A presentation of such resourcefulness ought to cover all those aspects, exhaustively. This thesis covered most of the above issues that are not covered by that work.

The work by Ola[53] was acknowledged. In that work, author started with historical background of taxation in Nigeria. He discussed how income tax was, first, introduced in Nigeria by Lord Lugard, and maintained that Lord Lugard introduced income tax in Nigeria when community tax became operative in Northern Nigeria. He stated, in his work, that Lord Lugard, later, made changes, which culminated in the Native Revenue Ordinance of 1917, and further, stated that Nigerian income tax only began in modern form in 1940. He stated that those who determined taxable

[53] Ola, C. S. Income Tax Law for Corporate and Unincorporated Bodies in Nigeria, Heinemann Educational Books (Nigeria) Ltd, Ibadan, 1981.

income, as at then, were the resident, who were the officers appointed by the Governor to be in administrative charge of the province, together with any other administrative officer authorized by the resident to perform any duty imposed under the ordinance. The duties of the tax-collection authorities include giving of information, the supervision of collection of tax in their area, and accountability of tax collected to the resident. As to what constitute an income, Ola viewed that income is not capital and income tax is not tax on capital, that, income comes from continuing source as fruit from a tree; and includes Nigerian Income, foreign income and deemed income. However, the work is too technical, such that, an average tax payer and or even tax authority cannot understand properly. Where personal income tax is treated as a peculiar topic or, in terms of mechanisms of enforcement of Personal income tax and procedure, the current researcher was not clear, when using the work, as to where the Federal regulations are applicable and where the states regulations apply. This thesis simplified the above idea, in a more standardized form, with clear topics and sub-topics that aid simplicity and understanding, as well as, easy reference to the users.

In another book by Ola[54], particularly, Part Five, at Chapter XI, author discussed, almost exhaustively, accounting for tax purposes. In that work, he discussed computation of income for tax purposes and methods of making

54 Ola, C.S. A Guide to Accountancy and Taxation Law for Business and Government, University Press Limited, Ibadan, Nigeria, 1983, pp. 109-183

adjustments. He, further, went ahead and discussed tax avoidance and tax evasion. In his book, he quoted Menzies J., in the case of *Peate vs. Commissioner of Taxation*[55] as saying, *"It is perhaps inevitable in an acquisitive society that taxation is regarded as a burden from which those who are subject to it will seek to escape by any lawful means that may be found"*

According to him, tax avoidance is a deliberate legal act of the taxpayers to pay less tax than they ought to pay. He maintained that, only educated elites aided by professional accountants and lawyers largely engaged in tax avoidance and their being to read the tax law and discover the loopholes. In chapter XII of his book, Ola discussed examination of accounts for income tax purposes. Ola did not, however, provide means and ways of preventing tax Avoidance or tax evasion. This thesis provided workable solutions to those problems.

Abdurrazaq[56], in his work, stated that, direct taxation has been in existence in Nigeria since before the advent of the British rule in 1861, particularly in the North where there was an efficient and stable administration based on Islamic system. According to him, there were various forms of taxes in the Northern Nigeria such as *Zakat*, a tax levied on Muslims for charitable, religious and educational purposes. There are, also, taxes called "*Kudin-Kasa* (agricultural tax) and *Jangali*-a cattle tax levied on livestock. Whereas in the South Western part, there were various taxes

46. (1963-4) 111 C.L.R. 443, 445

[56] Abdurrazaq, M. T. Principles and Practice of Nigerian Tax Planning and Management, Batay Publications Limited, Ilorin, 1993.

such as *Isakole* – tax levied on land used by local communities who are normally expected to pay tribute tax to the local chief, *Owo-ori*- a tax paid by every individual in the community to the government[57].

He, further, maintained that, the Eastern Nigeria had a form of tax called *egbu-nkwu*, which is a tax imposed before palm oil is harvested, a compulsory tax which there can be no harvest without it. Apart from the above mentioned taxes that existed before the arrival of the British colonial masters, Abdurrazaq stated that, there are other forms of taxes such as community effort for specific purposes and those who cannot physically participate in community work either because of their status or old age pay their levy in cash, food, etc[58]. According to him, during the pre-colonial period, taxation functioned more or less on an ethnic basis, with a centralized authority, administrative machinery and judicial institutions to enforce it. However, in areas where there existed no chieftaincy rule like Igbo land, *Tiv, Bura, Igbira, Bachama*, etc, there exist little or no form of an organized taxation[59]. The advent of the British colonial rule and the creation of the Lagos colony in 1862 brought about English legal system. As such, income tax was first in Nigeria by the British colonial masters through Lord Lugard in 1904[60]. The work is more of history of modern taxation than providing effective enforcement mechanism of income tax in

[57] Ibid
[58] ibid
[59] Ibid
[60] ibid

Nigeria. The current work provided the rudiments of income tax procedures, viz-a-viz, their challenges and recommendations to the identified problems.

Another work of Abdurrazaq[61] was acknowledged. In that work, Abdurrazaq discussed the role of FBIR and the body of appeal commissioners, in the administration and collection of income tax in Nigeria. He, further, highlighted the jurisdictional powers of JTB and SBIR in the administration of income tax. In that work, he stated that, most of the functions of FBIR are delegated to inspector of taxes who carry out the assessment and collection of taxes on behalf of the board. He, further, stressed that tax collection, on a whole, is not an easy task. It has to be collected with caution, especially, in a developing country like Nigeria. He tried to examine the various methods and problems confronting the revenue departments in the collection of taxes and levies in Nigeria, with a view to finding solutions to them. However, despite the fact that the work aimed at highlighting problems of income tax enforcement procedures, the work did not, clearly, discuss the enforcement procedures of income tax, but, rather, copied the provisions of old Personal Income Tax Act and Companies Income Tax Act, barbatim. This current work, therefore, was premised on the current income tax laws that covered the recent amendments.

[61] Abdurrazaq, M. T. Nigerian Tax Offences and Penalties" in; Tax Law & Tax Administration in Nigeria (Ajemo, M.A. ed.), NIALS, Lagos, 1993, pp. 12-45

This study, also, acknowledged the work by Bariyima and Nwokah[62]. Authors spelt out the major Nigerian tax laws, forming the major legal framework, regulating the collection of taxes in Nigeria. According to them, tax administration in Nigeria is carried out by the various tax authorities, as established under the relevant tax laws. They forwarded a definition of "Tax authority", as provided under Section 100 of the Personal Income Tax (Amendment) Act[63] to mean, "The Federal Board of Inland Revenue, the State Board of Internal Revenue or the Local Government Revenue Committee".

According to them, the tax authority, in addition to the Joint Tax Board, the Joint State Revenue Committee and the Body of Appeal Commissioners together constituted the organs of tax administration in Nigeria. They identified the taxing power of each board or committee, with reference to a particular tax it will impose on the taxpayers, within its sphere of jurisdiction. The authors further, discussed arguments for and against the use of external tax consultants in the assessment, collection and administration of taxes in Nigeria.

Their work is very material to tax administration in Nigeria and the current research work. However, a work of that nature ought to incorporate the current issues of corruption in the Nigerian tax administration, causes of tax evasion and tax avoidance, procedures of enforcement of delinquent taxes, lacunas in the Nigerian

[62] Bariyima, D.K. and Nwokah, N.G. Boosting Revenue Generation by State Governments in Nigeria: the Tax Consultant's Option Revisited, in : European Journal of Social Sciences, vol. 8, No. 4 of 2009, pp. 532-539
[63] No. 21 of 2011

tax laws and regulations, multiplicity of taxes and controversy in respect to jurisdiction of some arms of government, to impose some certain taxes and went further to provide some workable solutions to those issues. Those identified weaknesses of their work were addressed in this research.

According to Ariyo[64], the problems are the deficient tax administration and collection system, complex legislation and apathy of Nigerians, caused by lack of value received in return for their taxation money. The general perception that the rich do not pay taxes in Nigeria has further worsened the situation. The military government's practice of using the budgetary process to amend several tax laws concurrently through a single omnibus decree created confusion. It was difficult to separate tax issues from financial ones, because these were usually lumped under a single standardized caption. It also made the process of ascertaining the legal position laborious and complex. Consequently, the eventual codification of tax laws has become difficult and lengthy. This issue was also addressed in this research work.

Ibraheem and Jegede[65] also highlighted the implications of the Federal Inland Revenue Service (Establishment) Act, 2007, on tax administration, at the states level in Nigeria. According to them, the Act created jurisdictional confusion between

[64] Ariyo, A. Productivity of the Nigerian Tax System: 1970-1990, in: African Economic Research Consortium, Nairobi, Kenya (1997)

[65] Ibraheem, A. and Jegede, R. O. Federal Inland Revenue Service (Establishment) Act, 2007; Centralization of Tax Adminstration in Nigeria Through the Back Door, extracted from http://www.icmaservices.com/ICMASERVICES/articles.htm, 8/2/2010

states and the Federal Government, as it has completely wiped out the division of tax administrative responsibilities that existed between the Federal Inland Revenue Service and the State Board of Internal Revenue. They maintained that, unlike the previous tax legislation, that clearly specified responsibilities of the FIRS or SBIR, the new Act does not even recognize the existence of the SBIR as a revenue collecting agency, not to talk of identifying where they belong in tax administration.

They further maintained that, the Act only recognized the SBIR[66] as if they are only created to assist the FIRS in issuing tax payer identification number to every taxable person in Nigeria. According to them, Section 8 of the Act listed, among its function, all functions of the SBIR as provided in the PITA as if SBIR are already extinct. Thus, the 2007 Act seriously calls into question the continued relevance of the SBIR, if not their legitimacy. Authors of the above paper brought about topical issues of concern; however, they did not provide means by which the problems can be solved. The oversight was corrected in this thesis.

The book by Adesola[67] was acknowledged. In his book, author itemized tax-based revenues in Nigeria, as well as, relevant tax authorities that are empowered, by law, to impose each of the tax-based revenue. He, further, discussed the procedure adopted on assessment and collection, as well as, enforcement procedures and powers of the relevant tax authorities for search, distrain, litigation

[66] Section 8 (q) of the Federal Inland Revenue Service (Establishment) Act, No. 13 of 2007,
[67] Adesola, S. Income Tax and Administration in Nigeria, College Press Ltd., Ile-Ife, Ibadan, Nigeria, 1986, pp. 1-69

and use of tax clearance certificate. The work is comprehensive. But, it is not up to date, with the current reforms that took place from the date of its publication.

Emiko,[68] in his work, discussed the division of tax powers and made reference to item 56 of the Exclusive Legislative List of the 1979 Nigerian Constitution. He maintained that, the power to impose tax on incomes, profits and capital gains is exclusive to the National Assembly, he, further, maintained that item D-7 of the Concurrent Legislative List of the 1979 Nigerian Constitution relates only to the collection of these taxes. According to him, a state or an authority of a state can collect or administer the law imposing those taxes or any of them only if it pleases the National Assembly as it so prescribed or directs[69].

He argued that, taxes imposable by the states and expressly referred to in the Constitution are taxes, fees or rates under item D-9 and 10 of the Concurrent Legislative List of the 1979 Constitution[70]. When talking of jurisdiction over income, he said that the problem then under that Constitution was that whereas the Federal Government had an exclusive power to tax incomes, there was no express power in respect of capital gains, in respect of companies and whereas it has exclusive powers to make uniform principles in respect of the taxation of the incomes of persons other than companies, those powers did not extend to that of capital gains and other taxes

[68] Emiko, G.I. An Analysis of Federal/State Taxing Powers, in: Tax Law and Tax Administration in Nigeria (Ajemo, M.A. ed.), NIALS, Lagos, 1991, pp. 12-45
[69] Ibid, p.13
[70] 1979 Constitution of the Federal Republic of Nigeria (now 1999 Constitution, 2010 as amended,)

not imposable on incomes and profits[71]. In that regard, he opined that all taxes on incomes, profits and capital gains can only be imposed by the National Assembly no matter the taxable persons involved. He maintained that any tax imposed by a state house of assembly possessing the main characteristics of these taxes would be unconstitutional, null and void. However, he was also of the view that a tax or fee may be imposed by any of the states in the Federation upon any taxable person provided the tax, duty or fee is not one that is exclusive to the National Assembly[72].

On jurisdiction over Excise Duties, he maintained that the power to impose was expressly vested in the National Assembly under the Exclusive Legislative List[73], while, according to him, there is no express provision under the Constitution, vesting the power to impose that tax by the States. He said the problem, therefore, is the meaning of that tax as envisaged by the Constitution. According to him, there appeared to be a lacuna in the said constitution in relation to these taxes, as the provisions defining such taxes under that Constitution would operate to invalidate most of the taxes imposable by the States.

The entire work of Emiko was based on the provisions of 1979 Constitution. This research was undertaken under the 1999 constitution as amended, other recently amended tax laws and regulations that captured the current income tax issues, challenges and prospects.

[71] Emiko, G. I. op cit, pp. 14-15
[72] Ibid, p.15
[73] Item 15 of the 1979 Nigerian Constitution

The work by Okorodudu[74] was acknowledged by the current research and, it was found very material to the current research work. His work, also, though comprehensive in respect to tax issues/system in Nigeria, is not up to date and need to be reviewed to reflect the current Nigerian tax legislation. Globally, government is saddled with the responsibility of providing some basic infrastructures for her citizens. Among these are the provisions of schools, hospitals, construction of roads, bridges, railway lines, airports and seaports. More so is the security of the life and properties of the citizens in the country against foreign and or local aggression. Abdulfattah, *et al* stated, "Most South-East governors are spending fortune to keep the Police and other security agencies"[75].

The stabilization of the economy, the redistribution of income and the provision of services, in the form of public goods, are among other functions or obligations government may owe her citizens. It has been noted that, due to the inefficiency of the private market, the provision of public goods such as security of life and property which the public might not be prepared to pay for directly, are left in the hands of the government rather than the private market. James[76] observed that, even without payment, the consumption of "pure public goods cannot be to the total exclusion or in isolation of certain individual. Government therefore, makes it free for all and sundry. A very good example is in the area of security e.g. Police, Arm Force etc. Their services cover all the

[74] Okorodudu, M. T. Analysis of Federal and State Taxing Powers, in: Tax Law and Tax Administration in Nigeria (Ajemo, M.A. ed.), NIALS, Lagos, 1991, pp. 47-84

[75] Abdulfattah, O. Nigeria: Yar'Adua's Nephew Makes List". Daily Trust. Available from: http://allafrica.com/stories/201003240058.html. Accessed.06/03/10.

[76] James, S. and Nobes, C. Economics for Taxation. 9th edition. Fiscal Publications, Birmingham, 2009.

citizens, without specific charges to the people. Besides, public goods do not diminish as consumption increases. Simply put, the consumption of public goods by one person does not stop or prevent another from consuming it, neither does it reduce the satisfaction the later consumer will derive from its consumption. It is, on the strength of the above two reasons, that it becomes practically impossible for the private market or firm to produce public goods, as the resultant effort could be underproduction of such goods and services. Lopez and Kadar posit that, taxation among Organization for Economic Development Countries (OECD) had uniformly been geared towards efficiency, increased tax revenue, equity and enforceability[77].

Taxation is, therefore, one among other means of revenue generation of any government to meet the need of the citizens, some of which have been pointed out above. The purpose of taxation, as enshrined in the French laws, is for the maintenance of public force and administrative expenses. It has been maintained that, taxation is required to finance public expenditure[78]. It is worthy of note, however, that there are other sources of revenue generation by the government e.g. borrowing, grants etc. If taxation is for public expenditure, public goods ought to have been consumed equally. The elites in the society have retinue of security men attached to them for protection, especially, in emergency cases but not the common man whose safety is just by implication, even when they represent a higher percentage of the taxpaying population. Since the use of most of the facilities for which the general tax revenue is raised as a right for some compared to

[77] Lopez, A. And Kadar, Z International Tax Review: World Tax 2002, 1st Jan: 6-11. Available from: http://proquest.umi.com/pqdweb?. Accessed 27/04/10.
[78] Miller, A and Oats, L Principles of International Taxation, 2nd edition, Tottel Publishing, West Sussex, 2009.

others, tax therefore remain a punitive levy on the deprived of these services. This is even worsening with the definition by Nightingale *"...imposed by government while taxpayers may receive nothing identifiable in return for their contribution..."*[79] Osunkoya, on his part, warned, "*Payment of tax does not mean that government must do something within the locality of the taxpayer*"[80]. These respected tax experts seem to forget that evidence of taxation seen in public goods encourage the taxpayer. This may account for the high evasion rate, as tax is assumed exploitative, instead of developmental.

There are many books and writings of eminent scholars in respect to the research topic. However, all materials that the current researcher referred to are found very resourceful and very important to the current research work. As such, they are highly acknowledged.

1.8 Research Methodology

The researcher used one principal method of acquiring data and information to enable him achieves a presentable and resourceful research work. The doctrinal method of research was, therefore, used, using primary and secondary sources such as library materials like books, articles, journals, periodicals, seminar papers, as well as internet/websites, etc. to wit.

a. Primary sources which consisted statutes and case laws.

[79] Nightingale, K. Taxation Theory and Practices, 4th ed., Pearson Education Ltd. England, 2002

[80] Osunkoya, D Nigeria Tax System Needs Autonomy; *Next*, 19th Dec. Available from: http://234next.com/csp/cms/sites/Next/Money/Finance/5499086-147/story.csp. Accessed 20/04/10

b. Secondary sources which consisted relevant information from leading authorities, textbooks on tax laws and practices, writings and articles of scholars, magazines, opinions of jurists, journals, periodicals, seminar papers, as well as internet/websites, etc..

1.9 Organizational Layout of the Study

This research work was arranged at five chapter basis. Chapter one dealt with general background of the entire work. It started with a general background to the study, statement of the research problems, aim and objectives of the study, Justification of the research, review of the existing literatures, method(s) of research adopted and the organizational layout of the research work.

Chapter two discussed clarification of concept of taxation generally. It started with introduction, followed by the meaning, nature and purpose of taxation. It also highlighted definitions of income and capital for the purpose of taxation and provided the definition of taxation under Islamic law.

Chapter three highlighted the overview of the Nigerian tax system and fiscal policy. It also started with an introduction then history of modern taxation in Nigeria. That chapter also discussed the structure of the Nigerian tax based revenue and the taxing powers of the states, local governments and the federal government. It further discussed different taxes, tax policy, tax administration and several reforms

that took place in the Nigerian tax system, and highlighted the need for further reforms.

Chapter four dealt with the enforcement procedures of income tax under the Nigerian tax system. After introduction, the chapter discussed about the instruments available for the enforcement of income tax in Nigeria, as well as, procedures of enforcement. Under those sub-topics, income assessment and collection procedure were discussed, and then procedures of enforcement in case of default of payment from the taxpayer.

Finally, chapter five provided conclusion and summary of the work, as well as, observations and recommendations.

CHAPTER TWO
CLARIFICATION OF CONCEPTS

2.1 Introduction

Taxation plays most significant role in governments' economic and fiscal policies. It is the most important source of revenue for modern governments, typically accounting for 70-90% of income generation[81]. Economists, generally, agree that there is a need for minimal direct government involvement in resource allocation and development process through fiscal policies and instruments such as taxation, public expenditure and regulation[82]. According to Jinghan, the most potent fiscal instrument is taxation, which facilitate reduction of private consumption, increase in investment and transfer resources to the government for (re-allocation to enhance infrastructural and) economic development[83]. According to Is-haq[84], tax influences economic behavior both at the micro and macro levels[85], hence an important tool for economic policy makers[86].

Countries differ, considerably, on different taxes they levied on taxpayers. In most developed countries, taxpayers pay income taxes, when they earn money, consumption taxes, when they spend it, property taxes, when they own it. Income taxes, therefore, play significant role in generating revenue for government's fiscal

[81] Is-haq, O.O. Repositioning the Nigeria's Tax System: Suggested Policy Measures, University of Ilorin, 2010. p. 3
[82] Ibid
[83] Jingal, M.L. The Economics of Development and Planning, 28 Revised Edition, Probhat Offset Press, New Delhi, 1995
[84] Ibid
[85] Obaje, E. Capital Gains Tax in Nigeria, Canadian Social Science Journal, vol. 8(3), 87-93
[86] Is-haq, O.O. op cit, p. 3

policies. For example, a country's tax system influences its business activities, hence, most countries encourages such institutions through a standard and acceptable tax policy.

However, it is still in contention as to the kind of tax that would be imposed on taxpayers, which should be just and acceptable. This posed an argument into two folds, firstly, some economists argue that income tax enhances economic development and facilitates, enabling and conducive environment, while others suggests income tax retards growth through discouraging new investment and imposes welfare costs[87].

That notwithstanding, in order for every government to attain economic and infrastructural development and vibrant fiscal policy, it most put, in place, a rational tax system, where a taxpayer can, conveniently, pay his tax and the cannons of taxation, as enunciated by Adam Smith, duly observed[88]. According to Ahmad Sani, the tax system, as a whole, is an embodiment of contention and controversy, whether in its policy formulation, legislation or administration, hence, a subject of interest[89].

Then, what is the meaning of this complex phenomenon of interest that always continues to be subject of controversy between taxpayers and their

[87] Is-haq, op cit, p. 2

[88] The canons of taxation are convenience, certainty, economy and equity in the tax collection and administration.

[89] Sani, A.F. Contentious Issues in Tax Administration and Policy in Nigeria: A State Governor's Perspective, a Paper Presented at 1st National Retreat on Taxation, organized by Joint Tax Board, Delivered at Sheraton Hotel & Towers, Ikeja-Lagos, Nigeria, 22-24 August, 2005.

government? What is its nature and scope, generally? What does it seeks to achieve in the society? From what source most it come from? And what are the procedures for its enforcement?

Therefore, this chapter clarified the relevant concepts. It discussed the conventional and acceptable meaning of the word "Tax" or "Taxation". Its nature and the purpose it seeks to achieve in the society. It, further, highlighted the meaning of income as opposed to capital upon which taxes are levied. This captured the overall meaning, nature and purpose of taxation.

2.2 The Meaning, Nature and Purpose of Taxation

There is no universal definition of the term "Tax". It has been variously defined over the years. However, the conventional definitions, when considered generally, gave comprehensive meaning of the term. According to the Oxford Dictionary, the word "Tax" refers to, *"a compulsory contribution to the support of government levied on persons, property, income, commodities, transactions, etc, now at a fixed rate mostly proportionate to the amount on which the contribution is levied*[90].

This definition of the term "Tax" is deficient because it gives an elusive meaning and did not provide the purpose of taxation. In *Mathews vs. Chicory Marketing Board*, it was held that a tax is, *"A compulsory exertion of money by a*

[90] Hornby, A.S. Oxford Advanced Learner's Dictionary, Seventh Edition, Sally Wehmeier et el (eds.), Oxford University Press, Oxford, 2005, p. 1516

public authority for public purposes, or taxation is raising money for the purpose of government by means of contribution of individual persons[91].

In *U.S.vs. Butler*, it was opined, in the words of per Justice Roberts, that, *"A tax in the general understanding of the term and as used in the constitution signifies an exertion for the purpose of government. The word has never been thought to connote the expropriate of money from one group for the benefit of another".*[92]

According to John, *"Tax can be defined as a mandatory contribution to the support of states and governments of a nation or country"*[93]. Adesola defined tax as, *"A compulsory levy which a government imposes on its citizen to enable it obtain the required revenue to finance its activities".*[94] Abdulrazaq, on the other hand, defined tax as, *"An enforced contribution of money, extracted pursuant to legislative authority".*[95]

The Institute of Chartered Accountants of Nigeria and the Chartered Institute of Taxation of Nigeria viewed tax as *"an enforced contribution of money, enacted pursuant to legislative authority"*[96]. The word "tax" has been defined in the Black's Law Dictionary as *"a monetary charge imposed by the government on people,*

[91] (1838) 60 C.L.R. 260, p. 276
[92] (2279) U.S. I [1936] at p. 61
[93] John, D. C. Assessment of the Effectiveness of Legal Provisions Relating to Civil and Criminal Sanctions under the Nigerian Income Tax Laws, an Ph. D dissertation (unpub.) submitted to Postgraduate School, A.B.U. Zaria for the Award of Doctor of Philosophy in Law, 2009, p. 8
[94] Adesola, S.M. Tax Law and Administration in Nigeria: An Introduction, Obafemi Awolowo University Press Limited, Ile-Ife. See also Asada, D. The Administration of Personal Income Tax in Nigeria Some Problem Areas, retreaved from http:/dspace.unijos.edu.ng, 1998.
[95] Abdurrazaq, A. Nigeria Tax Guides and Studies (ED), the Chartered Institute of Taxation of Nigeria, Lagos, 2002.
[96] Asada, D. op cit

entities, transactions or property to yield public revenue"[97]. It has been defined in the Webster's Dictionary as *"a charge imposed by governmental authority upon property, individuals or transactions to raise money for public purposes"*[98]. Another writer defined taxation as, *"a compulsory levy imposed on a subject or upon his property by the government having authority over him or the property"*[99].

This study viewed taxation, in line with the provisions of the Nigerian tax laws, as, *"a statutory imposition of certain charge on persons, whether legal or artificial, on their transactions or property by the taxing authority on behalf of the relevant government, as revenue accruing to that government for public purposes".* From the above definitions of the term "Tax", one could infer that, tax, by its nature, is "a compulsory levy imposed on individual taxpayer by a government, state or any taxing authority, for economic development of that country, state or nation". Examination of various definitions provided above shows that most definitions contained some common fundamental characteristics, i.e. coercion or element of compulsion, levied by government or any legal authority[100], backed by law and for public use, whether direct or indirect[101].

The word "enforcement", on the other hand, has been defined as, *"the act or process of compelling compliance with a law, mandate, command, decree or*

[97] Garner, B. Black's Law Dictionary, 8th Edition, Thompson West, New York, 2004, p. 1496
[98] Hopkins, J. New Webster's Dictionary of the English Language, Surjeet Publications, India, 2000, p. 1574
[99] Akanle, O. the Government, The Constitution and the Taxpayer, in: Ajemo, O. and Akanle, O (eds), Tax Law and Tax Administration, NIALS, Lagos, 1991, p. 1
[100] Asada, D. op cit
[101] Oluwakayode, E.F. & Arogundade, K.K Problems and Prospects of Using Consultants in Tax Administration in Nigeria: A Retrospective Focus on Lagos State, Nigeria, in: Journal of Management Society, vol. 1 (3), Faculty of Management Sciences, University of Ado Ekiti, Nigeria, 2011, pp. 22-29

agreement"[102]. Procedure, on the other hand was defined as, *"a specific method or course of action: The judicial rule or manner for carrying on a civil lawsuit or criminal prosecution"*[103].

2.3 Objectives of Income Taxation

The major objectives and aim or purposes of tax system in any country, according to John[104] and Adesola,[105] were summarized in the following:

i. To identify fiscal and social objectives and to design appropriate tax policies most suitable to achieve those objectives.

ii. To implement established tax policy efficiently, economically and effectively.

iii. To monitor and evaluate tax policy to determine its social benefits and costs, its impact, feasibility and sustainability.

iv. To ensure that the basic principles (Cannons) of taxation are observed with regard to the appropriate taxpayers.

v. To encourage the taxpayers to pay tax voluntarily.

vi. To prevent tax evasion as much as possible.

vii. To raise revenue that will help in the administration of government.

[102] Garner, B., op cit, p. 608
[103] Ibid, p.1323
[104] John, D.C. op cit, pp. 3-4
[105] Adesola, S.M. op cit p. 24

viii. To redistribute income between the poor and rich to balance the tax burden between the "haves" and "have-nots" in a way that the "haves" are taxed higher than the poor to achieve economic and social equality.

ix. To control and redirects the economy against recession and discourage negative activities with one income.

Taxation is, therefore, identified as a major tool in strengthening of domestic resource mobilization and, consequently, the search for ways and means of expanding the tax base and also strengthening tax administration[106]. It is the most important weapon available to governments for marshalling financial resources[107]. It was observed that, the existence of well-defined tax laws alone cannot guarantee a successful tax collection. There must be an efficient and effective tax administration to implement and enforce those laws. Surray, S.S. observed:

> *It is necessary apparent, however, that tax administration must receive far greater attention if the goals of tax policy are to be attained. Much of tax policy is being to carry out their economic planning. The search is for additional taxes, for new sources of revenue. Yet it is true in many countries that the successful administration of some of the existing taxes would provide a considerable part of the needed additional revenue. The diligent execution of existing taxes may well make unnecessary, or at least, reduce the multiplication of taxes in search for revenue[108].*

[106] Ibid
[107] In Adegbiye F.F. and Fakile, A. S. Company Income Tax and Nigerian Economic Development, European Journal of Social Sciences, Vol. 22, No. 2 of 2011, pp. 309-310.
[108] John, E. A. Infra, p. 1

The term "efficiency" has been defined as the level of performance of a tax administration's activities in terms of costs and productivity, while the term "effectiveness" referred to the level of taxpayer's compliance with the tax administrators' objectives[109]. An efficient tax administration can, therefore, help to device means to successfully tax the informal sectors of the economies of such countries that remained largely untaxed in spite of their inherent potentials to provide substantial portion of socio-economic projects, for development. For example, Nigeria has an inherent potential to generate revenue from informal sector, yet the low tax effort of Nigeria, therefore, showed the reflection of its weak tax administration. Though the institutional framework of tax administration differ from one country to another, it seems there is one common problem, especially in developing countries, that is, corruption, tax evasion and tax avoidance, amongst others, in the tax sector.

From the foregoing, it is clear that tax, by its purpose and nature, plays a vital role in the administration of any government, as it is a veritable source of any government's source of revenue generation. Where, therefore, can a tax be imposed or levied? Is it from the gross capital of an individual taxpayer? Or from the income derived from the use of the capital? John,[110] viewed that income is the basis for any tax liability. According to him, it will be very absurd to tax capital, because it will destroy the

[109] John, E. A. Infra, p. 1
[110] John, D.C. op cit p. 8

source where the income is derived[111]. This brings us to a question as to what is income and what is capital for the purpose of taxation.

2.4 Definition of Income and Capital for the Purpose of Taxation

The Oxford Advanced Learner's Dictionary defined income as, *"The money that a person, a region, a country, etc earns from work, from investing money, from business, etc"*[112]. It, further, defined income tax as:

> *the amount of money that you pay to the government according to how much invested or is received from any business or investment of capital, without reference to the outgoing expenditures; while profit generally means the gain which is made upon any business or investment when both receipts and payments are taken into account*[113]

It, further, provided that, *"Income when applied to the affairs of individuals, expresses the same idea that "revenue" does when applied to the affairs of a state or nation".*[114] Section 3(3) b defined income as, "*including any amount deemed to be income under the Act*"[115]. This definition, however, seem non-satisfactory. Lord McNaughton, also, gave a vague definition of the term "income" as above, where he stated, in the case of *London County Council vs. A.G.*[116] that, "a tax on income, it is

[111] Ibid, p.8
[112] Hornby, A.S. op cit, pp. 754-755
[113] Ibid, p.755
[114] ibid
[115] Personal Income Tax (Amendment) Act No. 21 of 2011
[116] (1901) A.C. 26

not meant to be a tax on anything else". In *Coltness Iron Co. vs. Black*, income was defined as,

> *...income tax to which effect is given by the statues is that everything of the nature of income shall be assessed from what source so ever it may be derived, whether from invested capital or from skill and labour or from a combination of both, and whether temporary or permanent, steady or fluctuating, precarious or secure*[117]

According to Asada,[118] there has not been precise definition to solve the problem. In *Whitley vs. IRC*[119] Lord Wrenbury stated, "*As regards the word income, it means such income as is within the Act taxable under the Act".* By careful perusal of the above definitions in the totality of the cited judicial pronouncements, it is manifest that the term is far from being precise. As such, the legislative approach to the problem in Nigeria, though in an elusive manner, seems the best option; which has classified income by reference to the receptive source from which such income is derived[120]. Therefore, it is our view that income is whatever accrued in, derived from or brought into Nigeria, the capital at the year of assessment after the deductions of all expenses that are incidental to the business, including statutory reliefs. In *Leaning vs. Jones*[121], where the issue was whether a receipt was income or capital, Lord Buck master stated; *"An accretion to capital does not become income merely because the*

[117] (1881) I.T.C. 289
[118] Asada, D. op cit
[119] Ibid
[120] In Adegbiye F.F and Fakile, A.S Company Income Tax and Nigerian Economic Development, European Journal of Social Sciences, Vol. 22, No. 2 of 2011, pp. 309-310.
[121] (1930) 15 TC

original capital was invested in the hope and expectation that it would rise in value, if it does so rise; its realization does not make it income".

The approach of our courts to the interpretation of such words as, "income or trading," is similar to that adopted by the English Courts and Judges. Thus, in the case of *Arbico Limited vs. FBIR*[122], the Supreme Court of Nigeria, held that the same wide definition given to the words "trade and income, should be applied in Nigeria without bothering to break any new ground or conceptual definition of these difficult words. Therefore, income like taxation, defy any clear, logical and universal statutory or case law definition. It seems Nigerian statutes and case laws, also, follow English courts, as regards the definition of income or profit for the purpose of tax. According to John, income is a dynamic subject; hence, little or no importance should be attached to its definition[123]. He maintained that, the only good thing that can be done is to ascertain any amount which can be termed taxable income of a taxpayer, i.e. wages, salaries, shares, profits and taxable income, unless the context in a taxing statute otherwise provide[124]. So also capital, like other tax components, i.e. taxation and income, has no universal definition.

According to Lord Upjohn, in the case of *Strick vs. Regard Oil Co. Ltd*.[125], *"it is indecisive to consider whether a receipt of outgoing is capital or income for tax purposes"*. He suggested that, the issue should be left to tribunals and Judges to

[122] (1986) NCLR at p. 150
[123] John, D.C. op cit p. 9
[124] ibid
[125] (1821) 20 K.B. 405

handle in each case brought before them. However, a workable and acceptable definition of the word "capital" was provided in the case of *Mallet vs. Staveley Coal & Iron Co. Ltd*.[126] where it was held that, *"capital actually represents the stock of resources from which flows the income".* That notwithstanding, the first step in computing the amount of income of individual taxpayer's gross income, on the other hand, is defined as, ***"****All income from whatever source derived, "whether income derived from personal services, business activities, or capital assets". Compensation for services in the form of money, wages, bonuses, fees, commissions, etc. constitutes income"*[127].

Capital gains and losses posed special consideration in the determination of income tax liability for tax purpose. Capital gains are the profits realized as a result of the sale or exchange of capital assets; while capital losses are the deficits realized in such transaction. Capital losses, on the other hand, are determined by establishing a taxpayer's basis means and the tax payer's cost of acquiring the property. Conventionally, therefore, it is clear, from the above definitions/explanations, that income is what has been derived from the use of the capital while income tax is a tax levied on the income of individuals or businesses.

[126]Extracted from http://www.answers.com/topic/income-tax 25/6/2010
[127]ibid

2.5 Meaning and Purpose of Taxation under Islamic Law

Unlike what obtains in conventional English system of taxation, the object of taxation, in Islamic Law (*Sharia*), is targeted on hoarded wealth and capital and not *stricto censo* on the income of taxpayer. Under Islamic Law, therefore, taxable person is only liable for tax on left-over income, when necessarily incurred expenses have been deducted. Islamic law, thus, allows more expenditure to be undertaken by taxable person, with an attendant accelerator/multiplier effect on the economy. As more expenditure occurs, more income is generated in the society. The argument is that, the more capital is allowed to freely circulate the more income is generated and the economy grows. But where the capital is hoarded and kept without circulating, the economy will be dormant.

Secondly, Islamic system of taxation is based at a uniform tax rate in every taxable item, which foreclosed the problem of double or multiple taxations and, has the potentials of reducing the incidence of tax evasion and tax avoidance. According to Faridi, *Zakah* tax, which is the most fundamental tax in Islamic government, occupies a central place in Islamic fiscal policy and operations. Since its rate is given, it lends an element of stability to public revenues, which is particularly useful in maintaining budget stability[128]. *Zakat* tax in Islamic law, therefore, is the principal tax that sets the trend for other taxes in Islamic law. Al-Qardawi, on the other hand,

[128] Faridi, F.R. Zakah and Fiscal policy: in Studies in Islamic Economics, Khurshid, A. (ed), Saudi Arabia, International Centre for Research in Islamic Economics, King Abdul Aziz University, 1976, p. 9

opined that *Zakah* tax under Islamic law takes care of eight categories of people mentioned in the Qur'an[129] and the tax cannot be used for any other tax bases like *Kharaj* (land tax), *Ghanimah* (booty), and other agreed taxes that can be imposed to take care of the state's welfare and development.

Thus, payment of taxes, in Islamic taxation, are regarded as a sacred duty which elicit voluntary compliance, evoking minimal enforcement cost and generating maximum revenue, unlike the conventional English taxation, which can only be enforced with high cost, but yet with several cases of tax evasion and least cooperation from the taxpayers. For example, in Nigeria, the tax system does not enjoy voluntary compliance, due to non-visible impact of taxes so collected.

[129] Qur'an ch. 9 v. 60

CHAPTER THREE

HISTORY OF MODERN TAXATION AND STRUCTURAL ARRANGEMENT OF INCOME TAX ENFORCEMENT MACHINERIES IN NIGERIA

3.1 Introduction

A country's tax system and fiscal policy represents its vital revenue allocator between the public sector and its counter-part, i.e. private sector. Taxes, as discussed in the preceding chapters, are imposed on individual's/businesses' income for the purpose of generating revenue which is used to support certain country's obligations. A state's tax system is often a reflection of its communal and leaders' values.

In Nigeria, the taxation system dates back prior to 1904. However, the modern tax system was introduced into Nigeria sometimes around that time even before the amalgamation of the country by the colonial masters[130]. It was later implemented through the Native Revenue Ordinances to the Western and Eastern regions in 1917 and 1928, respectively. Since then, the Nigerian tax system has been undergoing several amendments, reforms and revisions, and, since then, different governments and regimes have continued to try to improve the Nigerian tax system. The popular view, among scholars, is that Nigerian tax system and fiscal policy is

[130] Buzzle.com: tax policy in Nigeria; @ http://www.buzzle.com/articles/tax-policy-in-nigeria.html extracted on 25/6/2010

complex, controversial and marred with distortionary and inequitable tax laws and enforcement procedures, which affect the effective working of its financial sector.

Against the above background, this chapter discussed the general overview of Nigerian tax system and fiscal policy. The chapter started with introduction, history of taxation in Nigeria, the structure of Nigerian tax-based revenues and theoretical issues. It, further, discussed the taxing powers of three arms of Nigerian government, then tax administration and subsequent reforms of the Nigerian tax systems and procedures.

3.2 History of Modern Taxation in Nigeria.

Before the advent of colonialism in Nigeria, communal development was traditionally carried out through an informal tax either on cash or on labour[131]. Communal services such as building roads, places of worship, town halls, e. t. c. were done by communal efforts[132], through tax. Individuals contributed their quota of farm crops and services for the up keep of these facilities[133]. Failure to render such services usually resulted in seizure of property, which may be reclaimed on payment

[131] Ogunba, O. et. el An Appraisal of the Efficiency of Local Property Tax Administration In Nigeria (A Case Study of the Five Local Councils in Ibadan Metropolis) in: Journal of Land Use And Development Studies, Vol. 2, No. 1 of 2006, p. 2.
[132] Ibid, p. 2
[133] Ibid, p. 2

of money[134]. However, when money came into general use, though they did not abrogate personal service, they supplemented it[135].

Historically, therefore, there were various forms of taxes in Nigeria before the arrival of the colonial masters in the country. However, tax system and administration was more elaborate in the then Northern part of the country, partly, because of the entrenched Islamic system of taxation introduced by the Arabs from North Africa[136]. Under the Fulani Emirate system of administration in the Northern part of Nigeria, there was a system of tax[137]. Nigerians willingly pay tax through offering free services, for the good of the generality of the citizens of a village, town or and emirate[138].

Also, some taxes are paid in form of farm produce, such as yam harvest. One of the most popular ones in the Western part of Nigeria, particularly, under the Yoruba customary tax, was called *"Isakole"*. This was usually paid to the Oba, just like how president of Nigeria is being paid from Consolidated Revenue Fund[139]. Thus, taxes, in pre-colonial Nigeria, are paid either in cash or tribute-paying, to acknowledge the hegemony of vassal states or kingdom conquered by the stronger chief, Emir and Obas[140]. However, the modern income tax was formally introduced in

[134] Ola, C.S. op cit p. 1
[135] Ayua, I. A. op cit p. 22
[136] John, D. C. op cit, p. 1.
[137] Oluwakayode, E. L. & Arogundade, K.K. op. cit, p. 23
[138] Ibid, p. 23
[139] Ibid
[140] John, D.C. op cit, p. 1

Nigeria by the British Colonial Masters sometimes in 1904, using an income tax concept called "Community Tax"[141]. Land Revenue Proclamation Law was established in Northern Nigeria in 1904[142]. This was later modified and codified and named "Native Revenue Ordinance,"[143] which was applicable to Western Region[144]. These were the design of the colonial masters to amalgamate Nigeria as federating unit, with semblance of unified system of taxation.

An attempt to introduce Personal Income Tax in the Eastern Region of Nigeria led to Aba Women riot of 1929[145]. By 1939, Non-Native (Protectorate) Ordinance was introduced to tax non-natives especially on companies' profits accruing from or brought into Nigeria, with the exception of those companies in Lagos, under Company Income Tax Ordinance[146]. By 1940, the tax ordinance has been amplified, simplified, extended and applied in all the regions, excluding Lagos Township.

A more adequate tax system was introduced in 1943, which introduced high tax rates on income accrued in, derived from or brought into Nigeria[147]. Constitutionalism led to the need to distribute taxing powers between the central and regional governments. Prior to 1961, each region legislated on Direct and Indirect taxes[148]. The Nigerian Constitutional Conference[149] led to the establishment

[141] Oluwakayode, E. L. & Arogundade, K.K. op. cit, p. 23
[142] John, D.C. op cit, p. 1
[143] of 1917
[144] John, D.C. op cit, p. 1
[145] John, D.C. Ibid, p. 1
[146] Ibid, p. 1
[147] Ibid, p. 2
[148] Oluwakayode, E. L. & Arogundade, K.K. op. cit, p. 23

of Raisman's Commission, whose objectives are to make recommendations as to how and where the Central and regional governments are to harmonize tax collection and administration in Nigeria[150]. Problem arose out of the Riesman's Commission in respect of double taxation, as well as, conflict between Federal and regional governments, which resulted in establishing a common tax law for the whole federation called, "Income Tax Management Act (ITMA),[151] which was" aimed at consolidating the various tax laws in Nigeria.

Thus, all regions were made to enact their separate tax legislation, in line with the Federal Act[152]. However, with the creation of states and abolishing of regional governments, serious problems arose, which led to the promulgation of Income Tax Management Act. Despite all those reforms and amendments, the Nigerian tax system proved ineffective, in terms of tax bases, tax laws, tax assessment, collection and enforcement procedure and administration. Using the Musgrave's perspective to discuss the historical antecedents of Nigerian tax system and fiscal policy, therefore, it has been understood that, at the early period, economic development was characterized by the dominance of agricultural taxation. The various marketing boards served as effective mechanisms for administering taxation in the form of

[149] of 1957
[150] John, D.C. op cit, p. 2
[151] of 1961
[152] Income Tax Management Act (ITMA) of 1961.

surpluses generated by paying farmers less than the prices in the international market[153].

Therefore, during the early period of its development, direct taxes, in form of company income taxes, could not be used as a significant source of government's revenue, as there were few domestic industries. The same applied to excise tax on locally manufactured goods. An important source of government revenue, therefore, was the foreign trade sector[154]. Before the advent of oil in commercial quantity, revenue from the traditional sources, such as tax on export products like groundnut, cotton, cocoa, palm kernel, hides and skin, served as sources of revenue for financing the public sector[155]. Then, revenue from export and custom duties was not stable, because of periodic fluctuations in the prices of primary products. However, in addition to export and import duties, a poll tax was levied on most people who are not subject of direct taxation.

The advent of oil boom, in 1970, brought tax structural changes in Nigeria, with indirect taxes giving way to direct taxes. Domestic industrial activities increased, as many people were employed in the formal sector. This leads to the decline in the agricultural taxation. Ariyo remarked that, as the economy develops, more reliance is placed on direct tax revenue[156]. Over the past two decades, oil has accounted for at

[153] Femi, A. & Andy, W. Developing a Progressive Public Finance Programme, to Counter Neoliberatism: The Nigerian Experience, extracted from aborisadefemi@yahoo.com.
[154] Ibid
[155] Ibid
[156] Ariyo, op cit, p. 8.

least 70 percent of the country's revenue base, indicating that traditional tax revenue has no more assume a strong role in the country's management of fiscal policy. Hence, the need to address that problem led to several amendments and tax policy reforms, towards addressing the issue. Because Nigerian tax system is concentrated on oil and trade taxes and direct and broad-based, indirect taxes are neglected. This caused a structural problem for the country's tax system and fiscal policy[157].

The Personal Income Tax Act (PITA), Decree 104 of 1993, effectively repealed the ITMA. The PITA has been successively amended over the years. The most extensive is the Personal Income Tax (Amendment) Act of 2011.

3.3 The Structure of Tax-Based Revenue and Taxing Powers in Nigeria.

Nigeria's tax system is the major basis of other economic indexes. Thus, there existed a very important relationship between tax structure and level of socio-economic development in the country. It has been argued that the level of economic development has a strong impact on a country's tax base[158], and tax policy objectives vary with the stages of such development. Similarly, the mode by which a tax

[157] Ayodele, Tax Policy Reforms in Nigeria, Research Paper No. 2004, National Centre for Economic Management and Administration, Ibadan, (Nigeria), January, 2006.
[158] Hinricks, H. A General Theory of Tax Structure Change during Economics Development, Harvard Law School, Cambridge, 1966.

structure is to be identified and the importance of each tax source vary over time[159]. For example, during the colonial era and after the Nigerian independence, the sole objective of taxation was to raise revenue. Later on, it graduated to the small industries protection and income redistribution objectives and, now shifted to a very complex nature.

According Musgrave[160], the period of economic development is divided into two, i.e. the early period, when the economy is underdeveloped and the later period, when the economy is developed. He maintained that, during the early period, there is limited scope for the use of direct taxes, because the majority citizens leave in rural areas and are engaged in agriculture. Therefore, because their income is very difficult to estimate, tax assessment was based on presumptions. He further maintained that, direct taxes, in form of company income taxes is relatively less important, because there are few indigenous companies. Excise tax, on locally manufactured goods, was also less important. But, with increase in socio-economic development, and due to growth of bases of these taxes, many retail outlets make a sales tax also difficult in Nigeria to implement. Also, at that stage, identified and relative taxes proved difficult to collect[161].

Socio-economic development brings an increase in the shares of direct taxes, which is to the effect that direct trades yield more revenue than indirect taxes. For

[159] Ariyo, A. Productivity of the Nigerian Tax System: 1970-1990, in: African Economic Research Consortium, Nairobi, Kenya, 1997, p. 8-9.
[160] Musgrave, R.A Fiscal Systems, New Haven, Yake in: Ariyo, A., Ibid, p.8.
[161] Ibid, p. 9

example, personal income tax becomes more important in the tax system, as the share of employment, in the industrial sector, increases. In consideration of the Nigeria's tax-based structure in the 1960s, emphasis was on accelerated economic growth and development, and the main tax policy objective was maximum revenue generation, to finance public sector programmes[162]. Attention was also directed toward increasing the existing tax rates, especially, import duties, in the form of high protective tariffs, and as a consequence, import duties provided the bulk of Federal revenue bases[163].

Another major objective, in the increase in tariffs, was the desire to discourage imports and curtail consumer demand. Excise duties were also introduced on several goods, to broaden the tax-base. However, some structural changes emerged, where indirect taxes gave way to direct taxes, with the emergence of oil boom. The fall in non-oil tax revenue was then matched by an increase in import duties. The scenario has been sustained up till presently, with the dominant role of oil sector, as major source of the government's revenue. The summary of the Nigeria's structured tax-based revenue are specified below.

3.3.1 Companies Income Tax

Company Income Tax was introduced, in 1961. The original law has undergone many amendments and, was codified as the Company's Income Tax Act

[162] Ariyo, A. Ibid, p. 9
[163] Ibid, p. 10

of 1990, which is now repealed as Companies Income Tax (Amendment) Act of 2007. The FBIR is empowered to administer the tax. The CITA policies can be divided into two phases, i.e. pre-1992 and post-1992. The CITA policies in the pre-1992 era were based and characterized with increasing tax rates and overburdening of the tax payers. However, from 1992, measures have been taken to address those structural problems, e.g. excess profit tax was eliminated and the capital transfer rate was scrapped. Tax rate on company profits, payable on trade, profits and investment income, reduced the rate on capital allowances also reduced and there is a tax concession for certain companies[164]. The enabling law regulating company's income tax is the Company's Income Tax Act (CITA)[165] which provides that; *"The profits of any company accruing in, derived from, brought into or received in Nigeria is subject to tax"*[166]

Thus, the incomes of a company that are subject to tax include any trade or business for whatever period of time such trade or business may have been carried on, rent or any premium arising from a right granted to any other person/company for the use of or occupation of any property, dividends, interests, royalties, discounts, charges or annuities, fees and allowances for service rendered, any amount of profits or gains arising from acquisition and disposal of any short term

[164] Ayodele, O. op. cit
[165] 2004, as amended.
[166] Section 9(1), Ibid

monetary instrument, and any source of annual profits or gains not falling within the above categories[167].

3.3.2 Education Tax

Education Tax was introduced in 1993 to prevent the educational system from total collapse. The tax is applied to company's net profits, and is deducted from net profits before tax, thus it is not subject to company income tax[168]. However, it is argued that this type of tax is a double tax on company's profits and serves as a disincentive to foreign investment. It is among the multiple taxes that takes away the profits of companies. This is a tax base levied on the assessable profits of incorporated companies in Nigeria at 2% rate of the assessable profits[169].

3.3.3 Petroleum Profits Tax

The petroleum profit tax is applicable to upstream operations in the oil sector. It is particularly related to rents, royalties, margins and profit sharing elements associated with oil mining, prospecting and exploration leases. It is the most important tax in Nigeria in terms of its share of total revenue, contributing almost 90 percent of foreign exchange earnings and government revenue. It covered oil and gas sector[170].

[167] The Leadership, Tuesday 4, January 2011, pp. 30-31
[168] Ayodele, O. op. cit
[169] Section 2(1) of the Education Tax Act, as amended
[170] Ayodele, O. op. cit

Taxation of natural gas is a two-part process; upstream and downstream gas operations. Upstream operations enjoy several fiscal incentives, including a five year tax holiday, deduction of capital and operation expenditure, depreciation rate, investment allowance, certain percentage on royalty, and exemption from import duty and VAT[171].

Until recently, gas has been made to impose tax penalties on the volumes flared and provide tax incentives for utilizing all associated gas to encourage its commercialization. This tax base is levied on the chargeable profits of oil producing companies and is governed by Petroleum Profits Tax Act (PPTA)[172].

3.3.4 Withholding Tax

This arises where any interest (other than interest on inter-bank deposits), royalty, rent, dividend or other distributions, becomes due from one company to another company or to any person whom the provisions of Personal Income Tax Act apply[173]. This kind of tax base is, also, to be deducted from source in respect of payments by any company who provides petroleum operation services to a company carrying on petroleum operations in Nigeria[174]. The law, also, provides the deduction of withholding tax for corporate contractors, individuals and individual's firms. The

[171] Ayodele, O. op. cit
[172] Cap P 13, L.F.N. 2004
[173] Sections 78-82 of the Companies Income Tax (Amendment) Act (CITA), of Gazette No. 62, Vol. 94 of 13th June, 2007
[174] Section 56 of the Petroleum Profits Tax Act, Cap P18, L.F.N. 2004, as amended

laws and regulations are to the effect that where payments are due to a company or individual in respect of goods and services supplied by such company, person, e. t. c., and the entity making the payment shall deduct a portion of such tax by way of withholding tax, and remit it to the relevant tax authority[175].

It is argued that, this type of tax is not another type of tax, but a mode of payment of tax. It is an advance payment of a taxable entity's normal income tax. Since it is available for set-off against the ultimately assessed tax[176].

The withholding tax system is aimed at achieving a number of objectives for both the government and the taxpayer. The chief among its objects is to reduce the incidence of tax evasion by companies and individuals, thereby, increasing the revenue earning of government from income tax. It, also, guaranteed the all year round flow of revenue to government instead of waiting for the financial or fiscal year end when tax assessments and collection are carried out. Similarly, the effect of large tax payment on the cash flow of income is rescued by the installment payment of tax. However, there seems to be a confusion as to the responsibility of a paying organization to deduct withholding tax from an entity whose income are exempted from tax, though Section 19 of the Company Income Tax Act provides profits exempted from tax. Thus, when a religious or charity organization extend, its income

[175] Ossai, C. Public Service Agenda, Understanding Your Tax Obligation in: The Leadership, Tuesday 4, January, 2011, p.30-31
[176] Ibid

sources to non-religious or non-charitable activities, such income become taxable to the extent of their profit tendency.

3.3.5 Value Added Tax (VAT)

An important landmark, in tax reform in Nigeria, was the adoption of the value-added tax (VAT) in January through the VAT Act[177] but its implementation, actually, began in January 1994. Ajakaiye avers that since its introduction, 15 of the 42 sections of the Act have been amended. Replacing sales tax, VAT was, originally, imposed on 17 categories of goods and 24 service categories. Such items as basic foods, medical and pharmaceutical products, books, newspapers and magazines, house rent, commercial vehicles and spare parts and services rendered by community and peoples' banks, however, were VAT-free. Value added tax (VAT) has become a major source of revenue in many developing countries. In sub-Saharan Africa, for example, VAT has been introduced in Benin, Cote d'Ivoire, Guinea, Kenya, Madagascar, Mauritius, Niger, Senegal, Togo and, lately, Nigeria[178]. Evidence suggests that in these countries, VAT has become an important contributor to total government tax revenues. VAT accounted for about 30% of total tax revenues in Cote d'Ivoire, Kenya and Senegal in 1982[179]. The oil producing countries are not excluded from the list of

[177] No. 102 of 1993

[178] Landau, D. (1983), "Government Expenditure and Economic Growth: A Cross-Country Survey," Southern Economic Journal , Vol. 49, January.

[179] Naiyeju, J.A. (1993), ´Administration of VAT in Nigeria, FIRS Enlightenment Workshop Paper ,National Theatre, Lagos.

countries introducing this tax handle. According to Schnepper,[180] VAT has been in effect in Ecuador and Mexico since at least 1973, and by 1983 accounted for 12.35% and 19.71% of total government revenues in these countries, respectively. The introduction of VAT requires a lot of preparation because of the complexity in the implementation of VAT, which require the cooperation of the tax-payers. In January, 1994 when the implementation of the tax began there were no adequate machinery, public enlightenment and consumer education[181]. The problems created by inadequate preparation and lack of understanding of the workings of VAT coupled with administrative bottleneck. Although prices of VATable goods are expected to rise, businesses are taking advantage of the existence of VAT to increase prices of goods and services arbitrarily. The excessive price increase has further led to higher inflation in Nigeria. The VAT rate in Nigeria, at 5%, is considered too low because of high cost of administration. At 5%, the cost as a proportion of revenue will be very high. Data on cost of introducing and administering VAT are not yet available but it is expected to be significant. It is believed that for most countries, a VAT is probably not worth introducing at less than 10%. Specifically, the traditional incidence studies tend to concentrate on the issue of who pays the tax, so that the question of who gains or losses from the tax, whose income and welfare are reduced or increased, and whose employment opportunity is threatened or promoted are not sufficiently

[180] Schnepper, J.A. (1996), Considering the Value Added Tax Alternative, USA Today (Society forthe Advancement of Education), Vol. 125, September.

[181] Bargo, N. (1993), Value Added Tax Accounting and Inspection. FIRS Enlightenment Workshop Paper , Kaduna.

considered[182]. For efficient administration of VAT, businesses must keep proper source documents and books of accounts. Unfortunately, it is the very problem with most enterprises in Nigeria. The invoicing of all sales, the need to compel businesses to keep records of transactions and encourage consumers to demand receipts for every purchase have become mandatory. The idea of introducing VAT in Nigeria originated from the report of a study group set up by the Federal Government in 1991 to review the entire tax system. Subsequently, a committee was set up to carry out feasibility studies of its implementation. It should be noted that the committee was not requested to carry out any analysis of the impact of the tax. Neither was there an active debate among the various interest groups such as the organized private sector, labour unions and academics as well as other professionals through which certain aspects of the impact might have been considered and taken into account in its design and implementation. Eventually, government agreed to introduce VAT, but the actual implementation did not commence until January 1994 after the promulgation of the Value-Added Tax Act[183]. According to the VAT Act, a taxable person is an existing manufacturer, distributor, importer or supplier of goods and services. The following are the main features of the Nigerian VAT; first, it is a single rate of five percent (5%) VAT, which makes it easier to administer; Second, it adopts the input-output tax mechanism, which makes it policing. Specifically,

[182] Ajakaiye, D.O. (1999), Macroeconomic effects of VAT in Nigeria: A computable general equilibrium analysis. African Economic Research Consortium, Nairobi (AERC) Research Paper 92, March.

[183] No. 102 of 1993

although it is a multiple stage tax, it is expected to have a single effect on consumer prices and should not add more than the specified rate to the consumer price no matter the number of stages at which the tax is paid.

In essence, it is our view that, the VAT should not be cascading whatsoever, since the tax liability of a taxable person is the difference between VAT on output and VAT on inputs. In other words, the credit method of collection should eliminate any cascading effects. Third, all goods are VATable, with the exception of the following; Medical and pharmaceutical products; Basic food items such as peas, beans, yam, cassava, maize, rice, wheat, milk and fish; Infant food items; Books, newspapers and magazines; Educational materials (laboratory equipment); Baby products such as carriages, clothes and napkins, as well as sanitary towels; Commercial vehicles and spare parts, tractors, public transport passenger vehicles, motorcycles, tanks and other armoured fighting vehicles, and bicycles. Agricultural equipment such as those for soil preparation or cultivation, harvesting or threshing, milking and dairy machinery, and poultry keeping machinery; Veterinary medicine equipment; and Fertilizers and farming transportation equipment. Similarly, all services are subject to VAT except: Medical and health services; Services by community banks, people's banks and mortgage institutions (interest earnings on loans by commercial banks and premiums paid to insurance companies are not VATable); Performances conducted by educational institutions as part of learning; Social services such as

orphanages, charities and fire fighting; Pure postal services; Religious services; Non-commercial cultural services; Overseas air transportation; and Public telephone and telegram services (excluding business or commercial services).The following other goods and services are also exempted from VAT salt, water, salary or wages from employment, directors' emoluments, hobby activities, private transactions such as sale of domestic or household articles, vehicles, personal effects or private motor vehicles, and residential house rent. For avoidance of doubts, these goods and services are exempted from VAT but their inputs are VATable and they cannot claim credit for such input taxes. On the other hand, all exports are zero-rated, implying that exporters do not collect VAT on exports but they can claim credit for VAT paid on their inputs. All imports are VATable, whether imported raw materials or finished goods. Moreover, VAT on imports is calculated on the total value of the total cost, insurance and freight (CIF) plus customs duties and all other charges on imported goods. Amounts expressed in foreign currency are converted into naira using the exchange rate adopted by the Nigerian Customs Service between January 1994 and August 1995, the Nigerian Customs Service (NCS) used the exchange rate prevailing on the date the good was cleared from the ports. In this connection, it is recalled that by the beginning of 1995, when the exchange rate depreciated by over 70% in the Autonomous Foreign Exchange Market (AFEM), the organized private sector put enormous pressure on the government to review this procedure for computing VAT

liability on imports so that by August, the NCS was directed to use 65% of the prevailing exchange rate on the date of clearance of imports to determine the VAT liability on all categories of imports. Fourth, with effect from 1 January 1995, all ministries, parastatals and other agencies of government as well as religious and other organizations and similar persons that are normally exempted from income tax are expected to pay VAT on their consumption in addition to the contract price of items consumed by them.

VAT is collected through registered persons who are known as "taxable persons". A taxable person is obliged to register with the FIRS for VAT collection "within six months of the commencement of the Act or within six months of the commencement of business, whichever is earlier."[184] Failure to register attract a penalty of N10, 000.00 for the first month in which the failure occurs; and N5,000.00 for each subsequent month.[185] Since a period of six months has elapsed after the promulgation of the Act, it presupposes that every taxable person is now obliged to register as soon as it commences business. There has been a suggestion that all new businesses should be granted a period of six months' grace after the commencement of business to register for VAT.[186] If the suggestion were to be adopted, it might lead to the unintended effect of denying taxable persons the opportunity to set off their inputs against the output VAT. Since VAT can only be

[184] section 8 (1) , VAT Act.
[185] Section 8(2), VAT Act.
[186] B. Balogun, "Issues in Value Added Tax", (Unpublished) paper presented at a National Seminar on Critical Issues on Tax and Tax Management, May 14 1997, p.5

lawfully collected after registration it means that until then the taxable person will not have any output VAT against which the input tax can be offset.

Although the Act imposed an obligation on every taxable person to register, there was the initial concession, which allowed retailers a period of three years to register. Going by the bare statutory provisions, every retailer is obliged to register for VAT be collecting tax due upon the supply of goods and services to its customers since 1996 after the expiration of the concession period. This, however, seems to be a tall order judging by little or no formal regulation of commercial activities of the retail level in Nigeria. The futility of collecting sales tax at the retail level in Nigeria was underscored by the Supreme Court in the case of *Aberuagba v A.G. Ogun*[187] State thus:

> *In developed countries where retail trade is carried on in departmental stores, supermarkets, drug stores and shops where all sales are accounted for and the business addresses registered, it is convenient and safe for any government to appoint retailers as its agents for the collection of Sales Tax. Every penny collected will ordinarily reach the government. The position is entirely different in Nigeria. This is notorious fact that except in few departmental stores, shops and drug-stores, where accounts of sales are kept, the bulk of the retail trade is carried on by swam of amorphous trades in the market places and in their homes, on our streets and highways, under our bridges and trees. They do not keep record or account of their business dealings and they cannot be reached by any Government. It would be a bonanza t those retail traders to appoint them as agents for the collection of any sales tax. Except in the case of the few retailers that I have mentioned, not a kobo would reach the government. Consequently, for any meaningful sales tax to reach the government, it must be collected by agents, such as*

[187] [1995] NWLR (Pt.3) 385

> *distributors, whose accountability to the government for the tax collected is assured.*[188]

In spite of the review of the sharing formula, Lagos State, has always expressed concern about the fairness of the formula for the distribution of VAT revenue which eventually caused the Lagos State Government to re-introduce its Sales Tax Law vide the *Sales Tax (Schedule Amendment) Order 2000 of Lagos State*. Hence, Lagos State commenced the collection of Sales Tax within Lagos State from retailers and manufacturers; notwithstanding, it continues to share from the VAT revenue. In an attempt to address the demand for a more equitable sharing formula, the VAT Act was recently amended vide *Value Added Tax (Amendment) Act,*[189] such that not less than 20% of the revenue distribution among the States and Local Government shall reflect the principle of derivation. Although the amendment has significantly increased the share of the Lagos State, it has not sufficiently addressed its concern about equity in the distribution.

Meanwhile, aggrieved taxpayers in Lagos State had instituted a number of actions to challenge the constitutionality of the Sales Tax Law in about 10 different suits at both the Lagos High Court and the Federal High Court Lagos Division. Remarkably, virtually, all the suits instituted in the Lagos High Court upheld the constitutionality of Sales Tax Law of Lagos State and assessments raised there under, while the VAT Act was declared *null* and *void*. This development caused some taxpayers to institute their action in the Federal High Court against the Lagos State and the FIRS. At least, two of the concluded suits in

[188] Per Bello, J.S.C. (As he then was). *Id* at p.399.
[189] *No 12 of 2007*

the Federal High Court upheld the constitutionality of VAT Act and declared the Sales Tax Law of Lagos State null and void while others are still pending. Lagos State appealed unsuccessfully to the Court of Appeal in *Attorney-General, Lagos State v. Eko Hotels*[190] which affirmed the decision of the Federal High Court that Sales Tax Law of Lagos State was *null* and *void*. In view of the adverse decision of the Court of Appeal in *Attorney-General, Lagos State v. Eko Hotels(Supra)* Lagos State recently invoked the original jurisdiction of the Supreme Court pursuant to section 232(1) of the Constitution of the Federal Republic of Nigeria, 1999 (1999 Constitution) seeking the determination of the constitutionality of VAT as a federal tax. Meanwhile, while the VAT case is pending at the Supreme Court, the Lagos State House of Assembly passed the Hotel Occupancy & Restaurant Consumption Law (popularly known as "tourism tax") which imposes a five per cent tax on goods and services purchased from hotels, restaurants and event centers in the State which again had sparked off chains of litigation. VAT operates on the basis of self assessment. A taxable person is required to remit tax collected not later than the 21st day of the following that in which the purchase or supply was made, a return of all taxable goods and services made by him during the preceding month.[191] The period for filing return was reduced, from 30 days to 21 days by the 2007 Amendment Act.[192]

A taxpayer, who is aggrieved by an assessment made to him, may file an objection to the FIRS,[193] which shall be determined within 30 days.[194] Appeal lies from the decisions of

[190] CA/L/428/2005
[191] section 15, as amended by 2007 Amending Act.
[192] section 7(a) 2007 Amending Act.
[193] section 10(2), 2007 Amending Act.
[194] section 10(3), 2007 Amending Act.

the FIRS to the Tax Appeal Tribunal established under the Federal Inland Revenue Services[195] and thereafter to the Federal High Court. Originally, section 16 of the VAT Decree vested jurisdiction in the Federal High Court for the recovery of any tax, penalty or interest which remains unpaid after the period stipulated for payment.[196] The Federal High Court is one of the Superior Courts established under the Constitution[197]. Section 251(a) of the 1999 Constitution vests the Federal High Court with exclusive jurisdiction to hear and determine causes and matters relating to the revenue of the Federal Government in which the Federal Government or any of its organs or agency is a party. In 1996, the Value Added Tax Tribunal was established.[198] Section 16 of the Decree provides thus:

> *16 (1) Any tax, penalty or interest which remains unpaid after the period specified for payment may be recovered by the FIRS through proceedings in the value Added Tax Tribunal.*
> *(2) A taxable person who is aggrieved by an assessment made on the person may appeal to the Value Added Tribunal.*
> *(3) Appeal from the Value Added Tax Tribunal shall be made to the Federal Court of Appeal.*

Although the above provisions derogated from section 251(a) of the Constitution, which vested jurisdiction on the Federal High Court, the power of the Military Government to overreach the provisions of the Constitution, pursuant to the Constitution (Suspension and Modification) Decree[199] was not in doubt. Hence, the jurisdiction of the VAT

[195] 10(4) 2007 Amending Act.
[196] section 16 of the VAT Decree.
[197] The superior courts in Nigeria are established under section 6(5) of the *Constitution of the Federal Republic of Nigeria,* 1999, as amended
[198] section 31 of the *Finance (Miscellaneous) Tax provisions Decree* No. 3 2 of 1996
[199] No 1 of 1984

Tribunal prevailed over that of the Federal High Court, throughout the period of the Military rule.

Sequel to the commencement of civilian rule, under the 1999 Constitution, some taxpayers leveraged on the supremacy of the Constitution to challenge the jurisdiction of the VAT tribunal to entertain action by the FIRS, for recovery of taxes due. The Court of Appeal held, in *Stabilini v FBIR*[200] and *Cadbury v FBIR,*[201] that the establishment of the VAT Tribunal violated the provisions of section 251(1)(a) of the 1999 Constitution, which vests exclusive jurisdiction on the Federal High Court, on causes or matters relating to federal taxation and revenue of the Federal Government and, therefore, null and void.

A Tax Appeal Tribunal has now been established, with power to settle disputes arising from the operations of all the federal tax statutes listed in the First Schedule to Federal Inland Revenue Service (Establishment) Act,[202] including the VAT Act, thus, abolishing the jurisdiction of VAT Tribunal, by necessary implication.[203] The FIR Act has cured the mischief, which caused the Court of Appeal to invalidate the jurisdiction of the VAT tribunal, by providing that appeal shall lie from the decisions of the Tax Appeal Tribunal to the Federal High Court[204].

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[200] (2009) 13 N.W.L.R. (pt. 1157) 200; (2009) 1 T.L.R.N.1.
[201] (2010) 2 N.W.L.R. (pt. 1179) 561; (2010) 2 T.L.R.N. 16
[202] No. 13 of 2007
[203] There is no express provisions in the 2007 Act which specifically abolishes the VAT tribunal. However, the section which hitherto established the Tribunal had been substituted with a new section which makes reference to the Tax Appeal Tribunal.
[204] section 59 and para 17(1) of the Fifth Schedule to the FIRS Act

Various offences were created under the VAT Act, in order to punish defaulters and minimize evasion. These are contained in Chapter V.[205] The offences range from furnishing of false document, evasion, failure to make attribution, failure to notify change of address, failure to issue tax invoice, resisting an authorized officer of the FIRS, issuing of tax invoice by an unauthorized person, Failure to register, failure to keep proper record and accounts, failure to collect tax, failure to submit returns, aiding and abetting commission of offences, Where an offence is committed by a body corporate every director, manager or secretary and in the case of partnership, every partner is severally guilty and liable. Each offence attracts penalties such as a fine and or imprisonment, depending on the gravity. The offence of evasion of VAT payment carries the severest penalty of "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." The premises of a taxable person can be sealed up where he, knowingly, or intentionally, fails to register for VAT after one month of being convicted for the offence of non-registration. VAT is administered and managed by the FIRS, a federal agency responsible for the administration of federal taxes with power to do such things as may be deemed necessary and expedient for the assessment and collection of the tax due[206]. At the planning stage, some reservations were expressed about the competence and desirability of the FIRS to effectively administer VAT. The Federal Government, rightly in our view, rejected the recommendation that a fully independent and self-sustaining Commission

[205] Section 21-33 of the VAT Act.
[206] Generally see Sections 21-28 and Section 7 of the VAT Act, id

should be established to administer VAT. Rather, a VAT Directorate was established as one of the six Directorates of FBIR while Local VAT Offices (LVOs) were established in all the State capitals and some major towns in each States with the ultimate plan to have an LVO in each of the 774 Local Government Councils. Each of the LVO was under the supervision and control of the Zonal Office in the area. The Zonal Co-ordinator on his part reports regularly the activities and performances of the LVOs in his zone to the VAT Director in Abuja. In terms of physical location, the Local VAT offices are separated from the Income Tax Area Offices of the FIRS but the same Zonal Co-ordinator was maintained for both the Income Tax and VAT. Furthermore, a separate VAT Technical Committee was established by the Act[207] and vested with powers to consider all matters that may require professional and technical expertise and make recommendation to the FIRS.

The administration of VAT has undergone significant changes in the wake of the ongoing tax reform of the Federal Government of Nigeria. The campaign for restructuring and grant of administrative and financial autonomy for the Federal Inland Revenue Services (FIRS) has been a long drawn battle. The triumph came with the promulgation of the Federal Inland Revenue Service (Establishment) Act, which establishes the FIRS under a separate statute, dedicated for that purpose[208]. Hitherto, the Federal Board of Inland Revenue (FBIR) was established under the Companies Income Tax Act. The Establishment of the Federal Inland Revenue Service (FIRS) under a

[207] Section 17 of the FIRS Act
[208] Arogundade, J.A., *Nigerian Income Tax & Its International Dimensions*, 2nd edn., (Ibadan: Spectrum Books Ltd, 2010) , p.1

separate statute of its own now makes easy reference for administrators, practitioners and researchers. The FIRS Act has granted array of powers and a measure of autonomy to the FIRS, to enable it discharge its statutory roles. For instance, FIRS is now able to recruit, discipline and determine the terms and other conditions of service of its staff outside the civil service structure. Since the take off of the new structure, the FIRS have been re-invented in terms of dynamism and professionalism.

Hitherto, taxpayers were required to approach different offices, sometimes, situated far apart – for different tax needs, thus making the process of assessment and collection of tax cumbersome and distinctly tortuous. To address this concern, the FIRS had created 77 Integrated Tax Offices (ITOs) as one-stop shops for all tax payments including VAT. This development therefore drew a curtain on the existence and functionality of Local VAT Offices. Towards this end, section 2 of the VAT (Amendment) Act 2007 provides that the word "VAT Office" should be substituted with 'Tax Office" wherever it appears in the Principal Act.[209]

Although section 9 of the VAT Act, simply, requires a taxable person to register for VAT collection, which presupposes a single registration, in practice, the FIRS has, however, directed that, where a taxable person has more than one branch, each branch should register separately at the nearest tax office to it. The implication of this is that such a business entity is obliged to have a multiple registration and maintain independent

[209] section 2 of *Value Added Tax (Amendment) Act, 2007*

records of its VAT transactions at each branch. This directive has been severely criticized as imposing avoidable hardship on affected taxable persons[210].

The VAT Act has been quite dynamic in the area of registration of taxable person. The initial policy was to exclude public authorities from being taxable persons. In a bid to accelerate the rate of registration, the VAT Act was amended to impose obligation on all Government Ministries, Statutory bodies and Agencies at the Federal, State and Local Government levels to act as VAT collecting agents. A taxable person is defined as "a person who independently carries out in any place an economic activity as a producer, whole a trader, supplier of goods, supplier of services (including mining and other related activities) or person exploiting tangible or intangible property for the purpose of obtaining income therefrom by way of trade or business and includes an agency of government acting in that capacity.

Section 10 mandated a non-resident company, carrying on business in Nigeria to register for VAT by using the address of the person with whom it has a subsisting contract. A nonresident company shall include the tax in its invoice while the person to whom the goods and services are supplied shall remit tax in the currency of the transaction. As laudable as the provisions may be, they however pose certain administrative challenges in practice. For instance, where a foreign company has business dealing with more than one person, who are located in different places across the country, the foreign company will be required to register with the tax office at different locations where its customers are

[210] R.O. Ojukotola, *Value Added Tax in Nigeria: A critical Appraisal of its Legal and Administrative* F*ramework, (*Unpublished) Project Presented in partial fulfillment of the Requirements for the Award of Bachelor of Laws Degree (LL.B) of the University of Lagos, August, 2000. pp. 41-42.

located which may be administratively burdensome and discouraging. A better approach, in our view, may be, to require each local supplier to disclose such transaction and withhold the requisite VAT, rather than requesting the foreign company to register. This is more so when, in practice, the trading activities of such foreign companies usually became known through either a voluntary compliance or during the audit of the local companies with which the foreign company had contracted.

It is remarkable that the obligation to remit tax in the currency of transaction applies only to transactions involving non-resident companies. The basis for these discriminatory provisions is not clear. While, transactions involving foreign companies are usually denominated wholly in foreign currency or partly in foreign currency and partly in naira, Nigerian companies may, and sometimes do, request payment in foreign currencies whether partly or wholly. Against this background, it is suggested that the provision should be extended to all taxable persons as it is done under the Companies Income Tax and the Petroleum Profits Tax.

There is a problem of enforcement of this type of tax. For instance, although enforced by Federal legislation, VAT was unusual, because, at the time of its introduction, the Federal government's tax administrative machinery are states, as they had had jurisdiction over the sales tax that was now replaced by VAT. Furthermore, even to locally manufactured goods and imported goods, and while the Act empowered the FIRS to implement and collect it, the Nigerian Custom Service collects VAT on imports on behalf of FIRS. However, it is argued that VAT is

an indirect tax imposed on a Nigerian citizen and not the manufacturers because they remit it from the market price.

The Value Added Tax Act[211] provided all taxable goods and services to have, as part of the price, a 5% margin. It covers all business transactions except goods and services specifically exempted from tax burden and or liability.

3.3.6 Capital Gains Tax

This is imposed on the capital gains on sale or disposal of capital assets by a company, and is governed by Capital Gains Tax Act[212]. Capital Gains Tax is any income derived from sale of a capital asset. Gain, here, means increases resulting in the market value of assets to a person who does not regularly offer them for sale and in whose hands they do not constitute stock in trade. Capital gains may arise in two instances, i.e. where the asset appreciates in value, while still in the hands of the owner, or maybe he realized gains, when the asset are sold or disposed off. Capital gains are payable on stocks, shares, securities, land and buildings, plant and machinery every business assets such as good will and secret profits[213]. However, whatever justification made in respect of capital gains tax, it has been criticized as

[211] 2007, as amended
[212] 2007, as amended
[213] Obaje, E. op cit p.5

having a kind of a lock-in-effect on business, in the sense that it inhibits the sale of capital assets which have appreciated in value[214].

Capital Gains Tax Act creates offences and penalties, for non-compliance. However, the penalties prescribed in the Act are relatively low and not commensurate with the offences. Another problem with the Act is that, it allows the government to charge and collect tax on gain, but there is no provision in event of loss and, thus, taxpayer bears his loss alone. Furthermore, it is claimed that capital gains tax, in conjunction with income tax, is a case of double taxation, as the value of capital relates to the future income that the capital is expected to produce[215]. Capital Gains Tax Act, further, has problems of unwieldy scope, clumsy process of determining taxable gain, the inability to discount for inflation, as stated above and inability of loss relief within transactions. As pointed out, by the study group on tax reform[216], the complex provisions of the Act made the implementation of the tax impracticable. There is, also, confusion regarding the target of the tax, which reduced the significance of the tax[217].

3.3.7 Personal Income Tax

This tax is imposed on individual taxable persons on their taxable incomes. Example of those taxpayers and their taxable incomes includes incomes of

[214] Ibid, p.9
[215] Ibid, p.11
[216] Study Group on Tax Reform, Nigeria Tax Reform in 2003
[217] Ayodele, O. op cit.

employees, sole proprietors and partners in their partnership business. The administrative authority vested with the power is the Joint Tax Board (JTB). Each state of the Federation has a State Board of Internal Revenue (SBIR) which is responsible for the assessment and collection of pay-as-you-earn taxes from taxable persons resident in that state, while the Federal Inland Revenue Service is responsible for assessment and collection of such taxes from persons resident in Abuja, armed forces personnel, police officers of Nigeria, Foreign Service and non-residents, who derived income or profit from Nigeria[218].

It should be noted that, the above stated tax-based revenues are not exhaustive, as there are other tax based revenues, which include but not limited to, stamp duties, toll taxes, pools betting and lotteries, gaming and casino taxes, business premises registration and renewal levies, development levies, tenement rates naming of streets registration fees in State Capitals, Advertisement and permits e. t. c. However, despite the existence of those relevant tax laws and regulations that govern the procedure of assessment, collection, enforcement and general administration of those tax-based revenues in Nigeria, there are still multifarious administrative and procedural problems, some emanating from tax laws and regulations themselves, hence, the need for workable suggestions/recommendations and review/reform of the entire tax system, so as to bring the Nigerian tax system into a world accepted and standard tax system.

[218] Ossai, C., op. cit. p.31

3.3.8 Stamp Duties

This is applied to documents e.g. conveyance documents concerning land transfers, bonds, debentures, covenants and warrants, but not to transactions or individuals. The tax applies an *ad valorem* rate of the price or value mentioned in a document. Although stamp duties are regulated by Federal law, their administration is a mutual operation. One of the problems of stamp duties is the trespassing of states powers by Federal agents, who also tax individuals, as opposed to companies.

3.3.9 Custom and Excise Duties

Custom duties rates among the olden taxes in Nigeria, otherwise known as import duties charged either as a percentage of the value of imports or as a fixed amount contingent on quantity. Currently, the expired tariffs of 1995-2001 are still in use, which contradicts the provisions of the law. As pointed out by the study group on tax reform, certain amendments were considered inconsistent or subject to multiple interpretations, thus, providing loopholes in the tax law. Excise duties, on the other hand, are an *ad valorem* tax on the output of manufactured goods. The tax is administered by the custom service. Though the tax has been partly abolished, it is still used to discourage consumption of harmful goods.

3.4 Tax Policy & Administration in Nigeria

The national tax policy provides a set of rules, regulations and guidance to which, all stakeholders in the tax system will subscribe. It, as well, represents a key resource allocator, between the public and private sector in the country[219]. As stated above, it is usually imposed on individual taxpayers and entities that formed the country.

The ultimate goal of the national tax policy is to ensure that taxation provides the most significant and sustainable source of funding for the country's expenditure and achieving a tax system that will increase economic and social development. The Nigerian tax policy dates back to 1904, when the personal income tax was introduced in Northern Nigeria, before the unification of the country, by the colonial masters. It was, later, implemented through the Native Revenues Ordinances to the Western and Eastern regions in 1917 and 1928. Among other reviews, in the 1930s, it was later incorporated into Direct Taxation Ordinance[220]. Since then, different governments have continued to improve the Nigerian tax policy and administration. The major objectives of the Nigeria's tax policy/system are multi-dimensional, which include (i) Revenue generation functions (ii) Resource allocation function (iii) A fiscal tool for economic growth and development, and (iv) Social function and is anchored

[219] John, E.A. Improving Resources and Organizational Structures of the Tax Administrations, a Paper Presented at the 3rd Regional Workshop on Taxation, Brasilla, Brazil, 3-5 December, 2002-11
[220] No. 4 of 1940

into tax policy, tax law and tax administrations[221]. The successive governments have been very consistent in pronouncing the following country's tax policies;

a. Low tax regime which is aimed at reducing tax burden and encouraging savings and investments;

b. An attempt to shift from laying more emphasis on income tax to consumption tax to avoid tax evasion or tax avoidance.

c. Introduction of self-assessment scheme to encourage taxpayers' participation in the assessment process which is considered to be more just and equitable.

d. A shift from coercive enforcement procedure to voluntary compliance of tax payment; and

e. Preserving the due process of tax laws and regulations as the efficient mechanism of tax administration and enforcement to repeal the lacunas in the country's tax policy and administration.

In order to achieve the above mentioned objectives, the enabling laws, rules and regulations were established. The constitution[222], vested the legislative power for income tax, whether individuals or corporate entities, on the federal government. It only delegates the administrative power of some taxes to other tiers of government. This leads to the administration of taxes in Nigeria to the Federal government, the states and local governments. The tax authorities of these three

[221] Ahmad Sani, op cit, p.10
[222] The 1999 Constitution, 2010 as amended

tiers Nigeria government derive their powers from the federal tax laws, and they include the Federal Board of Inland Revenue (FBIR)[223], the State Board of Internal Revenue[224] and the Local governments Tax Revenue Committee[225]. The Joint Tax Board (JTB) was established in the law to harmonize the tax administration in Nigeria[226]. The Board is empowered over the administration of tax and tax policies in Nigeria by the personal income Tax Act, where it provides;

a. The Board shall use its vest endeavors to promote uniformity both in the application of this Act and in the incidence of tax on individuals throughout Nigeria;

b. Impose its decisions on matters of procedure and interpretation of this Act in any state for the purpose of conforming to agreed procedure or interpretation[227].

Paragraph 10 of the 1st schedule further provides, *"(the Board shall have power) to adjudicate in a case of dispute over an individual's territory of residence either between two or more tax authorities or between a tax authority and an individual and to determine the individual's residence for a relevant year of assessment"*[228].

The Board[229] has introduced a uniform Personal Income Tax Act, in order to eliminate multiple states tax laws. In view of the varied processes being used by

[223] Section 1 & 2 of Companies Income Tax (Amendment) Act, of Gazette No. 62, Vol. 94 of 13th June, 2007
[224] Section 85 A, B & C Personal Income Tax (Amendment) Act, No. 21 of 2011
[225] Section 85 D & E, Ibid
[226] Section 27 of the Income Tax Management Act of 1961, now Section 85 Ibid, amended by Act No. 31 of 1996.
[227] Section 85 (a) paragraphs (d) & (e) of the Personal Income Tax (Amendment) Act, op cit
[228] Ibid
[229] The Joint Tax Board, Ibid

states in the enforcement of the tax laws, therefore, the joint Tax Board can be said to be the only mechanism for standardizing the Nigeria's Tax policy and administration[230]. However, it has been observed that the Board was only set up to advice on quest and, therefore, has no legal powers to impose sanctions against any state that does not obey its decisions. As such, if the laws establishing the Joint Tax Board will suffer, as its role will be eliminated. Therefore, an efficient tax policy and administration is one of the elements of a good tax system which the functions of revenue agencies are achieved through capacity building, efficient staffs and good records management with minimum efforts, hence the need for further reforms of the Nigerian tax system, even though the Nigerian tax system had undergone several reforms.

The distribution of taxing powers to various levels of governments in Nigeria is also a subject of controversy which has to be looked into with all seriousness. It is our view that it is the nature of the Nigeria's fiscal Federation that leads to the country's multiplication of taxing authorities, at each level of government, each with different taxing powers for certain categories of tax-based revenues, which is influenced by socio-political, economic and cultural considerations[231].

There are two major factors that influenced Nigerian fiscal federalism to assign tax powers among three tiers of government. These factors are administrative

[230] Sani, A. op cit,
[231] Ekpo, B.U. and Ndebbid, J.E.U. , Fiscal Operations in a Depressed Economy: Nigeria, 1960-1990. Final Report Submitted to the African Economic Research Consortium, Nirobi Kenya, 1992.

efficiency and fiscal independence[232]. The efficiency factor requires that a tax be assigned to the level of government that is most capable of administering it as efficiently as possible; while fiscal independence, on the other hand, requires that each level of government should be able to raise adequate funds from the revenue sources assigned in order to meet its needs and responsibilities[233].

In the Nigerian context, the scale always tilts in favour of the Federal Government as against the regional/states governments. The only principal tax-based revenue with shared taxing power between the tiers of government collects the personal income tax of armed forces personnel and the judiciary. Each state government collects and administered personal income tax from other categories of taxpayers resident in its domain. Capital gains tax is also under shared power in which the federal government legislates while state governments collect and tax. Given the unbalanced scale, the states/local governments are only empowered over low-yielding tax-based revenue sources. This brought about conflicts and multiple/double taxation between the federal and other units of the federation.

3.5 Various Reforms of Nigerian Tax Policy

Tax reforms are aimed to feel the gap of the identified lacunas in the country's tax laws, rules and regulations, as well as, powers of taxing authorities in terms of procedures of enforcement and administration, to enhance the tax system

[232] Ariyo, A. op. cit. p.12
[233] Ibid, p. 12.

efficiency. Therefore, the main reasons for tax reforms may range from the need for additional revenue, to create a new tax to yield more revenue, to introduce a new tax rate or reform tax law or review the existing law and introduce a new tax assessment system[234]. The Nigerian tax system and fiscal policies have being undergoing several reforms through successive governments which is being aimed at enhancing the system. New ideas were introduced i.e. with the amalgamation of the Northern and Southern parts of Nigeria in 1914; direct taxation was introduced into the Western region in 1916 and into the Eastern region sometimes in 1927. Tax laws and regulations were established after those of the colonial masters[235].

The Nigerian legislature attempts at reforming tax laws, with the aim of repealing obsolete provisions and simplifying the main ones[236]. The recent reforms include the introduction of Tax Identification Number (TIN), automated tax system that facilitates tracking of tax positions and issues by taxpayers, E-payment system, and new enforcement scheme of special purpose, which led to an improvement in the Nigeria's tax administration. Under the current reform of the Nigerian tax laws, taxation is enforced by three tiers of government, i.e. the Federal, States and Local Governments with each tier having its sphere of jurisdiction clearly spelt out in the

[234] Somorin, T. Tax Reform: Efforts of Nigeria, a Seminar Paper Presented at the African Training and Research Centre in Administration for Development on the Reform of Fiscal Policies Based on Innovations in Charge of Collection and Management of Public Resources, Intercontinental Hotel, (Tangier), Morocco, 29th November, 1st December, 2010

[235] Ariyo, A. op cit, p. 14

[236] Ishaq, O. O. op. cit. p.5

current legislation[237]. To enhance its tax system, the Nigerian government has made several attempts to reform its tax system, starting from 1978. The 1978 Task Force on tax administration was established, to examine the sources of tax revenue and the structure of tax administration in Nigeria[238]. The task force made the following achievements;

i. Introduction of withholding tax regime
ii. Imposition of 10% special levy on the excess profits of banks
iii. Imposition of 25% turnover tax on building and construction companies[239].
iv. Promulgation of Companies Income Tax Act[240] which increased the Board Members to ten and made several amendments to the Companies Income Tax Act of 1961[241].
v. Introduction of Tax Clearance Certificate as a collection tool by a taxing officer.

Furthermore, the Federal Government set up another study group, in 1991, on the Nigerian tax system and administration[242] and the 1992 study group, on indirect taxation,[243] to review the entire tax system. The combined outcome of the above study groups leads to the following achievements;

[237] Taxes and Levies (Approved List for Collection) Decree, 1998, L.F.N. 2004
[238] Enaugurated on the 20th April, 1978 and headed by Alhaji Shehu Musa
[239] Sani, A. op cit p. 3-4
[240] Decree No. 28 of 1979
[241] Somorin, p. op cit,
[242]Headed by Prof. Emmanuel Edozion
[243]Headed by Dr. Sylvester Ugoh

i. The establishment of the Federal Inland Revenue Service (FIRS).

ii. The establishment of revenue services at the states and local governments level.

iii. Introduction of indirect/consumption tax, that is, value added tax (VAT).

iv. The promulgation of the Finance (Miscellaneous Taxation Provisions) (Amendment) Decree[244].

Other reforms brought by the above mentioned 1991/1992 study groups include;

i. The personal allowances increase from N2, 000 to N3, 000 with an addition of 15% of earned income.

ii. The children allowances increased to N500 from N400 and a maximum of 4 children.

iii. Wife allowance abolished and changed to spouse allowance.

iv. Tax rates reduced from 55% to 45%

v. Tax Clearance Certificate to be issued within 2 weeks of application or reasons to be given for its denial.

Tax laws were, also, reformed, to give a clear and unambiguous meanings of the words used. For example, Section 8(i) of the Companies Income Tax Act was amended to wit:- the word “Royalty” was included to show clearly that “royalty” is taxable.

[244] No. 3 of 1993

Another landmark reform, in the tax laws, was the introduction of the self-assessment scheme[245]. Thus, the 1991 reform becomes a policy shift, from direct system of taxation[246]. In 2002, another study group was established[247] to review all aspects of the Nigerian tax system, review the entire tax administration and its structure for the whole country, and consider measures to bring international developments in tax administration to bear in Nigeria[248]. The report of the above study group contained 275 recommendations, 127 amendments to the existing tax laws and constitutional amendments[249]. It recommended a complete reform of the tax system through the review of the tax laws and the granting of autonomous status to the Federal Inland Revenue Service (FIRS).

Some radical changes in the Nigeria's tax policy contained in the 2002 study group recommendations and amendments necessitated the Federal Government to set up a working group[250] to review the report submitted by the 2002 study group on January 12, 2004[251], which was headed by Seyi Bickerstech. The outcome of all these wide consultations has resulted in the ongoing wide-range reform of the FIRS and the Nigerian tax policy and administration in general. Another outcome of the 2002

[245] Somorin, T. op. cit.
[246] Ibid
[247] Headed by Prof. Dotun Philips
[248] http://www.buzzle.com/articles/tax-policy-in-Nigeria.html extracted on the 25/6/2010, at p.3
[249] Somorin, T. op. cit
[250] National Tax Policy (a private Sector)
[251] Sani A., op cit p. 4

review was the set up of Presidential Committee to review the tax laws, which step leads to the presentation of some bills to the National Assembly.

On the 16th April, 2007, four bills were passed and signed into laws[252]. However, the ongoing reforms and several repeals and amendments of the Nigerian tax laws and regulations calls for Federal Government to ensure the stability of its tax laws for some years, at least to encourage purposeful planning and investment decisions by corporate bodies and foreign investors, as administrative, challenges, compliances challenges, lack of equality, multiplicity of taxes, etc. the most recent reform is that of Personal Income Tax (Amendment) Act[253]..

[252] The Federal Inland Revenue Service (Establishment) Act, 2007, of Gazette, No. 64, Vol. 94 of 18th June 2007: Companies Income Tax (Amendment) Act, 2007, of Gazette No. 62, Vol. 94 of 13th June, 2007; Value Added and National Automobile Council (Amendment) Act, 2007, of Gazette No. 61, Vol. 94 of June, 2007.

[253] No. 21 of 2011

CHAPTER FOUR

AN ANALYSIS OF THE ENFORCEMENT PROCEDURES OF INCOME TAX UNDER THE NIGERIAN TAX SYSTEM

4.1 Introduction

Income taxation is always an area of complexity and subject of controversy between the taxpayers and the taxing authorities; hence, its procedures of collection and or enforcement are always marred with problems. One will wonder what makes income taxation a complex and controversial phenomenon. To the view of this writer, this has to do with its coercive and compulsory nature. Taxpayers adopt numerous tricks legal or illegal to evade or avoid payment of taxes at the relevant year of assessment[254]. Some employers often refused to remit income taxes which they already deducted from the income of their employers despite statutory stipulations that it should be remitted to the relevant authorities[255]. Sometimes, taxpayers give false account of their annual returns. On their own part, the relevant tax authorities, in trying to put the defaulting taxpayers into their net, adopt and use some techniques and procedures of enforcement, to compel the payment of the overdue taxes. In doing so, sometimes they go beyond the tax laws and regulations and, in excess of their powers, which, in most cases, cause their acts to be declared null and void by the Courts.

This chapter, therefore, highlighted the bodies empowered, by the relevant tax laws, to enforce income tax in Nigeria, the enforcement procedures adopted by those

[254] Abdurrazaq, M.T. The Nigerian Revenue Law, Malthouse Press Ltd., lagos, 2005, p.36
[255] Ibid, p.36

bodies, and raised some topical issues and challenges of enforcement, thereby exemplified those issues and challenges with decided case laws.

4.2 Bodies Empowered By Law to Enforce Income Tax in Nigeria.

The Nigerian tax system is basically statutory. It derived its authority from range of statutes, hence, there has been a requirement that; if at all, government was to interfere with property pry into a man's affairs and take his money, then, this must be on clear statutory authority[256]. This requirement is premised on the need to protect the individual from the state[257]. The Constitution[258] guarantees the existence and powers of the federating units. The functions and powers of the Federal Government are listed in the Exclusive Legislative List[259], while those of the states are in the concurrent list[260]. The constitution further recognizes the fiscal jurisdiction as well as spells out the area of fiscal jurisdiction of those three levels of government, i. e. Federal, States and Local Government[261].

The Federal Government is empowered under the relevant tax laws in respect to companies taxes, import and Export duties, Excise duties, mining rents and royalty Accounts, petroleum profits taxes, education tax as well as personal income tax for members of the armed forces, police and residents of the Federal Capital Territory, Abuja. States have taxing powers over capital gains tax value Added Tax, Stamp duties,

[256] Ayua, I.A. Nigerian Tax Law, Spectrum Law Publishing, Ibadan, 1993, p. 46
[257] Abdurrazaq, M.T. op cit p.37
[258] The 1999 Constitution, 2010 as amended,
[259] Item 59 of Part I, Second Schedule to the 1999 Constitution, 2010 as amended, ibid
[260] Items 1, 2, 7 and 9of Part II, Second Schedule, ibid
[261] Abdurrazaq, M.T. op cit p.37

pools and betting, personal income tax and other property taxes and levies within their jurisdiction. Local governments are empowered to levy taxes and rates, as itemized under the Constitution and the Taxes and Levies (Approved List for Collection) Act[262].

The Federal Inland Revenue Service (Establishment) Act[263], the Personal Income Tax (Amendment) Act[264] as well as the Companies Income Tax (amendment) Act[265] and other tax laws and regulations established different bodies to the three levels of government that were empowered with the assessment, collection enforcement and due administration of taxes in Nigeria[266]. Section 1 of the Federal Inland Revenue Service (Establishment) Act[267], established a body to be known as the Federal Inland Revenue Service (FIRS), whose operational arm is to be known as Federal Board of Inland Revenue (FBIR), whose objects are contained under section 2 of the Act[268]. Section 2 of the Act provides, *"The object of the service shall be to control and administer the different taxes and laws specified in the first schedule or other laws made or to be made from time to time by the National Assembly Government of the Federation and to account for all taxes collected[269]."*

The Federal Board of Inland Revenue (FBIR) is also established, with the principal mandate of overseeing and supervising the FIRS. Section 7 of the FIRS Act provides thus:

[262] No. 21 of 1993, cap T2, L.F.N. 2004
[263] No. 13 of 2007,
[264] No. 21 0f 2011
[265] of Gazette No. 62, Vol. 94 of 13th June, 2007
[266] Salami, A. Taxation, Revenue Allocation and Fiscal federalism in Nigeria,: Issues, Challenges and Policy Options, Economic Annals, vol. LVI, No. 189 of 2011.
[267] ibid
[268] ibid
[269] ibid

"The Board shall-

(a) provide the general policy guidelines relating to the functions of the Service;

(b) manage and superintend the policies of the Service on matters relating to the administration of the revenue assessment, collection and accounting system under this Act or any enactment or law;

(c) review and approve the strategic plans of the Service;

(d)employ and determine the terms and conditions of service including disciplinary measures of the employees of the Service;

(e)Stipulate remuneration, allowances, benefits and pensions of staff and employees in consultation with the National Salaries, Income and Wages Commission; and

(j) Do such other things which in its opinion are necessary to ensure the efficient performance of the functions of the Service under this Act."

Section 8 of the Act[270] provides the functions of the service, which include assessment, collection, account and enforcement of payment of taxes as may be due to the government or any of its agencies carrying out the examination with investigation, with a view to enforcing compliance with the provisions of the Act. In collaboration with the relevant law enforcement agencies, adopt measure to identify, trace, freeze, confiscate or seize proceeds derived from tax fraud or evasion, etc. State taxes are to be collected and administered by a body established under Section 87 of PITA[271] to be known as State Internal Revenue Service (SIRS) whose operational arm is to be known as State Board of Internal Revenue (SBIR).

[270] ibid

[271] Personal Income Tax (Amendment) Act, No. 21 of 2011

Section 90 of the same Act[272] established Local Government Revenue Committee (LGRC), whose responsibility is the assessment, collection, account and enforcement of all taxes, rates and levies within the jurisdiction of that level. Section 86 of the PITA[273] provided the establishment of Joint Tax Board to complement the activities of the FIRS and SIRS in effective administration of income taxes in Nigeria; while Section 92 of the same Act[274] established the Joint States Revenue Committee for each state, which is saddled with the responsibility to implement the decisions of the JTB, advice state and local governments, on revenue matters and harmonize tax administration. Apart from those bodies established by the relevant tax laws to assess, collect, account and enforce the payment of taxes, there are Judicial and Quasi-Judicial bodies established under those laws to settle disputes between tax payers and relevant tax authorities.

The Tax Appeal Tribunal (TAT) was established, in accordance with the Federal Inland Revenue Service (Establishment) Act[275]. TAT formally took off, pursuant to the Tax Appeal Tribunals Establishment Order 2009, issued by the Minister of Finance. By this enactment, TAT replaced the former Body of Appeal Commissioners (BAC) and Value Added Tax (VAT) Tribunals. Appeals from the decisions of the FIRS now lie to the TAT. TAT has jurisdiction to settle disputes arising from the operation of all of the federal taxing statutes listed in the First Schedule to that Act[276]. The TAT is not conferred with criminal jurisdiction. Where evidence of criminality is discovered, the

[272] ibid
[273] ibid
[274] ibid
[275] Section 59(1) of FIRS Act.
[276] First Schedule, ibid

TAT is obliged to forward such information to the office of the Attorney General of any State or any relevant law enforcement agency[277]. According to the Tax Appeal Tribunal (Procedure) Rules:

> *A person aggrieved by an assessment or demand notice made upon him by the Service or aggrieved by any action or decision of the Service under the provisions of the tax laws administered by the Service may appeal against such action, decision, assessment or demand notice within the period stipulated hereunder*"[278], generally, "*30 days from the date on which the action, decision, assessment or demand notice which is being appealed against, was made by the Service*[279].

Paragraph 15(5) of the First Schedule to the FIRS Act provides that *"All appeals before the Tax Appeal Commissioners shall be done in public."* This overrides the Petroleum Profit Tax Act which provides that trial shall be done in camera. The Federal High Court, on points of law, can hear appeals to the Tax Appeal Tribunal (TAT) only[280]. The appeal is notified to the Secretary within 30 days[281]. Prior to the establishment of the TAT, the Body of Appeal Commissioners was the tax tribunal of first instance. Most states, however, did not establish a Body of Appeal Commissioners (BAC). This had grossly deprived most taxpayers of the right to a speedy appeal expected under the BAC structure. The introduction of the TAT is intended to effectively address this challenge. No taxpayer should be shut out of the

[277] See Paragraph 12, 5th Schedule, ibid
[278] Order III.1 of Tax Appeal Tribunal (Procedure) Rules, 2010.
[279] Order III.2 ibid.
[280] Order XXIV.1 ibid.
[281] Order XXIV.2 ibid.

tax appeal structure due to failure of the relevant authorities to constitute such a vital adjudicatory body. It was publicly stated that:

> *It is no doubt that the establishment of the TAT would reduce the incidence of tax evasion, ensure fairness and transparency of the tax system, minimize the delays and bottlenecks in adjudication of tax matters in traditional court system, improve the tax payers' confidence in our tax system, provide opportunity for expertise in tax dispute resolution, provide a venue for effective involvement of parties, focus on facts rather than legal technicalities and promote early and speedy determination of matters without compromising the principle of fairness and equity*.

Despite these efforts, the applicability and practicability of the right to speedy trials is still suffering severely in Nigeria. The TAT is still a very slow tribunal, like its predecessor, the Body of Appeal Commissioners. The FIRS legal and prosecution department is not assisting in ensuring speedy trials by its organization and preparation for trials. Section 59 (1) & (2) of FIRSA[282] established the Tax Appeal Tribunal that is empowered to settle disputes arising from the operation of the Act, under the fifth schedule. However, by the provisions of section 12 of the Fifth Schedule to the Act [283], the Tribunal is only conferred with civil jurisdiction. Where evidence of criminality is discovered, the Tribunal is obliged to forward such information to the office of Attorney -General of any State or any relevant law

[282] No. 13 of 2007
[283] ibid

enforcement agency[284]. In *Addax petroleum Development (Nig) ltd. vs. FIRS*[285] it was held that, *"Tax Appeal Tribunal is an administrative body established to determine the correctness of assessments to tax without undue fixation with formality".*

This is in line with the provision of paragraph 20 (3) to the Fifth Schedule, where it provides, *"Any proceedings before the Tribunal shall be deemed to be a judicial proceedings and the tribunal shall be deemed to be a civil Court for all purposes*[286]*".* An appeal from the Tribunal shall lie to the Federal High Court[287]. However, it is not clear whether the appeal can only lie to the Federal High Court, where the issues are on points of law. This is because the said paragraph clearly states,

> *(1) Any person dissatisfied with a decision of the tribunal constituted under this schedule may appeal against such decision on points of law to the Federal High Court upon giving notice in writing to the secretary to the tribunal within 30 days after the date on which the decision was given.*

However, Sections 32 (2) of PITA[288] can be said to have complemented paragraph 17 (1) to the 5th Schedule to the Federal Inland Revenue Service Act, where it provides, *"An appeal shall lie from any direction of the Board made under this section to a Judge of the High Court*". Notwithstanding, the Federal High Court held, in the case of *FIRS vs. N. N. P. C*[289] thus,

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[284] Paragraph 12, Fifth Schedule ibid
[285] (2012) vol. 7, TLRN
[286] Paragraph 20, Fifth Schedule to the Federal Inland Revenue Service (Establishment) Act, op cit
[287] Paragraph 17, ibid
[288] No. 21 of 2011
[289] (2012) 6, TLRN

> *The exclusive Jurisdiction conferred on this Court in respect of revenue matters is not by accident in view of the historical evolution of the Federal High Court ... it is clear that the above provisions are all encompassing and leaves no one in doubt that this Court has the exclusive jurisdiction in any dispute relating to the revenue of the government of the federation in which the said government of the federation or any organ there of or person suing or being sued on behalf of the government of the federation is a party And in any dispute connected with or pertaining to taxation of companies and other bodies established or carrying oil business in Nigeria and all other persons subject to Federation taxation.*

Therefore, the entire arrangement of the coordination and jurisdiction of Tax Appeal Tribunal is not reliable and the procedures under the above quoted sections of the relevant tax laws is complicate and does not observe the principles of fair hearing.

4.3 Enforcement Procedures of Income Tax under the Nigeria Tax Laws

There are certain procedures employed by the relevant tax authorities, in accordance with the provisions of the tax laws and regulations, which include writing a demand notice on the taxpayers, to file their annual returns, allowing for objection to the assessment, if any, amendment of the assessment, where necessary, appeals, then, collection and administration of those taxes so collected. There are also laid down procedures for the enforcement of delinquent taxes when voluntary compliance proved difficult, which include penalties, civil and criminal litigation, distrain and sale of defaulting taxpayer's property, search and seizure, use of tax clearance certificate, etc. Those procedures will not bar the authority from taking advantage of the other procedure,

if it becomes necessary and expedient[290]. However, there are, also, rights of a tax payer that are sought to be observed and protected when applying any of the procedure of enforcement, which includes:

i. Right to a court order before sale of immovable property[291]

ii. Right to refund of excess tax[292]

iii. Right to be searched only by a person of the same gender[293]

iv. Right to information[294]

v. Right to private life[295]

vi. Right to fair trial[296]

vii. Right of appeal[297]

viii. Right to object to a revised assessment[298]

In Nigeria, despite the guarantee of a tax refund by Section 23 of the FIRS Act and Section 16(1) (b) of the VAT Act, the FIRS is yet to comply with these provisions by failing to refund excess tax whether in the form of VAT or arising from the withholding tax system, notwithstanding the crippling effect of this practice on businesses. One devastating impact of non-remittance of excess tax is on the cash flow of the company or business or individual. This situation is, further, worsened by

[290] Abdurrazaq, M.T. op cit, p. 103
[291] Section 33(6) of FIRS Act, op cit
[292] Section 23 of the FIRS Act; Sections 49(1) and 50(1) of PPTA; Section 90 of CITA; Section 16(1) (b) of VAT Act
[293] Section 36(4) of FIRS Act
[294] Freedom of Information Act, 2011
[295] Section 37 of the Constitution; Section 29(5) of FIRS Act
[296] Section 36(1) of the 1999 Constitution as amended; Article 7 of the African Charter
[297] Section 59 of FIRS Act; Section 32(2) of PPTA; Section 43(2) of CGTA
[298] Section 69 of CITA

the high inflation rate in Nigeria, which gradually erodes the real value of such un-refunded sum. This practice of non-refunding is a huge infraction on the legal and constitutional rights of taxpayers in Nigeria. By way of an obligation on the FIRS, on the one hand, and a right to the taxpayer, on the other hand, a court order authorizing the FIRS to sell immovable property belonging to a defaulting taxpayer is required by FIRS Act, CITA and PITA. But this obligation does not apply to goods, chattels and other personal effects belonging to the debtor/taxpayer. Section 33(6) of the Act provide that , *"Nothing in this section shall be construed so as to authorize the sale of any immovable property without an order of a High Court, made on application in such form as may be prescribed by the rules of court."*

The same rule is contained in section 86(6) of CITA. The new section 104 of the PITA, as amended, has introduced several novelties with respect to the power to distrain, viz:

i. It is mandatory for relevant tax authorities to apply to a High Court for issuance of a warrant to distrain properties of defaulting taxpayers.
ii. The tax authorities are authorized to keep the distrained properties for 14 days after which, if the sum is not paid, the goods may be sold; and
iii. Before an immovable property can be sold an order of court must be obtained.

4.3.1 Filing of Annual Returns

Section 41 (1) of the Personal Income Tax (Amendment) Act[299] require any taxable person to file a return of income with the tax authority of the state in which he is deemed to be resident. While section 41 (1) of the Companies Income Tax (Amendment) Act[300] require every company including company granted exemption to file a return with the Service. Where the taxpayer fails to file a return as prescribed by laws, the tax authorities are empowered to make its own assessment to its best judgement[301]. The question now is, who is a taxable person, and how can a taxable person be identified? It is simple to identify taxable persons that are in government employment and incorporated companies or contractors and politicians that must fulfill certain requirements and conditions before they can be eligible to get what they want from the government or its agencies. But then, what about the bulk of independent business men, most of whom does not know about the existence of any tax and the extent of their liability? How can they be identified and put into the net? This calls into question the expertise of the Nigerian tax authorities.

4.3.2 Assessment of Returns

This referred to an evaluation of the amount, which a tax payer is liable to pay. However, notice of assessment is a condition precedent to liability to pay tax[302]. It was

[299] No. 21 of 2011
[300] of Gazette No. 62, Vol. 94 of 13th June, 2007
[301] Sections 53 (2) PITA & 47 (2) (b) CITA op cit
[302] Sections 57 PITA, op cit

held, in the case of *Okupe vs. FBIR*[303] that; non-service of this statutory notice is a breach of the rights of the taxpayer. From the decision in that case, therefore, where notice is not served on the taxpayer, it will be a good ground for him to challenge the assessment. It was held, in the case of *Linwood Blackstone et al. vs. United States of America*[304] that, the general rule is that no tax lien arises until the IRS makes demand for payment. Without a valid demand, there can be no tax lien, without tax lien the IRS cannot levy against the taxpayer's property…this court concludes…that the appropriate sanction against the IRS for its failure to comply with the notice and demand requirement is to take away its awesome non-judicial collection powers.

In *FIRS vs. TSKJ II Contuce International Sociaaade Umpessual Ltd*, the Abuja division of the Tax Appeal Tribunal (TAT) has ordered TSKJ Nigeria to pay N 5.14 billion as tax liabilities to the Federal Inland Revenue Service (FIRS)[305]. The Acting Chairman of the Tribunal gave the order, following an appeal by TSKJ Nigeria, challenging the FIRS's tax assessments, in a construction contract for the Nigeria Liquefied Natural Gas (NLNG). The chairman, also, awarded N300,000 against TSKJ as cost of the three appeals decided in favour of FIRS[306]. The company had filed three separate appeals[307] before the tribunal. In the appeal to the Tax Appeal Tribunal by TSKJ II against the FIRS assessment, the company challenged FIRS's refusal to amend

[303] (2010) 2 TLRN
[304] 778 F. Supp. 224 (D.Md. 1991)
[305] Tax liability: Tribunal orders company to pay N5.75bn to FIRS in: the Tribune Newspaper, ***Friday, 10 August 2012***
[306] ibid
[307] suits No TAT/ABJ/APP1010/2008, TAT/ABJ/APP/006/2006 and TAT/ABJ/APP/017/2010

its assessments for 1997-2002 and additional assessment raised by the Service and $550, 556.74 tax liabilities for 2008 and 2009 tax years among others. In the first ruling on the appeal, the Tax Appeal Tribunal upheld FIRS's assessment that TSKJ II is to pay $16, 688, 267 as tax.

Also, in the second ruling, representing assessment years for 2006, 2007, and additional assessment for 2008, the court upheld FIRS assessment of $19,249, 820. In the two suits, TSKJ II (Contuce International Sociaaade Umpessual Ltd), a multinational firm, was awarded contract by the Federal Government on the Nigeria Liquefied Natural Gas project. It has a company called TSKJ Nigeria Limited, a subsidiary of TSKJ International, which offered services to TSKJ II, but was not party to the NLNG contract.

In trying to fulfil its tax obligations for the years in question, TSKJ II filed its tax returns, under Section 26 of Companies Income Tax, CITA, but made deductions on expenses incurred by TSKJ Nigeria, a subsidiary to TSKJ II- a multinational company. FIRS scoffed at this. It maintained that since TSKJ II did not file its audited accounts, but filed under Section 26 of Companies Income Tax (Amendment) Act CITA, deductions in favour of TSKJ N (Nigeria), a Nigerian subsidiary- should be allowed, which FIRS maintained were not allowable. Rather, FIRS maintained, Section 26 of CITA gives the FIRS Board discretionary powers to allow 80 per cent turnover as expenses/costs, and assess the remainder of 20 per cent of turnover at 30 per cent.

Statutorily, companies are required to file returns based on audited accounts, but TSKJN filed its returns for the years in question based on the Section 26 of CITA, with turnover as basis for assessment. The FIRS additional assessment was also based on the company's refusal to file its returns based on its audited accounts, in accordance with the law. The tribunal said that tax law, on the issues raised were clear, certain and that there were no ambiguities whatsoever in Sections 41 and 26 of Companies Income Tax Act (CITA) on payments to a subcontractor in any transaction by the taxpayer is not an allowance deductible under section 20 of CITA. Said the TAT Chairman:

> *On resolving this issue in favour of the respondent, it is not disputed that the appellant filed its returns on turnover basis, so under that basis, it is the respondent who defines what amount is fair and reasonable percentage of the turnover,". "It is undisputed that 80 per cent covers all the costs incurred by the taxpayer when using the Turnover Basis of Assessment. There is no provision of the law which makes subcontract allowable deduction.*

The chairman, in his declaration dismissed appeal in suit T9AT/ABJ/APP1010/2008 and the two other consolidated cases in suits TAT/ABJ/APP/006/2006 and TAT/ABJ/APP/017/2010.

In another suit between *FIRS vs. Oando Plc,* the Tax Appeal Tribunal (TAT), in Abuja, ordered Oando Plc to pay N72.92 million, as tax liabilities to the Federal Inland Revenue Service (FIRS). The Acting Chairman of the Tribunal gave the order,

following an appeal filed by Oando, challenging the FIRS's refusal to amend its tax assessment for the year 2003. The tribunal, also, awarded N100,000 against Oando, as cost of the appeal decided in favour of FIRS. Oando had, in March 2003, sued FIRS before the Tax Appeal Tribunal for refusing to amend its assessment on additional income tax and education tax for the year 2003, amounting to N72,912, 838. The relief sought by Oando to quash the assessment served on it by the FIRS in respect of interest disallowed for the assessment was dismissed by the tribunal. It, also, dismissed the appellant's prayer, seeking an order to prohibit the respondent from assessing the appellant to any further tax assessment for the year 2003, in relation to interests and similar charges.

In the judgment, the Tax Appeal Tribunal upheld FIRS's assessment and ordered Oando to pay N72, 912,838 as tax. The tribunal holds that, the case of the appellant failed and the relief sought by the appellant in this appeal are hereby dismissed. The tribunal, therefore, ordered that "the appellant is not discharged of the assessment of tax served on it by the respondent in respect of interests the respondent disallowed as deductable for 2003 year of assessment.' It also granted an order that the respondent is not prohibited from assessing the appellant to any further tax in 2003 year of assessment in relation to interest and similar charges. The tribunal, therefore, directed that "the appellant shall pay tax as assessed by the respondent which is the sum of N72,912,838''.

However, the Lagos Zone of the Tax Appeal Tribunal in its judgment in the case of *Halliburton Energy Services Nigeria Limited vs. Federal Inland Revenue Service*[308] stated *"that levying money for, or to the use of the Crown by pretense of prerogative, without consent of Parliament is illegal…."* It was evident in this case that the Tribunal refused the attempt by the FIRS to violate the dual internationally recognized principles, pursuant to which countries assert their jurisdiction to tax; the source and the residence basis; which also form the basis of the allocation of taxing rights under the Organization for Economic Cooperation and Development (OECD) Model Convention on Taxation of Income and Capital.

In brief, the gist of this matter arose out of an appeal filed by the Appellant wherein it challenged a FIRS assessment in the total sum of $167,000,000. As contained in the disputed assessment, the assessed sum was said to represent 30% of the total sum of $559,000,000 which the FIRS purportedly classified as "Disallowed Expenses" and "Profits" made by the Appellant and attributable to its operations in Nigeria. As contained in the FIRS assessment, the tax base of the sum of $559,000,000 was being disallowed as expenses as it represented the quantum of a fine of $559,000,000.00 that was paid by Halliburton Inc. USA (parent company of the Appellant) to US authorities in lieu of bribes given to Nigerian officials for operations in Nigeria by companies within the Halliburton group in contravention of the US Foreign Corrupt Practices Act (FCPA). It was, further, claimed in the FIRS

[308] (2006) 7 CLRN 138

assessment that the entire fine sum of $559,000,000 would have formed part of the expenses that was charged in the tax returns earlier filed by the Appellant and that this sum would therefore be deemed as profit accruable to the appellant arising from its operations in Nigeria.

In the notice of appeal filed by lead counsel to the Appellant, it was contended, inter alia, that Halliburton Inc. USA, the entity within the Halliburton group that was fined by US authorities, which fine formed the tax base upon which FIRS' assessment was based, does not carry out any trade or business in Nigeria. Also, it was argued on behalf of the Appellant that Halliburton Inc. does not have a fixed base in Nigeria so as to be chargeable to tax in Nigeria for any purpose whatsoever within the contemplation of the Companies Income Tax Act (CITA). It was, further, contended that the Appellant does not represent Halliburton Inc. USA in Nigeria in any manner whatsoever and is not an agent or representative of Halliburton Inc. USA in Nigeria so as to be chargeable to tax under the circumstances. Further, it was the contention of counsel to the Appellant that the bribe alleged to have been given to Nigerian Government officials as well as the fine paid to the US authorities did not involve the Appellant or any of its business activities in Nigeria and no related revenue or deduction were ever included or claimed in the Appellant's tax returns to the FIRS.

In its reply, the FIRS argued, inter alia, that the Appellant Company is a member of the Halliburton group and that consequently, Halliburton Inc. USA is substantially present in Nigeria. Further, the FIRS argued that the Appellant constitutes a fixed base for Halliburton Inc. USA in Nigeria, such as to render the Appellant an agent or representative of Halliburton Inc. USA in Nigeria. Relying on the provisions of Section 49 of CITA, the Respondent contended that a tax assessment could be raised in the name of a company sought to be taxed, its principal officer, agent, attorney, factor, representative and receiver/liquidator as may become expedient. Also relying on section 70 (1) and (2) of CITA, and in response to the Appellant's argument that the assessment failed to correctly identify the party sought to be charged to tax, as well as the assessed sum, it was the Respondent's contention that any mistake, defect or omission on the face of an assessment will not have the effect of rendering the assessment invalid; provided the assessment conforms substantially with the provisions of CITA with respect to the company sought to be charged as well as service of the assessment. Upon conclusion of pleadings and hearing, the Tribunal distilled 3 main issues for determination as formulated by counsel to the Appellant. Issues two and three are relevant here and were exhaustively addressed by the Tribunal in its judgment and are reproduced below:

"Issue 2: Whether the assessment issued by the Respondent and served on the Appellant is valid.

Issue 3: Whether Halliburton Inc. USA is a person chargeable to tax in Nigeria at all and in particular, whether it is chargeable to tax in relation to a sum of money paid by it as a fine to the government of the United States of America for breaching a law of the United States of America."

In its judgment, the Tribunal held that the Respondent failed to establish the ingredients contained in Section 9 of CITA, which are the accrual and remittance basis of taxation of corporate income. It was held by the Tribunal that no evidence was led on behalf of the Respondent to establish the fact that the tax base of $559,000,000 was profit made in Nigeria by the Appellant, or that it accrued in, derived from or was brought into or received in Nigeria by the Appellant. The Tribunal relied on the House of Lords decision, in *Russell vs. Scott* ,as well as, the decision in *Alh. Ahmadu & Anor. vs. The Governor of Kogi State.*

On the issue of the validity or otherwise of the assessment, whilst the Tribunal was in agreement with the contention of the Respondent that the provisions of sections 38 and 70 (2) of CITA were sufficient to resolve the issue of identity of the company sought to be charged in favor of the Respondent, it was, however, held by the Tribunal that the assessment is defective as it was speculative, contradictory and inconsistent with the relevant tax laws. It was held that these

defects could not be remedied or cured by the provisions of sections 38 and 70 (2) of CITA. By this judgment, a clear and unambiguous message has been sent to revenue officials that tax assessments must be raised after due regard has been had to the relevant tax laws. There should be no place for speculative assessments in the realm of tax law. A situation where there is no identifiable entity or subject sought to be taxed to be gathered from the face of an assessment will do no more than to render the assessment a speculative exercise and would be tantamount to a fishing expedition. However, where the assessment become final and conclusive, taxpayer must pay his tax. Where he is in default, the relevant tax authority can apply any of the procedures to enforce its payment. It was held in the case of *FBIR vs. Azigbo Brothers Ltd*[309] that the company having failed to deliver its return, the assessment made by the tax authority to its best judgement is valid. It was, also, held in the case of *Marina Nominies Ltd. vs. FBIR,*[310] where the company did not file its return, that the assessment is valid.

It is, therefore, important for revenue officials to adhere to the fundamental principles of rule of law in raising tax assessments. From the foregoing, it is arguable whether the practice of revenue departments of raising tax assessments based on "best of judgment" (BOJ) is legal. As it appears, BOJ assessments would be acceptable only in cases involving artificial or fictitious transaction as provided in

[309] (1963) 2 ALL NLR, 198
[310] (1986) 2 NWLR (pt. 20), 48

section 22 of CITA and also in order to counteract egregious tax schemes aimed solely at tax evasion.

4.3.3 Objections and Appeals

The combined effect of the provisions of paragraph 13[311] , Section 57(1)[312] and Section 51(1)[313] allow any taxable person, who is aggrieved by any assessment, demand notice, any action or decision of the service within 30 days from the date on which an order or decision which is being appealed against is made, to appeal to the relevant appellate body or tribunal. In *Effiong Uwah Itah vs. C. I. R*[314], the taxpayer produced an audited account to prove excess assessments. The appellant was engaged as a factor to two firms on which he received commission. His tax was first assessed at £143 based on income of £1648, 5 shillings and 3 pence. He objected to the assessment and forwarded audited account computed by an accountant who put his income at £433, 16 shillings and the tax at £16 and 10 shillings. The account was rejected and another assessment was computed based on the income of £1106 and tax payable at £70. He rejected this because of his status as a married person with children, entitled to certain deductive reliefs. The Court held that since there was no evidence of increase in the income of the taxpayer, he should be liable to the existing lower amount that he paid last year.

The decision showed the interest of the Court in applying the literal rule to uphold the provisions of the law so that assessment is not based on the whims and caprices of the

[311] paragraph 13, Fifth Schedule to the Federal Inland Revenue Service (Establishment) Act, op cit
[312] PITA, No. 21 of 2011
[313] CITA, of Gazette No. 62, Vol. 94 of 13th June, 2007
[314] (1976) NTC 73

tax authority. However, in *Godson Okoh vs. Commissioner of Internal Revenue*, the Court upheld the literal rule where an assessment was altered due to certain deductions and rather than producing sufficient evidence of his income to fault the assessment as was required by law, the appellant contended that the assessment was time barred. The Court held that the appeal was not time barred and the appellant was not discharged of his tax liabilities, since he did not give evidence of his income. However, it seems the tax authorities, in abuse of their powers, deny the tax payers such rights of appeal or cause unnecessary delays on issuing NORA. It was held in the case of *Okupe vs. FBIR*[315] thus:

> *The legislature of this country wisely entrusts to the Respondents (FBIR) the duty to operate the tax laws of the country but in doing so, the legislature provide safeguards from arbitrary of the liberty of the taxpayer and in particular safeguards from arbitrary and capricious assessment and/or assessments which are not made bona fide or which are perverse. Whichever way one looks at the matter, an assessment like the present one in which defiance of the mandatory provisions of the PITA, denies to the taxpayer his statutory rights of objection and as if that was not enough demonstrates clear and unequivocally to him that any objection may attempt to make against such assessment has already been refused cannot stand and an order of certain must issue to quash such assessment.*

It was, further, held in the case of *Oando Supply and Trading Ltd. vs. FIRS*[316] thus:

> *where a taxpayer files a notice of objection to FIRS, the latter, if they do not agree with the tax payer's objection in any material particular must issue NORA within a reasonable time. We must suggest 90 days. The Tribunal can treat FIRS failure to issue NORA within reasonable time or at all as a "deemed decision"...desirable as there may be NORA as part*

[315] (2010) 2 TLRN op cit
[316] (2011) 4 TLRN 128-129

of FIRS internal complaint handling procedure is now optional from the point of view of the taxpayer of course when the taxpayer complains, FIRS must treat the complaint fairly, justly and speedily.

From the above decisions, it is clear that whenever there is a delay in issuing Notice of Objection to Reverse Assessment (NORA) or denial of right of objection or appeal ,an aggrieved taxpayer can sue for enforcement and setting aside of the assessment or any act or decision of the service or tribunal. However, where no valid objection or appeal has been lodged within the prescribed time, the assessment shall be final and conclusive, and, the taxpayers cannot later complain against it nor can any court set it aside. In the case of *Federal Board of Internal Revenue vs. Owena MOTELS Limited*[317], the Federal High Court, sitting in Akure, held that, 'on the service of the notices of assessments on the Defendant, for the period of 1993-1998, without any objection by the defendant, it meant that the sums thereon stated became conclusive, final and due for payment thirty (30) days after the service of each notice of assessment on the Defendant'. Judgment was accordingly entered in favour of the Federal Inland Revenue Service, based on the preponderance of evidence before the Court.

4.3.4 Enforcement by Distrain:

Over the years, there has been a battle between the defaulting taxpayers and the relevant tax officials in respect of enforcement of delinquent taxes. Taxpayers always seek to find ways or means to throw the burden of income taxation off their shoulders,

[317] (2010) 2 TLRN

thereby refusing to comply with the provisions of the relevant tax laws. There are set down procedures and standards that are to be followed by the tax officials that include penalties, civil and criminal litigations, distrain of defaulting taxpayer's property, use of tax clearance certificate, etc. for effective enforcement of such delinquent taxes in the Nigerian tax laws.

Distrain or Distress, was defined as the seizure of someone's property in order to obtain payment or satisfaction of a claim, as a pledge for performance of a duty or in reparation of injury[318]. It is an act or process whereby a person seizures the personal property of another in satisfaction of a claim. It is defined in the Black's Law Dictionary as:

> *the taking, either with legal process, or extra judicially subject to the performance of some necessary condition precedent, by a private individual or by an officer of the Court, of a person chattel, out of the possession of a wrongdoers, or defaulter and into the custody of the law to be impounded as a pledge in order to bring pressure to bear upon the owner of the chatted to redress an injury, to perform a duty, or to satisfy a lawful demand subject, however to the right to the owner to have the chatted returned to him upon the injury being redressed or the duty performed or the demand satisfied or upon security being given so to do*[319].

The amendment to the Personal Income Tax Act, in 2011, effectively introduced amendments with respect to the power to distraint property in personal income tax matters. The implication of this provision is that, for distraint and sale of immovable property both a warrant and an order of the court must be sought and

[318] Hopkins, J. op cit p. 371
[319] Garner, B. op cit, pp. 542-543

obtained at both stages, while for a movable property only a warrant to distrain will suffice. This amendment has clearly reduced the wide powers of the FIRS and SIRS with respect to distraint and sale of immovable property. The court has, therefore, been conferred with powers to check likely abuse of powers by Revenue Authorities. Mention must be made of the fact that the above amendment applies only with respect to personal income tax disputes, but does not apply to Petroleum Profit Tax and Companies Income Tax disputes. Similar provisions should be included in other tax laws; this will ensure that there is uniformity in the relevant tax laws and equal treatment of taxpayers.

Sections 34 of Federal Inland Revenue Service Act[320] and 104 of the PITA[321] empowered the FBIR and SBIR to levy distress against the property of any defaulting taxpayer to enforce the payment of the delinquent tax[322]. It was held in the case of *I – D Sam Nig. Ltd. vs. Lagos State Internal Revenue Service*[323] that:

> *Where a taxable person fails and/or refuses to make the necessary tax payments, sanctions are prescribed in the relevant tax laws, which include, but are not limited to the power to distrain. There is no doubt that the claimant has the right to distrain for nonpayment of tax.... This section also empowers an officer authorized in writing by the relevant tax authority to break open any building or place in the day for the purpose of levying distress and he may call for the services of the Police to assist in that regard. Things distrained may be kept at the cost of the taxable person for a*

[320] No. 13 of 2007,
[321] No. 21 of 2011
[322] Adedokun, K.A. Enforcement and Recovery of Income Tax in Nigeria (Law, Practice and Procedure), Corporate Transaction Limited, Lagos, 2010, pp. 4-5
[323] (2011) 5 TLRN

period of fourteen days, and if all outstanding are not paid, the goods may be sold.

Sub-Sections (2) and (3) of Section 34 of the FIRS Act provide procedures that must be followed before distrain can be valid. Under that Act, there has to be a warrant of distrain as contained in the 4th schedule of the Act, the warrant must contain the name of the defaulting taxpayers, the amount of tax to be levied by distress, the arrears of tax, the place of business, and, it has to be duly dated and signed by the relevant authority. In the case of *Illinois vs. Krull*[324] it was held that the warrant must describe with particularity the place to be search, the things to be seized and be supported by oath or affirmation of the officer requesting its issuance.

Furthermore, Section 33(1) of the Act[325] provides that, 'power to distrain cannot be effective unless an assessment has become final and conclusive'. Apart from that condition, a demand notice to pay tax must be served upon the taxable person. If those conditions were not met, then there would be no power to levy distress. Where the tax authority levies a distress without due compliance with the above conditions, then, the taxpayers shall be at liberty to contest the act of the taxing authority. It is provided, in the tax laws, that notices should be published in the gazette or in the newspapers. However it is the view of this writer that that should not be enough on the taxpayer, notifying him on the need to pay his tax.

[324] 480 U.S. 340 (1987)
[325] No. 13 of 2007 op cit

Sometimes, the relevant tax authorities abuse their power to distrain by levying same before the expiration of the time provided in the demand notice. It was held in the case of *L. O. C. Indus. Inc. vs. United States*[326] that, 'any distrain made before the expiration of time provided in the demand notice was invalid'. Sometimes also, the relevant tax authorities abuse their power by levying distress without warrant or even forcefully removing the taxpayer's property, without due compliance with the relevant provisions of the tax laws. This may amount to trespass and violation of the taxpayer's constitutional rights. It was held in the case *G. M. leasing Corp vs. United States*[327] that an entry without warrant by the service onto private property of a person in which that person has a reasonable expectation of privacy for the purpose of seizing property to satisfy a tax liability is a violation of that person's rights, therefore, permission is required.

Section 33(4), (5) and (6) of the FIRS Act[328] and section 104 (5) and (6) of PIT(A)A[329] empowered the relevant tax authorities to sell the property distrained after 14 days and at the expiration of the time contained in the warrant and deduct the amount due in respect of the tax and the costs and charges that are incidental to the process of distrain and the sale. The balance, if any, shall be paid to the taxpayers upon demand being made by him or on his behalf, within one year of the date of the sale. This provision, which require the taxpayers to demand for payment of the balance within one year, is not contained in the PIT(A)A. However, the PIT(A)A provide that the balance shall be paid

[326] 423 F. Supp. (M.D. Tenn. 1976)
[327] 429 U.S. 338 (1977)
[328] No. 13 of 2007, op cit
[329] No. 21 of 2011, op cit

to the owner of the distrained property, or, where he cannot be traced, to the appropriate Court, within 30 days[330]. It seems there is a mix up of conflicting provisions above, with the provisions of Section 68(2) of FIRS Act,[331] which states, 'if provisions of any other law, including the enactments in the first schedule are inconsistent with the provisions of the Act, the provisions of the Act shall prevail, and the provisions of that other laws shall to the extent of the inconsistency be void'. This is a great lacuna in the laws.

That notwithstanding, there are procedures that must be followed, before the sale can be effective. In the old case of *Cummings vs. Holt,*[332] it was held that the sale of distrained property will be illegal unless the taxing authority levying the distress strictly complied with all the requirements of the law with respect to notice and Sale. It was further held in the case of *Jones vs. Flowers*[333] that the tax authority must take reasonable steps to ensure that the taxpayer receives actual notice of the sale. Therefore, where there is non-compliance with the above procedures, the taxpayer may sue the tax authority to invalidate the sale or where the purchaser has taken possession he may join him in the suit. However, it was held in the case of *Chester Motors vs. Koledo*[334] that so long as these purposes are met, substantial compliance rather than exact compliance, with the notice requirements will be sufficient.

It has been observed that, even though there are provisions in the relevant tax laws that the balance should be refunded to the taxpayer, the tax authorities, occasionally, do

[330] Sub-Section (6) of Section 104, ibid
[331] No. 13 of 2007 op cit
[332] (1883) 56 vt. 384
[333] (2006) 545 U.S.
[334] (1986) 148 vt. 357

not observe those provisions, they, either in ignorance of the law or because corruption have eroded their minds, retain the balance, mostly, converting same to their personal pockets. In such cases, it was held in the case of *Interplay vs. Ukraine*[335] that delaying refunds is an abuse of the right of peaceful enjoyment of possession. As such, a taxpayer can seek redress, for a refund of the balance of the proceeds of sale.

Nigeria operates a Withholding Tax System (WHT), which means that in qualifying transactions the paying party is required to deduct at source any payment due to a taxable persons or companies. Where a taxpayer has overpaid tax (which usually is due to the WHT regime), he is entitled to either a refund of the excess tax or set off against a future tax. Section 23 of the FIRS Act provide as follows:

> *(1) there shall be refunded to taxpayers, after proper auditing by the Service, such overpayment of tax as is due.*
> *(2) The service shall decide on who is eligible for the refund mentioned in subsection (1) of this section subject to such rules and conditions as may be approved by the Board.*
> *(3) Any tax refund shall be made within 90 days of the decision of the Service made pursuant to subsection (2) of this section, with the option of setting off.*
> *(4) For the purpose of tax refund, the Accountant-General of the Federation shall open a dedicated account into which shall be paid monies for settling such refunds.*
> *(5) The Service shall administer the dedicated account as created by virtue of section 23*
> *(6) For the purpose of the dedicated account, the Service shall prepare an annual budget for tax refund to be funded from the Federation Account as may be approved by the National Assembly.*

[335] (2007) ECTHR 803/002

This provision of section 23 of the FIRS Act has been applauded as one of the most innovative provisions of the Act. However, despite the existence of these provisions and rights in the FIRS Act, no steps have been taken by the FIRS to put into operation the provisions of this section 23 of the FIRS Act. This has placed countless taxpayers in a precarious position that often involves taxpayers having millions of naira and dollars standing to their credit. This situation is likely to and in some instance is already affecting the cash flow of many companies' and businesses, which in turn exposes such unpaid sums to the risk of value erosion by reason of inflation; it also affects the time value of money.

Mention must be made that, the FIRS is yet to set up a system for tax refund and hundreds of companies, businesses and individuals have billions of naira in credit with the FIRS. Several companies have complained about the adverse effect of this practice on their cash flow. Section 23 of the FIRS Act gives an option to affected companies and businesses to institute legal action against the FIRS compelling it to set up the necessary machinery for tax refund.

Taxpayers can seek relief under section 49(1) of the PPTA, where by error or mistake they supply certain wrong information, which forms the basis of an incorrect tax assessment. The section empowers a taxpayer who has paid excess tax by reason of the error to seek relief from the FIRS within a period of 6 years. A taxpayer has a right to claim repayment of any excess tax within a period of six years after the end

of the accounting period to which it relates. Section 50(1) of the PPTA provide as follows:

> *Save as is otherwise in this Act expressly provided, no claim for the repayment of any tax overpaid shall be allowed unless it is made in writing within six years next after the end of the accounting period to which it relates and if the board disputes any such claim it shall give to the claimant notice of refusal to admit the claim and the provisions of sections 36 and 37 of this Act shall apply with any necessary modifications.*

A similar rule is contained on section 90 of CITA:

> *(1) If any company which has paid tax for any year of assessment alleges that any assessment made upon it for that year was excessive by reason of some error or mistake in the return statement or account made by or on behalf of the company for the purposes of the assessment, it may, at any time not later than six years after the end of the year of assessment within which the assessment was made, make an application in writing to the Board for relief. (…)*
>
> *(4) A determination by the Board under this section shall be final and conclusive*

A good incentive that can arrest this situation will be the imposition of interest on any unpaid sum held by the FIRS. This will compel the FIRS to creatively comply with the express provision of the law. Realizing the amount of interest that is likely to be claimable from it, the FIRS will no doubt force itself to set-up the needed machinery to comply with the law. The VAT system requires that whenever input VAT exceeds output VAT, the party obligated to pay VAT shall be entitled to a tax refund. Section 16(1) (b) of the VAT Act provide as follows:

(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 document as the Board may from time to time require.*

This provision re-enforces the provisions of section 23 of the FIRS Act on refund of excess tax. These provisions have not been complied with. Mention must also be made that this is a violation of the right to property as guaranteed in both the Constitution and in the African Charter. This practice is posing a grave financial threat to many companies especially those in the gas sector and construction sector. It was held in *E.C. Term of Years Trust vs. United States*[336] that a third party cannot seek redress through a refund claim, but can only seek a remedy in a wrongful distrain, search and service or sale suit.

Sub-section (6) of section 33 of the FIRS Act provide that, 'the sale of any immovable property is not allowed unless the relevant tax authority obtained an order of a High Court'. However, it seems the relevant tax authorities are not complying with this provision, thereby selling the taxpayer's property without obtaining an order from the High Court mandating them to proceed with the sale. Whenever this happens the taxpayer can challenge the sale and seek for a remedy. After the parcel to be sold is identified, the delinquent tax collector must post, publish, and send out notices of the sale to the

[336] (2007) 550, U.S. 429

delinquent taxpayer and any lien holders as described above. The purpose of the notice is two-fold:

(1) to inform the taxpayer and lien holders that the property is to be sold, and that the sale can be avoided by the payment of the taxes due; and

(2) to advise prospective purchasers that the land is to be sold[337].

So long as these purposes are met, "substantial compliance," rather than exact compliance with the notice requirements will be sufficient. Nevertheless, it is important to comply with the statutory requirements as exactly as possible to avoid a later challenge to the sale. In some jurisdictions, the delinquent tax collector must notify the delinquent taxpayer of the sale in writing, by registered mail, return receipt requested. This notice is sent to the property owner's last known address, and must include the time, date and place of the sale. It is not the delinquent tax collector's responsibility to ensure that the delinquent taxpayer actually receives the notice. A taxpayer's refusal to accept the certified mail will not prevent the delinquent tax collector from proceeding with the tax sale. On the other hand, the delinquent tax collector must take reasonable steps to ensure that, whenever possible, the taxpayer receives actual notice of the sale[338].

[337] *Chester Motors v. Koledo*, 148 Vt. 357 (1985).
[338] *Jones v. Flowers*, 545 U.S. (2006)

4.3.5 Enforcement by Search and Seizure

This refers to the methods used by the relevant tax authorities where they are satisfied that there is reasonable grounds for suspecting that an offence involving any form of total or partial non-disclosure of information or any irregularity or an offence in connection with or in relation to tax has been committed and, is of the opinion that evidence of the offence or irregularity is to be found in the premises, the registered office or any other office or place of management of trade, vocation, profession or business or in the residence of the principal officer, factor, agent or representative of the individuals, the relevant tax authority is authorize if necessary, by force to conduct a search as such[339]. This is provided under sections 53(1) of the PIT(A)A[340] and to 64 of the CITA[341]. Power to effect search and seizure has also been provided under sections 29, 30, 31 and 36 of the FIRS Act[342].

From the combined effect of the above sections, there must be a warrant and the occupier of the premises to be searched must be consented. A search must also be conducted by the same gender. Section 36(4) of the Act[343] provides that *"no person shall be bodily searched under this section except by a person who is of the same gender as the person to be bodily searched"*. Thus, where the provisions are breached, it can be the basis for an action for assault against the erring tax official. It was held in the case of

[339] Adedokun, K.A. op cit p.85
[340] Section 53 (1) of the PITA, op cit
[341] Section 64 of the CITA, op cit
[342] Sections 29, 30 & 31 of the FIRS Act, op cit
[343] ibid

Illinois vs. Krull[344] that the warrant must describe with particularity he place to be searched the persons or things to be seized and be supported by oath or affirmation of the officer requesting its issuance, and the warrant must be served on the person in possession[345].

In cases of serious tax infraction or suspicion of tax abuses, the FIRS is authorized to carry out inspections, searches, seizures, make copies of evidence, obstruct or break into premises etc. However, in the course of carrying out any of these activities, the FIRS Act forbids the search of a person to be carried out by a person of the opposite gender. In other words, a man can only be searched by another man and vice versa. This is an attempt to protect the cultural and religious sensibilities of most Nigerians. Similar provisions with respect to search are contained in the Penal Code and Criminal Code applicable in Nigeria. Where this provision is breached it can be the basis for an action for assault. But such an infraction will not affect the admissibility of any evidence so illegally obtained[346]. Section 37 of the Constitution provides the right to privacy. This has far reaching tax implications that will be analyzed. The provision stipulates that*, "The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected".*

[344] (1987) 480 U.S. 340
[345] See the cases of FIRS v. NNPC (2012) 6 TLRN 1 and G.M. Leasing Corp. v. United States, op cit
[346] Section 14 of the Evidence Ac, 2011 as amended

However, section 45 of the Constitution allows derogation from this right by any law for any exception that is reasonably justifiable in a democratic society and is in the interest of defense, public safety, public order, public morality or public health or for the purpose of protecting the rights and freedoms of other persons. This provision confers a general right on taxpayers to be entitled to their privacy. However, there is a derogation stated in section 45 of the Constitution. However, such derogations are not absolute. Where the taxing authority seeks to exercise its very wide powers to search and investigate, it must be conducted in a manner that will not offend the provisions of section 37, and such an action must clearly fall within the exceptions and situations in section 45. Any exercise of power beyond sections 37 and 45 will be an infraction on a taxpayer's rights and will be unconstitutional. It must be noted that, the constitutional provision uses the word "citizen". Whether or not this provision can be interpreted and expanded to cover non-resident personal income taxpayers, resident and non-resident companies, is yet to be ascertained.

Sections 26, 27, 28 and 29 of FIRS Act are laws that derogates from the right to privacy. Section 28 of the FIRS Act empowers the FIRS to demand from every bank, quarterly information on transactions above N5, 000, 000 in the case of individuals and N10, 000, 000 in the case of companies and names and addresses of all new customers and other information with respect to customers.

Section 29 of FIRS Act empowers an authorized officer to have free access at all reasonable times to lands, buildings, places, books, documents, computers and other electronic devices etc. for the purposes of collecting tax or carrying out any other function lawfully conferred on the service. The officer is also empowered to make copies of such documents. The authorized officer can also enter upon any land, building or place. Any occupier is obliged to assist the officer, answer questions orally, in writing or by statutory declarations. For clarity, Section 29(1) of the FIRS Act provide as follows:

> *Notwithstanding anything to the contrary in any other enactment or law, an authorized officer of the Service shall at all reasonable times have free access to all lands, buildings, places, books and documents, in the custody or under the control of a public officer, institution or any other person, for the purpose of inspecting the books or documents including those stored or maintained in computers or on digital, magnetic, optical or electronic media, and any property, process or matter which the officer considers necessary or relevant for the purpose of collecting any tax under any of the relevant enactment or law or for the purpose of carrying out any other function lawfully conferred on the Service or considered likely to provide any information required for the purposes of any of those enactments or any of those functions and may, without fee or reward, make extract from, or copies of, such books or documents.*

However, this very wide power is limited by Section 29(5) of FIRS Act, which restricted the exercise of the above powers to require either the consent of an occupier or an authorization by a judicial officer. Section 29(5) provides as follows, *"Notwithstanding subsection (1) of this section, the authorized officer shall not enter*

any private dwelling except with the consent of an occupier or pursuant to an authorization issued under subsection (7) of this section."

Section 29(5) of the FIRS Act restricts the power of an authorized officer to enter any private dwelling except with the consent of an occupier or based on a judicial authorization. This is a legislative response to the practice of high handedness and arbitrary sealing of business premises of taxpayers, while tax liabilities are being contested. While it is important for the revenue authority to have reasonable access to information on taxpayers, it is important to know that a proper balance must be struck with the right to privacy. In the course of exercising the powers of the service to access information, certain infractions may be committed. For example, the powers to obtain banking information by FIRS are too broad and no provision is made for judicial checks and balances before application and disclosure. This is a typical instance of the law going outside the spirit of this fundamental right.

The Nigerian Constitution clearly guarantees the right to privacy. The exceptions for derogation are public safety, public order, public health, and public morality among others. In other words, overriding public interest must be shown to exist. Where this is not sufficiently shown, it is our view that these powers to access information by the FIRS cannot be effectively and legitimately exercised. It is our opinion that the affected taxpayer can proceed to court to seek legal redress.

Despite the above conditions precedents for a valid search and seizure, it seems the relevant tax authorities without warrant duly executed and without compliance with

the provisions of the law, makes illegal entries and illegal searches of the taxpayers premises and thereby unlawfully obtaining confidential information and or documents, in violation of the taxpayer's fundamental rights to privacy. In such instances, a taxpayer can maintain an action against such tax authorities for a legal remedy. It was also held in the case of *Stephens Equipment Co., Inc. Debtor*[347] that:

> *The role of District Court in issuing an order for the seizure of property in satisfaction of tax indebtedness is substantially similar to the Court's role in issuing criminal search warrant." The Court further held that "in order to substantiate such an order the IRS must present the Court with certain validation." As such, a relevant tax official wishing to search and seize a defaulting tax payer's property must apply for an order to search the taxpayer's premises. Not only that he has to supply the court with reasonable grounds that will convince the court to grant him that order, otherwise his application will be refused.*

In many instances, the relevant tax authorities use the above procedure of enforcement as punishment on delinquent taxpayers. This has strongly been frowned by the courts. The courts have also held that tax must not be taken as an instrument for punishment, even where the taxpayer is guilty. In *Okupe vs. FBIR* (supra), the court held thus:

> *It is my view that though there is abundant evidence that the appellant was guilty of failure or willful default in the supply of information or disclosure concerning his sources of income, the officials of the Board have no right or power under the law to inflict any assessment which is or tends to be of a punitive nature upon him and I conceive that it is my duty in the public interest, to ensure that officials of the*

[347] 54 BR, 676 (D.C. 1985)

Revenue Board are discouraged and in fact prevented from using their power of taxation as a punitive measure.

4.3.6 Enforcement through Monetary Penalty

The Nigerian income tax laws make adequate provisions for monetary penalties and or terms of imprisonment, in lieu of fines, against taxpayers who engaged in committing tax offences. Some of the offences include failure to register within the stipulated time, which attracts a penalty of N10, 000.00 for the first time and N5, 000.00 for each subsequent month of default, non-remittance of tax attracts the penalty of a sum equal to 5% per annum, plus interest at a commercial rate of the tax remittance, rendering of false returns attracts a fine twice the amount underpaid or a conviction; while failure to file returns attracts N5, 000.00 per month. There is, also, a penalty for failure to keep proper records, failure to issue tax invoice, failure to notify change of address, to collect tax, to remit the deducted taxes of employees to the relevant tax authorities, to make attributions, etc.

On the side of the tax authorities, themselves, the FIRS Act[348] provide offences and penalties on the commission of some offences by the authorized and unauthorized persons. The offences includes a demand from any taxpayer an amount in excess of the authorized assessment of tax, withholding any amount by a tax official for his own use, rendering a false return of the amount of tax collected or received by a tax official impersonation, etc. The offences are not exhaustive the commission of which attracts penalties. However, in trying to impose penalty on a taxpayer, the service must convince

[348] Sections 44, 45, 46, 47, 48 & 49 of FIRS Act, op cit

itself that the person has committed the alleged offence; otherwise, if the taxpayer challenge the imposition, he will succeed. Payment of penalties may not exonerate a defaulter from criminal prosecution. It was held in the case of *FRN vs. Kingsley Ikpe*[349] that in serious corporate offences that go beyond regulatory matters, the directing minds of the corporate entity are to be identified and made to serve prison terms while the company as an entity is fined.

Non-compliance with the penalty provisions by the tax officials will warrant their proceedings being quashed, at the instance of defaulting taxpayers. In the case of *Nigerian Breweries Plc. vs. Lagos State Internal Revenue Service*[350] the Respondents imposed penalty on the Applicants through an ordinary letter indicating revision of the Appellants' tax liability, it was held that a penalty imposed under Section 76(3) of the PITA shall not be deemed to be part of the tax paid for the purpose of claiming relief under any provision of the Act. It seems the tax authorities, either in ignorance of the relevant provisions of the law, or that they know but only because they are corrupt used the power conferred on them arbitrarily against the tax payers, them by not observing the ingredient's contained in the provisions of those laws. This arbitrary use of power must be curtailed.

In the case of *FIRS vs. AMBA Microfinance Bank Nigeria Limited*, the North Central zone of the Tax Appeal Tribunal has found AMBA Microfinance Bank Nigeria Limited guilty of tax evasion. The company was found guilty by the court after about

[349] (2002) 5 NWLR (pt. 759) 1
[350] (2009)1 QCCL vol. 2, p.155, 192

one year of legal battle at the tribunal sitting in Jos, Plateau State[351]. The Federal Inland Revenue Services (FIRS) had dragged the bank before the tribunal in March 2012 with allegation of failure to remit tax to the agency over the years as well as the firm's failure to pay withholding tax for a period of time[352].

While delivering judgment, on the case during the sitting of the tribunal, Chairman of the tribunal, after listening to argument by counsels to the accused, declared that Amba Micro Bank was guilty of the tax offence and must pay the penalty according to tax laws. Counsel to the defendant, however, pleaded for the reduction of the liabilities and penalties by 50 per cent quoting relevant sections of the tax law. The Tribunal using his discretion accepted the plea of the accused by reducing the tax penalties and liabilities by 50 per cent[353].

4.3.7 Enforcement by Litigation

There are provisions in the Nigerian tax laws that empowered the relevant tax authority to file a civil action or a criminal action against a taxpayer who commit any of the itemized offences contained in the relevant tax laws. On conviction the defaulting taxpayers or tax officials may be subjected to various fines and or terms of imprisonment[354]. The FIRS Act[355] empower the service to sue and recover from any defaulting taxpayer any amount that is due for payment which was not paid, or prosecute

[351] Seriki, A. Nigeria: Tax Evasion - Tribunal Indicts Amba MFB in: Thisday Newspaper, 13 February 2013
[352] ibid
[353] ibid
[354] Ayua, I. A. op cit, p.297
[355] Sections 1 (1) (b), 34 & 47 of the FIRS Act, op cit

any taxpayer or tax official who violates any of the provisions of any relevant tax law. Section 34(1) of the Act provide, *"Without prejudice to any provision of this Act or any other law listed in the first schedule to this Act, any amount due by way of tax shall constitute a debt due to the service and may be recovered by a civil action brought by the service*[356]*."*

These sections gave the Service a power to file a civil action against any defaulting taxpayer to enforce the payment of the overdue tax. Section 47 of the Act,[357] specifically, provides that, *"The service shall have powers to employ its own legal officers who shall have powers to prosecute any of the offences under this Act subjects to the powers of the Attorney General of the Federation*[358]*."*

The Supreme Court, in the case of *Unipetrol Nigeria Plc. vs. Edo State Board of Internal Revenue,*[359] held that the phrase "sue and be sued" is wide enough to include civil and criminal actions". This means that the service can use its staff in the legal department to prosecution tax offences, but that power is subject to the powers of the Attorney General. This has created a great controversy and robust literatures in academic circle[360], and a number of case reviews[361]. However, in line with the decision of the Supreme Court in the *Unipetrol's case*[362], the relevant tax authorities prosecuted many

[356] ibid
[357] ibid
[358] ibid
[359] (2006) CLR 28
[360] Nwadialo, F. The Criminal Procedure of Southern States of Nigeria, 2nd Edition, MIJ Publishers, Lagos, 1987, pp. 368-370
[361] Ajayi, K. revisiting Police Power to Prosecute: A critique of FRN v. George Osahan & 7 Ors, the Appellate Review, vol. 1, No.1, 2009, 67: Abiola, S. The Power to Prosecute Tax Offences: A Critique of Unipetrol Nigeria Plc v. Edo State board of Internal revenue, NIALS Journal of Criminal Law and Justice, vol. 1, 201, of 2012.
[362] (2006) CLR 28, op cit

cases, both civilly and criminally to enforce the payment of delinquent taxes. However, despite the statutory and judicial authorities conferred on the service to prosecute criminal offences, the service whether of states or of the Federal Government rather prefer to file civil suits to recover delinquent taxes, even where the cases exhibits some criminal elements[363]. In the case of *FBIR vs. West African Pictures Co. Ltd,*[364] where the Respondents, by their acts clearly commit offences against tax laws, it was held that:

> *it could be seen from the evidence that non-chalant attitude of the defendants in matters of taxation and the levity which they had all along treated notices served on them under the law until they found that proceedings were imminent and that their defence was nothing short of findings an escape valve for their acts of irresponsibility and wanton disregard of continued authority. But since the amount was being claimed as a debt due to the Federal Government the Defendants were liable for the amounts and penalties stated on the demand.*

However, despite the ample provisions to prosecute tax offences and to file civil suits to recover delinquent taxes, the tax Courts and tribunals are very slow in tax proceedings, which causes delay in justice delivery, which makes both the relevant tax authorities and taxpayers to show strong reluctance to seek legal redress. Another sad but true cause of litigation apathy is the practice of tax officials and auditors requesting bribes from tax payers to conceal concerns, even where the concerns are genuine on the part of tax payers. Because of the above challenges many tax payers opt for arbitration rather than defending their rights through litigation. This attitude has been challenged by

[363] FBIR v. Blue Penican Casino Co. Ltd. (unrep) suit No. FRC/PH/2/76.
[364] (unrep) suit No. FRC/L/8/73.

the federal high court in the case of *FIRS vs. N.N.P.C.*[365] where it was held that tax disputes are not arbitral in Nigeria.

Where the service decides to adopt litigation, as a means of enforcing the payment of delinquent taxes, they sometimes use it arbitrarily and in excess of jurisdiction. It was held in the case of *Halliburton West Africa ltd. vs. FBIR*[366] that though the object of a taxing statute is to raise revenue for the government, it is however not the intention of the law makers that a person should be taxed for the same money that is paid to its Nigerian affiliate. Taxation, according to the courts, is one of the expropriatory encroachments on the private property rights of citizens. In stressing how the courts view these expropriatory legislation, the Supreme Court of Nigeria, per Hon. Justice Uwaifo, J.S.C.

(as he then was), states that:

> *It is the law that in interpreting a statute which encroaches on a person's proprietary right, the courts' attitude must be to adopt the principle of strict construction, fortissimo contra proferentes [strictly against any one claiming benefit], which leans in favour of the citizen whose property rights are being denied; and against the interest of the lawmaker…*[367]

It is trite that, any tax which is not prescribed by law is illegal and unenforceable[368]. In another holding of the Supreme Court, the court states that:

> *It has often been the view of the Courts here and elsewhere that if a person sought to be taxed comes within the letter of the*

[365] (2012) 6 TLRN 1
[366] (2006) 7 CLRN 138
[367] Victor Manyo Ndoma-Egba v. Nnameke Chikwukeluo Chukwuogor and Ors.[2004] 6 NWLR 382-434.
[368] 7up Bottling Company v. Lagos State Internal Revenue Board [2000] 3 NWLR p. 565-591

> *law, then such a person must be taxed. On the other hand, if the tax authority seeking to recover tax from a person is unable to bring him within "the letter of the law", the person will be free, however apparently within the spirit of the law his case ought to otherwise appear to be.*[369]

It is imperative to note, at the onset that, property taxation in Nigerian law is constituted by a patchwork of statutes passed by states and local government authorities. Property taxes can only derive legitimacy to the extent that they are recognized within the country's legal structure. To reinforce this position, the Federal Supreme Court was apt in the case of *Authority v. Regional Tax Board; Attorney-General of the Western State of Nigeria and Adelaja* as it stated thus, ***"****No tax can be imposed on the subject without words in an Act of Parliament clearly showing an intention to lay a burden on him"*[370]

The jurisdiction of Lagos State Internal Revenue Service had been challenged in the case of *Registered Trustees of Association of the Licensed Telecommunications Operators of Nigeria & Ors vs. Lagos State Government & Ors,* where some telecommunication companies challenged certain sections of the Lagos State Infrastructure Maintenance and Regulatory Agency Law, 2004, on the basis that the Law amounted to imposition of tax on their operations. The learned Judge said, *"The IMRA Law, from the name it looks very innocent. .... From the contents of the law, the driving force is just to make money for the State, as the State has numerous laws*

[369] ibid
[370] **[1967]** NCLR 452-464.

dealing with the issue of urban planning." The learned Judge went on to reiterate the revenue objective of the law, *".What the Lagos State is doing is to create an agency that will get its own share of the booty, as their counsel said that their operators are making billions of Naira."*

Therefore, viewed from these broad perspectives, it will be seen that none of the three levels of government can be said to be free from blame. The high rate of success on appeals is evidence of mistakes on the side of the taxing authorities for non-compliance with procedures of enforcement. Due to the incidence of tax evasion/avoidance and the attendant loss of revenue to government, emanating from the and application of tax incentives, tax laws vest tax authorities with power to disregard transactions which, in its opinion, is artificial or fictitious and which reduces or will reduce the amount of any tax payable and give such direction which will counteract the reduction of liability to tax[371]. The laws, also, provide opportunities for resort to the Courts for interpretation of tax incentives by the tax authorities and taxpayers. Incentive provisions in tax laws are not *sui generis*, they are purely statutory. To aid the administration of justice, the Courts apply rules of statutory interpretation to determine the proper application of incentives provisions in tax statutes. The rules applied are:

[371] Section 17 CITA

a. Literal Rule:

The Literal Rule is applied where the language of the statute is clear and unambiguous[372]. The Rule is founded on the premise that the function of the judge is to interpret and no to make laws i.e. the office of the judge is *jus dicere* not *jus dare*[373]. The Literal Rule has been applied in a plethora of cases[374].

b. Golden Rule:

This is applied where the words of a statute are unclear and ambiguous either due to the limitation of language as a medium of expression,[375] inability of the legislature to foresee all natural and social possibilities in the future and drafting errors. In such a case, the wording of the statute may be vague or capable of more than one meaning and the rule is applied to remove the ambiguity on the assumption that the legislature could not have intended the ambiguous result.

c. Mischief Rule:

Mischief Rule, which was laid down in the *Heydon's case* and applied in *Sussex Peerage's case,* is resorted to in order to consider the historical antecedent of the statute and the purpose of the law. It interprets the statute in a way that will advance the purposes of the law.

d. The Court also applies other ancillary rules.

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[372] Dias, R. W. M, Jurisprudence, 5th Edition*, Butterworths*, London, 1985, p. 171.
[373] Per Bairamian JSC in *Okumagba v. Egbe* [1965] 1 All NLR 62.
[374] *Ifezue v. Mbadugha* [1984] 1 SCNLR 427, *Chief Obafemi Awolowo v. Alhaji Shehu Shagari & Ors* (1979) 6 – 7 SC 51, *Adegbenro v. Akintola* (1962) 1 All NLR 465, *Toriola v. Williams* [1982] 7 SC 27, *Ogbuyiya v. Okudo* [1979] 6 – 9 SC 32 and *Mobil Oil v. FBIR* [1977] 3 SC 53.
[375] In *Seaford Court Estates Ltd v. Asher* [1949] 2 KB 481, Lord Denning stated that English language is not an instrument of mathematical precision

This is where the words used are not crystals and no fixed and immutable meaning can be attached to them. The words are therefore to be construed within their context and the light of their objective, associated words and surrounding circumstances. Ancillary rules such as *ejusdem generis rule, expression unis est ex insio atterius, Nositur a sociis lex non cogi ad impossibiha, ut res magis valetquam pareat* have been developed and applied by the Courts[376].

It is common principle that the literal interpretation of the provisions of the tax laws shall be adopted. The Court of Appeal in the case of *Phoenix Motors ltd. vs. NPFMB*[377] held that if a statute is revenue based or revenue oriented, the provisions thereof must be construed literally. Therefore, flowing from plethora of decisions in tax cases tax statutes are construed strictly to the expriorprietory nature of taxes. In the olden case of *Brandy Syndicate vs. IRS*[378] it was held that in a taxing Act, one has to look merely at what is clearly said. There is no room for intendment, there is no room for equity about tax, there is no presumption as to tax, nothing is to be read in, nothing is to be implied, and one has to look fairly at the language used. It was held, in the case of *Victor Manyo Ndoma-Egba v. Nnameke Chikwukeluo Chukwuogor and Ors*[379] *that:*

> *It is the law that in interpreting a statute which encroaches on a person's proprietary right, the courts' attitude must be*

[376] Where there is doubt, it is resolved in favour of the taxpayer. If the doubt is with respect to an exempting provision, that provision is construed strictly and any ambiguity is construed against the taxpayer. *Littman v. Barron* (1951) 33 TC 3
[377] (1993) 1 NWLR (pt. 272) 718
[378] (1921) KB 64
[379] (2004) 6 NWLR 382-434

> *to adopt the principle of strict construction, fortissimo contra proferentes [strictly against any one claiming benefit], which leans in favour of the citizen whose property rights are being denied; and against the interest of the lawmaker*

However, it seems the Nigerian Supreme Court, in the case of *Shell Petroleum Development Company vs. FBIR,*[380] has derogated to the principle and applied the doctrine of equity. In *Gulf Oil Co. Nigeria Ltd vs. FBIR,*[381] the Court of Appeal followed the decision in the case of *Shell Petroleum Development Company vs. FBIR,* as well as, earlier case like *Western Soudan Exporters Ltd vs. FBIR*[382] . That decision has, however, been criticized by Abdurrazaq, M.T.,[383] where he said, *"though it was sympathetic to consider the losses by the applicants, it must be noted that the learned justices invocation of the doctrine of equity no doubt derogated from the well established principles that there is no equity in tax, as postulated by lord Blackburn in Coltness Iron Co."*.

In the English case of *Pepper v. Hart,*[384] Lord Griffiths states that: "The courts now adopt a purposive approach which seeks to give effect to the true purpose of the legislation." Hence, judges may be at liberty to read in words not used in the legislation to interpret it: so as to clearly reflect in their decisions the intentions of the legislature.[385] The court should look beyond the words used to the entire text, and the context in which they are used to bring out the purpose of the legislation.

[380] (1996) 8 NWLR (pt. 446) 256
[381] [1997] 7 NWLR (Pt.514), 698,
[382] (2010) 3 TLRN 139
[383] Abdurrazaq, M.T. op cit, p.12
[384] [1993] AC 593 at 617.
[385] Lee, N. *a Purposive Approach to the Interpretation of Tax Statutes,* 20 Stat. L.R. (1999), 124 at 128.

It is, therefore, our view that, in applying the purposive approach, the court must employ diligent care and extreme caution, so as not to go into legislation arena, by creating a tax where none is technically contemplated by the provision.

4.3.8 Enforcement by Tax Clearance Certificate

Tax clearance certificate is a written confirmation from revenue authorities that person's tax affairs are in order at the date of issue of certificate. In some instances, a certificate may be issued to a customer who has tax arrears provided such arrears are covered by an installment arrangement that has been agreed by revenue. The best description on what a Tax Clearance Certificate is can be found in the statutory provision of Section 101(1) of the Companies Income Tax Act[386] , as amended, which provides as follows:

> *Whenever the Board is of the opinion that tax assessed on profits or income of a person has been fully paid or that no tax is due on such profits or income, it shall issue a tax clearance certificate to the person within two weeks of the demand for such certificate by that person, or, if not, give reasons for the denial.*

A tax clearance certificate must disclose, with respect to the last three preceding years of assessment, of the mentioned tax payer, the total profits or chargeable income of the tax payer, the tax payable, the tax actually paid and the tax amount outstanding for payment; and alternatively, a statement that no tax is due for payment. It is a mandatory statutory requirement that all departments of government and commercial banks must

[386] of Gazette No. 62, Vol. 94 of 13th June, 2007

demand for the Tax Clearance Certificate, for the last three preceding years, of any person with whom they intend to have any dealing in the areas of applications for government loans, contracts and other businesses, registration of motor vehicles, applications for firearms license, foreign exchange transactions or the remittance of funds outside Nigeria, applications for certificate of occupancy of land, building plans, transfer of legal title to land, applications for plot of land, export or import licenses, pools or gaming licenses, distributorship, registration of a limited liability company or a business name, allocation of market stalls, etc[387].

A contentious question with regard to tax assessments and tax clearance certificates is whether they are by themselves final and conclusive tax documents? In the case of *Alhaji Audu Bado vs. Commissioner of Revenue*[388], the Supreme Court held that a Tax Assessment Certificate is sufficient and conclusive evidence of the tax amount due for payment provided that no contradictory evidence is produced by the tax payer to displace the figures in the Tax Assessment Certificate. The Assessment Certificate was therefore upheld to be valid for payment by the tax payer. Therefore, the amount of tax paid and indicated as such in a Tax Clearance Certificate will be final and conclusive where it has been adjudicated upon and or finally determined by a judicial authority.

There are instances where a tax payer holding Tax Clearance Certificates (TCC) issued in another State and willing to use it in other states for transactions faces challenges in that other state. For example, a Kaduna State resident has a land transaction

[387] See Section 101(2) & 101(4) of Companies Income Tax Act, as amended.
[388] (1972) (4) SC (reprint) 57

in Lagos State; the latter usually insists that the Kaduna resident tax payer must pay personal income tax in Lagos State. This has been happening over the years and the JTB does not appear to have addressed this issue at its periodic meetings. It seems the Joint Tax Board (JTB), which is the umbrella body of State Internal Revenue Service throughout the federation, including the Federal Inland Revenue Service, is ignoring complaints from the citizenry that some states are refusing to accept tax clearance certificates from other states for transaction in their state. The Joint Tax Board is supposed to contribute to the advancement of the tax administration in Nigeria, especially in the area of harmonization of Personal Income Tax (PIT) administration throughout Nigeria.

There are reports of counterfeiting the tax clearance certificate by both the tax authorities and the tax payers. For example, there is a pending case where the FIRS accused Air Nigeria of presenting counterfeit companies income tax clearance certificate to secure expatriate quotas for its workers[389]. The level of abuses of the above procedures, as well as, non-compliance of the set rules and procedures of income tax enforcement is not exhaustive and still in existence in the Nigerian tax system. Therefore, there is still need to review the system to enhance effective compliance.

[389] Quoted in Thisday Newspaper of March 2013

CHAPTER FIVE

CONCLUSION AND SUMMARY

5.1 Summary

This research work was premised on five chapter basis. The work dealt with an appraisal of the enforcement procedures of income tax in Nigeria. The first chapter provided general background of the research work. In that chapter, the writer gave an introduction of the topic. Problems of research were provided, as well as, the aim and objectives of the research. The writer justified his research work in that chapter, and provided a literature review of the available literatures used, as well as, the method of research adopted, and provided the organizational layout of the study therein.

Chapter two of the work highlighted the general concept of taxation, the meaning, nature, scope and purpose of taxation, as well as, the definition of income and capital, for the purpose of assessment and collection of tax derived therein. The chapter also discussed the historical antecedents of taxation in Nigeria, as well as, taxable and non-taxable incomes; the composition of tax organs, authorities and tax boards was also highlighted, as well as, their role towards enforcing taxes.

Chapter three of the research work discussed an analysis of the legal regime of the procedure of income tax assessment, collection and enforcement in Nigeria. In that

chapter, assessment, collection, and enforcement of income tax have also been discussed.

Chapter four of the work made a comprehensive analysis of the problems of income assessment, collection, administration and enforcement.

Chapter five provided the summary of the research work, observations were made in the course of this research work, solutions to observations made were also recommended.

We have also made an appraisal of the enforcement procedures of income tax under Nigerian tax system. We also highlighted some problems of enforcement procedures of income tax under the Nigerian tax system, such as problems of assessment and collection of income tax, which seriously affects efficient assessment, collection and enforcement of income tax in Nigeria. Observations and recommendations were made to solve the identified problems.

5.2 Findings/Observations

From the above foregoing, it has been observed that,

i. Despite the well arranged procedures for the enforcement of income tax in Nigeria and the enabling tax laws and regulations to that effect, there are still persisting non-compliance and defiance of payment of delinquent taxes by the defaulting tax payers. On the side of the relevant tax authorities, there are constant and arbitrary abuses of powers as well as the procedures of enforcement. This is due to the

complex nature of the Nigerian tax laws. Every year, the annual budget statements introduce new measures and procedures, and amended, or repealed the existing ones. Those frequent amendments make the Nigerian tax laws confusing, as well as, complicated the country's tax structure. The amendments became so many such that the willing taxpayer find it difficult to know which laws are current and applicable and which laws are repealed. They are difficult for the common taxpayer to understand, some provisions of the Nigerian tax laws are problematic, even to the tax officials, some provisions of the laws are obsolete and outmoded, while some provisions of the laws brought or rather created some ambiguities, instead of clearing them.

ii. Corruption by the taxing authorities eroded the income tax system in Nigeria. Both the taxpayers and taxing authorities are involved in this evil trade. Many taxpayers do not want to pay the correct tax even in the face of clear information available to the taxing authorities about their true earnings and income. They prefer to pay far less than they ought to. In some cases, the tax authorities themselves demand bribes in order to reduce tax liabilities of the tax payers, without the taxpayers demanding for that, which results in enormous losses of revenue to Nigeria. The Nigerian government continues to face or witness cases of diverting and converting personal income taxes collected into private use without trace.

iii. It has been observed that many countries really possess no such clear picture of their tax systems. Instead, there often exists a bewildering array of overlapping and contradictory taxes. Many of these taxes overlap so that a single commodity

of transaction may be subject to a number of taxes imposed at different or supplementary rates involving different tax bases with different times of payment, different returns and separate administrative and judicial procedures. Some of these taxes are obsolete, yielding only small revenue or sometimes nothing at all, but remain on the books to complicate the tax structure. Others are so riddle with exemptions as to be scarcely applicable to anyone. Moreover many tax measures are simply charges and fees for government concessions or services. Often the administrative provisions and judicial procedures of an existing tax are applied without change to new taxes as they are enacted, without any examination of the differing requirements that the new taxes may warrant. In addition, the same words will be used in various tax laws but with different definitions or without definitions. So that only confusion in application can result.

iv. The Taxes and Levies (Approved Rates for Collection) Act, 1998 provides the taxes and levies collectible by the various tiers of Government. Any tax or levy outside of what the Act provides is illegal. However, the incidence of multiple taxation and regulation evidences disregard of the provisions of the above Act by various Ministries, Departments and Agencies (MDAs) of the Federal, State and Local tiers of Government. These acts culminate in the imposition of illegal and inappropriate taxes and levies in the following ways as discussed in detail below: (a) illegal taxes and levies; (b) excessive quantum of taxes demanded when the

tax is legal; (c) extra-legal mode of collection of such taxes; (d) use of consultants for assessment and determination of taxes and levies. Judicial confirmation of this is given in the case of Eti-Osa Local Government v. Jegede[390]. It is notable that in a bid to shore up internally generated revenues, MDAs consistently impose taxes and levies unknown to law on telecommunications operations. For instance, in 2009, the Imo State Ministry of Petroleum and Environment introduced an Environmental Audit Review and Certification Fee of N30,000 per site without the backing of any known law. It is noted that statutory responsibility for the conduct of an Environmental Audit under the Environmental Impact Assessment (EIA) Act rests with the Federal Ministry of Environment (FME) or the enforcement agency, the National Environmental Standards and Enforcement Regulations Agency (NESREA). Further, the controlling laws themselves may be extremely difficult to locates very often there is a tangled noass of laws, regulations, decrees and the like reaching far into the past, jumbled together with amendments and modifications. When the statutory picture is so confused it is extremely difficult for the government to know what it must administer and for the taxpayers with what they must comply. The above manifestly reflects the current situation of the Nigerian tax system. The Nigerian tax laws are many and, subject to frequent changes. Every year, the annual budget statements introduce new measures and procedures, and amend, or repeal the existing ones. Those

[390] [2007] 10 NWLR p. 537 at p. 545

frequent amendments make the Nigerian tax laws confusing as well as complicate the country's tax structure. The amendments became so many such that the willing taxpayer finds it difficult to know which laws are current and applicable.

v. One of the most disturbing issues, under the Nigerian tax system, is the independence of the Tax Appeal Tribunal. It is the Minister of Finance that specifies by official gazette, the number of zones, matters and places in relation to which the Tribunal may exercise jurisdiction. The Commissioners of the TAT are equally to be appointed by the Minister and can be removed by the Minister. This puts in question the independence of the TAT and the confidence of aggrieved taxpayers even when they file an appeal before the TAT. This put in doubt the applicability of the fair hearing principle of *nemo judex in causa sua*. Just of recent, the tenure of the Commissioners of Tax Appeal Tribunal expired while there are pending cases before them some of which almost reached the judgment stage. They were re-appointed by the Minister of Finance[391]. Had it been the Hon. Minister decided otherwise, the pending cases must be started *de novo*. Secondly, since the Minister has an inherent power to hire and fire the Commissioners of Tax Appeal Tribunal, definitely he can influence their decisions; hence the doctrine of fair hearing can hardly be observed.

[391] Daily Trust Thursday 27, 2013, p. 20

vi. The judicial arm of government is also not helping the effective enforcement of income tax, as there is the problem of delay due to long court processes which discourages taxing authority from taking litigation as an option for enforcing personal income tax in Nigeria. Despite the establishment of Tax Appeal Tribunal, the applicability and practicability of the right to speedy trial is still suffering severely. There is, also, the problem of inadequate prosecution of the defaulting taxpayers as well as awarding light punishments and penalties on the defaulting taxpayers. The tax officials very rarely use the criminal penalties. No one is known to have been convicted and imprisoned for giving incorrect information, for aiding, abetting, assisting, counseling, inciting or inducing a tax payer to make or deliver false returns even where such fraudulent intent is established. The tax authorities mostly opt for civil litigation to recover taxes than to prosecute defaulting tax payers even though criminal prosecution does not debar them from recovering delinquent taxes through civil actions.

vii. There is also constant abuse of tax clearance certificate by both the tax authorities and the tax payers. There are cases of forging the tax certificates as well as demanding money to produce same to the defaulting tax payers. That is why the above procedures cannot be effectively implemented.

5.3 Suggestions/Recommendations

Based on the above findings, it is recommended that,

i. There should be proper compliance with the provisions of the tax laws and regulations as well as conditions stipulated therein by both the relevant tax

authorities and the tax payers. The relevant tax officials should not use the enforcement procedures arbitrarily against the tax payers. There has to be a fair play ground for both, where the fundamental rights of the tax payers is safeguarded.

ii. In the case of foreign investment, bilateral tax agreements can be useful in facilitating normal assessment and collection of taxes. The treaties should contain clauses for the exchange of fiscal information and for mutual cooperation in enforcing statutory provisions for the prevention of fraud and the punishment of tax evaders.

iii. To avoid the present situation of multiple taxations where States impose illegal taxes and levies, there should be a unified, effective and unbiased tax administration with full representation from the three tiers of government. Thus, in recognition of the fundamentals of federalism, the *Taxes and Levies (Approved List for Collection) A*ct[392] contains as much as 8, 11 and 20 taxes and levies for federal, states and local governments respectively. There is need for introspection on whether the current thinking is to ensure that taxes, fees and charges do not exceed those listed in the Act or whether to streamline the number of taxes into just a few simple broad based taxes with elastic revenue potentials as being advocated by protagonist of flat tax. The only solution to the problem presented by the above problem of tangled mass of tax laws is to have

[392] No. 21 Cap T2 Laws of Federation 2004,

the various laws codified, based on an orderly statutory arrangement of the entire tax system in accordance with a definite outline. Thus, the various taxes should be classified therein, and each tax separately identified and various taxes that are applied to a single article of trade or transaction should be consolidated into one tax. There is the need to undertake a periodic consolidation of the tax laws so that it can have all the amendments and changes compiled into a single statute to which both taxpayers and tax administrators can have an easy access.

iv. Imposition of stiff penalties for the various offences as prescribed in the income Tax Acts. As mentioned earlier on, no one is known to have been convicted and imprisoned for giving incorrect information, for aiding, abetting, assisting counseling, inciting or inducing a taxpayer to make or deliver false returns even when such fraudulent intent is established. Therefore, it is recommended that, to solve the problem of corrupt practices mentioned in this paragraph, government at all levels ensure the enforcement and implementation of stiff penalties and punishments provided by the provisions of the relevant tax laws against any person caught and, such person shall be exposed and publicized through media stations.

v. Lastly, tax laws must be understandable to all: they should be expressed simply, clearly and intelligibly. The annual amendments that are incorporated into the yearly budgets should be aligned with the principal legislation to avoid confusion.

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