A CRITICAL APPRAISAL OF UNIFORM PERSONAL INCOME TAX SYSTEM WITHIN THE CONTEXT OF NIGERIAN FEDERALISM

BY

ADEDOKUN KAREEM ADEYIMIKA

AUGUST 2006

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LLM/Law/ 28532/01-02

A THESIS SUBMITTED TO THE POST-GRADUATE SCHOOL AHMADU BELLO UNIVERSITY ZARIA IN PARTIAL FULFILMENT OF THE REQUIRMENTS FOR THE AWARD OF

MASTER OF LAWS
DEPARTMENT OF COMMERCIAL LAW
FACULTY OF LAW.

DECLARATION

I, hereby declare that this thesis has been written by me and it is a record of my own research work. It has not been presented in any previous application for a higher degree.

All quotations are indicated and the sources of information are specifically acknowledged by means of references.

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ADEDOKUN KAREEM ADEYIMIKA

AUGUST, 2006

CERTIFICATION

The thesis entitled A CRITICAL APPRAISAL OF UNIFORM PERSONAL INCOME TAX SYSTEM WITHIN THE CONTEXT OF NIGERIAN FEDERALISM BY ADEDOKUN KAREEM ADEYIMIKA meets the regulation governing the award of the degree of master of Laws, of Ahmadu Bello University Zaria and it is approved for its contribution to knowledge and literary presentation.

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DEDICATION

To the worthy trio of **LATE CHIEF JONATHAN .O. BABATUNDE** *(the Bobagunwa of Ago Are Land)* of the Federal Inland Revenue Service, Zonal Office Ilupeju

Lagos; for being the bastion of my inspiration and encouragement to pursue and accomplish this endeavour

AND

BARRISTER (HAJIYA) BILKISU MOHAMMED *(The Principal Partner, Messers Bilkisu Moh'd & Co, 7 Park Road, Zaria*) for exposing me to a good practice of the Law and for always rising up to my assistance in all ramifications throughout the conduct of this research work.

AND

ALL honest and patriotic Nigerians who are alive to their civic obligations of the payment of their taxes as and when due.

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Last, the views expressed in this thesis are mine and those of authors acknowledged. All errors in form or substance are entirely mine.

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ADEDOKUN KAREEM ADEYIMIKA

TABLE OF CONTENTS

DECLARATION		i
CERTIFICATION		ii
DEDICATION		iii
ACKNOWLEDGEMENT		iv-x
TABLE OF CASES		xi-xii
TABLE OF STATUTES		xii-xiv
ABBREVIATION		xv

CHAPTER ONE – GENERAL INTRODUCTION

1:1	BACKGROUND INFORMATION	1
1:2	STATEMENT OF PROBLEM	5
1:3	OBJECTIVES OF RESEARCH	6
1:4	SCOPE OF RESEARCH	8
1:5	RESEARCH METHODOLOGY	10
1:6	JUSTIFICATION OF RESEARCH	13
1:7	LITERATURE REVIEW	16

CHAPTER TWO - PERSONAL INCOME TAX JURISDICTION

2:1	INTRODUCTION	24

2:2 AN EXAMINATION OF PERSONAL INCOME TAX JURISDICTION 27

2:3 PERSONAL INCOME TAX AT THE STATE LEVEL 38

2:4 PERSONAL INCOME TAX AT THE FEDERAL LEVEL 57

2:5 THE BALANCE BETWEEN THE STATES AND FEDERAL FISCAL AUTONOMY OVER PERSONAL INCOME TAX 64

2:6 THE IMPACT OF FREEDOM OF TRADE AND COMMERCE ON PERSONAL INCOME TAX. 75

CHAPTER THREE -_APPRAISAL OF UNIFORM PERSONAL INCOME TAX

3:1 INTRODUCTION 87

3:2 ARGUMENTS AGAINST UNIFORM PERSONAL INCOME TAX 94

3:3 ARGUMENTS IN FAVOUR OF UNIFORM PERSONAL INCOME TAX 107

3:4 STATUTORY PROVISIONS ON UNIFORM

PERSONAL INCOME TAX. 114

CHAPER FOUR - INSTRUMENTALITY OF GOVERNMENT ENFORCEMENT OF UNIFORM PERSONAL INCOME TAX.

4:1 INTRODUCTION 130

4:2 THE INSTRUMENTALITY OF GOVERNMENT ENFORCEMENT OF UNIFORM PERSONAL INCOME TAX. 153

4:3 FUTURE PROSPECTS OF UNIFORM PERSONAL INCOME TAX. 168

CHAPTER FIVE – SUMMARRY AND RECOMMENDATIONS

5:1 SUMMARY 176

5:2 RECOMMENDATIONS 178

5:3 CONCLUSIONS 182

BIBLIOGRAPHY 183

TABLE OF CASES

(1)	A. G Lagos State Vs A. G Federation (2003) 12NWLR (Pt 833) Pp 119 - 120 Para H _ F	95
(2)	A. G Lagos State Vs A. G Federation (2004) 18 NWLR (Pt 904) P 1 @ P 14	69,70
(3)	A. G Lagos State Vs A. G Federation (2005) All FWLR (Pt 224) P 805 @ 905- 906 Para G- P	119
(4)	A. G Ogun State Vs A.G Federation (1982) 1- 2 SC 13 @ P P 72 - 73	95
(5)	A. G Ogun State Vs Alhaja Ayinke Aberuagba (1985) IN WLR (Pt 3) P 395	11,73,80,82
(6)	A. M. Shittu Vs N. A. C. B. & OVS (2001) 10 NWLR (Pt 721) P 316 Para G – H	12,159,
(7)	Ayeni Vs Unilorin (2000) 2 NWLR (Pt 644) 290 @306	112
(8)	Brown V Houston 114 US 6 11 @ 630	83
(9)	Commissioner Of Internal Revenue Vs J. A. O. Aworeni Suit No 1/404/72 High Court Of Western Nigeria.	164

(10)	Manufacturers Association Of Nigeria & 16 ors Vs. A. G. Lagos State (2004) All FWLR (Pt 199) P 1327.	11,22,72,73, 77,84,85
(11)	Nigerian Breweries Plc Vs Lagos State Internal Revenue Board (2002) 5 NWLR (Pt 759) Pg 1 @ 13 – 14 Paras H – A	157
(12)	Nippert Vs City Richmond 327 US416	83
(13)	Trade Bank Plc Vs Banilux Nig Limited (2000) 13NWLR (Pt 685) 483.	112

TABLE OF STATUTES

1904	Land Revenue Proclamation Law	88
1917	Native Revenue Ordinance	88
1927	Income Tax Ordinance	88
1940	Direct Taxation Ordinance	27, 88
1943	Income Tax Ordinance	90
1957	Western Region Income Tax Law	91
1960	Constitution of the Federal. Republic of Nigeria.	25,30
1961	Income Tax Management Act	18,30,31,93
1962	Eastern Region Finance Law	91
1962	Northern Nigerian Personal Tax Law	91
1963	Constitution of the Federal. Republic of Nigeria.	18,25,93,97
1975	Income Tax Management (Uniform Taxation Provision) Acts	7,31,93,117
1979	Constitution of the Federal Republic of Nigeria	19,25
1987	High Court Civil Procedure Rules of Kaduna State	104
1990	Companies and Allied Matters Act	54
1990	Companies Income Tax Act	132,133,135
1993	Value Added Tax Decree	80,84
1993	Suspension & Modification Decree	2
1993	Personal Income Tax Act	6,10,12,23,31,34,36,39,43,49,93

1993	Finance (Miscellaneous Taxation Provision) Decree No 3	132
1994	Sales Tax Law, Lagos State	80
1996	Finance (Miscellaneous Taxation Provision) Decree No 31	138,139
1996	Finance (Miscellaneous Provision Taxation) Decree No 3	154,155
1999	Constitution of the Federal Republic of Nigeria	4,19,25,33,36,76
2000	Sales Tax (Schedule Amendment) Order	80
2004	Companies Income Tax Act	58,132,133,135
2004	Personal Income Tax Act	6,10,12,23,31,43,102,103,126
2004	Value Added Tax Act	83

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CHAPTER ONE

1.1 BACKGROUND INFORMATION

Nigeria operates a federal system of government under which system each tier of government has its legislative competence or functions conferred on it as the case may be. It is significant to note that Federalism in Nigeria dates back to 1954 when the country which had hitherto been administered as a Unitary state was restructured into three quasi-self governing and administered regions[1].

It is equally noteworthy that shortly before and since the independence of Nigeria in 1960, all the constitutions that have been enacted have taken the pattern of federalism. Section 2(2) of the 1999 constitution also re-enacts the doctrine of federalism when it provides that:

"*Nigeria shall be a federation consisting of states and a federal capital territory*"

However, there is no doubt that Nigerian federalism is anomalous in practice. It is fraught with various phenomena that conflict with the universal precepts and normative imperatives of federalism to the extent that the danger and apprehension that the nation is susceptible to unitarism becomes heightened[2].

However, the focus of this thesis is not to appraise the entire constituents of Nigerian federalism but only the aspect of it that affects Uniform Personal Income

1. Fajana O. – Three-and-a-half decades of fiscal federalism in Nigeria In: Elaigwu J.I and Akindele R.A (ed) Foundations of Nigerian Federalism 1960 – 1995, NCIR, Abuja (1996) p.105
2. Kupolati I. - Democratic Federalism in the cloud of Assault being one of the issues discussed as fourth Anniversary editorial message in (2004) All FWLR (P t 211) PXIX

Tax system. It is expedient to note that one of the most constant sources of inter-governmental wrangles, which any federal system is likely to confront is the distribution of financial resources among the various levels of government. The pivotal concern in this regard is to ensure the different tiers of government have adequate financial resources for the effective discharge of their essential political and constitutional responsibilities[3].

The division of taxing power between the various parts of Nigeria has been a recurrent problem since the amalgamation of North and South in 1941[4]; and perhaps, for the texture of Nigerian Federation, it has succeeded in rearing its ugly head into our nascent democracy. The enthronement of a democratically elected civilian government in Nigeria on May 29th 1999 was preceded by about fifteen years of Military interregnum during which a somewhat unitary system of administration was practised because of the command structure of the military[5]. That is a system where power flow from the centre. For instance, the Federal Military Government was vested with sweeping powers to make laws on any subject –matter whatsoever such as police affairs, census, imposition of taxation on

incomes and profits, trade and commerce, etc including Local Government matters which is hitherto residual to the state governments[6].

3. Ayua I.A. – The Nigerian Tax Law. Spectrum Law Publishing, Ibadan, First edition (1996) p. 25 see also Fajana O. op cit. 106
4. Note that in 1914 what Nigeria achieved was only amalgamation not unification or unitarism, and at independence in 1960 it became a federation, not a unitary dispensation.
5. Abiola S. – Division of Taxing Powers In: Abdulrazaq M.T. (ed) Chartered Institute of Taxation of Nigeria – Tax guide and statues, P. 650
6. See generally sections 2 and 5 of the constitution suspension and modification Decree 107, 1993 quoted in Abiola S. op. cit P.650.

This made the military era witnessed the enactment of certain Tax Decrees and edicts some of which are bound to generate jurisdictional conflict between the federal and state Governments with the coming into effect of the constitution of the Federal Republic of Nigeria, 1999. The recent observation of the Chief Justice of Nigeria[7] lend credence to this view as thus:

Our present constitution seems to have been completely obliterated, negating the principles of federalism… the military as politicians under a constituent assembly to review and update the nation's constitution and thereafter embark on windy transition programmes whenever it suited them to vacate. They (Military regime) simply remove the suspension orders and modifications made on the constitution while handling over power to the elected civilian. These constitutional alterations by various military regions have created numerous problems for successive civilian administration in the country.[8]

A corollary of the above observation of His Lordship that is relevant to the topic under research is that since the inception of this democracy, the tension has been heightened on the arrangement of centralized financial and fiscal jurisdiction on federal government bequeathed by long years of military rule at the expense of the financial sovereignty of the federating states.

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7. Hon. Justice Mohammed Lawal Uwais (CJN)
8. See New Nigerian Newspaper edition of 31st May, 2004 P.5

Be that as it may, there is another strong view that the Nigerian federalism is not bound to tow the pattern of foreign federalism lock, stock and barrel. The importation of formal structures or institutions of governments however excellent they may be on paper, cannot guarantee their success if the conditions which make them work in their country of origin are lacking. This cannot be imported from outside; but have to be developed an nurtured from within[9]. It is further contended that each federal experiment has to cope with the peculiarities dictated by its own history, political economy, social cultural environment and leadership profile, even when it is simultaneously open to learning, borrowing, emulation or even stealing from the experience of other federations. [10]

However, it is instructive to note that under the 1999 constitution there exists two separate legislative lists. One enumerating Exclusive central

powers and the other enumerating concurrent powers, leaving the state governments with exclusive authority over unspecified residual fields. Personal Income Tax is a significant tax that has all the time being the problem item of Nigeria's revenue structure since its adoption of federalism in 1954, However, to reduce this attendant problem, the Federal Government is vested with the exclusive power under item 59 of the second schedule to the constitution[11] to legislate on

9. Nwabueze B.O. – The United State Constitution in Global Perspective In: Olaniyan R.A. (ed) Federalism in Changing World. O.A.U. Press, Ile-Ife (1988) P.1
10. Akindele R.A. – Nigeria in the Global Market of Experiments in Federalism In: Elaigwu J. I and Akindele R.A. (ed) Foundations of Nigerian Federalism, NCIR, Abuja (1996) P.1
11. Constitution of the Federal Republic of Nigeria 1999

personal income tax with the view to harmonise the rates of taxes, reliefs and allowances. As straight forward as this arrangement seems, it has excited mixed feelings from cross section of professionals.

1.2 STATEMENT OF PROBLEM

The quest for an acceptable pattern for sharing of powers to levy personal income tax between the Federal and State governments have been a recurring problem in Nigeria. There is hardly any civilian regime since independence till date that has not experienced contentious litigation on income tax jurisdiction. It therefore becomes imperative to examine, nay appraise why the Federal government (and not the State) is vested with the exclusive power to legislate on this important tax in a way that portends a centralising trend in Nigeria federal

structure and also make the State governments virtually junior partners in Federal-State relationship.

It is equally worthy of thorough examination the belief that once the subject-matter of taxation has been allocated to one tier of government, the proceeds therefrom usually belong exclusively to the authority levying the tax.[12] Is this a water-tight arrangement? Particularly when in the 1999 constitution the power to impose and or collect a tax is allocated to one level of government while the proceeds therefrom is disbursed to another level of government or shared among different tiers of government. There is therefore the need to examine which of these two arrangements will augur well for the Nigerian Federation.

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12 Ayua I.A. op. cit. P.32

Another significant issue worthy of consideration is the clamor or desire by state governments for securing that the maximum possible proportion of the income of state governments should be within the exclusive power of those governments to levy and collect. The practicability of this shall be confronted with the consideration of national policy, which involves the well-being of Nigeria as a whole, and inter-State policy which will ensure harmonious relations between States so as to avoid causes of frictions.

In this thesis therefore, it is necessary to examine carefully all these statements of facts with the hindsight that there would not be any infraction on the autonomy enjoyable by State government within Nigeria federal set up as provided

for in the 1999 Constitution, and will also not affect the provision of the Personal Income Tax Act.[13]

1:3 OBJECTIVES OF RESEARCH

A thoughtful consideration of the idea of vesting the exclusive power to legislate on personal income tax on federal government portends an intricate and complex financial implication. This is because the state governments will be left with inelastic revenue bases. A corollary of this is that the scope for the enlargement of state jurisdiction/taxation seems disappointingly small. This will make them excessively dependent on statutory allocations from federally collected revenue to discharge their functions. This, according to Professor Ayua is not a recipe for political unity particularly in a developing heterogeneous society like Nigeria where there is differential/socio economic development with the central government apparently lacking any definitive policy to bring even development.[14]

Again, a cursory look at the position of the personal income tax before 1975 [15] reveals that the era was fraught with internal double taxation problems, as a result of multiplicity and diversity on rates or tax reliefs and personal allowances on mobility of labour.

13. 1993

The tax administration of that period was adjudged inefficient to the extent that tax experts opined and suggested that unless and until a uniform personal income tax system is established in Nigeria, the tax cannot play the significant role it should play in Nigeria's revenue structure and economic development [16] A.O. Philips has this comment on the situation:

Personal Income Tax has all the time been the problem item of Nigeria's revenue structure particularly since its rationalization in the late 1950s. Nigeria is the only federation in the world in which a significant tax such as this is vested in an authority other than the central authorities. Thus Nigeria has as many tax systems as there are governments in Nigeria, resulting in differential income tax burdens throughout the country, and

14. Ayua I.A. op. cit. P 25
15. Being the year Income Tax Management (Uniform Taxation Provisions) Act (hereinafter known as ITMA 1975) was enacted.
16. Philips A.O. - Nigeria's Tax Effort (1970) BTR 180 @ 186 quoted in Ayua I.A. op. cit P. 29

hampering its use as a significant source of revenue and as an instrument of economic control. The administration is generally thought to be inefficient… The opinion has gained ground that unless and until a uniform personal income tax system is established in Nigeria, the tax cannot play the significant role it should play in Nigeria's revenue structure and economic development.[17]

Against this background therefore; this research work aims to achieve the following objectives VIZ:

I. to have a critique of the personal income tax jurisdiction in Nigeria

II. to appraise the rationality of uniform personal income tax arrangement within the structure of Nigeria fiscal federalism with the view to consider whether uniformity and/or harmonization of personal income tax will assist in quick realization of Nigeria's fiscal objectives.

III. to make suggestions and recommendations on how the present uniform personal income tax arrangement should be improved upon to foster economic growth and meaningful development.

1.4 SCOPE OF RESEARCH

It is not in doubt that the whole gamut of Nigerian federal structure requires streamline and overhaul to make it more efficient and better organized for the

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17. Ibid P. 186

visions, aspirations, ambitions and focused statesmanship of the founding fathers of Nigerian federalism to be realized in a perspective that will better the lot of the present day Nigeria.

However, this dissertation is constrained by scope to appraise the entire facet of Nigerian federalism. Instead, it shall attempt an appraisal of the rationality

of the practice of the Uniform personal income tax system within the set-up of Nigerian federal arrangement. In doing so, the research work shall come out with a finding on whether the present Uniform Personal Income Tax Regime can guarantee even and meaningful desirable economic development and as such be retained; or that the exclusive power to levy and collect personal Income tax be allocated to the state governments with the attendant effect of strangulating inter-state commercial intercourse which may result in intolerable discriminations and unneighbourly regulations.

Be that as it may, the finding cannot be achieved without appreciating the essence of federalism. This is because in a federal set up like Nigeria, the federal government and state cannot avoid facing each other as equals on constitutional provisions which define their respective taxing jurisdiction[18], especially when there is an infraction of same.

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18. Ayua I.A. op.cit. P. 40

1.5 RESEARCH METHODOLOGY

The materials to be used in this research work are documentary. They consist of both primary and secondary documents; such as statutes like the 1999 Constitution of the Federal Republic of Nigeria, the Personal Income Tax Act [19] etc

as well as various textbooks. The researcher will adopt both eclectic and doctrinal methods of data collection.

Several visits shall be made to the National Archives Ibadan wherefrom the researcher envisages getting the authentic text of the report of the two-man fiscal commission chaired by **Sir Jeremy Raisman** in 1958. The terms of reference of the commission requires it to have regard to the desirability of securing that the maximum possible proportion of income of regional governments should be within the exclusive power of those governments to levy and collect, and at the same time to take into account considerations of national and inter-regional policy. There is no doubt that the commission find itself in a cleft stick out of which a proper balance had to be stricken between these somewhat conflicting considerations.

The researcher will peruse the report in its entirety to be able to elicit some vital information, which shall constitute valuable materials with which this dissertation is expected to be fleshed up.

Also, we will study the 1974/75-budget speech wherein the Federal Government announced its intention to introduce uniform taxation throughout the

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19. 1993

country. A thorough reading of this important archival document will reveal attempt by the Federal government to justify the introduction of uniformity of taxation in Nigeria; and its attendant problems. The researcher will sift the

substance from that document and use it to strengthen his view in what shall make up the whole of this treatise.

Furthermore, we will visit the Institute of Advanced Legal studies Lagos in search of some decided cases on tax jurisdictional issues that ended up in contentious litigations. One of such celebrated cases is **A.G. OGUN STATE V. ALH AJA AYINKE ABERUAGBA**[20]. The researcher will consider very carefully the historical background and the facts of the case for the purpose of drawing forth latent but salient information to facilitate the accomplishment of the objectives of this thesis. As the case raised very important constitutional issues concerning the federal and state taxing powers, the supreme court invited all the Attorneys – General in the federation as amici curiae to file briefs of argument on the issues and to appear for oral argument at the hearing of the case. The researcher will consider keenly the divergent and varied views expressed in their submissions which is full of industry and erudition to embellish this thesis

Another kind of such cases to be considered by us is the recent case of **MANUFACTURERS ASSOCIATION OF NIGERIA & 16 ORS V. A.G. LAGOS** [21]. The plaintiff in this case was seeking a declaration that the Lagos

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20. (1985) 1 NWLR (Pt 3) 395
21. (2004) All FWLR (Pt 199) P. 1327

State Government has no power, right or jurisdiction to impose any duty, levy or tax howsoever called on any person manufacturing in or bringing any

goods or services into Lagos State. The researcher will pensively digest the instructive submissions of learned counsel to both parties as well as the well-considered judgment therein which was riddled with topical issues relevant to the subject matter of this research. The valuable materials to be extracted from the case will animate this dissertation.

As earlier stated, one of the taxing statutes to be scrutinized in this research work is the Personal Income Tax Act.[22] Section 2(2) thereof empowers the government of a state to impose personal income tax for every year of assessment on the personal income of individuals who are resident for that year in the state under the provision of first schedule to the Act. This has received judicial approval in the case of **A.M. SHITTU V. N.A.C.B & 2 ORS.**[23] In the thesis, the holding is confronted with item 59 of the Exclusive Legislative List of the 1999 constitution of Nigeria vis a-vis item 7 of the concurrent legislative list of the same constitution. The thorough consideration of which shall widen the horizon of and will enrich the perspective of the researcher in coming out with a whole of this research work.

It should be noted that in all the above highlighted cases, the courts were invited to interprete certain provisions of the constitution and/or that of the

22. 1993
23. (2001) 10 NWLR (Pt. 721) P.316 Paras G-H

Personal Income Tax Act 1993. A careful analysis of those cases will reveal that some of them arose either from the manners of inter-relations between the Federal and state governments or between state government and individual corporate entities that hinges on fiscal jurisdiction of the two tiers of government. In this research, we shall exploit the ratio decidendi thereof to expound and justify some of the opinions on the topic at hand; and also use same to criticize some of the seemingly archaic opinions expressed by authors of some texts to be consulted.

All in all, the researcher in analyzing the data collected will combine what seems the best or the most useful from many different available texts and literatures and eclipse them to make a whole of this dissertation.

1.5 JUSTIFICATION OF RESEARCH

The resources, time and energy dissipated on this thesis is to achieve a purpose. The treatise is expected to be of immense benefit to the cross-section of people in discharge of their professional callings.

First, judges will find the contents of the dissertation very helpful in discharging their judicial functions. The classical responsibility of the courts is to interprete laws and apply them to the facts of the case before them. Decisions reached as a result of the interpretation by superior courts of records have the force of law and sanction like any other law made by the legislature.[24] However, it is a

24. Aboki Y. – Introduction to Legal Research Methodology, Tamaza Publishing Company, Zaria, First edition, P.7

common knowledge that our courts are abound with fiscal jurisdictional conflicts arising from intergovernmental intercourse or inter-state commercial relations on which they (courts) are invited to interprete certain provisions of the constitution and/or other taxing statutes. In discharging this onerous obligation, this thesis will assist Nigerian judges to be cautious in not slipping into unnecessary error. A careful digest of this research work will undoubtedly imbued our courts with a teleologic stance in construing this aspect of our taxing legislation or constitutional provisions that bothers on revenue so that the underlying objectives of our tax system can be achieved.

Second, our citadels of learning are reputed for breeding legal minds. There is the need for the law teachers to constantly enhance their knowledge and widen their horizon of erudition. This thesis will be useful to the legal academics by enriching their knowledge especially those in the tax law circle so as to impart current and sound knowledge on the law students.

Another class of Professional that will benefit from the contents of this thesis is the legal practitioners. They receive briefs on multi-farious courses of action, such as tax, contract, tort etc on which they need to conduct a thorough legal research to be able to advise their clients appropriately. One of such courses of action on which a lawyer's service may be sought is the subject matter of this

dissertation. Tax laws are drafted to reflect the policy of the government. The laws are interpreted and clarified by the courts; but it is the function of the Lawyers to evaluate individual tax cases and assist the court in elucidating the provision of tax law with particular reference to specific tax cases as they occur. In discharging this task, the contents of this thesis shall be of immense assistance to Lawyers.

Furthermore, in a democratic set up like ours, the heavy task of legislators cannot be underestimated. The National Assembly being the institution vested with legislative powers in Nigeria is empowered to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in Exclusive Legislative List and concurrent Legislative List (by virtue of the doctrine of covering the field). This heavy obligation laddened on the National Assembly cannot be accomplished with an empty head. The individual law maker have to be imbued with wide range of knowledge to meet the challenges of law making. The topic of this research forms one of the items on which our National Assembly is competent to legislate.

To that extent therefore, this thesis shall better inform both the legislators and the legislative counsel (*whose main function is to assist legislators in fulfilling their legislative tasks)* in making valuable contributions to the development of Nigeria vide law making.

It should be also noted at this juncture that tax is not a voluntary payment or donation. It is an enforced contribution exacted pursuant to legislation. This evinces the fact that the legislators will also be adequately informed by the

contents of this thesis of the need to exhibit circumspection by consulting spectrum of stakeholders who will be affected by any law made by them before such a law is made so that it will not excite strict resistance.

Similarly, the contributions of tax practitioners to the growth and development of tax law and Nigeria economy is not out of place. On several occasions, the Chartered Institute of Taxation of Nigeria had issued communiqué to express its position on any issue that bothers on tax law in Nigeria. The institute consists of tax experts whose stock-in trade is engagement in the practice of tax profession. The individual members cannot discharge their professional prowess as expected, if they do not constantly improve on their knowledge of tax law. This thesis will in no small measure assist them in their professional obligations. At least the contents of this treatise will be instinctive to them in advising their client appropriately.

On a final note, the students of law shall find this thesis useful. It will serve as a reference point of knowledge for the law undergraduates, while the law graduates will find it a valuable outline for future research work.

1.6 LITERATURE REVIEW

The materials to be used in this dissertation are secondary data such as textbooks and statutes. However, there is the need to distinguish them from this thesis. One of the earliest author on this topic is **Professor C.S. Ola**[25]. In his book

25. Ola C.S – Income Tax Law for Corporate and Unincorporated Bodies in Nigeria – Heineman, Ibadan, New edition (1984) P. 55

"Income Tax Law for Corporate and Unincorporated Bodies in Nigeria", the Learned professor treats the topic as **"The Need for Uniformity of Taxation in Nigeria"** According to him, the proposal to introduce Uniform Personal Income Taxation throughout Nigeria erodes the powers of state governments under the constitution to initiate or manipulate tax policies in areas where each state tax authority has exclusive or concurrent tax jurisdiction. The measure may make a

huge joke of the continued existence of state governments in a federal constitution which guarantees the autonomy of state governments in specified fields including taxation. He caps up his opinion by reasoning that a federal set up directed towards national unity cannot be reconciled with a situation whereby there is an increasing trend towards rendering the state components of the federation ineffective. For income taxation is an elastic and fertile source of revenue to state governments and can be made to yield more revenue as circumstances demand.[26]

It should be noted that the above assertion was viewed about three decades ago, specifically in 1974[27] when the Federal Government announced its intention to introduce uniform taxation throughout the country as socially and economically desirable then. One wonders, if the observation at the proposal

stage can still have the same substantial potency now that the proposal had since being on implementation.

26. Ibid Pp 54-55
27. Being the Year the Federal Government announced its intention to Introduced Uniform Taxation throughout the Country.

This apart, the topic was considered in a very myopic length and it did not thoroughly inter-weave the concept of uniformity of taxation with many faces of Nigerian fiscal federalism in such a way that discussion on the topic could be said not to need further scholarly inquiry.

Besides, the learned author considers the topic vis-à-vis the Income Tax Management Act 1961 and 1963 Republican Constitution which are hitherto obsolete laws. So, apart from few cogent issues raised therein, and which had been overtaken by events, the book is nothing more than a source of history. Therefore, there is the need for an intensely fresh research on it.

Another erudite scholar that had also considered the topic under research is **Professor I.A. Ayua**[28]. He treats the topic under the heading **"Distribution of Taxing Power in Nigeria**". He did a more comprehensive research work on the topic. He inter-alia discussed the historical outline of Nigeria tax system, the history of distribution of taxing power in Nigeria, and further considered the Income Tax Management (Uniform Taxation Provisions etc) Act 1975, but what he termed "the current position of Taxing Powers" in his book is

now of history. Some of the opinions of the learned author were pursuant to the provisions of the 1979 constitution now repealed.

Though some of his views are instructive and constitute valuable outline for future research work on the topic, but with the coming into operation of

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the 1999

28. Ayua I.A. op. cit P. 24

constitution, the position of the law has changed compared to what obtained a decade ago. In fact, the learned Professor conceded to the fact that some of the issues raised in his work require further future consideration. He observed that:

The system of distribution of taxing power as embodied in the 1979 constitution look fairly straight forward and simple----- However, in practice, this is hardly the case. For instance, once the subject matter of taxation has been allocated to one tier of government, the proceeds of the tax usually belong exclusively to the authority levying the tax. But this is not the case under the 1979 constitution with the taxation of individuals which has exclusively been vested in the Federal Government. This therefore needs further examination in future[29] *(underline mine)*

The effect of the foregoing is that the conduct of a fresh research on the topic at hand is expedient particularly under the 1999 constitution and this is the focus of this thesis.

The learned Professor further stated that under the 1979 constitution the Federal Government then has the power to enact a uniform tax code throughout the country which can harmonise the rates of taxes, reliefs and allowances.[30] This dissertation is out to reveal that what obtains under 1979 *constitution (which is not largely different from the position under the 1999 constitution)* is not

29. Ibid P. 32
30. Ibid P. 32

harmonization as the learned author wants us to belief, rather it is a direct unification, which portends a foreboding constitutional cataclysm in our federal set-up.

Also, **Professor Olufemi Fajana** [31] in his academic cogitation on the inter-governmental fiscal relations in the Nigerian Federation since 1960 considers the topic as: **"division of fiscal powers among levels of Government in Nigerian Federation".** He opines that the division of fiscal powers in the Nigerian federation has been dictated more by efficiency of tax administration than by the relatives needs of the different levels of government for financial resources, hence he notes that the federal government has jurisdiction over revenue sources which have national bases or have significant implications for macroeconomic objectives while the subordinate level of government have assigned to them resource bases that are regional or local in nature. [32]

However, as insightful as his work is, it is caught up by shortcomings. First, there is excessive concentration on historical outlines of fiscal Federalism in Nigeria in it, whereas this research work, in addition to considering the historical outlines will build on same by beaming its searchlight on the legal propriety of the fiscal federalism. It will also consider indept the cases borne out of fiscal

31. Fajana O. op. cit P.105
32. Ibid P. 110

jurisdictional conflicts, the ratio decidendi from which forms the law today. Second, his work was considered basically from the perspective of the discipline of humanities whereas this treatise is viewed partly from humanities perspective and largely from legal viewpoint.

In all, the erudite professor's work touches though in paraphrase, the entire gamut of Nigerian federalism and to the extent that this thesis focuses particularly on Uniformity of Personal Income Tax in the context of fiscal federalism, it is distinguishable from his work..

Abiola Sanni,[33] in another comprehensive research work deals with the topic under the caption **"Division of Taxing Powers"**. He painstakingly considers the topic on the following sub-heads: definition of taxing powers,

techniques of division, Federal taxing powers, States taxing powers and Local Government powers. According to the learned author.

… the military era witnessed the enactment of certain tax decrees and edicts some of which are bound to generate Jurisdictional conflict between the federal and state governments with the coming into effect of the constitution of the Federal Republic of Nigeria 1999. For instance, the Governor of Lagos State recently declared his intention to re-introduce the collection of sales tax as permissible under fiscal federalism, notwithstanding the existence of a value Added Tax Decree. The

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33. Abiola S. op cit P.650

question is whether a state government can impose its independent sales tax simultaneously with VAT. Will such a measure not amount to double taxation? [34]

It should be noted that as at the time of this research work, the Government of Lagos State has made true his intention to re-introduce sales tax from which a legal tussle had ensued[35]. The court had answered the above poser on whether a state government can impose its independent sales tax, in the affirmative. Therefore, the fear enunciated by the learned author on double taxation has been allayed with the holding that there is no constitutional bar against double taxation[36].

As elaborate as his work seems, he treats the law as it is. No appraisal as to justification or otherwise of the current position of the law. Most significantly and unlike Professor Ayua, the learned author did not provoke the minds of future researchers and to this extent a new research work is imperative to build on his effort.

On a final note, the 1999 constitution only give the body of the law. It forms the political and legal framework of Nigerian Federalism and taxation but same cannot be regarded as the original act of the people. It reflects only the minds of

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34. Ibid P. 650
35. Manufacturers Association of Nigeria V A.G. Lagos State (2004) All FWLR (Pt 119) P.1327
36. Ibid P. 136 Para G and Ayua I.A. op cit P.33

military cabals characterized with unquestionable command, because a wide spectrum of people's representatives were not involved in the process of bringing the constitution into being. This explains why there are log-jam of jurisdictional conflict with which our nascent democratic administration is trammelled.

The personal Income tax Act [37] is made pursuant to Federal Government's power to levy personal income tax under the constitution; and like the constitution; it contains only the body of the law.

This thesis shall go beyond the provisions of the constitution and Personal Income Tax Act. It shall consider the views of experts both in law and in taxation;

dicta of judges arisen from tax jurisdictional conflict between the federal and state Governments, opinions of elderly and reasonable statement who believed that the salvation of Nigeria lay in a truly federal system of government and Uniform Personal Income Tax or otherwise.

In all, the researcher will harmoniously juxtapose these various views to give recommendations, which he believes will influence the direction of thought and of taxational advance in Nigeria.

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37. 1993

CHAPTER TWO

PERSONAL INCOME TAX JURISDICTION

2:1 INTRODUCTION

The personal income tax is a dynamic phenomenon due to its use as an instrument of fiscal policy.[1] By its nature, the controversy over which tier of government should have authority to legislate on it keeps recurring in Nigerian fiscal arrangement. The views being expressed by commentators on this significant tax range from one extreme to the other.

On the one hand, it is canvassed that the incidence of benefits from personal income tax is nationwide. As such, the jurisdiction of the federal government to levy it is borne out of the need from time to time, for the federal government to intervene to correct the inefficiency of the economy.[2] Thus, Professor Fajana [3] in his view states that:

> ***...the pursuit of macro economic objectives such as equitable income redistribution and economic stabilization, and the need to coordinate the promotion of economic growth at the national level have necessitated the allocation of the above revenue source (i.e. personal income tax) to the federal government ... if states were to***

be given jurisdiction over... it ,the effectiveness of this tax as

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1 Adesola S.M.-Tax Laws and Administration in Nigeria. O.A.U.Press, Ile Ife, 1998, P.2.
2 Ibid P.1
3. Fajana. O. – Three-and-half decades of Fiscal Federalism in Nigeria. In :J Elaigwu & R. Akindele (ed) Foundations of Nigeria Federalism NCIR Abuja 1996 P.109.

instrument of macro - economic management will be diminished by the likely unhealthy inter-state tax competition[4]

In essence, to ensure the efficiency and economy of tax administration and to sustain the economic integrity of the entire country, it is necessary to allocate the jurisdiction to levy the personal income tax to the federal government.

On the other hand, the antagonists of the allocation of absolute jurisdiction to levy personal income tax to federal government canvass a formidable objection. In their view, the overall federal jurisdiction on personal income tax erodes the powers of state government under the constitution to initiate and manipulate tax polices in areas where each state tax authority has exclusive or concurrent tax jurisdiction.[5] The arrangement may make a huge joke of the continued existence of state government in specified fields including taxation.[6] Apart from this, under the 1960 and 1963 constitutions of Nigeria, personal income tax was not under the exclusive Legislative List on which only the Federal Government can legislate. It

was equally not made an item under the concurrent legislative list. As such, it was made an exclusively residual matter.

But under the 1979 constitution,[7] personal income tax was removed from state authority to levy and it was transferred to the exclusive jurisdiction of the federal government. Consequently, the revenues that can be secured by the state

4. Ibid P.109
5. C.S. Ola-Income Tax Law for Corporate and Unincorporated Bodies in Nigeria, Heinemman Education Books (Nig) Ltd, Ibadan, 1984, P.54.
6. Ibid P.54
7. The Position is the same under the 1999 Constitution.

governments are insufficient to provide not only for their immediate needs but also for a reasonable degree of expansion.[8] Therefore, considering the significance of personal income tax in revenue generation, the sources of internally generated revenue available to state governments is drastically reduced.

This definitely foists a situation of excessive dependent on statutory allocations from federally collected revenue on the state governments for funds to discharge their socio-economic responsibilities. And as a matter of fact, the statutory allocation is observed to be an unpredictable source of revenue. Behind this view is Professor Ayua who asserts that:

The federal dominance of the inter-governmental fiscal relations if not properly controlled will make the state

completely dependent financially and thereof generally, upon the federal government, thereby denying them of their autonomy in matters that directly concerns them. This is not a recipe for political unity particularly in a developing heterogeneous society like Nigeria where there is differential socio-economic development with the federal government apparently lacking any definitive policy to bring about even development.[9]

8. Ayua I.A. – The Nigerian Tax Law, Spectrum Law Publishing, Ibadan, 1996 P.25
9. Ibid P.25.

A corollary of the above assertion is that the federal dominance of the inter-governmental fiscal relations has some adverse implications for the economic and political development of the country. It can result in making the federal government so powerful to bend the will of the state governments to its own.[10]

In this chapter therefore, the thesis aims at a proper balance between these somewhat conflicting considerations. The jurisdiction of the personal income tax in Nigeria will be examined with the view

to strike a balance between the states and Federal fiscal autonomy over personal income tax. Also, a survey of the impact of freedom of trade and commerce on personal income tax shall be considered with the hindsight that there is need for a more rational and equitable allocation of tax jurisdiction among the various levels of government in Nigeria.

2.2 AN EXAMINATION OF PERSONAL INCOME TAX JURISDICTION

The legal history of personal income tax in Nigeria may be traced to the enactment of the Direct taxation ordinance 1940.[11] Under the ordinance, tax policy appeared to be based on a choice between bureaucracy (tax administration by officials) and the democratization of the tax system (the introduction of politicians as representatives into the tax system) and the former was preferred and practised.[12]

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10. Nwabueze B. – The Presidential Constitution of Nigeria, C. Hurst & Co Publishers Ltd, London 1982, P. 40
11. No. 4 of 1940 Cap 54. See also Ola C.S. op. cit P. 9
12. Ola C.S op. cit P. 9

Prior to independence in 1960, the three regions (as Nigeria was previously constituted) had various legislations for direct and indirect

personal taxes resulting in differential income tax burdens throughout the country. [13]

Personal Income Tax, being one of the major sources of revenue of governments in Nigeria is beset by controversies. History had it that it generated a contentious argument in 1957 constitutional conference in London. As a result of that a two-man fiscal commission was established in 1958 under the Chairmanship of Sir Jeremy Raisman. The terms of reference of the commission, inter-alia, requires it to have regard to the desirability of securing that the maximum possible proportion of the income of regional governments should be within the exclusive jurisdiction of those governments to levy and collect.[14]

In considering the arduous task before it, the commission was confronted with a serious consideration of the possibility that the terms suggested, as it has brought some problems in its train. The commission's report reads, in part, as thus:

Our terms of reference require us to have regard to the desirability of securing that the maximum possible proportion of the income of regional governments should be within the exclusive power of those governments to levy

and collect, and at the same time to take into account, considerations of national and inter-regional policy. It is in the light of both these aspects

13. Philips A.O. – Nigeria's Tax Effort (1970) B.T.R. 180 @ P.186 quoted in Ayua I.A. op. cit P. 29
14. Report of Fiscal Commission, 1958 Para 23 P.18

that we are asked to examine the present division of powers to levy taxation in the Federation and the present system of allocation of revenues and to make recommendations. The primary desideratum being posed as a high degree of regional fiscal autonomy, the limitations on achieving that target are presented as being, first practicability…; second, national policy… and finally inter-regional policy, which implies the maintenance of harmonious relations between the Regions, the avoidance of causes of friction, and above all, the preservation of the free movement of trade across the regional boundaries. [15]

In giving the regions exclusive jurisdiction to impose personal income tax on individuals, the commission identified three resultant problems. First, there was the danger of regional income tax law conflicting with double taxation arrangement between Federal Government and foreign governments. Second, there was the danger of internal double taxation. Third there was the desirability of a careful definition of which income should be subject to Federal government's jurisdiction and which one to be placed under the state government's jurisdiction. [16]

If the terms suggested to the commission were achieved, it means the regional governments will have exclusive power to fix rates of tax, personal allowances, and to decide upon its own, method of assessment and administration.

15. Ibid para 23 P. 18
16. Ibid para 88: 91, see also Ayua I.A. op. cit. P. 27

The commission, recognizing this, recommended the introduction of general principles for taxing individual incomes applicable to the whole country. It was in acceptance of these recommendations that the 1960 constitution of Nigeria[17] conferred powers on Parliament to make laws for Nigeria or any Part thereof with respect to certain enumerated uniform principles in relation to personal income tax[18].This formed the basis for the enactment of Income Tax Management Act 1961 (hereinafter referred to as ITMA 1961).

It should be noted that the enactment of ITMA 1961 did not take away from the states, the plenary power to impose personal income tax. Although, four years before ITMA was made, the Western and Eastern regions had their separate income tax laws [19]. Apart from taxing income of residents in the two regions, the West also taxed any income, which was derived from its region irrespective of the residence of the recipient [20]. The result of this was that there was internal double taxation on the same income by various governments.

What the regions did after the enactment of ITMA was just to amend their regional tax laws to bring them in conformity with ITMA 1961. In essence, there were different income tax laws applying in the country with different rates of tax,

17. Section 70 (ii) and (iii) thereof
18. Ayua I.A. op.cit p. 27. See also Ola C.S. op.cit P. 9
19. Ibid P.27
20. Ibid P.27-28

reliefs and personal allowances. The effect of these diversities on mobility of labour attracted serious reproach. A.O. Philips observed that:

...Nigeria is the only Federation in the world in which a significant tax such as personal income tax is vested in the government other than central authorities... Nigeria has as many tax systems, as there are governments...resulting in differential income tax burdens throughout the country, and hampering its use as a significant source of revenue and as an instrument of economic control[21].

It is gratifying to state that the administration then was criticized to be inefficient to the extent that opinion gained ground that unless a uniform tax enactment is made in Nigeria, the tax cannot play the significant role it should play in Nigeria's revenue structure and economic development[22].

Against this background, it was considered necessary to enact Income Tax Management (Uniform Taxation Provisions etc)ACT 1975. This explains why the jurisdiction to legislate on this important tax is placed within the exclusive power of the Federal government under the 1979 constitution of Nigeria [23]. It is noteworthy that both ITMA 1961 and 1975 had been effectively repealed and replaced by the personal Income Tax Act 1993[24] (hereinafter referred to as PITA 1993) which now regulates personal income tax in Nigeria.

21. A.O. Philips op.cit P.180 @ 186
22. Ibid P. 186
23. Item 58 of the second schedule part 1 thereof
24. Now cap P8 vol. 13 LFN 2004

It should be noted that the federal government promulgated PITA Pursuant to Section 4 (1), (2) & (3) of 1979 constitution and item 58 of the second schedule part 1 thereof. The section provides:

S4(1) The Legislative Powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation

which shall consist of a senate and a House of Representatives.

S4(2) The National Assembly shall have power to make laws for the peace, order and good government of the federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in part 1 of the second schedule to this constitution.

S4(3) The power of the National Assembly to make laws for the peace, order and good government of the federation with respect to any matter included in the Exclusive Legislative List Shall, save as otherwise provided in this Constitution be to the exclusion of the House of Assembly of States.

The part one of the second Schedule to the 1979 constitution provides for the Exclusive Legislative List under which only the federal government [to the exclusion of House of assembly of states has plenary jurisdiction to legislate. By virtue of item 58 thereof,

imposition of tax on incomes of individual falls within the exclusive preserve of the federal government, except as otherwise prescribed by the constitution itself. This arrangement is retained under the 1999 Constitution except that the federal government's power to legislate on personal income tax is now contained in item 59 of part 1 of second schedule thereof.

Furthermore, it is obvious that PITA 1993 predates 1999 Constitution; but by virtue of section 315 (1),(a) and (4) (b) of the same constitution, its validity is unshakened. The section states that subject to the provision of the constitution, an existing law shall be deemed to be an Act of the National Assembly to the extent that it is a Law with respect to any matter on which the National Assembly is empowered by the constitution to make laws.[25] An existing law, by 1999 constitution means:

"any law and includes any rule of law or any enactment or instrument whatsoever which is in force immediately before the date when this section comes into force or which having been passed or made before that date comes into force after that date"[26].

An inference to be drawn from the above constitutional provisions is that PITA 1993 is deemed to be an act of National Assembly to the extent that it is a

25. Section 315 (1) (a) CFRN 1999
26. Section 315 (4) (b) CFRN 1999

law with respect to which the National Assembly is empowered by the constitution to make laws.

At this juncture it is instructive to have an idea of what PITA 1993 is made to achieve. The main objectives of the Personal Income Tax act 1993 are:

a) The regulations of the imposition of personal tax throughout the federation so that internal double taxation of income by the Federal and State governments will be avoided.

b) The determination of the tax Authority and other technical issues arising from personal taxation in which the interests of these governments might otherwise be in conflict.

c) To achieve uniformity in the incidence of Personal Income Tax in Nigeria.[27]

A keen perception of the above highlighted objectives reveals a serious caution on the part of the Federal government from slipping into the three attendant problems identified by the 1958 Raisman Fiscal commission. Also, it shows the Federal Government's grip on personal income tax as an instrument of fiscal policy. Although, a thorough critique of the objectives, especially the last on the list, will be considered later; one can say in passing that the placement of personal income tax under the Federal Government's jurisdiction ignores the ambition

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27. Osita A. – Taxation and Tax Management in Nigeria; Tabansi Press, Onitsha, 1994, P4

of each state, under a Federal set up, to improve its percentage of internal revenue.

Be that as it may, it is worthwhile to consider the major provisions of PITA 1993, which deal with fundamental income tax principles applicable to the whole country. The provisions relate to: the determination of the residence of the tax payer, the basis of computing the incomes of individuals, families, communities,

partnerships, trusts and estates; the period covered by the income tax payer; the treatment of provident and pensions funds; capital allowances for qualifying building, plant, machinery etc used for producing income; the types of expenses which are allowable or unallowable for income tax purposes; the treatment of losses incurred in a trade, business, profession or vocation; incomes which are exempt from tax, persons liable to income tax and the machinery of resolving any conflict of interest in respect of persons and taxes between the territorial tax authorities.[28]

Considering all these major provisions embodied in PITA 1993, one can conveniently conclude that the Federal government has used its taxing power to enact a comprehensive personal Income Tax Act for the whole country.[29]

Although, the federal government has the exclusive power to legislate on taxation of individuals, it should not be supposed that the states' hand off it completely. A critical look at the 1999 constitution as it affects the subject matter

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28. Ibid P.4 See also PITA 1993
29. Ayua I.A. Op. cit P.33

of this thesis shows that both the federal and state governments are given interest in personal income tax. While the federal government legislates on it, the state governments collect.

By virtue of item 7 of part II of second schedule of the 1999 constitution, the National Assembly in the exercise of its power to impose any tax on incomes or profits of persons other than companies may provide that the collection of any such tax or the administration of the law imposing it shall be carried out by the Government of a state or other authority of a state; subject to such conditions as it may prescribe. [30]

It is pertinent to note that the constitution envisages the need to avert internal double taxation. It stipulates that where an Act of National Assembly provides for the collection of tax on incomes or profits on the administration of any law by an authority of a state in accordance with paragraph 7 of the second schedule, it shall regulate the liability of persons to such tax in such a manner as to ensure that such is not levied on the same person by more than one state. [31] **This provision becomes necessary so that there would not be any derailment from the objectives of personal Income Tax Act 1993.**

30. Item 7 of part II of 2nd Schedule to the 1999 CFRN
31. Item 8 of part Ii of 2nd Schedule to the 1999 CFRN

Moreover, in compliance with this sacrosanct provision of the constitution, The Personal Income Tax Acts Provides:

"In the case of an individual other than an itinerant worker and persons covered under paragraph (b) of sub-section(1) of this section, tax for any year of assessment may be imposed only by the state in which the individual is deemed to be resident for that year..."[32]

The above provision is to the effect that every individual is liable to personal income tax in the state in which the individual is deemed to be resident if on the first day of January in a year of assessment, he has a place or principal place of residence in that state. It is therefore clear that the

above provision of PITA 1993 is not incongruous with the constitution.

In all, what appears from the foregoing constitutional analysis is that the Federal and state governments have certain power allocated to them subject to the limit by the constitution.

It should be finally noted that there are some individuals who are exempted from the power conferred on state governments by section 2(2) PITA, 1993. They are the persons mentioned in section 2(1) (b) (i-iv) PITA, 1993 i.e armed forces members, foreign employees, Abuja residents etc. Tax on them shall be imposed by the Federal Government vide the Federal Board of Inland Revenue being the functional body under it for tax purposes.

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32. Section 2(2) thereof

2.3 PERSONAL INCOME TAX AT STATE LEVEL

The starting point for a discourse on this sub-head is sections 1 and 2 of the PITA 1993. section 1 thereof provides for imposition of income tax thus:

Section (1) – There is hereby imposed a tax, ~~on the~~ income

(a) of individuals, communities, families and

(b) arising to any trustee or executor under any settlement, trust or estate, which shall be determined under and be subject to all the provisions of this Act.

Section 2(1) –Tax of an amount to be determined from the set out in the sixth schedule (in this Act referred to as "Income tax") shall be payable for each year of assessment on the total income of every individual other than persons covered under paragraph (b) of this sub-section or corporation sole or body of individuals deemed to be resident for that year in the relevant state under the provisions of this Act.

Section 2(3) - In the case of an itinerant worker, tax may be imposed for any year by any state in which the itinerant worker is found during the year.

The sum total of the above provisions is that tax shall be payable on the total income of every individual, corporation sole or body of individuals deemed to be resident in Nigeria in the relevant states except those individuals set out in section

2(b)(i-iv) PITA 1993.

It is imperative to discuss what determines what persons in respect of what income are liable to income tax under the state's jurisdiction seriatim for better understanding of income of those persons on which tax may be charged.

2.3.1 INDIVIDUALS

The personal Income Tax Act [33] defines individual, to include a corporations sole and a body of individual, but does not include a

company, partnership, community, family, trustee or executor or any other trustees or executors.[34]

Although, an itinerant worker means individual but for the purpose of imposition of tax, they are distinguished from other individuals.

In the case of an individual other than itinerant worker, tax for any year of assessment may be imposed only by the state in which the individual is deemed to be resident for that year on his total income.[35]

Total income for a year of assessment in relation to an individual means his aggregate assessable income for that year after the additions and deductions specified in part IV of the Act .[36]

It should be quickly pointed out that as crucial as the term 'individual' is to our tax system, it is not defined by the Act. What is contained in section 100 of the Act is not definition strict sensu, but enumeration of class of persons that could be regarded as individuals.

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33. 1993
34. Section 100 PITA 1993,
35. Section 2(2) PITA 1993
36. Section 100 PITA, 1993

Again, at this juncture one may seriously ponder on whether individuals are actually taxed in Nigeria as at today. This question

becomes necessary considering the seriousness attached to the enforcement of Personal Income Tax on individuals in the past (by government); which is apparently lacking today.

In Nigeria in 1970s, we grew up to see how personal income tax is exacted on individuals with compulsion. In fact, its compulsoriness necessitates a saying among the Yorubas in the western part of Nigeria that *"individual tax is as compulsory as one's covering cloth".*

At that time, the tax clearance certificate that evidenced payment was a vital document that a pupil must present before he/she is offered admission into elementary and secondary schools. It was also a guarantee for his/her undisturbed stay in that school. We used to see tax officials on surprise raid to towns and communities with a forceful and insistent attempt to make individuals perform their tax obligations.

But all of a sudden, the enforcement of individual tax, especially direct assessment, becomes faintly visible. The attention of internal Revenue is now on P.A.Y.E whereby tax is deducted at source and net balance is given to the tax payer as his salary. This explains why a lot of self-employed individuals evade tax with impunity.

For instance, the oral interview conducted reveals that a lot of legal practitioners, Accountants and other professionals in private practice hardly pay tax on their income. Also, some rich businessmen evade tax most without any punishment on them. Thus, a scholar in his observation said:

of all the major taxes in Nigeria, the Personal Income Tax is, in my view, the most disappointing and most problematic. Even though the base and the rate structure of this tax have been nationally harmonized since 1975 under the uniform Income Tax Decree, the tax has been effective only on people in paid employment in the public sector and the formal private sector. Persons in self-employment, professional practice and the informal sector have continued to successfully escape effective coverage under the tax[37].

As a matter of fact, it has been confirmed that only two sets of individuals are now sure of paying income tax in Nigeria today. The first set are individuals who are either in public employment (civil servants) or in a recognized private institution employment. Tax on

their income is deducted at source. The other set of individuals are those in partisan politics who are vying for one public office or the other. Their tax clearance certificates for three years preceding the year of election is an indispensable condition that must be fulfilled before they can qualify for any political office.[38] Even this category of people don't pay their tax as at when

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37. Philips A.O. – The Nigerian Tax System at the Cross Road, In P.A. Omorogiuwa (ed) Nigerian Institute of Taxation Selected Papers 1987
38. Section 85 (4) (S) PITA 1993

due. What they use to so is to bribe tax officials to achieve tax clearance racketeering.[39]

It is obvious that a very minute percentage of taxable individuals fall within the two categories of individuals above highlighted. What about millions of individuals whose tax is not subjected to deduction at source! It is therefore an established fact that a lot of revenue is eluding the government from this source; and this will in effect impair the chances of realizing the distributional or equity goals of taxation.

Despite all these, the statutory provisions in the Personal Income Tax Act 1993 to check all manners of tax evasion by individual taxpayers are implemented half-heartedly. It is therefore relevant to state that in a developing economy like Nigeria where all hands should be on deck to revamp the economy, the prevalent magnitude of tax evasion by individual tax payers is indeed injurious. There is need for a thorough review of PITA 1993 in this regard.

2.3.2 ITINERANT WORKER

Tax may be imposed on an itinerant worker for any year of assessment by the state in which he is found during that year.[40] An itinerant worker may be assessed and paid tax during a year of assessment by a state, and he may be assessed to tax by another state where he is found during the same year of assessment; though he shall be given credit for the actual amount of tax he had paid in the first state.[41]

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39. Kingsley Emereuwa – Bombshell: Wabara not pay tax between 1993-96 – BIR Exposes Senate President in Sat. Sun edition of March, 19 2005 P. 8.
40. Section 2(3) PITA 1993.

The Personal Income Tax Act 1993 defines an itinerant worker to mean:

"an individual who works at any time during a year of assessment (other than as a member of the armed forces) for a daily wage or customarily earns his livelihood in more than one place in Nigeria and whose total income does not exceed ₦600".[42]

This definition is assailable on two grounds. The first shortcoming lies on "an individual whose total income does not exceed ₦600". Considering the economic situation and the inflational effect on employment and market in Nigeria, one can assert with certainly that there are no itinerant workers in Nigeria by this definition.

However, to say that there are no itinerant workers, strict sensu, in Nigeria is to stress the assertion too far. There are; but they are left off the hook of taxation by the last leg of the definition in section 100 PITA, 1993; to wit: "---whose income does not exceed ₦600." Without mincing words, this is what incapacitates the state governments from imposing personal income tax on itinerant workers today. If an individual is identified as an itinerant worker but his income is

41. Ibid, Proviso (1)
42. Section 100 PITA 1993

ascertained to be above ₦600, can he still be called an itinerant worker for the purpose of personal income tax?

As a matter of urgent reform this amount "N600" needs be raised-up to say N10,000.00 to be in tune with prevailing economic situation in Nigeria today. Otherwise, this provision of our personal income tax law will just adorn our statute without any meaningful effect.

In addition, the definition does not define the word 'place' so that one can construe it as referring to either a state or town, place, village, site or spot within a state. There is nothing in the taxing statute which says conclusively the word is synonymous with "territory" which has itself been defined in the statute to mean a 'state' or the 'Federal Capital Territory'.[43] But Professor Ayua resolves that lacuna as thus:

In the absence of such a definition one can say that since an itinerant worker is taxed by the state in which he is found, the necessary intendment here is that the word 'place' is synonymous with 'territory'. This interpretation is

underlined by the fact that proof of residence or deemed residence is not a prerequisite for personal income tax liability in respect of an itinerant worker.[44]

43. Ibid. See also Ayua I.A. op. cit P.65
44. Ayua I.A. op. cit P65

2.3.3 FAMILIES

Another taxable person under the authority of the state governments is the family. The income of the family recognized under any law or custom in Nigeria as families income which the several interests of individual members of the family are indeterminate or uncertain. Tax may be imposed only by the territory in which the members of that family who customarily receives that income in the first instance in Nigeria usually resides. Territory as used in this context means a state of the federation and includes Federal Capital Territory, Abuja.[45]

It is worthy of mention that the treatment of a family as a taxable person is not unconnected with the anticipation that family may be used in the immediate future as a tax saving device.[46]

However, one cannot but observe that it is one thing to make a set of individual taxable. It is another thing to consider the beneficial effect of it in terms of revenue generation to government. The provision of PITA 1993 in respect of this sub-head is only geared towards preventing some instances where some individual taxpayers transfer valuable things to their infant children to avoid or evade tax without effecting any settlement on the children. It is practically difficult to generate any meaningful revenue to government from it.

Using family as a tax saving device can only attract utmost attention of revenue authority where there is a voluntary tax

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compliance from the individual

45. Section 100 PITA 1993
46. Ayua I.A. op.cit. P. 68

taxpayer; where every taxpayer is assumed to be honest and the revenue authority makes stringent effort to ensure individuals perform their tax obligations. But as it is today where individuals especially the rich ones are not declaring their income for the purpose of tax, one can say with reasonable degree of centainty that the provision of PITA 1993 as it affects this sub-head is hardly applicable today. It is too contemplative; not realistic. There is need for urgent reform thereto.

2.3.4 PARTNERSHIP

The term partnership is another very important concept to personal income tax, which the Act does not define. However, it is a very important form of organization, it is the type of association which brings in the expertise which the sole trader alone cannot always provide himself, without resorting to the formality of incorporating a registered company.[47]

It should be remembered that section 1, PITA 1993 makes an individual a taxable person. Section 100 thereof, in its definition of individual 'provides that individual includes partnership.[48] The combined effect of these provisions is that partnership is a taxable person. Pursuant to this, Section 8, PITA [49] which covers the taxation of partnership provides as follows:

8(1) The gains or profits from a partnership of a partner therein shall be the sum of

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47. Mayson S.W . - Mayson on Revenue Law, Blackstone Press Ltd, London 1987 P.617
48. Section 108 PITA 1993
49. 1993

(a) any remuneration, interest on capital or the cost of passages to or from Nigeria wholly or mainly undertaken for the purpose of

leave or recreation, which is charged in the partnership accounts in respect of that partner; and

(c) his share in the income of the partnership, computed in accordance with the provisions of this Act after the deduction of charges to which paragraph (a) of this subsection applies in respect of all the partners but before the deduction of any other expenses of the partnership referable to a partner which would have been private or domestic expenditure within the meaning of subsection (1)(a) of section 21 of this Act if incurred directly by that partner.

The income of a partnership for a year of assessment is taxed by the tax authority in which the principal office or place of business of the partnership in Nigeria is situated on the first day of that year, or is first established during that year.[50]

In effect, it means that where a partnership is registered in more than one territory, the state of registration should supply the state of

residence of the partners with particulars of the registration, accounts and income of partners for tax purposes.[51]

50. Section 100 PITA 1993
51. Section 8(5) PITA 1993.

However, it is noteworthy that there is no particular code of taxation applied to partnership as there is to companies in Nigeria. One explanation for this may be that a partnership has no recognized separate legal entity distinct from the partners of whom it is composed.[52] As such, the income of a partnership as a growing business concern is in reality not taxed. It is instead the income of the individual partners that is taxed.[53] In otherwords, partnership cannot be directly assessed to tax in respect of partnership profits, but the share of partnership profits and other incomes of an individual partner will be assessed.[54]

The assumption of the earlier quoted provision of PITA premises on a situation where a partnership is governed by certain terms and conditions as may be contained in the partnership agreement. In such a situation, the following facts will be contained therein:

(a) Each partners contribution to the capital of the partnership.

(b) Rates of interest payable, if any, on the capital

(c) Salaries, if any, payable to the partners

(d) Profit or loss sharing ratio.[55]

These will make the computation of partnership income for taxation easier for the Internal Revenue Authority.

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52. Mayson S.W. op. cit. P 617
53. Ayua I.A. op. cit. P 66
54. Ola C.S. op. cit. P 202
55. Osita .A. op. cit. P114

Conversely, where there is no fixed terms and conditions agreed upon for the period of the partnership [i.e. where the association is a partnership at will], how is it determined that a partnership exists? This question becomes more relevant when it is obvious that, for tax purposes, it will often be necessary to determine whether or not a partnership exists.

It should be noted that a partnership can exist even though no formal agreement is ever entered into. Section 8(8) PITA 1993 recognizes this when it provides that:

The partnership, employee or agent in charge of the principal office or place of business of a partnership in Nigeria shall--- cause to be registered with the relevant tax authority, a certified copy of the partnership deed or, where no written deed is in existence, particulars of any written or oral agreement under which the partnership is currently established---.[56]

In determining whether a partnership exists therefore, the court is concerned with the intention of the parties as indicated in their oral or written dealings and the surrounding circumstances.[57] It may therefore be concluded that in any situation the existence of a partnership is a question of mixed law and fact depending on the parties' intentions.

56. See PITA 1993
57. Mayson S.W. op. cit. P 618

Even after it is being established that certain persons are partners, the

question of their transactions being affected because they are 'connected' persons also needs thorough consideration.[58] Mayson defines connected person to mean:

"A person is connected with an individual if that person is the individual's husband or wife, or is a relative, or the husband or wife of a relative of the individual or of the individual's husband or wife."[59]

The partnership of connected persons may make the problems encounterable in computation of partnership income for taxation more acute. This is particularly so because it must be ensured that any transactions are carried out between the partners pursuant to bonafide commercial arrangements.[60]

Furthermore, the totality of section 8 of PITA 1993 contemplates partnership between individual and not partnership of individual with corporate members. This may tend to pose problems. However in such a situation both personal income tax and company tax shall come to play. Mayson, in his endeavour resolves the seeming problem as thus:

The general principle behind the taxation of the income of partnerships with a corporate member is that an individual partners

58. Ibid P. 617
59. Ibid P.619
60. Ibid P. 619

should be liable to income tax on his share of the partnership income and that a corporate partner should be liable to corporate tax on it share of partnership profits.[61]

In all, the provisions of PITA 1993 as it affects partnership need to be overhauled to accommodate some of the areas/instances herein highlighted.

2.3.5 TRUSTEES

A trust is a legal fiduciary relationship existing between two persons in which one person known as the trustees hold the title to property or other assets usually an estate or any other trust property for the benefits of another person known as the beneficiary.[62]

As defined in paragraph 8 of the second schedule of the PITA, a settlement includes any disposition, trust, conveyance, agreement, arrangement or transfer of assets.[63]

The concept of trust allows the taxpayer to transfer property to trustees to be held for the benefit of others. This allows the taxpayer to say to the Revenue Authority: the legal ownership of this property is no longer vested in me, and so you cannot tax me as though it were (despite the fact that I, or my spouse or my children or my relatives --- might benefit from the income.[64] In essence, trust is a vehicle for the avoidance of one's fiscal burden.

61. Ibid P. 644
62. Osita . A. op. cit. P 145
63. See also para. 8, second schedule PITA 1993.
64. Mayson S.W. op. cit. P 430

The Revenue Authorities have countered this process sometimes by recognizing the trust as a taxable entity. Where a trust has been created, there are three types of person who may become potential taxpayers in relation to the trust: settlers, trustees and beneficiaries. All the three categories may, at certain times or in relation to certain events, be liable to income tax.[65] Essentially, income payments in the hand of any of the trio is liable to income tax.

Thus under PITA 1993 income arising to a trustee of any settlement or trust or to an executor of any estate of a deceased person shall be assessed to tax by the state authority where the

administration of the trust takes place or where the deceased was last resident, as the case may be.[66]

However, for all practical purpose, how effective is the income of trustees charged to tax in Nigeria? More still, how productive is the anti-avoidance efforts/measures of the internal Revenue? To say the least, trustees may make a deliberate decision to accumulate income and such accumulated income will become 'capitalised' and may be paid out as capital not subject to income tax. Equally, they can impose the character of income on capital (both pure capital and accumulated capital) for example, by paying an annuity out of capital.[67] In these situations, the distinction between income and capital remains vital. Moreso that

65. Ibid P. 430
66. Section 2(6) PITA 1993.
67. Mayson S.W. op. cit. P. 429

two taxes will come to play: income tax and capital gains tax. Can our tax officials cope with this complexity occasioned by interrelation of the various taxes? Do they enhance their knowledge of tax periodically to widen their horizon of comprehension and application of

taxation of trust? These fundamental questions are not to be glossed over. Rather, they should be urgently attended to by the government.

The tax law as it is (on income of trustees) assumes that every trustee is honest, has integrity, is a patriot that is alive to his/her civic duties including the payment of tax as at when due. This is not; particularly that trust itself is created in order to avoid tax. In other words, the law on this sub-head seems comprehensive enough to capture any fictitious or artificial disposition created by taxpayers; but it lacks effective enforcement and administration.

2.3.6 VILLAGE/INDIGENEOUS COMMUNITY

A village or indigeneous community's income is assessed to tax under state's jurisdiction. S2 (4) PITA, 1993 provides that in case of a village or other indigeneous communities, tax may be imposed for any year only by the law of the territory [state] in which that community is to be found.[68] The income of the community for tax purpose can be computed in any of the three ways provided therein.[69]

The question that may first come to mind is: what income may be

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68. See also section 2 (4) PITA 1993
69. Section 2(4)(a-c) PITA 1993

community income? Is it the total income of community's association derived from their annual levies? Or profit income from a trading venture embarked upon by such a community?

It is a notorious fact that some indigeneous communities/villages used to come together to form a community progressive union; such as Igbo Community Progressive Union, Ago- Are Community Union etc. While some of them used to have their constitutions and register their trustees under part C of Companies and Allied Matters Act;[70] some are unregistered. The purpose of these community associations is to carry out some charitable activities that will make their community progress as well as complementing the social responsibilities of the government. They award scholarships, donate money and materials to hospitals and establish schools etc.

With all these charitable objectives, such associations are exempted from tax.[71] It means if all the adults members of an indigeneous community charge themselves some annual dues to carry out some or all of their charitable objectives, such an income, though, a community income is not taxable. Again, if a community celebrates its 'day' such as "Ibadan Day", "Ilorin Day" and reaches out far and

wide to rich men and women in order to generate funds to pursue its charitable objectives, such income is equally exempted from income tax.

70. Cap 59 LFN 1990.
71. Section 19 PITA 1993.

However, sight should not be lost of the fact that some of these indigeneous communities do engage in trade and other profit oriented ventures. Some may construct a very big water dam wherein they breed fish in commercial quantities. Some may engage in mechanized farming; some may engage in isolated purchase and resale of a large quantity of manufactured goods etc. All these lucrative ventures can fetch such a community huge profits. The nature of the subject matter of the above enumerated ventures qualifies the profits accrued therefrom as a taxable trading profit.

Be that as it may, community income is to be assessed to tax by state governments. Some of these indigeneous villages are found in rural areas where the presence of internal revenue is not feasible. Though the state can make use of local government machinery to collect this form of tax for onward remittance to state government, but investigations conducted reveals that great numbers of our local

government councils in Nigeria have no revenue committee, since they depend; entirely on monthly allocations from federation account.

On a final note the assessment and collection tentacles of Internal Revenue need be spread to rural areas otherwise a lot of revenue will continue to elude the government.

In all the above highlighted chargeable persons, liability to tax is marjorly dependent on the concept of 'residence'. This concept is decisive to our tax system and as such it is comprehensively taken care of in the First Schedule to the PITA .[72]

Frankly speaking, substantial percentages of Nigerians under the six chargeable persons highlighted above are evading tax with impunity. More than half a dozen studies have appeared in the last few years reporting the results of interviews with tax payers about their attitudes towards non compliance and their admitted non-compliance behaviour.[73] Their general finding is that a relatively large fraction of those interviewed, at least 15 to 30 percent in most of the studies freely admit to having engaged in what they regarded as tax cheating.[74]

It is common knowledge that our present society has little regard for law and order. Laws are breached most by those who have benefited more from society and who on reflection are those who stand to gain much more from a well-ordered law abiding society.[75]

Investigations show that the tax collection machinery of government (on the above highlighted six-subheads) at the moment lacks the capacity to correctly determine the total number of Nigerians who have or have not perform their civic obligations as at when due. Also, the internal revenue officials fail to make use of

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powers at their disposal. They do not effectively apply and enforce penal

72. 1993

73. Abdulrazaq M.T.- Nigerian Tax Offences and Penalties, Tosco Press, Illorin 1993 P. 28.

74. Ibid P 28

75. Ibid P 15

provisions in the Personal Income Tax Act. Therefore, one can suggest that there is need to strengthen the investigatory powers of internal revenue to check tax malpractices. Although there are statutory provisions in Personal Income Tax Act to curb fraudulent tax practices, the reality is that they are not seriously implemented.

On a final note, it is imperative to state that imposition/charge to tax can only be effective when the person sought to be taxed have some contact with the jurisdiction. The states, vide section 2 of the PITA have jurisdiction to impose tax on the income of the above enumerated chargeable persons. In essence, nothing precludes the legislature of the state from making laws that will facilitate the imposition of personal income tax on the above highlighted persons.

2:4 PERSONAL INCOME TAX AT THE FEDERAL LEVEL

Section 2 of the Personal Income Tax Act provides that tax shall be payable on the total income of every individual, corporation sole, or body of individuals deemed to be resident in Nigeria except:[76]

(a) Persons employed in the Nigerian Army, the Nigerian Navy, the Nigerian Air force, the Nigerian Police [excluding those employed in civilian capacity]

(b) Officers of the Nigerian Foreign Service.

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76. PITA 1993

(c) Residents of the Federal Capital Territory Abuja

(d) Persons resident outside Nigeria but who derive income or profit from Nigeria.

Tax on all the above set of persons shall be imposed by the Federal Board of Inland Revenue, [77] established under section 1 of the Companies Income Tax Act.[78]

However, these categories of people are discussed hereunder in a more detailed manner.

2.4.1 ARMED FORCES

The members of armed forces are Nigerian Army, Nigerian navy, Nigerian Air force and the Nigerian Police. By virtue of being in Nigerian employment the law provides that a person in full time employment in the armed forces on the first day of January in the year of assessment or who first becomes liable to income tax in Nigeria for that year by reason of his entering into such employment during that year shall be deemed to be resident for that year in the Federal Capital Territory, Abuja.[79]

It should be noted that civilians employed by the Nigerian Armed Forces are liable to income tax in the state in which they are actually resident on the first of January of each year of assessment.

77. Section 2(2) PITA, 1993

78. Cap 60 LFN 1990

79. First Schedule PITA 1993

Investigations show that the Nigerian Army, unlike other members of armed forces is in two cadres: common soldiers and officers. The common soldiers rank from Warrant Officer 1 down to private soldiers. They do not pay tax. Surveys indicate that despite being guiltier of tax evasion than civilians they seem to enjoy self-declared immunity from tax prosecutions. No tax official dare take "assessment form" to them. It is like a goat visiting a lion's den.

The second category is 'Officers.' They rank from second lieutenant to the highest echelon of 'General'. Tax on their salaries is deducted at source.

As one may be tempted to believe that soldiers do not pay tax because of the services they are rendering to the nation, what about the Police Force that does not enjoy the same opportunity? A defense that soldiers are exempted by virtue of the "Terms and conditions of service (Nig. Army) 1984", is weak for lack of credible justification. This is particularly so that (on sober reflection) soldiers benefit immensely from other taxpayers money. No wonder they use

government's properties in their care anyhow. Should, the provision of Personal Income Tax Act be strictly implemented, soldiers' orientation about government's properties will change.

It is therefore pertinent to suggest that soldiers should not be treated as sacred cows for the purpose of tax. The Personal Income Tax Act needs some review to redress the tax situation among armed forces.

2.4.2 FOREIGN EMPLOYEES

This is the employment the duties of which are wholly performed outside Nigeria save during any temporary visit of the employee to Nigeria.[80]

An individual who holds a foreign employment on the first day of January of the year of assessment or who first become liable to income tax in Nigeria for the year by reason of his entering into such employment during that year shall be deemed to be resident for that year in the territory in which the principal office of his employer is situated on that day or on the day his foreign employment commences.[81]

A major constraint on the implementation of the Personal Income Tax Act on this subhead is lack of the capacity by the tax collection machinery of government to correctly store necessary information about foreign employees. There is need for a constant steady intercourse between Inland Revenue Service and the immigration department that keeps statistics of immigrants and emigrants in Nigeria. It is a common knowledge that this is apparently lacking. It goes beyond manual operation; but regrettably our tax collection machinery is not computerized to enable the Revenue Board keep accurate and up-to-date data on taxpayers; except in Lagos state

A study of what obtains in some advanced countries e.g USA will show that our tax

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80. Ibid
81. Ibid

Collection machinery operates at poor level. Our Revenue boards are not connected to the Internet except in Lagos state. They have no Revenue board stenographers who keep adequate data of taxpayers. This brings about failure in implementing the provisions of Personal Income Tax Act, which in turn affects the realization of government objectives on personal income tax in Nigeria.

2.4.3 RESIDENTS OF FCT ABUJA

The Federal Capital Territory Abuja forms part of the Nigerian Federation.[82] Although, it has the status of a state, it is distinct from the other Thirty six states of the Federation. As such its administration is placed under a minister appointed by the Federal Government.

An individual who is resident in the Federal Capital Territory, Abuja on the first day of January of the year of assessment is liable to tax under the authority of that territory (FCT).[83] Residence in this regard means a place available for his domestic use and does not include any hotel or rest house or any other place at which he is temporarily lodging.[84]

It should be quickly pointed out that a practical enquiry on what operates in Abuja proves this provision of the Act too assumptive. The survey conducted divulges the fact that there is influx of members of

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upper socio-economic group

82. Section 2(2) CFRN, 1999
83. Section 2(2) PITA 1993;
84. First Schedule to PITA 1993

residing in Abuja. It is further confirmed that they are far guiltier of major tax evasion than poor people therein.

As earlier observed,[85] the revenue board is too weak to ensure effective enforcement of the penal provisions of Personal Income Tax Act against these individuals who are considered too important to face tax prosecutions.

Further, one notices with utmost concern the absence of a tax collection agency at FCT Abuja, which would be separate and distinct from Federal Inland Revenue Service. Such an agency could be named "FCT Revenue Board". At least it is on record that FCT Abuja has it distinct ministry; judiciary and even local councils. This suggestion therefore cannot be out of place if any pragmatic result is to be expected therefrom. Though constitutional amendment is needed.

It is this FCT Revenue Board that will administer tax on FCT residents. The Board, unlike, Inland Revenue will not have too many taxes to administer and as such efficiency will be enhanced.

2.4.4 NON-RESIDENT

Where a non-resident carries on business or derives profit or income from Nigeria, that part of profit and income, which is not

attributable to operations outside Nigeria, is taxable. Such a non-resident holds Nigerian employment because the duties are wholly performed in Nigeria.[86]

85. See Item 2.3 of this thesis
86. First Schedule, PITA 1993

The position of the law is that an individual who holds a Nigerian employment on the first day of January in the year of assessment or who first become liable to income tax in Nigeria for that year by reason of his entering into that employment shall be deemed to be resident for that year in the territory in which he has a place or principal place of residence on that day or as the case may be on the day on which he enters upon the full duties of that employment in Nigeria.[87]

It is a notorious fact that Nigerian government is persuasively wooing foreign investors to the country. It is not out of place to observe that in order to achieve its economic crusade, the government relaxes on implementation of various taxes. The provision of Personal Income Tax Act under this subhead is inclusive. The government seems to have lost sight of the significance of income tax to the extent of trifling with it in the guise of wooing foreign investors. This,

no doubt, creates a gratuitous escape-route for non-residents to evade tax. In effect, this will definitely widen the gap between actual and the potential tax collection. The end total is less revenue to the government.

Although all the above highlighted persons are liable to tax as imposed by the Federal Board of Inland Revenue in respect of income which qualify for

income tax, such individuals are liable to tax under the Personal

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Income Tax Act,

87. Section 3, First Schedule PITA 1993

1993.[88] This explains why the Act defines tax authority to include the Federal Board on Inland Revenue.[89] It is the duty of the Board to raise and collect income taxes of these set of people.

2.5 THE BALANCE BETWEEN THE STATES AND FEDERAL FISCAL AUTONOMY OVER PERSONAL INCOME TAX

Income tax is one of the major sources of revenue of all governments in Nigeria. It is a factor to be reckoned with in both the state and federal governments' budget.[90] Its importance is also shown

by the fact that one of the problems inherent in any federal system of government is the allocation of taxing powers between the Federal and State Governments.[91]

Under the 1999 constitution, the Federal Government has the exclusive power to legislate on it. This has enhanced the Federal Government's taxing power by explicitly placing within its exclusive competence this more important form of taxation;[92] which has unfavourable fiscal implications on the state government. This is due to the fact that the discharges of the functions assigned to

88. Osita .A. op. cit. P 9
89. Section 100(f) PITA 1993
90. Ola C.S. op. cit P 6
91. Ibid P8
92. Ayua .I.A. op. cit. P 31

the states involve expenditure and revenue. But the revenue available to the states is grossly inadequate for effective performance of their functions.

The inadequacy is more acute considering the mounting costs of state services such as, the sharp rise in the costs of providing

education to meet the society's insatiable demand for trained people, paying the salaries of civil servants, providing hospitals and Medicare, providing adequate water supply and other valuable services to meet the growth in population.[93] The provision for all these infrastructures points to the need for the revenue base of the state governments to be progressively enlarged. But the latitude of state governments in respect of their internal revenue is curtailed, despite the fact that pressure on state governments becomes unbearable. Professor Fajana asserts that:

> ***"the function of state governments in the Nigerian federal system have, in addition to those specified on the concurrent legislative list, included some public services whose consumption could be confined to the areas within their jurisdiction".***[94]

But unfortunately, the division of fiscal jurisdiction among the federal and state governments in Nigerian federation has been dictated more by the efficiency of tax administration than by the relative needs of the financial resources.[95]

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93. Ibid P 26
94. Fajana .O. op. cit. P 107
95. Ibid P 110

In other words, despite the expansion in responsibilities of the states, the scope for the enlargement of its tax jurisdiction seems disappointingly small. The allocation of revenue power, especially, personal income tax jurisdiction, is heavily weighted in favour of the federal government. This is in addition to its revenue sources being more buoyant and income elastic; but at the expense of the state government that is saddled with inelastic revenue bases. As Professor Nwabueze rightly observed that:

"while the state government's sources of independent revenue have shrunk, federally collected revenue available for sharing has increased considerably. The shrinkage of the states' independent revenue and the increase in the distributable pool considerably increased rather than reduced the dependence of the states on federally-collected revenue---."[96]

It is therefore clear, that a major challenge which fiscal federalism in the country faces is to reduce/eliminate inter

governmental imbalances. In its stead, there is the need to ensure each level of government has adequate [at least in a relative sense] resources for the effective discharge of its statutory functions.

A perusal of the 1999 constitution shows that it has not done much to

96. Nwabueze B.O. –Federalism in Nigeria under the Presidential Constitution. Sweet & Maxwell, London, 1983, P 182
quoted in Ayua I.A. op. cit. P 38

improve the lot of the states in terms of allocation of financial sovereignty with the consequence that the federal government maintains its strong financial position.[97]

However, it should neither be supposed that the states lack taxing power; nor that the proceeds of the personal income tax belongs exclusively to the federal government, being the authority vested with its legislative jurisdiction. Although, the Federal Government legislates on income tax, the proceeds therefrom go to the states. Thus, section 163(a)&(b) of the constitution[98] provides that where under an Act of the National Assembly, tax or duty is imposed in respect of any of the matters specified in item D of part II of the second schedule to the constitution, the net proceeds of such tax or

duty shall be distributed among the states on the basis of derivation and accordingly:

(a) Where such tax or duty is collected by the government of a state or other authority of the state, the net proceeds shall be treated as part of the Consolidated Revenue Fund of that state;

(b) Where such tax or duty is collected by the government of the federation or other authority of the federation, there shall be paid to each state at such times as the National Assembly may prescribe, a sum equal to the proportion of the net proceeds of such duty that are derived from that state.

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97. Ayua I.A. op cit. P 30

98. 1999 CFRN

The probable reason for the above constitutional arrangements is simply to achieve uniformity in personal income tax liability and make it an economic tool for the Federal Government for the purpose of influencing economic development in the country.[99] In consonance with this probability a source remarked that:

In determining the balance between Federal Government and state government on jurisdiction over Personal Income Tax, we have had to keep constantly in mind that the financial stability of Nigeria as a whole, and that by its strength and solvency the creditworthiness of the country will be appraised. This will in turn have its influence on the investment of external capital, without which economic development must be painful and slow--- the main factor of national policy must operate to restrain allocation of jurisdiction of such a tax to the states---.[100]

However, as convincing and helpful as this constitutional arrangement seems, it is caught up with many formidable objections. In the first instance, it tends to produce a situation similar to that of a unitary government in its relations with state authorities. This is because it negates the basic realities of co-equality in

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99. Ayua I.A. op. cit. P 32
100. Report of Fiscal Commission, 1958 Para. 28

federation. i.e. autonomy of the State and Federal Governments to develop at its own pace. It gives a decided advantage to the center.

Apart from this, the attitudinal orientation of the operators of Nigeria Federalism makes the arrangement susceptible to abuse. Federal Government may refuse to distribute the net proceeds of this tax (as mandated by the constitution) to the concerned state. All in a bid to create an electoral political advantage, especially that in Nigeria, fiscal mechanism and political aspect are not treated as independent variables.[101]

A classical illustration of the abuse of federalism or power by the Federal Government to bend state government to its will is the Lagos State's case. On the 8th April, 2004, the president wrote the Minister of finance instructing her not to release allocations from the Federation Account to the States where new Local Governments were created and elections held into them, including Lagos State

Despite the fact that the said letter of the president admitted that the States Houses of Assembly are empowered by the 1999 constitution to create new Local Governments, the president hinged his flagrancy on the fact that the National Assembly is yet to make the

necessary consequential provisions for such newly created Local Government Councils to have constitutional recognition.[102]

101. Ayoade J.A.A.-The changing structure of Nigerian Federalism. In: J Elaigwu & R. Akindele (ed) op. cit. P 56
102. See the case of A.G. Lagos state Vs A.G. Federation (2004) 18 NWLR (pt 904) P 1 @ 14.

The supreme Court in the case has this to say:

There is nowhere in the constitution where the president is expressly or impliedly authorized to suspend or withhold the statutory allocation payable to Lagos State or any other state pursuant to section 162(5) of the constitution on the ground of the complaints made against Lagos state by the Federal Government in this action or any ground at all. If the president has any grievance against any tier of Government, he should go to Court. He cannot kill them by withholding their statutory allocations. That will be brutal indeed.[103]

As a keen observer of Nigerian politics, particularly since the inception of this nascent democracy, one does not need magnifying

glasses to know that the dispute that led into the above cited case is simply due to ideological asymmetry between the two levels of government concerned.

What this litany illustrates is that the fiscal arrangement is not functioning as it should and it is vulnerable to the whims and caprices of the Executive president. It is therefore obvious that the personal income tax jurisdiction in Nigeria is not aligned in such a way that state governments stand a good chance of substantial revenue. In that regard people's faith rely more on systematic checks and balances rather than on the better things this fiscal arrangement can offer.

103. Ibid Per KUTIGI J.S.C paras. C-D

Although, the revenues collectible from this particular tax source are shared with state governments, this does not solve the jurisdictional imbalance between the two tiers of government [Federal and States]. Rather, it will perpetuate a relationship of fiscal dependency between the duo and hinder the ambition of each state to improve its percentage of internal revenue.[104]

The imbalance in the fiscal autonomy between the federal and state governments has had some adverse implications for the

economic and political development of the country. The heavy concentration of fiscal powers in federal government has been partly responsible for the unhealthy inter-ethnic fracas and state competition for the control of the federal level of government. This constitutes a serious threat to the stability and continued co-existence of Nigeria.

Furthermore, the state governments are closer to the people than Federal Government. They have exclusive authority over the creation and control of the affairs of Local Government, [105] which tier of government (as an extension of sate) touches the lives of the grassroot people. Hence the bias against the state governments in the distribution of fiscal powers as regards personal income tax is a militating factor against grassroots development.[106]

However, as earlier posited, it should not be supposed that the state governments are stripped-off their fiscal jurisdiction/sovereignty completely under

104. Ola C.S op. cit. P 57
105. See section 7(1) 1999 CFRN
106. Fajana O. op. cit. P 120.

the 1999 constitution. The states are constitutionally competent to legislate on tax subjects as residual matters. Thus, the powers of the states in respect of taxation are plenary except in so far as the

contrary are expressly provided in the constitution, which are the enumerated taxing powers of the Federal Government.[107] Thus, according to Professor Ayua, since there is no specific mention of sales tax as an item both in Exclusive and concurrent legislative lists, this makes it a residual subject on which only the state can legislate[108]. It is therefore the states that have an inherent taxing power and not the Federal Government. This view has gained judicial approval in the recent case of MANUFACTURERS ASSOCIATION OF NIGERIA V.A.G.LAGOS STATE.[109] Before this suit was instituted [shortly after the inception of this democracy in the year 2000], the Governor of Lagos state declared his intention to re-introduce the collection of sales tax as permissible under fiscal federalism, not withstanding the existence of the Value Added Tax. In that year, the Lagos State Government in an effort to make true its declaration made Sales Tax [Schedule Amendment] order 2000 to streamline Sale Tax Law Cap. 175, Laws of Lagos State, 1994.

On 6th day of February 2001, the applicants [M.A.N] took out an originating summons for a declaration that both above quoted laws are

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inconsistent with, in

107. Ayua I.A. op. cit. P 33
108. Ibid P 33
109. (2004) All FWLR (pt 199) @ 1327

contravention of and ultra vires the constitution, the Taxes and Levies (Approved List for Collection) Decree No, 21 of 1998 and Value Added Tax Decree and therefore illegal. They further contended that Lagos State Government has no power, right or jurisdiction to impose sales tax.[110]

The Lagos State High Court, having the benefit of the supreme Court decision in the case of A.G. OGUN STATE V ABERUAGBA.[111] held inter-alia that:

"In exercise of the powers reserved for a states House of Assembly not being one specifically provided for under the exclusive and concurrent list, the state Government can validly legislate on the sales Tax pursuant to item 9 enabling it in that behalf [112].

An immediate deduction from the holding is that sales tax is not an item on the exclusive legislative list as it relates to intra state trade and commerce. The power to legislate on it is residual. It is not on the concurrent list save and except as provided for under para. 9 of

item D. However, notwithstanding this constitutional analysis, sight should not be lost of the fact that the state will be forced to seek every available source of revenue because of lack of Legislative Jurisdiction on personal income tax to the Federal government. They will be tempted to impose sales tax and any other taxes on every available commercial

110. Ibid P 1345
111. (1985) 1 NWLR (pt 3) P 395
112. Per FALASE .J. in M.A.N Vs A.G. Lagos state (Supra) P 1356 Para f

transactions and properties. Consequently, this will bring about an unhealthy matter of economic survival for the states [113].

Moreso, it should be constantly borne-in mind that "Inter-state commerce" will operate as a bar on the extent sales tax can go. It is therefore correct to state that tax subject under the residual list are in consequential compared to the more certain, significant and income yielding nature of personal income tax. The idea could be likened to the saying: ***"I will take the meat; you take the bone"***

On a final Note, each state has its own revenue needs. It can therefore use the various forms of taxation not only to raise revenue but also to perform other socio-economic functions. Therefore, there is need for a more rational and equitable allocation of fiscal

jurisdiction. The state governments need to be given more independent revenue sources[114]. This is particularly so as the needs of the states always require to be balanced up against the needs of the Federal government.

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113. Ayua I.A. op. cit. P 39
114. Ibid P 39, See also Fajana O. op. cit. P 121

2.6 THE IMPACT OF FREEDOM OF TRADE AND COMMERCE ON PERSONAL INCOME TAX

The necessity of ensuring complete freedom of internal trade throughout the federation is a paramount requirement of national Policy. The sovereign states, the World ever, are finding it worthwhile to pool their customs jurisdiction, in order to secure the benefits of free trade over as large an area as possible [115]. This explains why all Federal constitutions contain a commerce clause with the basic

objective of ensuring an open or unified national economy or free trade by vesting in the Federal Government the Power to regulate inter-state commerce[116]. It would therefore be a retrograde step to facilitate and or run the risk of encouraging an opposite tendency in the Nigeria Federation.

This, by virtue of item 62 on the Exclusive, legislative List of the 1999 Constitution, the Federal Government is empowered to make laws in respect of trade and commerce and in particular, trade and commerce between Nigeria and other countries and trade and commerce between the states. This therefore empowers the Federal Government, within its exclusive preserve, with a strong tool to regulate inter-state trade and commerce. This consequently informs while the political objectives of the federation frowns against discrimination on grounds of place of origin, sex, religion, status, ethnic or linguistic association but leans in

115. Report of Fiscal Commission, 1958 Para. 25
116. Ayua I.A. op. cit P 40

favour of national intergration[117].

For the purpose of promoting equal participation and integration, the constitution mandated it for the state to provide adequate facilities for and encourage free mobility of people, goods and services throughout the federation[118.] In achieving these objectives, the state shall ensure that loyalty to the nation overrides sectional loyalties [119].

A thorough study of these constitutional provisions shows that they are in conformity with the main objectives of personal Income Tax Act, 1993, to wit:-

"The regulation of the impositions of personal tax throughout the federation so that internal double taxation of income by the Federal and state Governments will be avoided" [120].

All therefore points towards avoiding any impairment by fiscal measures to the freedom of trade and commerce of Nigeria. Although there is much fear about the negative impact of internal double taxation, it is not an illegality. There is no express provision of the constitution that bars it; but only that it is distasteful.

117. See section 15(2) 1999 CFRN
118. See section 15(3)(a) 1999 CFRN
119. See section 15(4) 1999 CFRN
120. Osita A. op. cit P 4

In the view of Professor Ayua:

"Where more than one legislative authority such as the Federal Legislature and a state Legislature have the power to levy a tax, there is nothing in the constitutions that prevent the same person or article being taxed by both the Federal and State Governments" [121].

The above illustration represents the idea of double taxation envisaged by both the constitution and the Personal Income Tax Act 1993. But we beg to disagree that this is a misconception of what double taxation connotes. Instead, double taxation means two taxes imposed on the same property, by the same governing body, during the same taxing period and for the same taxing purpose [122]. It can, however, be distinguished from the imposition of different taxes or similar taxes concurrently on the same income by Federal and state governments. The latter can better be termed as duplicative taxation.

Be that as it may be called, the bottom line is that both are not constitutionally barred.

This view may be vehemently objected to by those who believe that one of the basic objectives of the constitution is to have an economic system of inter-state trade that allows an individual and its goods to pass from state to state without hindrance or molestation. To them, any incongruity to these objectives is by implication, an illegality.

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121. Ayua I.A. op. cit. P33

122. M.A.N. Vs A.G. Lagos state (Supra) P 1361, see also Black's Law Dictionary, 6th Edition P 491

Furthermore, given our own circumstances as a developing country, one may think that it is undesirable to have an absolute freedom of inter-state commerce. This is so, as it may eventually cause an uncontrollable urban sprawl. Since the rates and allowances of income tax are the same everywhere, people will want to avoid establishing trade in rural Areas. They may equally prefer transacting their businesses in urban centers where there is possibility of maximizing more profits.

Be that as it may, it is a notorious fact that personal income tax is imposed not only on incomes of individuals but also on gains or

profits from any trade, business, profession or vocation for whatever period it may have been carried on or exercised [123]. There are instances where individuals trade and commercial activities may face a big constraint as a result of multiple imposition of tax by various states. Indeed because of the peculiar nature of the pattern of trade in Nigeria the difficulties involved in imposing multiple sales taxes would be particularly great. It is a peculiarity of Nigerian trading habits that goods often pass through as many as ten distributors or sub-distributors before they are finally sold to the consumer, and an important part is played by market and itinerant traders. Wide use is made of road and river transport, and both internal produce and imported goods often travel vast distances from their original source to the point of final sale. The pattern of trade therefore has little regard to state boundaries and the importer or internal producer or

123. See section 3(1)(a) PITA 1993

manufacturer often has little idea of the final destination of his goods. Any system of multiple or duplicative taxes would therefore be bound to run up against or interfere with free trade within the federation [124]. It will constitute internal barrier against free and unfettered commercial activities.

For instance, if goods produced in Lagos state bear sales tax and the same goods when sent to say Benue state are also subject to sales tax in that State, does this not amount to duplicative taxation of the same commodity which is inimical to national commerce or to unified economy? [125]. On the other way round if there is any general system of sales tax, like value Added Tax would it not run up against formidable difficulties of enforcement and evasion?

Another instance of hindrance on freedom of trade and commerce is what obtains in some states of Nigeria where measure are introduced which have the effect of restricting a trader in his inter-state activities like discriminatory levies for a licence to do business in same state [126].

Furthermore, an instance where income tax is imposed by a state on the gain over the sale of a commodity only if it is imported from another or the rate of tax imposed on the sale of a commodity, when imported, is higher than that imposed on the sale of the same commodity produced and sold within the taxing state[127].

124. Report of Fiscal Commission 1958 Para. 39 P 10
125. Ayua I.A. op. cit. P 39
126. Ibid P 39
127. Ibid P 39

This will restrict manufacturers or producers to market their products any where in the country.

It should be noted, that all the instances highlighted above characterized the nature of trade and commerce before the introduction of the Value Added Tax in 1993. The question that comes to mind is whether all or some of those instances have been cured on promulgation of Value Added Tax Act in 1993. Or even upon introduction of VAT they sprang up in another form hitting negatively on inter-state commercial activities?

The value Added Tax is an improvement on the Sales Tax hence section 41 of the value Added Tax Act[128] repealed the Sales Tax, 1986. What brought about this repeal was the challenge of the jurisdictional competence of the state government to impose sales tax in the celebrated case of A.G. OGUN STATE Vs ALHAJA AYINKE ABERUAGBA [129]. In that case, the House of Assembly of Ogun State enacted the Sales Tax Law, 1982 which imposed a tax on the purchase of certain goods and services listed in the schedule to the Law. The Appellants who were wholesale purchaser of beer in Ogun

state, instituted a suit in the High Court of Ogun State on behalf of wholesale purchasers of beer in the State claiming that sections 3(1), 3(7), 4, 5, 8 AND 21 of the sales Tax Law were inconsistent with the provision of the 1979 Constitution.

128. Value Added Tax Decree No 102 of 1993
129. (1985) 1 NWLR (pt 3) @ 395. See also (1985) SC P 289

As the case raised very important Constitutional issues concerning the Federal and State taxing powers, the Supreme Court invited all the Attorneys-General of the States in Nigeria and that of the Federation as amici curiae to file briefs on the issues and appears for oral argument at the hearing.

The Plaintiffs/Applicants submitted that the omission of the words 'Sale and Purchase' (item 38) from the Exclusive legislative List (as contained in the 1960 and 1963 constitutions) did not ipso facto make sales/purchase tax residual.

Rather, the subject matter of sales/purchase tax was impliedly covered by item 15 and or 51 of the Exclusive Legislative List in the 1979 constitution. It was argued that the phrase "particular" in item 61 was one of emphasis and that the provision of item 61

unequivocally vested "trade and commerce" exclusively and without any limitation on the federal government. Hence sales tax/purchase tax was said to be and incidental matter within the exclusive power of the Federal Government.

The defendant/respondent on the other hand submitted that the effect of the omission of item 38 of the Exclusive List of the 1963 constitution in the 1979 constitution was to make the subject matter of the sales tax a residual matter on which states can legislate.

It was argued that item 61 of the Exclusive Legislative list did not exclusively vest all aspects of trade and commerce throughout the country on the Federal Government. Rather, the "federal trade and commerce" power under the item was limited to the matters set out in sub-items (a) to (f). Consequently, a state has an appreciable measure of control over trade and commerce within its territory. For instance, a state is entitled to regulate any business or trade within its territory or even, if it thinks fit prohibit particular trade such as the sale and consumption of alcohol [130]. The Supreme Court rejected the extreme argument of both parties and held that:

... the control of the economy is not within the exclusive power of the federation. Each government (Federal, State and Local) has a share in the control. While the constitution requires the Federation to control the National economy, it also empowers state to participate in the development of the economy within the state and a Local Government in the development of the economy within its area of jurisdiction... For the avoidance of any doubt ... the Federal government had power to make law on the items specified in sub-items (a) to (f). In this respect, international trade and commerce are specifically reserved for the Federation. While trade and commerce within a state is left as a residuary matter to the state [131.]

It is made clear from the above that the taxing of goods coming from other

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130. Abiola Sanni- Division of Taxing Powers. In: Abdulrazaq M.T. (ed) Chartered Institute of Taxation of Nigeria, Tax Guide and Statutes, P 650 @ 663

131. Per Bello J.S.C (as he then was) in A.G. Ogun state Vs Aberuagba (Supra) P 321-323.

states, by a state, as such is unconstitutional because such tax is a regulation of inter-state commerce and to leave the states free to tax inter-state commerce would result in intolerable discriminations and unneighbourly regulations [132].

In other words, no state has power to make any law or regulation which will affect the free and unrestrained intercourse and trade between the states, or which will impose any discriminating burden or tax upon the citizens or products of other states coming or brought within its jurisdiction [133].

The above judgement of the apex court seem to have settled the issues raised in the instances of internal barrier on trade and commerce earlier highlighted. But however, rather than obviating the issues, it exacerbates them. After the judgement, many states in the country introduced sales tax, which in effect interfere with the free flow of inter-state trade and commerce. It therefore heightened the likelihood of a high taxation to the extent that people suggested that one of the solutions of the problem was to promulgate a central sales Tax Law. The law will allocate the income of an inter-state business among the several states in which it did business [134]. This led to the

promulgation of the Value Added Tax Act[135] by the Federal Government, which replaced the sales Tax Law.

The question that quickly comes to mind again is whether the

Federal

132. See the case of Nippert Vs City Richmond 327 US 416
133. See the case of Brown Vs Houston 114 US 611 @ 6:30
134. Ayua I.A. op. cit P 44
135. Formerly known as Decree No 102 of 1993

Government has that sweeping power to repeal the sales Tax Law validly made by a state pursuant to the constitutional provisions, which expressly empowers the state to legislate on such tax. This is what apparently goad the Lagos State Government to re-introduce Sales Tax in the year 2000 on intra state trade and commerce; which step does not go well with the manufactures and merchants.

In the recent case of **M.A.N. Vs A.G. LAGOS STATE** [136]. The plaintiff's contention is that by the provision of section 315 of the 1999 constitution, the VAT Decree No 102 of 1993 and Decree No 21 of 1999 are to take effect as existing laws of the National Assembly who has the competence to legislate on the issue covered by the Decree. The plaintiff referred to schedule II and item 62 on the Exclusive List, which deals with trade and commerce. It is also the plaintiff's

contention that the sales Tax Law of Lagos State purports to legislate on trade and commerce on which subject the Federal Government's power is unfettered.

The defendant on the other hand contends that the VAT Decree, which imposes sales Tax in the most general terms on all aspects of trade and commerce, is not entirely compatible with constitution. To the extent that it affects intra-state trade and commerce, it is unconstitutional, null and void.

The High Court of Lagos State having the benefit of the Supreme Court's decision in Aberuagba's case held that:

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136. (2004) All FWLR (pt 199) P 1327

... the supreme court in Aberuagba's case had already settled the issue of legislative competence as it relates to Sales Tax. Whereas the capacity of the Federal Government to legislate on the Tax is limited to inter-state trade and commerce, it is the states that are clothed with the competence to legislate on intra state commerce and trade i.e. trade and commerce within the state [137]***.***

The purport of the above holding is that the existence of VAT does not preclude the state government from promulgating on Sales Tax provided it is on intra-state trade and commerce. Therefore the provision of VAT Law that bothers on intra-state trade and commerce is a flagrant usurpation of the residual power of the state.

The VAT Decree should be amended to exclude intra-state supply of goods and services that are within the residual powers of the state government under the 1999 constitution unless, this is done, the friction on this aspect of our tax law between the Federal and State Governments might plunge the country into avoidable serious fiscal/constitutional crisis in the nearest future [138].

As foretold by Professor Ayua , the court will definitely continue to be faced in future with more of such issues as whether a particular tax falls within the

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137. Per FALASE J. @ P 1352
138. Abiola Sanni op. cit. P 667

power of a legislative body.[139] As there is bound to be a temptation on the part of an impecunious State government to embark on aggressive policy of revenue generation by taxing every available commercial

transactions. This is particularly so, since the personal Income Tax is not within the states' power to levy and collect.

Finally, it should be noted that there is need for a genuine political reform that will straighten the imperfections of fiscal imbalance in Nigerian

Federalism. Otherwise the consequential effect will beat hard on inter-state trade and commerce and will be incongruous with the political objectives of Nigerian Federation.

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139. Ayua I.A. op. cit. P 45

CHAPTER THREE

APPRAISAL OF UNIFORM PERSONAL INCOME TAX

3:1 INTRODUCTION

A Country's tax system is essentially a derivative of the history and political economy of that country. In the case of Nigeria, it is necessary to grapple with both historical background as well as the legal history of personal income tax in Nigeria for a better understanding of the raison d'etre behind the introduction or otherwise of uniformity in personal income tax. [1]

The former will shine on the colonial history of Nigeria; which is particularly relevant herein as the broad outline of Nigeria's tax system took shape during the colonial era. The latter will highlight some constitutional hurdles in personal income tax since Nigeria's regionalization in the late 1950s.

It is axiomatic to state that a system of direct taxation had been in existence in this country before the advent of colonial rule. In the North, there was an efficient and stable administration of tax based

majorly on Islamic system. In the South, there was an indigenous system of taxation though not as organized as in the North.[2] It is pertinent to state that the pre-Colonial period taxation premised on ethnic basis. However, when the British came to Nigeria around 1900, they enacted

1. Dotun Philips -Nigeria Tax system at the cross road . In : P:A. Omoragiuwa (ed) Nigerian Institute of Taxation selected papers, NIT Lagos 1987.
2. Ayua I.A. - The Nigerian Tax Law, Spectrum Law Publishing Ibadan 1996 P.28

various tax ordinances. The term personal income tax was first introduced in 1904 when Lord Lugard consolidated all the various traditional taxes under the land Revenue Proclamation Law 1904. As a result of this, community tax became operative in the Northern Nigeria.[3] On amalgamation of the Northern protectorate with the Colony and Southern protectorate in 1914, the first statute on taxation in Nigeria came into being. It was Native Revenue Ordinance of 1917, which covered the areas of the Western Region of Nigeria in the provinces of Abeokuta, Oyo, Benin and Ondo. It was not until 1928 that it was extended to the Eastern Nigeria by the Income Tax Ordinance of No 23 of 1927.[4] It should be noted that because the Eastern Nigeria originally operated acephalous system, the introduction of the

personal income tax to the region met a severe resistance. It sparked off the disturbances that culminated in the Aba Tax Riot of 1929, which claimed many lives and properties.[5]

However, the Nigerian income tax in modern form only began in 1940. The year witnessed the enactment of two tax ordinances. The first was the Income Tax Ordinance No 3 of 1940, which applied to Europeans all over the country and to Africans in township of Lagos. The second was the Direct taxation ordinance No 4 1940 which applied to Natives in Nigeria elsewhere than the township in Lagos.

3. Ola C.S Income Tax Law for corporate and unincorporated Bodies in Nigeria, Heineman Education Books (Nig) Ltd Ibadan, 1984, P 1
4. which took effect on the 1st January 1928
5. Osita A. - Taxation and Tax Management in Nigeria, Tabansi Press, Onitsha, 1944 P.3. Also Ayua I.A. Op.cit P.23

This latter Ordinance was for the first time in Nigeria public finance the only enactment, which covered the whole previous tax ordinances

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It is pertinent to state that ordinance No 4 of 1940 was assailed on three short- comings VIZ:

(a) It was discriminatory as it applied to Natives in Nigeria elsewhere than in the township of Lagos.[7]

(b) It was cumbersome as it applied to expatriates and to Nigerians living in Lagos as well as to companies thereby lumping together under the same Law the provision for the taxation of personal and company incomes[8].

(c) It failed to provide for uniform tax rates throughout the country. It left it to the Governor's approval to decide what the rate of tax should be from year to year in any particular province[9].

Furthermore, in 1943, a more progressive and comprehensive tax ordinance was enacted, under which Europeans all over the country and Africans resident in Lagos were assessed.[10] It came into operation on 1st April, 1943. It taxed income, which accrued in, derived from, were received in or brought into Nigeria. These included profits from trade, business, profession or vocation for whatever period of time such trade, business, profession, or vocation may have been carried on or

6. Orewa G.O. - Taxation in Eastern Nigeria 1962, quoted in Ayua I.A.op.cit. p 24
7. section I, Direct Taxation Ordinance NO 4 1940 cap 54
8. Ayua I.A. Op. cit P 24
9. Ibid P 24
10. No. 29 of 1943 Cap. 92

exercised.[11] It is important to state that at that stage of Nigerian tax system, no principle of federalism was introduced in Nigeria and so the constitutional question of allocation of taxing power between different tiers of government did not arise[12].

When Nigeria became a federation in 1954, the question of sharing taxing powers between the regions and the Federal Government immediately arose. The question was discussed at the Nigerian Constitutional Conference in London in 1957, where it was decided to refer to a commission the issue of how to allocate taxing powers between the Regional and Federal Governments. Consequently, the Jeremy Raisman commission was appointed to look into the matter and make recommendations that would ensure, inter-alia, that the maximum possible proportion of the income of regional governments be within the exclusive power of those governments to levy and collect.[13]

At the time of the 1958 Fiscal Commission's report, history had it that there were instances of double taxation in the Eastern and Western Nigeria. A resident of Eastern Nigeria working in the Western

region would be taxed twice on the same income by both governments.[14]

It is equally on record that at the time the 1958 Fiscal commission was constituted, there were various legislations for direct and indirect personal taxes.

11. Section 7 (a) Income Tax Ordinance, 1943
12. Ayua I.A. Op. cit P 24
13. Report of the Nigerian Constitutional Conference 1957, para 57, see also Report of Fiscal Commission 1958 Para 23
see also I.A. Ayua Op.cit P. 27
14. Ayua I.A. Op. cit P. 27

The Western Region was the first to enact income tax law in 1957 which was known as the Western Region Income Tax Law No.16 of 1957.[15]

The Federal Government; following the recommendation of the 1958 Fiscal Commission to the effect that basic principles for taxing income of individuals be introduced throughout Nigeria, embodied it in the Nigeria (constitution) order in council 1960. This formed the basis of Income Tax Management Act (ITMA) 1961. Despite this, in 1962 the Eastern and the Northern regions also enacted their own separate income tax laws known as the Eastern Region Finance Law 1962 and the Northern Nigeria Personal Tax Law 1962, respectively.[16]

When in 1963, the Mid-Western region was created; it adopted the tax law of western region being the region from where it was created. Thus, there were four different income tax laws applying in the country with different rates of tax, reliefs and personal allowances as at that time.[17] The tax situation became worse in 1967 when the Federal Government divided the country into twelve states. Each of the states adopted the tax law of the region from which it was created. The Lagos state government being the Federal Capital Territory then applied the Federal Personal Income Tax Law.[18] Consequently, Nigeria was beset with a situation of diversities in personal income tax laws with lot of attendant drawbacks.

First, Nigeria entered into a number of tax treaties with foreign countries,

15. Ola C.S. Op.cit P9
16. Ibid P.9
17. Ayua I.A. Op. cit P28
18. Being ITMA 1961

which undertake to limit or prevent double taxation. The multi-personal income tax law conflicts with this double taxation arrangement of the Federal Government.

Second, it created the problem of internal double taxation. It is on record that the western region then did not only tax the income of those resident in the West, but also taxed any income which was derived from the Western region irrespective of the residence of the recipient[19]. This obstructed the flow of goods between the states and creates some distortion in the administration of the taxes.

Third, there were varying rates of taxation of individuals, which proved to be a constant source of hardship to the taxpayer and tax collectors. It brings difficulty in the administration from the tax office.

Fourth, it is trite that apart from revenue-generating role, a tax system must be seen as an instrument of social engineering aimed at positively mobilizing the masses and securing their continuous commitment to the development effort. The existence of overlapping income tax hampered its use as a significant instrument of economic control as well as instrument to realize social engineering imperatives.[20]

All the above setbacks necessitated the announcement of the intention by the Federal Government to introduce the Uniform Personal

Income Tax throughout the country as socially and economically desirable in the 1974/75-budget speech.[21]

This led to the promulgation of the Income Tax Management (Uniform

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Taxation

19. Report of the Fiscal Commission 1958 Para 89
20. Dotun Philips Op. Cit P 39
21. Delivered by the Head of the Federal Military Government, Commander in-chief-of the Nigerian Armed Forces, General Yakubu Gowon in April, 1975

provisions etc) 1975. The Act was enacted to amend the ITMA 1961 and the Income Tax (Armed Forces and other Persons) (Special provisions) Act 1972.[22]

It provided for uniform rates of tax, reliefs and allowances throughout the country thereby putting an end to varying rate of tax, reliefs and allowances on the taxation of individuals.[23]

The ITMA 1975 though provided for uniform tax, it is not unassailable on the ground that it was an enactment on subject matter that Federal Government then had no legislative competence. Under the 1963 constitution that was then in operation in Nigeria, 45 items were placed under the exclusive legislative list on which only the Federal Government can Legislate.[24] Taxation of income of individual

was not among the items; neither was it in any of the 29 items under the concurrent legislative list.[25]

To rectify the Lacuna, taxation of incomes and profits of individual was made an item under the exclusive legislative list of the 1979 constitution.[26] This technically invalidated all the former multi-personal tax laws. Being empowered by this constitutional provision, the Federal Government in 1993 enacted a comprehensive income tax Act. It is Personal Income Tax Act 1993 which repealled the ITMA 1961 and 1975 as well as income Tax (Armed Forces and other persons) (special provisions) Act 1972.[27] The Act aims, inter-alia, to achieve

22. No 51 of 1972
23. Ayua I.A op cit p.29
24. Part 1 of the schedule to 1963 constitution.
25. Part II of the schedule to 1963 constituiton.
26. Items 58, 2nd Schedule, 1979 CFRN
27. Section 99 PITA, 1993

uniformity in the incidence of personal income tax in Nigeria.

It is worthy of mention that the introduction of the uniform personal income tax system in Nigeria was met with mixed reactions from cross-section of Nigerians. Some commentators commended the Federal Governments courage to initiate and implement uniformity as it will make personal income tax play the significant role it should play

in Nigeria's revenue structure and economic development.[28] Other commentators attacked it on the ground that it is incongruous with the Federal nature of Nigerian government under which autonomy of the state government is guaranteed.[29]

In this chapter, however the researcher shall examine the arguments in favour of and against uniform personal income tax system. The thesis shall also consider critically the statutory provisions of the Personal Income Tax Act 1993 on uniform personal income tax system.

3:2 ARGUMENTS AGAINST UNIFORM PERSONAL INCOME TAX

Although it was the general wish in Nigeria before 1975 that a smoothly working system of personal income tax should be evolved, nevertheless, there are important arguments against the proposition that the Federal Government should have a sweeping legislative jurisdiction over it. The objections shall be considered

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28. Philips A.O –Nigeria's Tax Effort (1970) BTR 180 @ 186 quoted in Ayua I.A. Op-cit p 29
29. Ola C.S. O.P Cit p.54

under the following sub-heads.

a. Incongruity with Nigerian Federal set-up

b. Inequity of uniform rates and allowances

c. Administrative problem

d. Option of harmonization instead of unification

e. Unfair income re-distribution.

3.2:1 INCONGRUITY WITH NIGERIAN FEDERAL SET-UP

By the doctrine of Federalism which Nigeria has adopted by virtue of section 2(2) of the 1999 constitution, the autonomy of each tier of government is essential to Federal arrangement.[30] The autonomy presupposes that each government exists not as an appendage of another government but as an autonomous entity in the sense of being able to exercise its own will in the conduct of its affairs free from direction by another government.[31] By extension it means each state has ambition to improve its percentage of internal revenue.

It has been canvassed that the introduction of uniform personal income tax throughout Nigeria erodes the autonomous power of the state government as highlighted above, to initiate and manipulate tax policies in areas where each state tax authority has exclusive or

concurrent tax jurisdiction.[32] Each state has its own regulatory and taxing authority and revenue needs. It can use the personal income

30. A.G.Lagos State vs. A.G Federation (2003) 12 NWLR (pt 833) p. 119 – 120 para H-F
31. A.G. Ogun State vs. A. G Federation (1982) 1-2 SC 13 @ pp 72 –73 per Udoma JSC
32. Ola C.S. Op Cit p.54

tax under its jurisdiction not only to raise revenue but also to perform other socio-economic functions on subject- matter within its jurisdiction.[33]

Therefore the measure of uniformity of taxation may make a huge joke of the continued existence of state government in specified fields including taxation. We can appreciate the views of a foremost tax scholar, Professor Ola who wrote that:

> ***A federal set-up directed towards national unity --- cannot be reconciled with a situation whereby there is an increasing trend towards rendering the state components of the Federation ineffective, for income taxation is an elastic and fertile source of revenue to state government and can be made to yield more revenue as circumstances demand.[34]***

Hence, taking it away from state government will foist a situation of complete financial dependence upon the Federal Government by the

state thereby denying them of their autonomy in matters that directly concern them. This is particularly so that the control of the economy is not the exclusive preserve of the Federal Government alone. Both tiers of government are to exhibit concerted efforts towards revamping of the Nigerian economy.

Under the 1960 and 1963 constitutions of Nigeria, personal income tax

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was not an

33. Ayua I.A. Op Cit P39
34. Ola. C.S. Op Cit P.55

item under the exclusive legislative list on which only the Federal Government can

Legislate. It was equally not made an item under the concurrent legislative list. As

Such it was made an exclusively residual matter.[35] It can be discerned that the 1963 Constitution gave more recognition to the regions then as autonomous government entities that can act unilaterally with a high degree of autonomy in matters that directly concerned them.

Surprisingly under the 1979 Constitution for the first time in Nigerian tax history, personal income tax was removed from the state

jurisdiction and was placed under the exclusive preserve of the Federal Government to levy.[36] This Professor Ayua, opined, is not a recipe for the political unity of the heterogeneous country like Nigeria.[37] It can result to making Federal Government so powerful to bend the will of the state governments to its own.[38] It can also make the state completely dependant financially and thereof generally, upon the Federal Government; thereby denying them autonomy in matters that concernedly affect them.[39]

Although the provision of section 163(b) of the constitution[40] may seem to have whittled down the potency of this argument. The section provides that a sum equal to the proportion of the proceeds of the tax

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or duty collected by the

35. Parts I & II of the Schedule to 1963 CFRN
36. Item 58, part 1,2nd schedule to 1979 CFRN
37. Ayua I.A.op Cit P25
38. Nwabueze B.O.- The Presidential Constitution of Nigeria, C. Hurst & Co Publishers Ltd London 1982 P 40.
39. Ayua I.A. Op Cit p25
40. CFRN 1999

government of the Federation or other authority shall be paid to the state from which such tax is derived. This does not assuage the state governments of the curtailment of its latitude in respect of their internal revenues. It is also not a substitute for taking away of this

important kind of taxation from state governments to shape economic activities within their sphere of jurisdiction.

This becomes more relevant that the autonomy of each state under a Federal set-up presupposes that each state has ambition to improve its percentage of internal revenue and that the creation of states in Federation like Nigeria accommodates healthy fiscal competition which leads to overall improvements of the Nigeria economy.[41]

3:2:2 INEQUITY OF UNIFORM RATES AND ALLOWANCES

A uniformity of tax brings in its train uniform tax rates, reliefs and allowances. It is suggested that a uniformity of tax rates in a country as diverse as Nigeria appears a contradiction in terms both from viewpoint of sophistication and level of development.[42]

By uniform rate of personal income tax it means a method whereby people who earn equal income pay equal tax to the government. This presuppose that a peasant farmer who is resident in a remote area like Shika[43] will be similarly rated

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41. Ola C.S. Op. Cit p.57

42. Ibid P 55
43. A small town in Sabon Gari Local Government Area of Kaduna State.

with an effluent business tycoon who resides in Kaduna metropolis for income tax purposes. Whereas little or no presence of government infrastructures is felt in Shika; almost every infrastructures that promote life comfort are enjoyed in Kaduna. This by implication is disadvantageous especially when it is closely examined from the point of view of low-income families. Thus Professor Ola reasoned that:

> ***It implies, for example, that all such people who earn equal income are required to pay equal tax are also equally situated. This is an over-simplification of a complex subject because it ignores the distinction between equality by definition of income and equality by situation. The one relates to people as income earners and the other refers to them as individual taxpayers. The difference of course is that equality by definition of income is subjective while equality by situation of taxpayers is objective.***[44]

Thus, rates of tax should be related to the services provided by the state government. If not, what justification can one offer for a situation like in Lagos State where taxpayers enjoy free health; free education, good roads and adequate water supply;[45] compared to Ogun State where education is heavily paid for at all

44. Ola C.S Op Cit P75

45. The State is being Controlled by Alliance for Democracy. (A.D). The Cardinal Objectives the party is executing includes free education, health etc. see AD (Lagos State) Party Manifestoes,2003

levels and one pays heavily to have good health and medication;[46] AND taxpayers in those states pay uniform rates of tax.

More importantly, there is absence of uniform prices of essential commodities necessary for economic progress. Uniform rates of tax cannot work, more especially where amenities enjoyed by individuals differ from state to state.

For instance oral interview conducted revealed that a two bedroom flat goes for N250,000.00 per annum in Lagos.[47] whereas it goes for N60,000.00 per annum in Zaria. In the same vein, the interactive session with the Chairman of food stuff Sellers Association Lagos State (in the course of the research work) revealed that the prices of food stuff in Lagos metropolis triples the prices of the same food items

in Zaria and yet tax-payers in these cities and town pay the same rate of tax.

Therefore, the idea of uniformity of tax rates may render the whole structure of taxes and related services and infrastructure provided incongruous.[48]

Furthermore, the strength of this argument can also be extended to uniformity of reliefs and allowances. The purpose of reliefs and allowances in a tax system is two fold. One is the familial responsibility of the taxpayer, which may reduce his ability to pay tax from his full emoluments. The second hinges on the belief that the post-tax income of a taxpayer should be sufficient for him to live on.

46. The Oral interview conducted in the course of this research revelaved that Ogun Stae, being governed by People's Democratic Party (PDP) has no free education programme etc like AD State.
47. Being facts elicited from the oral interview conducted with the principal partner, Wole Ogungbola &Co, Estate Surveyors and Valuers Lagos, on 28th Day of March, 2005
48. Ola C.S Op Cit P55

In effect, a taxpayer is not expected to work only for subsistence. His post-tax income should be such that he could save and invest. The savings and investment are not for him alone, but for the whole country. This is so because capital formulation for production depends very much on the level of savings and investment.[49]

It is therefore arguable that a regime of uniform reliefs and allowances contradicts the policy rationale for those reliefs and allowances. To bring the argument home in a clearer form, should a level ten civil servant in a Federal Government service who resides in Lagos where the cost of living is very high, be subjected to the same reliefs and allowances with a similar level ten officer in the same Federal Government service who lives in Zaria where rents, transport fares and general cost of living is not as high as Lagos? The one in Zaria will definitely have more to save and invest than the one in Lagos. One can therefore conclude that since uniform regime of reliefs and allowances cannot guarantee uniform savings and investment on the post tax income of taxpayers the underlying principles and rationale behind granting of those reliefs and allowances are definitely betrayed.

3.2:3 ADMINISTRATIVE PROBLEM

No Tax Law, no matter how sophisticated and progressive can be effective unless

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49. Omughele .J. _ An Appraisal of the Personal Tax Relief Regime in Nigeria. (2002) (unpublished) P.3

it is administered with competence and integrity.[50] It is observed that administrative defects, inefficiency and high handedness may constitute a real bane to the socio – economic target from the uniform personal income tax system.

By virtue of section 85 A (1) and 85 B (1) (B) of the Act, [51] the state board of internal revenue collects all taxes due to government under the Act, except on those tax payers highlighted under section 2 (2) of the Act.[52] to wit: Armed Forces Members, foreign employees, Residents of FCT Abuja and non – resident.

The Federal Inland Revenue Board shall administer the tax on these set of people.

Again, Section 85 of the same Act provides for an extensive policy making body to be known as Joint Tax Board. The function of the Board inter-alia includes:

a. using its best endeavour to promote uniformity both in the application of the Act and in the incidence of taxation of individuals throughout Nigeria;

b. Impose decisions on matters of procedure and interpretation of the Act on any state for purposes of conformity with agreed procedure or interpretation.

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50. Abdurazaq M.T. – Nigerian Tax Offences and Penalties, TOSCO Press, Ilorin, 1993 P.131

51. The Personal Income Tax Act 1993

52. Ibid

c. advise the Federal Government, on request in respect of double taxation arrangements concluded or under consideration with any other country.[53]

An immediate deduction from the above statutory provision is that the Federal Government's utmost concern is about "Uniformity" irrespective of the impairment it may likely cause to the economic development of each state. It follows from this corollary that should a state wants to use income tax as a measure of achieving social equity no matter how genuine the measure may seem, the Joint Tax Board

can impose its contrary decision on such a state! Again, both Federal Inland Revenue service and state Internal Revenue Service in so far as their services relate to personal income tax; their state of affairs as far as staff is concerned is not satisfactory. This results in inefficient and defective assessment and collection.[54] The enquires and oral interview under this research reveal that a lot of the staff of the two establishments do not even possess a working knowledge of the tax Law.

This is antithesis of the quality of staff expected of an effective personal income tax administration. This is coupled with the fact that the composition of the two boards is not above partisan political pressure; as they lack operational and financial autonomy.[55]

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53. Section 85 (9)(d), (c) & © PITA 1993
54. Abdulrazaq M.T. Op Cit P131
55. Somorin O.A. _ The Origin and status of Revenue Boards in Nigeria. The Nigeria Tax Journal Oct – Dec 2002 Vol 2. P.26

With the above weakness in the composition and functions of the tax authority both at Federal and State levels; which are impediments to effective tax administration in Nigeria, one can confidently asserts that the Nigerian's uniform income tax system cannot yield the

revenue expected from it. As such, the uniform tax system is impaired by administrative problem.

3.2:4 OPTION OF HARMONIZATION INSTEAD OF UNIFICATION

By enacting a uniform tax code throughout the country, the rates of taxes, reliefs and allowances are harmonized.[56] This view cannot be said to be absolutely true. A keen perception of the uniform tax system reveals that it is uniformity vides a direct unification, which portends a foreboding constitutional danger in our Federal set-up. To this end, it is suggested that instead of uniform taxation, the objectives of the Federal Government could have been met by harmonization of tax policies and not by direct unification.[57]

It is observed that the uniform income tax code is not the only uniform statute in Nigeria. At least there is "uniform Civil Procedure Rules" that governs the proceedings of High Court of States.[58] it is on record that the Federal Government did not take over legislation or the power to legislate on the rules simply to achieve uniformity. Instead the rule was harmonized in such a way that

56. Ayua I.A. Op.Cit P 32

57. Ola C.S.Op Cit p55

58. See the High Court (Civil Procedure) Rules of Kaduna State (Uniform Rules) 1987.

can promote attainment of justice. Such kind of gesture can be copied to bring out a harmonious code that will aid economic growth and development with the States retaining the power to Legislative on it. After all, the autonomy enjoyed by each tier of government does not mean a water-tight separation.

Moreso, that in a Federal Set-up like Nigeria, there is a meeting point between the Federal and State Government where knotty issues of national importance are pleasantly ironed-out.

A forum or board like Joint tax Board can be made a harmonizing center whereat all issues involving income tax legislation can be harmoniously treated instead of the direct unification. Though there may be recalcitrant states.

Again, the personal income tax is a major economic tool which either the

Federal or State government may exploit where the need arises. Each of them may use it to control the rate of consumption by lowering disposable income or take – home pay from the citizens. The idea of

uniformity renders this basic tool ineffective on the part of the state government.[59]

3.2:5 UNFAIR INCOME RE – DISTRIBUTION

A relatively good tax system should be expected to achieve, inter-alia, income re-distribution. As far as low-income families are concerned, income re-distribution appears to be the most central issue in a system of uniform

59. Ola C.S Op. Cit P.55

taxation. We may admire the erudition of Professor Ola who wrote that:

> ***"Until uniform taxation guarantees a minimum subsistence income for every family by providing more money in the pockets of the low-income groups, the uniform income tax system must continue to be lacking in objectivity"***[60]

considering the prevailing economic situation in the country, it appears that uniform taxation provides no solution to income re-

distribution. The rich are becoming richer while the poor are becoming poorer. The uniform tax system does not in any way reduce inequality.

The economic programme of the government creates inflation, the control of

which may require the adoption of deflationary policies which in turn may lead to un-employment. It is the unemployed ones that definitely bear the pinch of unfair redistribution of tax burden arising from the adoption of the uniform personal income tax system.

Viewing all the above criticisms leveled against uniform personal income tax system, one may be tempted to believe that its adoption is entirely non-beneficial. An attempt to swallow the grains of the above highlighted objections absolutely presents only one-half of the truth about the system. Although the uniform tax system has its shortcomings, it also has some worthy

merits.

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60. Ibid P. 76

3:3 ARGUMENTS IN FAVOUR OF UNIFORM PERSONAL INCOME TAX

The uniform personal income tax system has certain built-in advantages. There are important arguments in the overriding national

interest to suggest that the Federal Government should wholly occupy Legislative power on personal income tax. This view is supported by the experience of comparable Federations in operating systems of income Tax.[61]

Concededly, under the 1963 constitution of Nigeria, taxes on the income and profits of individual was not made an exclusive item under which the Federal Government alone can legislate. That did not mean that the Constitution did not recognize the need for uniform principles for the computation of income and profit of individuals. Section 76 (2) (b& c) provides:[62]

76 (2) – Parliament may make laws for Nigeria or any part thereof with respect

to taxes on income and profits other than the income and profits of companies for the purpose of –

(a) .....

(b) Securing uniform principles for the taxation of income and profits accruing to persons in Nigeria from Countries other than Nigeria and of income and

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61. Report of the Fiscal Commission 1958 Para 80
62. CFRN 1963

profits derived from Nigeria by persons outside Nigeria;

c) Securing uniform principles for the taxation of income and profits of all persons (including members of partnerships) for the purposes of assessment of tax and for the treatment of losses, depreciation of assets and contributions to pension or provident funds or schemes.

The above constitutional provisions has put lie to the argument that under the 1963 constitution uniform tax was not provided for. Although the parliament's power then to so legislate was discretionary, notwithstanding, the constitution recognized the purpose for securing uniformity of tax. It also serves as pathfinder for the subsequent constitutions of Nigeria[63] in so far as their provisions affect incomes and profits of individuals.

One of the purposes that the 1963 constitution recognized for securing uniform principles for the taxation of income and profits of individuals was for implementing any treaty, convention or agreement

between the Federation and any other country or any arrangement with or decision of an international organization of which the Federation is a member with respect to taxes on income and profits[64].

This purpose is still recognized today as a vital reason why Federal Government, and not the state government should possess the power to legislate on

63. That is, 1979 and 1999 CFRN
64. Section 76 (2)(a) CFRN 1963

the personal income tax. Nigeria has entered into a number of treaties with foreign countries, which undertake to limit or prevent, double taxation. One of the treaties is the Double Taxation Relief between the Federal Republic of Nigeria and United Kingdom and Northern Ireland Order of 1988.[65]

Whenever a problem is encountered which involves a person from Nigeria deriving income (or having a taxable estate) in one of these countries having income (or a taxable estate) in Nigeria or transactions between Nigeria and one of these countries, the

provisions of the relevant treaty should be examined. The responsibility of such double taxation arrangement rests squarely on the Federal Government because the constitution gives the Federal Government exclusive power over trade and commerce between Nigeria and other countries including import of commodities from Nigeria.[66]

The Federal Government wields these powers to influence level of investments of both foreign and local investors. To this end, the personal income tax can be used as a significant instrument of economic control. Therefore, uniform tax system is meritorious to the extent that it removes conflicts that state personal income tax laws might have with double taxation agreements, which the Federal Government has entered into, or might do so in the future with foreign governments.

65. See Seventh Schedule to the PITA 1993
66. See Item 62, 2nd Schedule part I CFRN 1999

Second, the pursuit of macro-economic objectives and the need to coordinate the promotion of economic growth at the national level

have necessitated the allocation of personal income tax (as a formidable revenue source) to the Federal Government. Under the 1999 constitution, defence, trade and commerce between Nigeria and other countries are under the exclusive preserve of the Federal Government to legislate.[67] To this end, section 5 (5) and section 16 of the constitution[68] provide as follows:

> **"The President, in consultation with the National defence Council may deploy members of the armed forces of the Federation on a limited combat duty outside Nigeria if he is satisfied that the National security is under imminent threat or danger"[69]**

Section 16(1) of the same constitution states that:

> **"The State (Federation of Nigeria) shall**
>
> **(a) harness the resources of the Nation and promote National prosperity and an efficient, a dynamic and self-reliant economy."**

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67. See items 17 and 62 of the 2nd schedule part 1 of the 1999 Constitution.
68. CFRN 1999
69. Section 5(5) thereof

(b) control the National economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity.[70]

The combine effects of the above constitutional provisions is that the responsibility of the Federal government for defence, and ultimately for meeting a major emergency which may arise has meant that in certain cases, when faced with a national emergency the cost of which could not otherwise have been met, the Federal Government had to assume complete control in the income tax field.[71] Thus the report of the 1958 Fiscal Commission states that:

"...Income tax has proved to be an essentially valuable instrument of economic control in the hands of central government responsible for overall economic policy, and as a means of influencing both the level of investment and the extent of personal expenditure..."[72]

In view of the above therefore, the uniform personal income tax regime is justifiable.

Furthermore, the uniform tax system has quashed the crises of overlapping income tax jurisdictions that exist in the Country before 1975. It is observed that where competing or overlapping income tax Jurisdictions exist, they have

70. See Section 16 (1) CFRN 1999
71. Report of Fiscal Commission, 1958 para 81 P18
72. Ibid para 81 p 18

proved to be a constant source of hardship to the taxpayer and conflict between the governments concerned.[73] Should Federal and state governments have separate income tax laws, there is bound to be jurisdictional problem similar to the one between Federal High Court and States High Courts toady.[74]

Aside, there will also be problems of internal double taxation on taxpayers in their inter-state trading activities. This is a strong reason for holding that income tax should be levied on uniform rates over the whole country. For instance, it is a common difficulty with any sort of tax, when it is decentralized that one area may charge a high rate, while its neighbors charge something less. When this happens, any person who has no special preference for one area or the other, is likely to choose to live or work in the area where the tax is lower.[75]

In the same vein, it is observed that one peculiar habit of Nigerian trading is that goods often pass through as many distributors and or sub-distributors before they are finally sold to the consumers. Wide use is made of road and river transport, and both internal produce and imported goods often travel vast distances from their original source to the point of final sale. In the course of this trading activities the traders used to come across frictions and barriers. At least to cross the frontier of a state to another state within the nation, traders used to meet plethora of road blocks mounted by tax collectors of various

73. Ibid para 81, P.18
74. See Ayeni V. UNILORIN(2000) 2 NWLR (Pt644) 290@306, see also the case of Trade Bank Plc V. Banilux. (Nig) Ltd (2000) 13 NWLR (Pt 685) 483
75. Report of Fiscal Commission 1958 para 81 p18.

states. This hinders the free flow of goods and smooth running of commercial activities. All these kind of hindrances and barriers have been removed by uniform income tax system. As such an economic system of interstate trade that allows an individual and his goods to pass from state to state without any restriction is achieved. What it means in effect is that, though tax payers may scatter in different geographical divisions of the country, uniform

income tax system promotes a feeling of them belonging to the same nation under an open or unified national economy.

Moreover, it is noteworthy to examine the possible effects of uniform personal income tax system on Nigerian low–income families. The uniform rate of personal income taxation presupposes that tax rate applies equally to every member of a neatly defined income group. It is easy to administer from the tax office. Similar to this is the fact that it avoids excessive tax drives' which are obnoxious to tax payers and even dangerous to tax collectors.[76]

It should be further noted that what the uniform tax system seems to achieve is a smoothly working system of personal income tax, which is suitable to the special diverse circumstances of the Country. This is accomplished by taking over the Legislation over it by the Federal Government. The collection is done by State's tax mechanism while the proceeds is shared in a sum equal to the proportion of the net proceeds of such tax collected by the State; which amount has not been criticized to be insufficient.

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76. Ola C.S. op. cit p 75

Therefore, to say that uniform income tax system has taken away huge revenue from the states is to stress the argument too far. Rather, it improves on and modify personal income tax system in such a way that freedom of trade and commerce will not be hindered. To this extent, uniform system of income tax is highly beneficial.

Considering the arguments against and in favour of the uniform personal tax system above highlighted, one cannot but suggest an arrangement whereby personal income tax shall be levied according to a uniform Federal Law and collected simultaneously by the Federal Government and state governments. This is what uniform system of personal income tax seeks to achieve, as it is suitable for the special circumstances of Nigerian Federalism.

3:4 STATUTORY PROVISIONS ON UNIFORM INCOME TAX.

The idea that personal income tax should be levied at uniform rates over the whole country is not new. It has been on the tract since when Nigeria became a Republic. Although, the Republican constitution of 1963 did not make personal income tax an item under

the exclusive Legislative list, the constitution saw the need to secure uniform principles for the computation of tax on income and profits of individuals. Thus, section 76 (2) (a) (b) (c) & (d) provides that:

> **Parliament may make laws for Nigeria or any part thereof with respect to taxes on income and profits other than the income and profits of companies for the purpose of:**
>
> **(a) Implementing any treaty, convention or agreement between the Federation and any other country or any arrangement with or decision of an international organization of which the Federation is a member with respect to taxes on income and profits;**
>
> **(b) <u>Securing uniform principles for the taxation of income and profits accruing to persons in Nigeria</u> from countries other than Nigeria and of income and profits derived from Nigeria by persons outside Nigeria;**

(c) Securing uniform principles for the computation of income and profits of all persons (including members of partnerships) for purposes of assessment of tax and for the treatment of losses, depreciation of assets and contributions to pension or provident funds or schemes;

(d) regulating the liability to tax of persons within Nigeria by reference to their places of residence or otherwise for the purpose of ensuring that any income or profit does not bear tax under the laws of more than one territory.[77]

Also section 76 (4) of the constitution provides that:

"the powers conferred upon parliament by sub-section (2) and (3) of this section shall not extend to the imposition of any tax or penalty or the prescribing of rates of tax or personal allowance and reliefs.[78]

In the same vein section 76 (5) states that:

"Nothing in sub-sections (2) and (3) of this section shall preclude the legislature of a region from making laws with respect to the matters referred to in those sub-sections"[79]

From the totality of the constitutional provisions above quoted, the following facts are deduced:

(i) The parliament has discretionary power to make laws throughout Nigeria on taxes on income and profits of individuals in such a way that uniform principles for such taxes are secured.

(ii) The parliament has power to make laws on taxes on income and profits of individuals in such a way that internal double taxation will be avoided.

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77. See Section 76 (2) (a-d) CFRN 1963
78. Section 76(4) CFRN 1963
79. Section 76(5) CRFN 1963

(iii) The parliament and regional Legislative Assembly have concurrent powers to make laws on taxes on income and profit of individuals.

(vi) Securing uniform principles of income tax is a necessary weapon for the Federal Government to implement any

treaty convention or agreement it enters into with any other country.

(v) The powers conferred on parliament affects legislating alone. It does not extend to imposition of tax and prescription of rates of tax..

Although it is a strong argument that since the income tax is not an item on the exclusive Legislative list, parliament cannot legislate on it. Also, if it was the intendment of the constitution to make income tax a concurrent item, it could have been expressly placed under that list. As such, both Federal and Regional legislatures would have had powers to legislate on it. But in the absence of that, it is obvious that it was an exclusive preserve of the Regional Legislature.

Be that as it may, our concern at this time is that the 1963 constitution constitutes a valuable outline on uniform principles of tax. It is from the hints of the provisions of the constitution that gave birth to the promulgation of income Tax Management Act 1961 and subsequently the Income Tax Management (Uniform Taxation Provision etc) Act 1975.

Thus, when the 1979 Constitution of Nigeria came into being, the Federal

Government assumed the exclusive powers to Legislate on taxation of individual.[80]

This gave life to the promulgation of the Personal Income Tax Act by the Federal Government.[81] It is a comprehensive income tax Act that regulates the imposition of personal tax throughout the Federation. By its promulgation the internal double taxation of income by the Federal and state governments will be avoided. The Act aims majorly to achieve uniformity in the incidence of personal income tax in Nigeria. This presupposes that the rates of tax, reliefs and allowances become rhyme and uniform throughout the Federation.

On promulgation of the 1999 constitution, the Federal Government doses not derail from its earlier exclusive jurisdiction on personal income tax. So, a combined perusal of the provisions of the 1999 constitution, in so far as they relate

to income tax vis-à-vis the statutory provisions of the Personal Income Tax Act 1993 reveal glaringly the intendment of the Federal Government about uniform personal income tax system.

In part one of the second schedule to the 1999 constitution, which contains the exclusive Legislative List, the Federal Government is clothed with incontestable power to legislate on taxation of incomes, profits and capital gains except as otherwise prescribed by the constitution.[82] The reason the Federal

80. See Item 58, part1,2nd schedule CFRN 1979.
81. PITA 1993
82. Item 59 thereof

Government's jurisdiction in this regard cannot be challenged by other tiers of Government is stated by the supreme Court recently as thus:

Nigeria is Federation and operates a federal constitution. An important attribute of a Federal constitution is that there is a division of power between the center or the Federal Government, and the States. The powers and roles given to each of the Governments are as defined and set out in the constitution. None of the governments

is allowed to step out of its assigned field. If it does, whatever it does outside its assigned field will be unconstitutional and will be declared null and void by the Court.[83]

One can assert from the spirit of the foregoing ratio that taxation of incomes of individual is a solemn legislative matter which comes within the exclusive power of the Federal Government to the exclusion of any other tiers of Government.[84] **It is a positive fiscal step to avoid a situation of Nigeria having as many tax systems as there are Governments. It also clears off the resultant effect of differential income tax burdens throughout the country. Consequently, it enhances the use of income tax (by Federal Government) as a significant source of revenue as well as an**

83. A.G. LAGOS STATE V.A.G.FEDERATION (2005 All FWLR (pt 244) P 805@905-906 para,G-H.

84. See Item 59, part 1, 2nd schedule to the CFRN 1999.

instrument of economic control.

As a follow up to the above, the Federal Government has exclusive power to fix rates of tax, personal allowances, and to decide

upon its own, method of assessment and administration of Personal Income Tax. Thus, the Personal Income Tax Act provides that:[85]

> ***Subject to the provisions of this Act, the income tax that may be payable on the chargeable income of an individual ascertained in accordance with the provision of this Act SHALL, in respect of each year of assessment, be assessed at the rate or rates specified in the sixth schedule to this Act....[86]***

A simple and straight-forward fact deduceable from the above provision of the Personal Income Tax Act is that the rates(s) of tax under the Act must be in line with the sixth schedule of the Act. The said schedule is as tabulated below:[87]

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85. PITA 1993.
86. Section 37 PITA 1993.
87. Section 37 of the Finance (Miscellaneous Taxation Provisions) Decree No 19 of 1993.

INCOME TO BE TAXED	RATE OF TAX	PERC ENT
For every Naira of the first ₦20, 000	5k per ₦1	5%
For every Naira of the next ₦20, 000	10k per ₦1	10%
For every Naira of the next ₦40, 000	15k per ₦1	15%
For every Naira of the next ₦40, 000	20k per ₦1	20%
For every income above ₦120,000	25k per ₦1	25%

Furthermore, the Personal Income Tax (Rates etc of Tax deducted at source [with holding Tax] Regulations provides that.[88]

The rate at which a person as defined in paragraph (2) of this regulation shall deduct tax under the Act from a payment made by him for an activity or service listed in column 1 of the schedule to these Regulations. SHALL be as set out in column 2 of the schedule.[89]

The said column 2 of the schedule to the regulation is as below:

88. No 19 of 1997
89. Section 72 thereof

PAYMENT FROM WHICH TAX IS TO BE DEDUCTED AND RATE OF TAX

COLUMN 1 PAYMENTS IN RESPECT OF	COLUMN 2 RATE AT WHICH TAX IS TO BE DEDUCTED
1. All aspects of building, construction and related activities.	5%
2. All types of contracts and agency arrangements, other than sales in the ordinary course of business.	5%
3. Consultancy and professional services	5%
4. Management services	5%
5. Technical services	5%
6. Commissions	

It should be noted that the use of the word 'SHALL' in the above provision of the PITA 1993 and the subsidiary Legislation of 1997 makes it compulsory (and not permissible) for the rates of income tax to which every individual is to be charged to conform to the two

income tax tables of the Act. This has put an end to varying and divergent rates of tax.

It means in effect that wherever an individual lives or works in Nigeria, the rates of income tax he/she is to pay is the same. No individual tax payer will any longer be selective in trading in a particular state on the ground that the rate of income tax in that state is higher or lesser than the one in another state.

Although, all these fiscal virtues are credited to uniformity of tax, it needs be emphasized that uniformity of rates of tax encroaches on the constitutional rights of states of the Federation.

In the same perspective, the personal relief and allowance deductible by every taxpayer is uniform. Thus, the Act[90] provides that:

> ***"There SHALL be allowed as personal relief in the case of every individual a deduction of N5,000 plus 20% of earned income"[91]***

This relief and other sets of reliefs therein are not given simply because of the type of income which the taxpayer receives, but because of his personal situation. Whatever it is, it is certain that

wherever the taxpayers reside or work in Nigeria as at today, the reliefs and allowances to which they are entitled to pay are the same.

Furthermore, it is worthy of note that it is the exclusive preserve of the Federal Government to implement treaties relating to matters on the Exclusive Legislative list.[92] One of such matters is taxation of incomes and profits of individuals.[93] It may happen that both Nigeria Government and a foreign jurisdiction seek to tax the same income or gains accrued to a tax payer from foreign jurisdiction on the basis that the tax payer has a personal contact with it through domicile, residence, or on the basis that the income or gains arise from assets within Nigeria. A double charge to tax in these circumstances may be avoided by unilateral or bilateral double taxation relief. If there are multifarious

90. The PITA 1993, Section 33 (1) thereof.
91. See also the Finance (Miscellaneous Taxation Provisions) Decree No. 19 of 1998.
92. Item 31 Part 1, 2nd schedule CFRN 1999.
93. Item 59, Part 1, 2nd schedule CFRN 1999.

states income tax laws, there is bound to be danger of states income tax law conflicting with double taxation arrangement between Federal Government and foreign government(s). To avoid such conflict therefore, the Personal Income Tax Act[94] provides that:

If the minister by order declares that arrangements specified in the order have been made with the government of any country outside Nigeria with a view to affording relief from double taxation in relation to tax imposed on income charged by this Act and any tax of a similar character imposed by the laws of that country and that it is expedient that those arrangements should have effect, the arrangement shall have effect notwithstanding anything in any enactment.[95]

Section 38(5) of the same Act states that:

For the purpose of affording relief in Nigeria from double taxation, the arrangements specified in the seventh schedule shall be deemed to have been made under the provisions of this section and to apply throughout Nigeria with effect from the year of

94. 1993, Now Cap P8 Vol. 13 LFN 2004.
95. Section 38(1), PITA 1993.

assessment on the first day of January, 1989 in the case of the united Kingdom and, in the case of any other country, on such date as is specified in the agreement with that country.

It can be discerned from the phrase 'to apply throughout Nigeria' used in the above statutory provision that the force of the provision has to do with general applicability in Nigeria. It operates from end to end of the Federation without any exception.

However, by virtue of the seventh schedule of the PITA 1993, the double taxation arrangements referred to in section 38(5) of the Act are contained in the Double Taxation Relief between the Federal Republic of Nigeria and United Kingdom and Northern Ireland Order 1988 and other such arrangements between the Federal Republic of Nigeria and any other country published as subsidiary legislation.

To this end the Joint Tax Board is empowered to advise the Federal Government on request, in respect of double taxation arrangement concluded or under consideration with any other country[96].

Another statutory provision on uniform personal income tax is the one that bothers on administration of the Personal Income Tax Act. Section 85 (1) thereof provides thus:

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96. Section 85 (9) (c) PITA 1993.

"There is hereby established a Board which shall be known as Joint Tax Board"[97]

While section 85 (9) (d) & (e) states that:

"The Joint Tax Board <u>SHALL</u> use its best endeavours to promote uniformity both in the application of this Act and in the incidence of tax on individuals <u>THROUGHOUT</u> Nigeria"[98].

Section 85 (9) (e) on its own provides that:

"The Joint Tax Board <u>SHALL</u> impose its decisions on matters of Procedure and interpretation of this Act on any state for purposes of conforming with agreed procedure or interpretation[99]."

From the foregoing provisions, it can be seen that they express an emphatic intention. A command to the effect that it is mandatory on the Board to ensure the application of the Act conforms to the government's objectives on personal income tax.

It follows from the above corollary that it is incumbent on the Joint Tax Board to see that the rates of tax, the reliefs and allowances and assessment of individual to personal income tax comply into to

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with the provision of the Act. In

97. PITA 1993
98. PITA 1993
99. PITA 1993

case of any attempt by any state government to derail from uniform incidence of tax on individuals throughout Nigeria, the Board is vested with a sweeping power to impose its decision on any state for the purpose of conforming to the agreed uniform procedure.

Moreover, there is another statutory provision that ensures the internal double taxation is avoided. In the exercise of its provision to impose any tax or duty on incomes and profits of individuals, the National Assembly may, subject to such conditions as it may

prescribe, provide that the collection of any such tax or duty on incomes and profits of individuals, the national Assembly may, subject to such condition at it may prescribe, provide that the collection of any such tax or duty or the administration of the law imposing it shall be carried out by the Government of a state or other authority of a state[100]. Pursuant to this, the constitution provides as below:

Where an Act of the National Assembly provides for the collection of tax or duty on... incomes or profits or the administration of any law by an authority of a state in accordance with paragraph 7 hereof it shall regulate the liability of persons to such tax or duty in such manner as to ensure that such tax or duty is not levied on the same person by more than one state [101].

100. Item 7, Part II, 2nd Schedule CFRN 1999.

101. Item 8 Part II, 2nd Schedule CFRN 1999.

This in effect conforms to the objective of the Personal Income Tax Act 1993 to wit: the regulation of the imposition of personal tax throughout the Federation so that internal double taxation of income by the Federal and State governments will be avoided.

With the above provision in our constitution, the imposition of restrictions upon inter-state trade is prohibited. As a result, an individual and his goods can pass from state to state without any hindrance or molestation.

Finally, it should be noted on this sub-head that the proceeds collected by each state from the personal income tax goes to a common (uniform) purse, which is the Consolidated Revenue Fund to be shared in a sum equal to the proportion of the net proceeds of such tax that are derived from that state. Thus, the 1999 constitution provides that:

> **Where under an Act of the National Assembly, tax or duty is imposed in respect of any of the matters specified in item D of part II of the second schedule to this constitution (i.e *Collection of Income Tax)* the net proceeds of such tax or duty shall be distributed among the states on the basis of derivation and accordingly-**

(a) Where such tax or duty is collected by the Government of a state or other authority of the state, the net proceeds of such tax or duty shall be treated as part of the Consolidated Revenue Fund of that state;

(b) Where such tax or duty is collected by the Government of the Federation or other authority of the Federation, there shall be paid to each state at such times as the National Assembly may prescribe a sum equal to the proportion of the net proceeds of such tax or duty that are derived from that state[102].

It means the proceeds of the income tax collected by a state government is

treated as part of the Consolidated Revenue Fund of that state. While the one collected by the Federal Government shall be paid to the state in a sum equal to the proportion of the net proceeds of the tax derived from that state.

In conclusion, all the statutory provisions highlighted above, contain either expressly or impliedly the spirit and intendment of uniform personal income tax in Nigeria.

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102. Section 163 (a & b) CFRN 1999.

CHAPTER FOUR

INSTRUMENTALITY OF GOVERNMENT ENFORCEMENT OF UNIFORM PERSONAL INCOME TAX.

4:1 INTRODUCTION

No tax law, no matter how sophisticated and progressive can be effective unless it is administered with competence and integrity.[1] For a tax system to be effective and efficient, it is necessary to have a workable instrumentalities of enforcement. It is equally imperative to create a statutory authority which performs both technical and management functions in the administration of the tax law.[2] Otherwise, a good tax policy may end up looking remarkably alike in the hands of incompetent administration.[3]

The term instrumentality has been defined to mean something by which an end is achieved; a means, medium, and agency.[4] In this chapter, it is used to connote the instruments by which personal income tax is enforced by the government so as to achieve inter-alia, maximum revenue yield. The said instruments are being employed or

made to function effectively by various statutory authorities created to realize the tax objectives of the government.

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1. Abdulrazaq M.T. –Nigerian Tax Offences and Penalties Tosco Press, Ilorin, 1993, P.131.
2. Omorogiuwa P.A.- A critique of the Composition and Functions of Tax Authorities in Nigeria In P.A. Omorogiuwa (ed) Nigerian Institute of Taxation, 1987, Lagos P49
3. Bird Richard – Taxation and Development, Lessons from Columbia Experience (1970) P 7
4. Black's Law Dictionary, Sixth Edition P 801

Essentially, there are three main boards responsible for the administration and collection of the personal income tax in Nigeria. These are:

i. The Federal Board of Inland Revenue

ii. The State Boards of Internal Revenue (36 Boards for the States of the Federation)

iii. The Joint Tax Board.[5]

All the boards are primarily responsible for revenue generation for the government. However, it has been observed that the Nigeria's uniform income tax law could still have yielded much more revenue but for the inefficient and defective assessment and collection machinery.[6] This is due to weakness in the composition and functions

of the tax authority at the federal and state levels. These weaknesses are impediments to effective tax administration in Nigeria. In view of the changing revenue tides of the nation, the researcher deems it necessary to have a critical examination of the statutory authorities that enforces the personal income tax in Nigeria in this chapter in it's entirety. Their establishment, compositions, functions as well as their critique shall be thoroughly analyzed. This will be done with the hindsight to see if there is need for their reform so as to maximize the revenue objective of personal income tax.

5. O.A. Somorin – <u>The Origin and Status of Revenue Boards in Nigeria.</u> In S.A. Rabiu (ed) The Nigerian Tax Journal Vol 1 No 2.P 25,
6 M.T. Abdulrazaq Op.Cit P131.

Also in this chapter, the researcher shall critically study the instrumentalities of government's enforcement of uniform personal income tax and the future prospects of it in Nigeria.

4.1.1 <u>THE FEDERAL BOARD OF INLAND REVENUE</u>

As regards the administration of the uniform personal Income tax, tax authority includes the Federal Board of Inland Revenue (*hereinafter referred to as the board*).[7] The Board has been in

existence since 1961.[8] But the Board as it is today was re-established by section 1 of the companies Income Tax Act.[9] It provides that:

"There shall continue to be a Board of which the official name shall be the Federal Board of Inland Revenue whose operational arm shall be called and known as the Federal Inland Revenue Service,"[10]

The Board comprises of:

i. An executive chairman who shall be a person within the service experienced in taxation to be appointed by the president.

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7. See Section 108 PITA 1993.
8. See Section 3, CITA 1961, No 22
9. CAP, 60 LFN 1990, Now Vol. 3 Cap C21 LFN 2004
10. See also Finance (Miscellaneous Taxation Provision) Decree No. 3 1993

ii. The Directors and Heads of Departments of the service

iii. The officer from time to time holding or acting in the post of Director with Responsibility for

planning, research and statistics matters in the Federal Ministry of finance.

iv. A member of the board of the National Revenue Mobilization Allocation and Fiscal commission.

v. A member from the Nigeria National Petroleum Corporation not lower in rank than an executive director.

vi. A director from the National planning commission.

vii. A director from the Nigerian Custom Service.

viii. The Registrar-General of the Corporate Affairs Commission and,

ix. The Legal Adviser to the service.

It should be noted that any seven members of the Board, of whom one shall be the chairman or a Director of a department within the service shall constitute a quorum.[11] The Secretary who shall be an

11. Section 3 CITA 1990.

ex-officio member of the Board shall be nominated by the Board from within the service.[12]

In 1991, a study group was constituted by the Federal Government to look into tax administration in Nigeria. Prior to the Group's recommendations, the Federal Board of Inland Revenue was a department under the Federal Ministry of Finance. Unlike the Boards of 1961 and 1979, the Board today has a statutory Technical Committee to advise on all tax matters requiring professional and technical expertise.[13]

The Federal Inland Revenue Service which is an offshoot of the Board is made up of six Directorates. Apart from the Directorates, there are other specialized service units which, include Inspection Division, the Corporate Affairs Division, the Tax Audit branch, the intelligence branch, the special investigation branch and the Internal audit branch. The directorates together with the service units/arms perform the numerous functions of inter-alia, personal income tax of non-residents and members of the armed forces, the police and the residents of the Federal Capital Territory Abuja.[14]

However, in view of the recent reform in the Federal Board of Inland Revenue the directorates system had ceased to exist.

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12. Section 4, CITA 1990.
13. O.A. Somorin Op. Cit P 28
14. Ibid P 28

What is now in vogue is the Integrated Tax system. This is a one-shopping system whereby a taxpayer can transact his business/tax activities, such as getting tax clearance, Registration for and payment of Value Added Tax etc in any branch of the service.[15]

Furthermore, the board is assigned with some statutory functions. It is empowered to do all things as may be deemed expedient for the assessment and collection of the tax and shall account for the tax so collected to the Ministry of Finance.[16]

The Board may also authorize any person within or outside Nigeria to perform or exercise on its behalf certain powers or duties conferred on the Board such as assessment and collection of the personal income tax of the members of the Armed Forces, non-residents and residents of Federal Capital Territory, Abuja.[17]

It is noteworthy that with the consent of the Minister of Finance, the Board can delegate certain powers to the Joint Tax Board. In addition to that, the Board may sue and be sued in its official name and may authorize any person to accept service of any document to be sent, served upon or delivered to the Board.[18]

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15. This information was elicited from the oral Interview conducted with Mr. J.O. Babatunde (Assistant Director) FIRS, Zonal Office, Ilupeju Lagos on 29th May, 2005
16. Section 2(1) CITA 1990.
17. Section 4(a) CITA 1990.
18. Section 3, CITA 1990.

It should be noted that the boards as it is today is bedeviled with some weaknesses, which constitute impediments to its efficiency. First, the Board is now an extra-ministerial department, which is devoid of an independent charter unlike other government parastatals and boards. In other words, there is no specific legislation or an independent chapter that establishes it. Its powers are derived from the Companies Income Tax Act. The Board is part and parcel of the Federal Civil Service and as such it is not above partisan political

pressure. [19] Certain reports on the operation of the federal Inland Revenue Service had emphasized the imperatives of granting the organization operational and financial autonomy. This would enable the Revenue Service to offer a compensation package that would attract and retain skilled personnel.[20]

Another major handicap that impairs the efficiency of the Federal Inland Revenue Service is lack of a computerized tax collection machinery which would enable it (the Board) to keep accurate and up-to-date data on tax payers and be able to effectively apply and enforce the penal provisions in the various tax laws and Acts. [21] The powers conferred upon the Board, which includes the duties to examine accounts, raise assessment and collect income tax are so cumbersome that manual operation cannot be adequate to accomplish them.

19. O.A. Somorin Op Cit P 26
20. Ibid P. 26
21. M.T. Abdulrazaq Op. Cit P 14

Again, it is canvassed that the operation of the tax authority covers both the public and the private sectors. As such, it is necessary to have the representatives of the private sector to serve

on the Board. Since there are four professions that are directly relevant to taxation, the representatives of the private sector should include some members from those professions namely: Taxation, Accountancy, Economics and Law on part time basis.[22]

4.1.2 THE STATE BOARD OF INTERNAL REVENUE

Prior to the report of the 1991 study group, there was no uniformity in the composition of the State Boards of Internal Revenue. While some states did not have Boards at all, it is the Director of Internal Revenue alone that constitute the almighty Internal Revenue Board in some other states. [23]

The recommendations of the 1991 study group as it affect personal income tax was backed up with the promulgation of the Personal Income Tax Act in 1993. The Act provides for the establishment of the state Board of Internal Revenue thus:

22. P.A.Omoroguiwa Op. Cit. P56

23. O.A. Somorin Op. Cit P29

There is hereby established for each state, a board to be known as the State Board of Internal Revenue (in this Act referred to as "the State Board") whose operational arm shall be known as the State Internal Revenue Service (in this Act referred to as " the State")[24].

The state Board shall comprise:

i. **The executive head of the state service as chairman, who shall be a person experienced in taxation and be appointed by the governor from within the state service.**
ii. **The Directors and Heads of Department within the state service**
iii. **A Director from the state Ministry of Finance**
iv. **The legal Adviser to the state service**

v. Three other person nominated by the Commissioner for Finance on their personal merit and

vi. The Secretary of the state service who shall be an Ex-officio member.[25]

It is provided that any five members of the state Board, of whom one shall be the chairman or a director, shall constitute a quorum.[26] But the

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24.Section 85(A) (1) (a-e) PITA 1993, now Section 87(1) PITA CAP P8 Vol. 13 LFN 2004. See also Finance (Miscellaneous Taxation Provision) Decree No 31of 1996

25. Section 85 (A)(2)(a-e) PITA 1993, now section 87(2) (a-f) PITA Cap P8 Vol. 13 LFN, 2004.

26. Section 85 (A) (3) PITA, 1993, now Section 87(3) PITA CAP P8 Vol. 13 LFN 2004.

secretary of the State Service shall be appointed by the Board from within the state service.[27]

Furthermore, the state Board shall be responsible for:

i. ensuring the effectiveness and optimum collection of all taxes and penalties due to the government under the relevant laws.

ii. doing all such things as may be deemed necessary and expedient for the assessment and collection of

the tax and shall account for all amounts so collected in a manner to be prescribed by the commission;

iii. making recommendations, where appropriate, to the Joint Tax Board on tax policy, tax reform, tax registration, tax treaties and exemption as may be required from time to time.

iv. generally controlling the management of the state service on matter of policy, subject to the provisions of the law setting up the state service; and

v. appointing, promoting, transferring and imposing discipline on employees of the state service.[28]

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27. Section 85 (A)(4), PITA 1993.
28. Section 85 (B)(1)(a-e) PITA 1993 see also (Miscellaneous Taxation Provision) Decree No. 31 of 1996

It should be noted that to facilitate the above highlighted functions the

state Board shall be autonomous in the day to day running of the technical, professional and administrative affairs of the state service.[29]

However, the state Board is confronted with many drawbacks which constitute cog in its efficient performance. In the first instance, a keen look at the composition of the state Board reveals that it operates on civil service line. As such, one may rightly suspect that the purported autonomy granted to it is to be exercised at the whims and caprices of the state government. This is so because he who pays the piper dictates the tune. If we are to have a dynamic and forward-looking tax system, it is necessary to have a state Board whose existence is not tied to civil service commission. As it is now, the membership of the state board is largely civil servant.

Although, it has been contended that the case for restricting the membership of the state Board to civil servants is that continuity and permanency are enhanced. This arrangement ensures that meetings and consultations can be easily arranged as and when necessary, thus enabling decisions to be taken quickly.[30] However, as sound as this argument seems it would appear that the idea of having only civil servants

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29. Section 85(B)(2) PITA, 1993.
30. Omorogiuwa P.A. op. cit. P52

on state Board denies the private sector the right to participate in the decision making process of tax administration. It therefore amounts to taxation without representation.[31]

Furthermore, one may be tempted to believe that section 85 (A)(2) (e)[32] has taken care of the necessity of involving the private sector in the state Board. It states: that the state board shall among others, comprise of:

"three other persons nominated by the commissioner for finance on their personal merit."[33]

An insightful consideration of it shows that the provision is too vague. The nomination of those three other persons should have been tied to the four professions that are directly relevant to taxation to wit: Taxation, Accountancy, Economics and Law even if same would be on part time basis.

Second, it has been observed in recent times that many of the state Government did not set up the tax machinery as per the Act. The failure to implement the provisions of the Act has a negative

effect on tax collection such that many state governments had to engage the services of tax consultants/contractors.[34]

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31. Ibid P 52
32. PITA 1993
33. PITA 1993
34. O.A. Somorin Op. Cit P. 29

This non-compliance with the Act can draw the efficiency of tax administration backward.

4.1.3 THE JOINT TAX BOARD.

Originally, the Joint Tax Board is a body comprising of Directors or state Commissioners of Internal Revenue and the Chairman of the Federal Inland Revenue as the chairman. The board was set up in accordance with Income Tax Management Act 1961.[35] Its original posture under the said Act was to ***"advise government when asked to do so"*** on all matters that connect with taxation.[36]

The Board then served as a clearing house for tax disputes and as a forum for heads of Inland Revenue Departments.[37] In the interim report of the Task Force on tax administration 1979, it recommended that this posture should be changed and the Board should assume responsibility as a standing advisory body.[38]

It should be noted that before 1979, the Board had no executive function as such and therefore could not issue guidelines or directives even on matters as interpretation

and uniform procedure. As such, guidelines that emanated from it may not be binding on state tax authorities. This

35. Section 27 thereof
36. See section 4 ITMA 1961. See also O.A. Somorin op. cit. P 30
37. Ola C.S. Income Tax Law for Corporate and Unincorporated Bodies in Nigeria, Heineman Educational Books, Ibadan 1984, P 16
38. Somorin op. cit. P 30

situation, which was considered defective, was changed and the Joint Tax board was accorded the status of a body with authority to issue guidelines on all matters of taxation of the 36 states under the directives of the Minister of Finance. This is considered necessary if the Federal Government is to have control of tax legislation and its application to practices and principles, in accordance with the constitutions.[39]

The Joint Tax Board as it is today is established under the Personal Income Tax Act 1993.[40] The Act provides:

"There is hereby established a Board which shall be known as the Joint Tax Board (in this Act referred to as "the Board")

The Board shall consists of the following members:

i. the chairman of the Federal Board of Inland Revenue, appointed pursuant to section 1 of the companies Income Tax Act who shall be chairman of the board; and

ii. one member from each state, being a person experienced in income tax matters nominated either by name or office, from time to time, by the commissioner charged with responsibility for matters relating to income tax in the state in question; and a

39. Ibid P 30
40. Section 85 thereof.

nomination under this paragraph shall be evidenced by notice thereof in writing delivered to the secretary to the Board.[41]

The Federal Civil Service Commission shall appoint an officer who is experienced in income tax matters to be secretary to the Board, and may, in accordance with existing law, appoint such other staff as the board may deem to be necessary from time to time, including on secondment or transfer, from any public service in Nigeria.[42]

The secretary, who is not a member of the Board, is responsible for maintaining records of the Board's proceedings and for signifying all decisions of the Board. He is also to perform other administrative assignments.[43] The Legal Adviser to the Federal Board of Inland Revenue shall be in attendance at the meetings of the Board and serves as an adviser to the Board.[44] Any seven members shall constitute a quorum.[45]

It should be further noted that in relation to the powers and duties of the Joint Tax Board, that the board shall:

a. exercise the powers or duties conferred upon it by any express provision of the Personal Income Tax Act and any other powers and duties arising under the Act which may be agreed by the government of each territory to be exercised by the Board.

41. See section 85(2)(a&b) PITA 1993
42. Section 85(3) PITA 1993
43. Section 85(4) PITA 1993
44. Section 85(8) PITA 1993
45. Section 85(6) PITA 1993

b. exercise any powers and duties conferred on it by the enactment of the Federal Government imposing tax on the income or profits of companies, or which may be agreed by the Federal Minister for Finance to be

exercised by it under such enactment in place of the Federal Board of Inland Revenue.

c. advise the Federal Government, on request, in respect of double taxation arrangements concluded or under consideration with any other country, and in respect of rates of capital allowances and other taxation matters having effect throughout Nigeria in respect of any proposed amendments to this Act.

d. Use its best endeavours to promote uniformity both in the application of this act and in the incidence of tax on individuals throughout Nigeria [46]

A careful look at section 85(9)(c) above shows that the Joint Tax Board to some extent is a lame body. It can only advise the Federal Government on tax matters only ***'on request'.*** If the Federal Government makes no such request, and the Board has something valuable on tax matters to advise it on, it must keep its breath until the Federal Government beckon at it like an errand body. Therefore there is need for this provision to be streamlined to read **'advise the Federal Government as and when necessary'** and not **'on request'.**

46. Section 85(9)(a-e) PITA 1993.

Although, Professor Ayua, in his book observed that the establishment of the Joint Tax Board amounts to unnecessary duplication of tax administrative machinery.[47] One may not absolutely accede to this assertion in the field of uniform personal income taxation. Instead, the position of Professor Ola on the importance of Joint Tax Board is more acceptable. The learned Professor while commenting on the unique position of the Board in the Federal administrative taxation network in Nigeria remarked that:

No one who is familiar with the working of the Board (JTB)...will fail to be impressed by some of its accomplishments. It has served as a clearinghouse for tax disputes as approving authority for pensions and provident fund schemes and as a forum for heads of Inland Revenue Divisions of the Ministry of Finance for exchange of views.[48]

47. Ayua I.A.- the Nigerian Tax Law, Spectrum Law Publishing, Ibadan, 1996 P 274.
48. C.S.Ola- Nigerian Income Tax Law and Practice, Heinneman (Nig.) Ltd, 1974, Pp 183-184.

The above assertion is strengthened by the fact that the administration of personal income tax rests on both Federal Inland Revenue Service and the State Internal Revenue Service. As such, there is need for a forum where coordination of the system should be enhanced. Therefore the above assertion, no doubt, puts the Board in its proper place as the highest national coordinating body of all states in the Federation in respect to tax matters.[49]

To this extent, Joint Tax Board is both advisory and harmonizing body. That is why, by virtue of section 85(9)(d)[50], the Board is vested with strict discretion to promote uniformity in the application of the Act and incidence of tax on individuals throughout Nigeria. It is advocated that frequent rotational meetings of the Board will go a long way in ameliorating the working efficiency of the entire tax system.[51]

4.1.3 A BRIEF CRITIQUE OF THE TAX AUTHORITIES

Apart from the inequities earlier pointed out on the composition and functions of the three tax authorities, there is need to have a thorough review of them. Either in

terms of staffing, equipments (working tools) and or the genuine commitment and expertise of the staff towards realizing the tax

49. A.M. Kotangora-A Review of Reforms in the Nigeria Tax Law, From 1990 to Date. Unpublished LL.M Thesis, Faculty of Law, A.B.U Zaria 2005 P 52
50. Of the PITA 1993
51. A.M. Kotangora op. cit. P 52

objectives of the government. This is because a well-framed tax law, rid of loopholes, may be fruitless if the administrative machinery is incompetent.[52]

In all the administrative bodies above highlighted, especially the state Internal Revenue Service, in so far as its service relates to personal income tax, the state of affairs as far as staff is concerned is not satisfactory at all. Apart from being understaffed, most of the meager staff members on ground are poorly educated, inadequately trained, and therefore ill- equipped to do the Job properly. A lot of them do not even possess a working knowledge of the tax law.[53] This is antithesis of the quality of staff expected of an effective personal income tax administration. This Professor Ayua remarked that:

> ***The problem of personnel occupies a key role in tax administration. A member of staff with an informed knowledge of the intricacies of the statutory laws and regulations in the field of taxation and with workable knowledge of general economic activities is a must for an efficient (personal income) tax administration. Such a person will know the usual incidents and***

52. K.A. Monkaree- Tax Administration in Nigeria and Cameroon: A comparative Study. Unpublished LL.M Thesis, Faculty of Law, A.B.U Zaria, 1992 P ii.
53. Ayua I.A. Op. Cit. P 303

> ***methods of business dealings and other aspects of life and will be able also to identify at what stage or stages***

in a business transaction that profit arises. Thus, competent staff with knowledge of tax law of the principles of book-keeping and simple accounting is essential for an effective administration of (personal Income) taxation in a booming economy like that of Nigeria.[54]

But unfortunately our tax authorities are deficient of the above highlighted proficiency. In fact, the oral interview conducted revealed that the competence of some states Internal Revenue Service's staff is questionable. To compound the problem some states have no internal Revenue training school similar to that of Federal Inland Revenue Service where recruits can be embedded with basic tax principles and the general working knowledge of tax. This explains why the states do not bother to introduce computer technology as the available man-power to handle it are not improved upon in adequate preparation for same.

A corollary of this is that individual tax payers need to be constantly educated vide spot-light programmes on media or by organizing at intervals

54. Ibid P 303

community tax enlightenment programmes that will ensure voluntary compliance to tax obligations. Unfortunately this cannot be achieved as majority of our income tax officials in Nigeria lack these benevolent initiatives. It is only when they are adequately knowledgeable about personal income tax administration that they can think of educating the tax payers. This explains why the attitude of our income tax officials is mainly passive especially towards the enforcement of the penal provisions of the Personal Income Tax Act. [55]

Moreover, it is evident that our tax collectors rarely use the criminal penalties as provided for in sections 73 and 86 to 89 of the Personal Income Tax Act.[56] A perusal of the Personal Income Tax Returns form for Kaduna State shows the threatening preamble below:

> ***In accordance with the provisions of Personal Income Tax Law No. 104 of 1993 (as amended) you are required to make on this form a return of your income from all sources for the year ended 31st December…. You must give particulars of allowances, which you wish to claim for the assessment year…. Please note that any information supplied by you will be fully verified by the Board. The non-rendition of returns and/or providing incorrect returns are criminal offences under the law. Your returns, which must be duly signed and dated by you personally must reach the Board not later than 31st March, in any assessment year. The Board will charge you 10% of the tax due for late remittance, plus interest at prevailing Bank's lending rate. The Board will also press charges against you for any violation of the provisions of the enabling Law.***[57]

55a See M.T. Abdulrazaq on Revenue Law P16
55b. Ibid P 301
56. PITA 1993

It should be noted that several visits were made to some branches of Internal Revenue Service in Kaduna State in the course of this research. The visits revealed

that the above quoted preamble, though in line with the provisions of the Personal Income Tax Act are not enforced at all. This reduced it to an empty threat.

The reason, in the first instance, is that a tax system like ours where tax authorities are bereft of reliable and credible data bank, where there are no adequate facts and figures cannot make a full verification of any

57. See preambles to form 49 and 49(a) of the Personal Income Tax Returns Form.

information supplied to it by the taxpayers.

Second, no one is known to have been convicted and imprisoned for giving incorrect information, for failure to deduct the tax due, for aiding, abetting, assisting, counseling, inciting or inducing a taxpayer to make or deliver false returns even where such fraudulence is established.[58] It is so because the offences in the preamble above quoted and others as contained in sections 95-98 of the Act are treated as less serious offences than theft, burglary or embezzlement etc. Whereas, public contempt for personal income tax have apparently been high enough for them to be regarded as crimes against the state.[59]

In other words, personal income tax administrators in Nigeria lack an aggressive attitude with respect to the correctness of the taxpayer's action. This in turn undermines the entire tax structure. Thus, taxpayers must be made to understand (by tax officials) that violation of the income tax law is a grave offence. Strict observance of the tax rules and regulations need be ensured and this can only be achieved by prompt action on the part of the tax officials by promptly enforcing the prescribed sanctions.[60] There is therefore the need for adequate staffing with technical competence in term of knowledge and appropriate experience.

58. Ayua I.A. Op. Cit 301

59. M.T. Abdulrazaq Op. Cit P 26
60. Ayua I.A. Op. Cit. P 302

4.2 THE INSTRUMENTALITY OF GOVERNMENT ENFORCEMENT OF UNIFORM PERSONAL INCOME TAX

No tax law without adequate enforcement machinery can accomplish the tax objectives of the government. In fact, such a law can better be described as a body of rules of action or conduct. It is a binding legal force that can make it assume the status of law. i.e. those, which must be obeyed or followed by tax payers subject to sanctions or legal consequences. [61]

Having thoroughly examined the statutory authorities responsible for the administration of uniform personal income tax in Nigeria, it is pertinent to examine the enforcement of taxation on tax delinquents. These enforcement instruments are contained in the Personal Income Tax Act. They include: monetary penalty and terms of imprisonment; Legal proceedings; Tax clearance certificate system; Distraint of property and its sale by public auctions; and recovery by deduction through the employer. In this sub-head, all these enforcement procedures shall be examined seriatim.

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61. Black' Law Dictionary Sixth Edition P 884

4.2.1 MONETARY PENALTY AND TERMS OF IMPRISIONMENT

The Personal Income Tax Act makes adequate provisions for either monetary penalties and or terms of imprisonment for certain tax delinquencies. Such

delinquencies are failure to deduct tax, non-payment of income tax, making incorrect returns and making false statements and returns.

The Act provides that a person who, being obliged to deduct tax under the Act, fails to deduct or having deducted fails to pay to the relevant tax authority within thirty days from the date the amount was deducted or the time the duty to deduct arose, is guilty of an offence under the Act and it liable on conviction to a fine of N5,000.00 or 10 percent of the amount of the tax due, whichever is higher, in addition to the amount of tax deductible plus interest at the prevailing commercial rate.[62]

Also, if any income charged by any assessment is not paid within the periods prescribed in section 68 of the Act, a sum equal to 10 per cent per annum of the tax shall be added thereto, and the provisions of the Act relating to the recovery and collection of tax shall apply to the recovery and collection of the sum.[63]

Not only that, a person who, without reasonable excuse makes an incorrect return by omitting or understating any income liable to tax under

62. See Finance (Miscellaneous Taxation Provisions) Decree No 3, 1996
63. Section 76(1) PITA 1993

the Act or gives an incorrect information in relation to a matter or thing affecting the liability to tax of any taxable person, is guilty of an offence and liable on conviction to a fine of 10 per cent of the correct tax and double the amount of tax which has been undercharged in consequence of the incorrect return or information, or would have been so undercharged, if the return or information had been accepted as correct.[64]

Furthermore, a person who knowingly makes a false statement or false representation or aids, abets, assists, counsels, incites or induces any other person to make or deliver a false return or statement under the Act or unlawfully refuses or

neglects to pay tax is guilty of an offence. Such a person is liable on conviction to a fine of N5,000.00 or imprisonment for five years or to both such fine and imprisonment.[65]

It should be noted that the Act prescribes penalty for an authorized tax collector (agent) who withholds for his own use or otherwise a portion of the amount of tax collected. So also is for an unauthorized person who collects or attempts to collect the tax under the Act. Either of the two is guilty of an offence and liable on conviction to a fine of N1,000.00 or to imprisonment for three years or both such fine and imprisonment.[66]

However, a person guilty of an offence under the Act, or a person who contravenes or fails to comply with any of the provision of the Act or

64. See Finance (Miscellaneous Taxation Provisions) Decree No 3, 1996
65. See Finance (Miscellaneous Taxation Provisions) Decree No 3, 1996
66. See Finance (Miscellaneous Taxation Provisions) Decree No 3, 1996

any rule or regulation made there-under for or regulation made there-under for which no other penalty is specifically provided, shall be liable on conviction to a fine of ₦200.[67]

In all the monetary penalties and terms of imprisonment above stated, the penalties set for those delinquencies are appropriate except the one that prescribes for a fine of ₦200. This amount is too small to serve as deterrent to other tax defaulters. As a result, tax defaulters may prefer to take the risk of evasion when same will not be easily detected.[68]

Again, this enforcement procedure is beset with another problem. The problem is on the fact that all the defaulters have to be taken to court before the monetary penalty can be recovered. Court proceedings take a long time in Nigeria and where the monetary penalty is small it would really not be worth pursuing it to the court. The expenses of litigation may outweigh the sum claimed.[69]

4.2.2 LEGAL PROCEEDINGS

The Personal Income Tax Act empowers Government of the Federation or the relevant tax authority to sue for the recovery of income tax in a court of competent jurisdiction with full costs of action from the person charged therewith as a debt due to it. The relevant Tax Authority

67. Section 94 PITA 1993
68. R.N. Chenge- Personal Income Tax in Nigeria, LL.M Thesis, Faculty of Law A.B.U Zaria 1986 P 347.
69. Ibid P 339.

may sue in its official name.[70] In this regard, a court of competent jurisdiction shall include High Courts and Magistrate's courts provided the amount claimed in any action does not exceed the amount of the jurisdiction of the magistrate concerned with respect to action for debt.[71] It should be pointed out that both the state and Federal High courts have jurisdiction in this respect. It depends on the Tax Authority that is suing. If it is the Federal Board of Inland Revenue, the Federal high Court shall have jurisdiction.[72] On the other hand, if it is the state Board of Internal Revenue, the state High court shall assume Jurisdiction.[73]

In an action brought pursuant to this provision, the production of a certificate signed by a person duly authorized by the chairman of the relevant tax authority giving the name and address of the defendant and the amount of income due shall be sufficient evidence of the amount so due. It shall also be sufficient authority for the court to give judgement for the said amount.[74]

It should be noted that the enforcement procedure under this dub-head conjoins with the monetary penalties earlier discussed. This is because the Revenue Authority sues to claim the penalty and eventually recover the tax due, after conviction.

70. See section 78(1) PITA 1993 see also the case of Nig. Breweries Plc Vs Lagos State Internal Revenue Board (2002) NWLR (Pt 759) P1 at Pp 13-14 Paras H-A.
71. See section 78(2) PITA 1993
72. By virtue of Section 251(1) 1999 CFRN.
73. By virtue of Section 272(1) 1999 CFRN.
74. See section 78(3) PITA 1993, and the case of Nig. Breweries Plc. Vs LSIRB (supra) P 17 Para. G

However this enforcement instrument is not without its shortcomings. As earlier remarked litigation drags for years in Nigeria. Apart from this, tax matters are always complex and as such likely difficult to comprehend. Some of the complications come from the efforts to discover the meaning of some technical terms to which the Nigerian taxing statutes do not provide a comprehensive definition. Further complications arise from the myriad rules allowing various deductions and exemptions, basis of computation of trading profits. etc

Therefore, it is not all Magistrates or judges of the High Court that can appreciate or grasp the technicalities and complexities involved. There is tendency that they may avoid tax cases and concentrate on the more familiar crimes in Penal Code or Criminal Code.[75]

Although the tax authorities have legal department that investigates and prosecutes tax cases in court, notwithstanding, other non-lawyer tax officials, who may not envisage the fact that a matter may end up in court, may raise assessments which cannot be supported in court.[76]

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75. R.N. Chenge Op. Cit P 341
76. Ibid P 342

4.2.3 DISTRAINT OF PROPERTY AND SALE BY PUBLIC AUCTION

Where an assessment has become final and conclusive and a demand note has, in accordance with the provision of the Act, been served on the taxable person or on the person in whose name the taxable person is chargeable, then if payment of the tax is not made within the time limited by the demand note, the relevant tax authority may in the prescribed form, for the purpose of enforcing payment of the tax due distrain the taxpayer by his goods or other chattels, bonds or other securities. It may also distrain upon any land, premises, or place in respect of which the taxpayer is the owner. It may recover the amount of tax due by sale of anything so distrained.[77]

For the purpose of levying a distress under the Act, an officer authorized in writing by the relevant tax authority may execute a warrant of distress. If necessary, such an officer may break open any building or place in the daytime for the purpose of levying the distress and he may call to his assistance any police officer. It shall be the duty of that police officer when so required to aid and assist in the execution of the warrant of distress and in levying the distress.[78]

It is noteworthy that things so distrained are at the cost of the taxable person. Such things shall be kept for fourteen days and at the end of that

77. See section 104(1) (a&b) PITA 1993 see also the case of A.M. Shittu Vs N.A.C.B & 2 ors. (2001) 10 NWLR (Pt 721) P 298 @ 317, Paras. B-D
78. Section 104(3) PITA 1993.

time if the amount due in respect of the tax and the cost and charges of and incidental to the distress are not paid, they may, subject to an order of a High Court be sold at any time thereafter.[79]

Out of the proceeds of the sale however, there shall in the first place be paid the cost or charges of and incidental to the sale and keeping of the distress and disposal there-under.[80] In the second place, the amount due in respect of the tax, and the balance (if any) shall be payable to the person on demand being made by him or on his behalf within one year of the date of the sale.[81]

Finally, no sale of an immovable property of a tax defaulter shall be authorized without an order of a High Court, made on application in such form as may be prescribed by rules of the court.

It should be noted that this enforcement procedure has not been used at all to the best of the knowledge of the researcher in the Zaria Judicial Division of Kaduna State. However, a smart tax defaulter upon institution of a suit against him in court may surreptitiously transfer valuable goods amongst his properties to third parties. The result is that the distraint and sale of the taxpayers' property may not be sufficient to cover the amount of tax payable by him.

79. See section 104(4) PITA 1993
80. See section 104(5) PITA 1993
81. Ibid.

On a final note, one advantage of the procedure of distraint and sale is the idea of making it open and public. This brings social stigma and disfigurement on the tax defaulter and may serve as deterrent to others.[82]

4.2.4 TAX CLEARANCE CERTIFICATE SYSTEM

A ministry, department or an agency of government or a commercial bank with whom a person has any dealing with respect to any of the transactions mentioned in the

regard under the act shall demand from the person a tax clearance certificate for the three years immediately preceding the current year of assessment.[83]

However, whenever the relevant tax authority is of the opinion that tax assessed on the income of a person for the three years immediately preceding the current year of assessment has been fully paid, it shall issue the tax clearance certificate to the person within two weeks of demand for the certificate by that person or give reasons for the denial.[84] Such a tax clearance shall disclose in respect of the last three years of assessment; a chargeable income; tax payable; tax paid and tax outstanding or alternatively a statement to the effect that no tax is due.[85]

The demand for a tax clearance certificate shall apply in relation to

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82. R.N. Chenge Op. Cit. P 343.
83. Section 85(2) PITA 1993
84. Section 85(1) PITA 1993
85. Section 85(3) PITA 1993

the following, among others:

i. application for certificate of occupancy
ii. application for transfer to real property;
iii. application for registration of a limited liability company or of a business name;
iv. application or election into public office,
v. application for award of contracts by Government, its agencies and registered companies.[86]

In all the few circumstances highlighted above where tax clearance certificate can be demanded, the researcher had personally handled briefs that involved some of them. Surprisingly no tax clearance of his clients was requested. In essence, this

provision of our taxing Act is like a toothlees dog. It can only bark but cannot bite. Besides, some tax officials have at their disposal fake tax clearance certificates. It takes the argus-eyes of a thorough scrutinizer before it can be distinguished from the authentic one issued by the government. On the other way round, some tax collectors do steal the authentic tax clearance certificate and issue same secretly (out of office) to unsuspected taxpayers.[87] As such government is denied substantial revenue.

86. See section 85(4) (e),(f),(i),(q) PITA 1993

87. A practical example of this unfaithful practice is the incidence that happened at the Ikeja Branch of the FIRS where plenty numbers of tax clearance booklets were mysteriously missing in the month of May, 2005.

Therefore there is the need for government to ensure that aggravated punishment is meted out to both taxpayer and Revenue officials who engaged in fraudulently issuing Tax Clearance Certificate.

Although one cannot say that this enforcement procedure has not yielded any success at all, but it is advocated that instances where tax clearance certificate can be demanded should be widened and extended to all dealings with Local Governments. This will further widen the base of taxpayers who have to produce tax clearance certifidate.[88]

4.2.5 PAY AS YOU EARN METHOD

This is an enforcement procedure where tax due is recovered by deduction through the employer. The Act provides that income tax chargeable on an employee by an assessment whether or not the assessment has been made, shall, if the relevant tax authority so directs, be recoverable from any emolument paid, or from any payment made on account of the emolument, by the employer to the employee.[89]

Income tax recovered under the provisions of this section by deduction from the emoluments of an employee shall be set-off for the purposes of collection against tax charged on him by an assessment, but only to the extent that the deductions have been made on account of or by

88. R.N. Chenge Op. Cit. P344
89. Section 81 PITA 1993

reference to an income charged by the assessment.[90]

It should be noted that an employer required under this provision of the Act to make deduction from emoluments or amounts on account of emoluments paid by him to an employee shall account to the relevant tax authority in such manner as the relevant tax authority may prescribe for the deductions so made, and in the event of failure by the employer to make the deduction, or properly to account therefore, the amount thereof together with a penalty of 10 per cent per annum of the amount plus interest at the prevailing commercial rate shall be recoverable as a debt due by the employer to the relevant tax authority. [91]

Thus in **COMMISIONER OF INTERNAL REVENUE V J.A.O. AWORENI**[92], the case against the defendant concerned his failure to pay tax deducted to the Government Treasury. The defendant in the case was sued in respect of the PAYE tax deduction from the salaries of various employees of his school, which he did not pay to the government Treasury. Before the case was heard in court the defendant paid the amount due but refused to pay the penalty on the ground that he was not liable to penalty. The court found the defendant liable to pay the penalty and the cost of the suit.[93]

90. Ibid section 81(4)
91. Section 82 PITA 1993 Also the case of A.M. Shittu Vs NACB (supra) @ Pp 316-317 Paras H-A.
92. Suit no. 1/404/72 in the High Court of Western Nigeria.

93. C.S. Ola Op. Cit Pp 476-477

For practical purposes, the tax chargeable on an employee is deducted at source and is payable at the point in time the emolument is paid or credited to the employee. Hence, the income tax is chargeable on an actual basis. This means that the income earned in employment in 2004 is taxable in the 2004 year of assessment.[94]

Although this enforcement procedure has worked wonderfully well, it has its own shortcoming. Taxpayers comply with the deduction without much ado, but some employers do fail in remitting tax deducted to the relevant tax authority until court proceedings are initiated against them. As such the whole process is delayed and hindered. It is therefore advocated that apart from the civil suit to recover the tax deducted, criminal sanction is prescribed to any employer that fails, refuses or neglects to remit as an when prescribed by the taxing Act should be given a strict enforcement.

4.2.6 POWER TO ENTER AND SEARCH PREMISES

The Act provides that where in respect of a trade, vocation, profession or business carried on in Nigeria by an individual (whether or not part of the operations is carried on in Nigeria), the relevant tax Authority-

94. Osita Aguolu- Taxation and Tax Management in Nigeria; Tabansi Press Ltd, Onitsha, 1999 P 128

(a) is satisfied that there is reasonable ground 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

(b) 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 the trade, vocation, profession or business or in the residence of the principal officer, factor, agent or representative of the individual.

The relevant tax authority may authorize any of its officers to enter, if necessary by force, the premises, registered office or the place of management or the residence of the individual, factor, agent or the representative of the individual, at any time from the date of the authorization, and conduct a search.[95]

The authority given to tax officials to enter premises to conduct a search shall be carried out with warrant and authority to enter issued and signed by the Chairman or Director of the Board of Internal Revenue.[96] To execute the warrant of search, the tax officer may call to his assistance a

95. See section 53(1) PITA 1993
96. See section 53(2) PITA 1993

police officer to forestall any violent resistance from the tax payer.[97] If anything is seized under the authority of the warrant, the list of items seized or surrendered shall be made known to the taxpayer whose things were seized.[98] An individual on whom a warrant is served shall cooperate fully with the tax official by allowing him easy access to the premises to be searched. He must equally cooperate by answering all questions and queries put to him in the course of the search.[99] A taxpayer that refuses to cooperate with the tax official in this respect or engages in an act or acts resulting in abuse, physical assault or similar behaviour is guilty of an offence and liable on conviction to a

fine of N5,000.00 or imprisonment for a terms not exceeding three months or to both such fine and imprisonment.[100]

Although the provision of the law under this sub head is comprehensive enough as enforcement measure. But as earlier remarked, our tax collectors in Nigeria lack an aggressive attitude to ensure adequate enforcement of the provisions of the taxing Act. There is need to enhance their technical competence.

97. Ibid, Section 53(4)
98. Ibid, Section 53(5)
99. Ibid, section 53(6)
100. Ibid, section 53(7).

4.3 FUTURE PROSPECTS OF UNIFORM PERSONAL INCOME TAX

The copious provisions of the Personal Income Tax Act on virtually every aspect of income tax Law and administration should leave on one in doubt about the policy of the federal government. The said policy is to unify the personal income tax laws and administration throughout the whole federation. [101]

However, the researcher had x-rayed virtually all the imperfections and loopholes in the structure and the administrative system of the uniform personal income tax in Nigeria. The system is critically combed-out for it to be able to render more efficient performance in the future. If all the inadequacies pointed out are corrected, the uniform personal Income tax system will be structured in such a way that progress in it shall be made as easy and strong as possible.

It is noteworthy that the future expectations (especially of success) from the income tax system predicate on multifarious factors such as:-

a) Jurisdiction to legislate and impose

b) Technical and administrative know-how of the tax officials

c) Adequacy of the working tools and instruments

d) Loyalty and Commitment of tax collectors towards the objective of the government on personal income tax system

101. Abiola Sanni- Division of Taxing Powers In: Abdulrazaq M.T. (ed) Chartered Institute of Taxation of Nigeria, Tax Guide and Statute P 660

(e) Proper and judicious use of the proceeds by the government.

should all these factors are seriously considered and rapidly improved upon, the economic growth of the nation as well as meaningful development shall be fostered.

As earlier pointed out, the main objectives of the Personal Income Tax Act is three fold.[102]

i. To regulate personal income tax throughout Nigeria so that internal double taxation between Federal and State governments will be avoided.

ii. To determine the tax authority on personal taxation so that interests of governments will not be in conflict

iii. To achieve uniformity in the incidence of personal income tax in Nigeria.[103]

These objectives shall be considered vis-à-vis the five factors above highlighted. The summation of all will bring forth either expressly or impliedly the future prospects of the uniform personal income tax system in Nigeria. The factors are below considered:

102. See Chapter two herein; Item 2.2
103. Osita Aguolu Op.Cit. p 4

4.3.1 JURISDICTION

There is a strong clamour for fiscal autonomy by the states of the Federation especially on personal income taxation. The clamour is made often time without any precision as to autonomy in what sense. Is it autonomy in revenue generation or autonomy on legislation on personal income tax? If it is the former, personal income taxation is not the only tax that can fetch state governments a lot of revenue. There are other plethora of taxes that are under the state's authority to levy and collect. But the point is that personal income tax is a vital one that plays central role in the overall economic stability of the Federation of which states are constituents.

If it is the later, it is a call for total and absolute separation of state and Federal Government in legislation on this important form of tax, which may not be absolutely possible. Although, when it comes to the question of allocating jurisdiction on personal incomes tax, the Federal Government should not be allowed to treat the state governments as underling; notwithstanding, sight should not be left of the aim of uniform personal income tax, which is to enhance convenience and secure uniformity. It is not to enhance the tax revenue of the federal government at the detriment of the state. This is because the proceeds of the personal income tax collected by the Federal Government are remitted to the states pursuant to section 163(b) of the constitution though the federal government is entitled to retain the cost of administration.[104]

However, the exclusive power of the Federal Government to levy or impose personal income tax is quite logical. Although federalism presupposes the existence of

a fiscal autonomy by each tier of government, it equally presupposes the existence of a minimum degree of fiscal and economic cohesions and uniformity. If each state government were to be vested with exclusive power to impose and collect personal income tax, it may obstruct the flow of goods between the states and create some distortion in the administration of this important tax.[105] To avoid this distortion is one of the aims of uniform personal income tax. As it is, the free flow of commerce and trade is guaranteed in the future.

In the same vein, the uniform personal income tax focuses on total elimination of internal double taxation, which brings about harmonious relations between the states, the avoidance of causes of friction and above all, preservation of the free movement of trade across the state boundaries.

Although, there are instances where both the Federal and state governments are grossly inactive to their responsibilities to justify judicious use of proceeds from personal income tax. If this area is handled with caution, the taxing power and revenue needs of the states as well as the

104. See section 163(b)CFRN 1999. See also Abiola Sanni Op. Cit. P 656
105. Abiola Sanni Op. Cit. P 653

requirements of a unified, national economy object of the federal government shall be simultaneously achieved. At large, Nigeria will be an egalitarian society where equal trading right and commercial opportunities are guaranteed in future.

4.3.2 **TECHNICAL EXPERTISE OF TAX COLLECTORS AND THEIR COMMITMENT**

An efficient, loyal and proactive tax administration is a recipe for a virile and productive personal income tax system. A tax administration can earn these epithets if only it is imbued with committed and well-trained tax officials. In fact the future

prospects of the nation from the personal income tax depends largely on the quality and technical wherewithal of the tax collectors.

A comprehensively drafted tax law like the personal income tax Act, with wide penal provisions, if given to a team of incompetent and inadequately trained tax officials will definitely produce a gloomy prospect.

As earlier pointed out, tax officials in Nigeria, especially in the State Revenue Service, are poorly educated and in-adequately trained to enforce the technically characterized provisions of the Personal Income Tax Act. As a matter of fact, tax laws are usually full of technical intricacies that only a staff with an informed knowledge can enforce. Again, considering the booming nature of the Nigerian economy, a tax official imbued with workable knowledge of general economic activities is also required. This is so because apart from enforcing the personal income tax, our tax officials should also be able to advise the government on tax policy. The tax policy of the government has a great influence on foreign investors setting up businesses in Nigeria.

In view of the above, it is advocated that a specialized short-term training programmes should be constantly organized for the tax officials. This will definitely enhance their knowledge of tax and the general knowledge of economic activities in Nigeria. The knowledge will imbibe in them modern skills which will make them come up with appropriate organizational forms for mobilizing skills and channeling them to meet emerging needs in the field of personal income taxation. In this context, it is asserted that the frontiers of knowledge of our tax collectors in Nigeria need be expanded, given the potentials of income tax in a developing society like Nigeria. Otherwise the future expectations of the nation from the personal income tax will be dashed. Should all the

grey areas pointed out herein are seriously remedied government will have more than enough revenue generation from this important tax. It will also be assisted in scheming out beneficial tax policy.

4:3:3 ADEQUATE INFRASTRUCTURES FOR THE TAX COLLECTORS

The performance of the tax collector depends on the infrastructure capacity of the administrative system of the personal income tax law. It has been earlier observed that our tax administrative system lacks necessary working infrastructures that will enable it function as expected. More importantly that there are revolutions in communication, information, other technologies and sweeping economic changes.

Our tax administrative system is bereft of computers talks less of being connected to Internet. Thus: **Professor Abdulrazaq** in his remark said:

> ***There is no doubt that the tax collection machinery of government at the moment lacks the capacity to correctly determine the total number of Nigerians who should pay tax and those who have not been performing their civic obligations. A major handicap is the lack of a computerized tax collection machinery which would enable the Inland Revenue Boards to keep accurate and up to date data on taxpayers and be able to effectively apply and enforce the penal provisions in the various tax laws and Acts..***[106]

It is obvious from the foregoing that the key constraint against effective and efficient performance of our tax officials is infrastructure constraint. The working tools and equipments of our income tax system is not in tandem with the dramatic increase of commercial trading and investment. Unless this aspect of our personal income tax system is urgently improved upon, the future prospects of our income tax system is blurred and dim.

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106. M.T. Abdulrazaq Op. Cit. Pp 13-14

CHAPTER FIVE

SUMMARY, RECOMMENDATIONS AND CONCLUSION.

5.1 SUMMARY

From the foregoing discussions,[1] it is crystal clear that Nigerian federalism (in so far as it affects personal income tax) is unique. It does not follow the pattern of foreign federalism into to. Considering the power to impose the personal income tax in its (Nigerian federalism) context, one may hold the view that it conflicts with the universal precepts and normative imperatives of federalism. Assuming it does (as far as personal income tax is concerned), it is for the purpose of coping with the peculiarity dictated by its political economy.

It is instructive to note that the method adopted under Nigeria federation for dividing taxing powers under the 1999 constitution is in two ways. First, it follows the legislative powers in the constitution. Second, the powers to impose and/or collect personal income tax is allocated to one level of government, while the proceeds of the tax is shared among different tiers of government.[2] The federal government imposes it, while the state governments collect and the proceeds therefore are distributed among the states on the basis of derivation.[3] One can therefore state that personal income tax is a state tax by virtue of the fact that what is obtained form each state is ploughed back to the state. The only thing is that the imposition and administration of the personal income tax are subject to federal laws.

1. Discussions from chapter 1-Chapter 5 of this Thesis.
2. Abiola Sanni –Division of Taxing Powers, In; Abdulrazaq M.T. (ed) Chartered Institute of Taxation of Nigeria, Tax Guide Statute, P 652.
3. See section 163 CFRN 1999.

Hence, it can be said that the exclusive control of the Federal Government to impose personal income tax is to ensure minimum degree of fiscal and economic cohesion and uniformiiity.[4] It is not to enhance the tax revenue of the federal government. Rather, it is an essentially valuable tool in the hand of the federal government in the pursuit of its macroeconomic objectives of economic stabilization, and the need to co-ordinate the promotion of economic growth at the national level. If each state government were to be vested with exclusive power to impose and collect personal income tax, it may obstruct the flow of goods between the states and create some distortion in the administration of this important tax.[5] Also internal double taxation is eliminated. As such, ways are paved for a unified national economy. Equal trading rights and commercial opportunities are therefore e guaranteed.

It should be noted that the problem of personal income tax in Nigeria is not about; which government imposes it? Rather, the problem is that of effective administration and enforcement. In fact, the future prospects of

4. See Abiola Sanni Op. Cit. P 653.
5. See Chapter 4 herein Item (4.3.1) and Abiola Sanni Op. Cit P 653.

the uniform personal income tax, as earlier observed, depends largely on the quality and technical competence of tax collectors. But, it is revealed in the course of this research work that large numbers of our tax officials are poorly educated and inadequately trained to enforce the technical nature of our personal income tax law. This has adverse effect on the booming nature of the Nigerian economy.

Coupled with this is lack of necessary working infrastructures by our tax administrative system. This constitutes a great constraint against effective and efficient performance of our uniform personal income tax.

5.2 RECOMMENDATIONS

In view of the thought provoking analysis and critique in the foregoing chapter of this treatise, it is imperative for the researcher to proffer alternative workable recommendations that will shape and promote our uniform personal income tax system in Nigeria. Against this background therefore, the following suggestions are recommended:

a. that the Personal Income Tax Act[6] should be thoroughly overhauled/reformed so as to strengthen the tentacles of its provisions to accommodate the

6. PITA 1993

emerging challenges in the personal income tax today.

b. both Federal Inland Revenue Board and the State Internal Revenue Boards should be granted operational and financial autonomy. This will enable them offer a compensation package that would attract and retain skilled personnel. Thus, a forward looking and dynamic tax system shall be enhanced.

c. It is hereby suggested that '**FCT Abuja Revenue Board'** be created to be separate and distinct from the Federal Inland Revenue Board. Moreso, that FCT Abuja is more or less accorded the status of a state and it is so recognized in the constitution.[7] The creation of the Board will reduce the load

of tax administration on the Federal inland Revenue Board. As such, it will yield pragmatic result in revenue generation.

d. As a matter of urgency, the establishment of Internal Revenue Training School is suggested in all the thirty-six (36) states of the Federation and the

7. See section 2(3) (1,4,5&6); CFRN 1999

FCT, Abuja. At the proposed training school, tax collectors recruits shall be taught the basic principles and the general working knowledge of tax. This will bring about qualitative staffing with technical competence of the tax law.

e. Furthermore, the provision of section 85(9)(c)[8] needs to be streamlined. The phrase ***'advise the Federal Government on request'*** in the section should be replaced with ***'advise the Federal Government as and when necessary'.*** This will definitely remove the insinuation that the Joint Tax Board is a lame body that can only render its competent advise to the federal government on request and when necessary.

f. It is equally suggested that both Federal Inland Revenue Service (FIRS) and State Internal Revenue Services (SIRS) be provided with adequate infrastructures. Especially in this modern era of revolutions in communication, information, other technologies and sweeping economic

8. Of PITA 1993

changes, both services need to be adequately computerized. This will enable them to keep accurate and up – date – data on tax payer.

g. Both the Federal and State Government should make efforts to ensure that aggravated punishment is meted out to both taxpayer and revenue officials who engage in fraudulent issuance of tax clearance certificate.

h. Finally, in the spirit of constitutionalism, each tier of government should endeavour to keep within their respective Legislative taxing jurisdiction as enshrined in the constitution. This will enhance fiscal understanding and economic cohension in the country.

i. It is equally suggested that the federal government vide the Federal Board of Inland Revenue and other states of the federation should take after the Lagos state government in its effort to introduce on-line tax payment scheme as well as e-Tax Clearance Certificate System.[9]

9. See Daily Trust Edition of Friday, 26th August 2005 P 28.

5.3 CONCLUSION

The attempt made in this treatise is to highlight the virtues and vices in the uniform personal income tax. It also exposes errors and prejudices in the personal income tax system in Nigeria. All in the bid to suggest pragmatic solutions to all the problems x-rayed. This will put our tax system in tandem with its world counterparts; otherwise it will be paled into backwardness.

As a matter of sincerity the country's tax administration is weak and incapacitated with a high level of system corruption, tax evasion and tax avoidance occasioned by lack of commitment and technical competence of our tax officials. In other words, lack of adequate tax education and training is the root cause of weak tax administration.

It is therefore asserted, with emphasis, that tax knowledge and education is the bastion of radiant prospect for our personal income tax system. It is also the key to power and implementation of government desired tax policies. As such, our government should boost it with all vigour and seriousness.

Furthermore, in most economies, personal income tax constitutes the major source of income for developments. But in Nigeria, our governments are over-dependent on oil revenue; thereby neglecting their responsibilities in ensuring that our personal income tax laws are strictly enforced. This calls for a sober reflection, as it may spell doom for our growing economy.

Finally, looking at the personal income tax system of other countries such as USA and England with undisguised admiration one will discover that the success of their income tax system lies in high/info-technology. Thus, there is need for availability of substantial funds, by government, to improve our income tax system by providing necessary infrastructures.

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