

**A CRITICAL ANALYSIS OF TAX SECTOR REFORMS IN NIGERIA  
FROM 1978-2012**

**BY**

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**JULY, 2014**

## **DECLARATION**

I hereby declare that this thesis has been written by me and that it is a record of my own research work. All materials and works used in the research have been duly acknowledged.

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**CERTIFICATION**

This thesis entitled: *A Critical Analysis Of Tax Sector Reforms In Nigeria from 1978-2012* by Halima Funmilola OLODO, meets the regulations governing the award of Masters of Laws degree (LL.M) of Ahmadu Bello University, Zaria, and is approved for its contribution to knowledge and literary presentation.

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## **DEDICATION**

This thesis entitled is dedicated to my Late Father Chief (Barr.) Salimonu O. Olodo, who did everything possible for me to have a sound education.

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## ABSTRACT

*Taxation remains a veritable instrument for national development. Apart from being a major source of revenue for the government, taxation provides goods and services needed by citizens. Taxation policies can stimulate economic growth and job creation through its impact on investment and capital formulation in the economy. In this respect reforms in the tax system that ensure effectiveness, equity and efficiency are conditions for healthy public revenue. The decision to reform the Nigerian tax system is crucial in order to improve the revenue base for national development and attaining socio-economic goals for taxation. The thesis which adopts the doctrinal approach examines the process that led to the current tax reforms under the Federal Inland Revenue Service (Establishment) Act, 2007 and the reforms initiated by the Act; the impact of the tax reforms under the Act on tax administration at the federal level; and the gap and challenges faced in the implementation of the reforms. The findings of the research are that the reforms in the FIRS have resulted in a review of tax laws, reduced the delay in policy initiations and implementation, creation of a customer friendly tax environment, improvement in staff training and welfare, greater accessibility, review of procedures and processes as well as utilization of information communication technologies. These have positioned the FIRS as a modern and efficient tax administrative agency and have redefined the role of taxation as an important means of generating revenue from non oil revenue sources. The research examines some of the challenges which include persisting cases of corrupt tax officials, centralization of tax administrative agency and the conflicts between the FIRS (Establishment) Act, 2007 and Company Income Tax Act 2011. The self assessment regime which in the past did not function properly, has under the last reforms gained ascendance as the major mode of tax assessment and the uncertainty that hitherto characterized the process has been resolved to a large extent by the FIRS (Self Assessment) Regulation 2011, by setting out processes, procedure and providing standard guidelines for the implementation of the established Self Assessment Regime in support of an efficient tax administration system in Nigeria.*

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## LIST OF ABBREVIATIONS

BOJ	-	-	-	-	Best of Judgment
CAP	-	-	-	-	Chapter
CBN	-	-	-	-	Central Bank of Nigeria
CITN	-	-	-	-	Chartered Institute of Taxation of Nigeria
CITA	-	-	-	-	Company Income Tax Act
FIRS	-	-	-	-	Federal Inland Revenue Service
FIR SEA-	-	-	-	-	Federal Inland Revenue Service (Establishment) Act
FBIR	-	-	-	-	Federal Board of Inland Revenue
FITC	-	-	-	-	Foreign Investment Tax Credit
IBID	-	-	-	-	Ibidem
INEC	-	-	-	-	Independent National Electoral Commission
ITO	-	-	-	-	Integrated Tax Office
IDA	-	-	-	-	International Donor Agencies
IMF	-	-	-	-	International Monetary Fund
ITAS	-	-	-	-	Integration Tax Administration System
JTB	-	-	-	-	Joint Tax Board
NTS	-	-	-	-	Nigerian Tax System
NTP	-	-	-	-	Nigerian Tax Policy
NCRA	-	-	-	-	National Custom and Revenue Authority
OP CIT	-	-	-	-	Opera Citaum
OSI	-	-	-	-	Open Society Initiative
PITA	-	-	-	-	Personal Income Tax

PAYE	-	-	-	Pay as You Earn
SAR	-	-	-	Self Assessment Regime
SBIR	-	-	-	State Board of Inland Revenue
SG	-	-	-	Study Group
TAT	-	-	-	Tax Appeal Tribunal
TASAR	-	-	-	Tax Administration (Self Assessment) Regime
TIN	-	-	-	Tax Identification Number
TPRDD	-	-	-	Tax Policy Research & Development Department
TCC	-	-	-	Tax Clearance Certificate
WG	-	-	-	Work Group
WHT	-	-	-	Withholding Tax

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# CHAPTER ONE

## INTRODUCTION

### 1.1 Background

The history of Taxation in Nigeria is traceable to the reforms initiated in the first decade of the 20<sup>th</sup> Century in Northern Nigeria. The High Commissioner of the Northern Protectorate, Sir Fredrick Lugard issued the Stamp Duties Proclamation 1903 and followed it with the Native Revenue Proclamation in 1906<sup>1</sup>. The Native Revenue Proclamation 1906 systematized all pre-colonial taxes that existed in Northern Nigeria by defining taxable rates, procedures for assessment and collection as well as penalties for default. This made away with the arbitrariness that was the case in the pre-colonial era and introduced the four certainties essential in modern tax practice: what to pay, when to pay, where and who to pay to. In this Thesis, Federal Inland Revenue Service shall hereinafter be referred to as ‘the Service’, the Federal Board of Inland Revenue shall hereinafter be referred to as ‘The Board’. The Federal Inland Revenue (Establishment) Act 2007 shall hereinafter be referred to as the ‘FIRS Act’.

The amalgamation of the Northern and Southern Protectorate to form the colonial federation of Nigeria in 1914 led to the Native Revenue Ordinance 1917, which was extended from the Northern territories to the Western<sup>2</sup> and Eastern territories in 1918 and 1927 respectively. Since then, there has been a steady progress in that regime with various attempts to modernize, expand, reform and improve the process, procedure and sanctions inherent in the system of taxation in Nigeria. In 1943, the Nigerian Inland Revenue

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<sup>1</sup> Federal Inland Revenue Service (hereinafter FIRS), ‘Reform and Transformation’ available at <http://www.firs.gov.ng/pages/firs> Reform and Transformation (last accessed 5/6/2013)

<sup>2</sup> Omogui-Okauru, I. (ed.) (2012) *FIRS and Taxation Reforms in Democratic Nigeria*, (Safari Books Ltd, Abuja,-Nigeria), p.1 available at <http://book.google.com.ng/ng/book?id=s>

Department was carved out of the Inland Revenue Department of British West Africa<sup>3</sup>. This department was later renamed the Federal Board of Inland Revenue under the Income Tax Ordinance, No. 39 (1958). This was followed by the Companies Income Tax Act, No. 22 (1961) which established the Federal Board of Inland Revenue (FBIR)<sup>4</sup>: the Act created a Body of Appeal Commissioners to resolve Tax-related disputes. In 1993, the Finance (Miscellaneous Taxation Provisions) Act No. 3 and decree No. 104 established the Federal Inland Revenue Service (hereinafter FIRS) as the operational arm of the FBIR and reviewed the functions of the Joint Tax Board (hereinafter JTB), respectively<sup>5</sup>. However, the history of Tax Administration in Nigeria changed dramatically in 2007 with the enactment of the Federal Inland Revenue Service (Establishment) Act, 2007 (hereinafter FIRS (Establishment) Act) and the granting of financial and administrative autonomy to the FIRS. The passage of the FIRS (Establishment) Act 2007 was an actualization of one of the several reform initiatives that arose from the recommendations of the Study and Working groups on Nigerian Tax System.

In the past, attempts have been made to engineer the reform process though without much progress. The Federal Government has made four separate attempts to reform the tax system. In 1978, a Task Force on Tax Administration headed by Alhaji Shehu Musa was set up by the Federal Government and achieved the following:<sup>6</sup> introduction of withholding tax regime, imposition of 10% special levy on the excess profits of banks, imposition of 2.5% Turnover tax on Building and Construction Companies. Also, in 1991

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<sup>3</sup> Federal Inland Revenue Service (FIRS), (2006) Operational Manual for Integrated Tax Office, January 1p.2

<sup>4</sup> Finance (Miscellaneous Taxation Provision) Decree No. 1, 1993 see also Adedokun, K.A. (2010)

*Enforcement and Recovery of Income Tax in Nigeria*, (Corporate Transaction Limited, Lagos-Nigeria,

<sup>5</sup> Ibid

<sup>6</sup> Sani, A., (2005) *Tax Reform in a Democracy*, A Paper Presented at the Conference Organized by the Joint Tax Board, held at Sheraton Hotel and Towers, Ikeja, Lagos from August, 22-24, p. 3

a study group on the Nigerian tax system and Administration headed by Professor Emmanuel Edozien was set up to review the tax system and make appropriate recommendations. In 1992 a study group on indirect taxation headed by Dr. Sylvester Ugoh was again set up by the government and they achieved the following<sup>7</sup>: the establishment of the Federal Inland Revenue Service (FIRS); the establishment of the Revenue Services at the three tiers of government; indirect/Consumption tax- Value Added Tax (VAT). Furthermore, the 2002 Study Group on the Nigerian tax system headed by Professor Dotun Philips was set up and they achieved the following<sup>8</sup>: centralizing tax administration with emphasis on tax administration, efforts to reduce tax rate and developing a tax policy for Nigeria.

The report of the Study Group, submitted in 2003, contained some other radical shifts in policy. This necessitated the Federal Government to set up a Working Group, headed by Mr. Seyi Bickerseth, to review the report of the Study Group on January 12, 2004. The Working Group<sup>9</sup> which concluded their review in March, 2004, agreed with some of the suggestions of the Study Group and disagreed with some of these suggestions. The report of the Study Group was reviewed by the Working Group and the implementation of the harmonized report of the two groups commenced in 2004.

The implementation of the critical changes in the laws and institutions governing taxation and tax administration fell to the new board and management headed by Ifueko Omoigui Okauru, who was appointed as the Chairman and Chief Executive of the Federal Inland Revenue Service by President Olusegun Obasanjo in May 2004. This marked a new era in the history of both the legal and institutional processes of tax administration in

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<sup>7</sup> Sani, A., op cit, note 6, p. 3

<sup>8</sup> Ibid

<sup>9</sup> Ibid, p.4

Nigeria, bringing into place the modernization and reform practices which had never been attempted in the history of taxation in Nigeria<sup>10</sup>. The reforms include organizational reforms in funding, legislation, taxpayer education, dispute resolution mechanism, taxpayer registration, human capacity building, and automation of key processes, refund mechanism and several other areas, which are explained in this Thesis.

In essence, the outcome of these wide consultations has resulted in the ongoing radical and wide ranging reform of the FIRS and tax administration and policy in general in Nigeria. This throws up the urgent need for a concerted study into tax administration in Nigeria.

## **1.2 Statement of the Problem**

The Nigerian Tax system has historically suffered from challenges ranging from poor compliance, inefficient tax administration, corruption and fraud. This state of affairs which led to several reforms initiatives culminated in the enactment of the FIRS (Establishment) Act and the positioning of the FIRS as an autonomous and modern tax agency.

The past decade has witnessed significant developments in tax administration at the Federal level leading to an unprecedented increase in the revenue generated by the FIRS. The FIRS realized ₦21.7 trillion from taxes in the last eleven years and made a total of ₦13.036 trillion from oil sources and another ₦7.53 trillion from non oil taxes within the period under review<sup>11</sup>. In the fourth year of the reforms (i.e. in 2008) the actual collection

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<sup>10</sup> Omogui-Okauru. I.(2012) op.cit note 2, p.2

<sup>11</sup> Ujah, E. 'FIRS realizes N21.7 trillion in 11 years' Available at [http://www.vanguard.ng.com/2012/04/FIRS realizes N21.7trillion in 11 years](http://www.vanguard.ng.com/2012/04/FIRS_realizes_N21.7trillion_in_11_years) (last accessed on 6/6/2013)

of ₦2.972 trillion in taxes was over and above the cumulative collection for the eight year period (1996-2003) preceding the reforms which amounted to ₦2.682 trillion<sup>12</sup>.

Identifying critical tax administration challenges and measures required to meet these challenges is crucial to improved revenue base for national development and attaining socio-economic goals of taxation. In this wise, it is needful to critically examine and document the impact of tax administration reforms under the FIRS (Establishment) Act 2007.

Thus, the Thesis seeks to answer the following questions:

- i) What is the process that led to the current tax reforms under the FIRS (Establishment) Act of 2007;
- ii) What are the reforms initiated by the FIRS(Establishment) Act of 2007;
- iii) What is the impact of the tax reforms under the FIRS(Establishment) Act on tax administration at the Federal level;
- iv) What are the gaps and challenges being faced in implementation of the reforms;
- v) What prospects do the reforms offer for improved tax administration in Nigeria;

### **1.3 Objectives of the Study**

The main objective of the study is to examine Legal and Administrative Tax Sector Reforms in Nigeria from 1978-2012, in particular reforms carried out in 2007 under the Federal Inland Revenue Service Act 2007. The study critically examines the law and its application as well as its effect on other existing tax legislation in Nigeria. Since an efficient tax administration is a necessity for revenue generation the study examines how

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<sup>12</sup> Omoigui-Okauru, I.(2012), op. cit. note 2, p.1

the reforms have tackled the problems that bedeviled Nigerian tax administration in the past.

#### **1.4 Scope of the Study**

The Tax Administration in Nigeria has undergone remarkable changes, although reform never ends, it keeps changing from one stage to another<sup>13</sup>. Thus, this research work examines the reforms in the tax administration, the problems facing the Nigerian Tax System and the impact of the reforms in the administration of tax.

The scope of this research is largely limited to the period covering 1978-2012, most especially reforms that culminated in the enactment of the FIRS (Establishment) Act 2007 and the Regulations pursuant to the Act.

#### **1.5 Significance/Justification of the Study**

There cannot be a better time to work on the critical challenge/reforms in the tax sector in Nigeria than now. The research work would contribute to the immense literature by focusing on the tax sector reforms in Nigeria with a view to identifying the critical challenges such as, corruption among tax administration, tax evasion and weak and unfriendly tax administrative systems and procedures that have been confronting the tax system and examine how the reforms have attempted to tackle these problems.

#### **1.6 Research Methodology**

To achieve the objective of this Thesis, the doctrinal method of research will be adopted. Doctrinal research involves in-depth examination of legal text, statutes and case

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<sup>13</sup> FIRS, Reforms and Change Management, FIRS Policy and Research Department, P. 16



laws. The doctrinal method of research entails consulting primary sources of laws for example statutes and case laws, and secondary sources of law for example, textbooks, journals, law reports as well as relevant conference proceedings, newspapers and materials obtained from the internet. Originality will be exhibited while making suggestions and recommendations on how this aspect of the law can be improved.

### **1.7 Literature Review**

In the past, attempts have been made to engineer the reform process though without much progress. But considerable amount of research and study groups on the Nigerian tax reforms have been devoted to these areas.

Many writers have written on the reforms of tax administration from different perspectives but they seem not to be very emphatic on the need to consider deeply the new structure of the Federal Inland Revenue Service. Some of the works made many references to the former legislation, some of which have been amended. There is need to restructure their work to go in tandem with the amended laws.

Omoigui Okauru, the former Executive Chairman of the Federal Inland Revenue Service (FIRS) in her book, *FIRS and Taxation Reforms in Democratic Nigeria*<sup>14</sup> not only documents the monumental reforms carried out since 2004, but also discusses the outcome of the current reforms. The book chronicles the historic changes which have been witnessed in the regime of taxation in Nigeria's fourth republic particularly since the 2004 reforms. The work records, explains and reveals the complex processes including the challenges faced and the subsisting constraints which, according to her, have led to "one of

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<sup>14</sup> Omoigui, -Okauru, I.(2012) op.cit note 2.

the most efficient, most effective, and most productive taxation regime and tax management institution in the developing world.”<sup>15</sup>.

The book points out that an important indication of the monumental achievements produced by the reforms since 2004 under Omogui-Okauru’s leadership is that, in the fourth year of the reform alone (that is in 2008) the actual collection of 2.972 trillion naira in taxes was over and above the cumulative collection for the eight year period (1996-2003) preceding the reforms which amounted to only 2.682 trillion naira<sup>16</sup>.

Notwithstanding the significance of the book in understanding the rationale and process of the reforms, it is written solely from the perspective of an insider, it is therefore necessary to also examine the reforms under the FIRS (Establishment) Act from the perspective of other stakeholders namely tax payers, tax practitioners, State Board of Inland Revenue (SBIR).

According to Abdulrasaq<sup>17</sup>, No tax law, no matter how sophisticated and progressive can be effective unless it is administered with competence and integrity. According to him, Nigerian’s income tax law could in spite of their low rates and generous allowances still have yielded much revenue but for the inefficiency and defective assessment and collection machinery. The work however has tax offences and penalties as its major focus. Furthermore it was published over fifteen years ago, subsequent to which major changes have taken place in tax administration in Nigeria.

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<sup>15</sup> Omogui,-Okauru, I.(2012) op.cit note 2

<sup>16</sup> Ibid

<sup>17</sup> Abdulrazaq, M.T.,(1993), *Nigerian Tax Offence and Penalties*, (Batay Law Publications Limited, Ilorin-Nigeria, P 131

According to Adedokun,<sup>18</sup> the legal and institutional framework for tax enforcement and their application to tax practice is a *sine qua non* for effective tax administration. He also examined several mechanisms employed by the tax administrators in enforcement and recovery of tax in Nigeria, amongst which are distress, litigation, use of tax clearance certificate, monetary penalties and criminal prosecution and search and seize.

The work is a worthy contribution to knowledge in its treatment of the tax administrative machinery and enforcement agencies. However, these fail to address the recent important and far reaching reforms that have taken place in tax administration at the federal level as well as the challenges currently facing the Federal Inland Revenue. It is a gap that the research addresses.

The *Nigeria Tax Law* by Ayua<sup>19</sup> is one of the oldest detailed works on Nigerian tax law. It examines the structure of the Nigerian tax system from a legal perspective. These include Personal Income Tax and Companies Income Tax. The work is rich in its treatment of the rules for the interpretation of taxing statutes as well as in other aspects; however its limitations lie in the fact that, while it generally discussed tax administration, it did not specifically treat the issue of reforms. In addition, there have been far reaching reforms in Nigerian tax law and tax administration since the publication of the work. Some of the tax laws have been repealed and several others enacted, nevertheless, the work forms a useful foundation for any legal discussion of tax matters in Nigeria.

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<sup>18</sup> Adedokun, K.A., (2010) op.cit note 4.

<sup>19</sup> Ayua, I.A. (1999) *The Nigerian Tax Law*, Spectrum Books, Ibadan-Nigeria.

Although Ojo,<sup>20</sup> discusses tax from the accounting perspective, his work contains issues of relevance to the law. His work however examines the basic principles of taxation in Nigeria amongst which includes various tax laws e.g. Value Added Tax (VAT), Stamp Duties Act, Petroleum Profit Tax, Personal Income Tax, Capital Gain Tax, taxation of companies, partnership assessment, taxation of non-residents, and administration of tax in Nigeria as well as the management of taxation in Nigeria.

Some of the topics in his work made a lot of references and quotations from the existing laws as at that time and these laws have been amended. For example, the former administrative machinery, which was the Federal Board of Inland Revenue (FBIR), has now been replaced with the FIRS and also the composition of each of these machineries has also been changed. The work aids the researcher in appreciating circumstances and short comings in the past system that led to present reforms.

According to Philips,<sup>21</sup> reforms are deliberate changes aimed at improving structures and systems. Such improvement- generating changes are usually required when existing structures and systems are failing to satisfactorily achieve their objectives. According to him, these three triggers of reforms were at play in 2002 when the Federal Government of Nigeria inaugurated the Nigerian Tax System Reform Committee which was chaired by him. However, the report of the Study Group contained some other radical shift in policy which necessitated the Federal Government to set out a Working Group on January 12, 2004<sup>22</sup>. In this lies its limitation.

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<sup>20</sup> Ojo, S. (2003) *Fundamental Principles of Taxation in Nigeria*, (Sagibra Tax Publications, Lagos-Nigeria.

<sup>21</sup> Philips, D. (2004) 'Nigerian Tax System: Which Way Forward?' A paper presented at the 6<sup>th</sup> Annual Tax conference of the chartered Institute of taxation in Nigeria, held at Abuja, on May 13, p. 1.

<sup>22</sup> Ibid.

In 2004, a Working Group (the WG)<sup>23</sup> was inaugurated to review the report and recommendations of the Study Group (SG) which was chaired by Dotun Philips. The Working Group (WG) agreed with the Study Group's recommendations for a National Tax Policy and recommended the creation of an autonomous National Customs and Revenue Authority (NCRA) to assimilate all tax administration powers and duties with funding from retained tax revenues. According to the Working Group the NCRA would be responsible for tax policy and administration across the three tiers of government. In their view, this would be more economical and official and would help coordinate tax instruments across the three tiers thus preventing the current abuse of powers that is currently occurring at the state and local government levels. The group recommended that the NCRA should be created by an enabling legislation, which would set it apart from the Civil Service but within the public administration domain as obtains in South Africa. Some of the advantages of a single NCRA according to the group are: multiplicity of taxes would be better minimized; uniformity of tax rates, among others; a single tax audit would be conducted on companies on an annual basis. This would prevent the nuisance of multiple tax audits by the various tiers of government among others.

However, the above are insufficient and do not warrant the setting up of a central body for the administration of revenues collected by the three tiers of government. Conversely Sani, opposed the creation of National Customs and Revenue Agency (NCRA) for the following reasons: over centralization usually leads to inefficiency, corruption and mass unemployment in the country. The Working Group while agreeing with some of the suggestions of the Study Group, however, disagreed with some of the suggestions.

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<sup>23</sup> Sani, A.(2005) op.cit. note 6, p. 43

Nigerian Tax Reform in 2003 and Beyond is the report of the Study Group on the Nigerian Tax system.<sup>24</sup> The 286 page report contained in 6 volumes identifies the problems of taxation in Nigeria as including poor and inefficient tax administration, multiple overlapping taxes, particularly at the lower tiers of government, undue tax burden, tax evasion, corruption and misappropriation of tax revenue as well as a lack of primary data of taxpayers.

The report also encapsulates a summary of findings of a survey of the attitude of Nigerian taxpayers to taxation in Nigeria. 275 recommendations are preferred in the documents and these include the provision of training and a code of ethics and conduct for administrators; the need for constitutional amendments to expressly limit the taxing powers of local governments; registers of individual and corporate tax payers to be compiled and tax identity numbers and cards to be issued to them.

The focus is on the tax payer since it is only then that taxation with a human face can be achieved. This, according to the report can be achieved through simple tax rules and procedures, low tax burden, tax payer convenience, minimum compliance cost, easy information access and friendly tax administration.

The relevance of the report of the study group lies in the fact that its mandate specifically covered the reform taxation and tax administration in Nigeria. Several of its recommendations adopted are currently reflected in recent forms of the tax administration in Nigeria. It is this gap in the reforms that the researcher seeks to examine.

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<sup>24</sup> Nigerian Tax Reform in 2003 and Beyond: Main Report of the Study Group of Nigerian Tax System

## CHAPTER TWO

### Definition and Conceptual Clarifications of Key Terms

#### 2.1 Definition

##### (a) Taxation

Taxation is basically the process of collecting taxes within a particular location. In this regard, tax has been defined as “a monetary charge imposed by the government on person’s entities transactions or properties to yield revenue”. It has also been defined as the enforced proportional contributions from persons and property, levied by the state by virtue of its sovereignty for the support of government for all public needs”.<sup>25</sup> This definition is deductive in that, it limits the purpose of taxation to the support of Government. In the same vein, tax has been defined in the Australia case of *Mathew v. Chicory Marketing Board*<sup>26</sup> “as a compulsory exaction of money by a public authority for public purposes; or taxation is raising of money for the purposes of government by means of contribution from individual persons. Also in the American case of *United States v. Butter* Mr. Justice Roberts essayed this definition<sup>27</sup>: ‘A tax, in the general understanding of the term, and as used in the Constitution signifies an exaction for the support of the government. Ayua, defines tax as “a compulsory exaction of money by a public authority for public purposes”.

Therefore, it is clear from the above definition that a tax is not a voluntary donation but a compulsory pecuniary burden imposed on persons, property and services for the support of government expenditure. Normally tax should be certain and orderly and are

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<sup>25</sup> Olakanmi, J.,(2012) *FIRS, Compendium of Tax Laws*, 3rd Edition, Law lords Publications, (2012) P.895

<sup>26</sup> (1838) 60 C.L.R 263, at P.276

<sup>27</sup> 2279 (1936) at P.61

usually imposed by statute. But going by the provision of FIRS Act,<sup>28</sup> “tax includes any duty, levy, or revenue accruable to the government in full or in part under this Act, the laws listed in the first schedule to this Act or any other enactment or law”.

Tax may also be defined as a “pecuniary burden laid upon individual or property to support government expenditure”. A tax “is not a voluntary payment or donation, but an enforced and compulsory contribution, exacted pursuant to legislative authority” and is “any contribution imposed by government”, whether under the name of duty, custom excise levy or other name.<sup>29</sup>

From the above, tax is a compulsory levy imposed by the government on its citizens in order to provide public services and ensure their social and economic wellbeing or is a compulsory payment for which the government is not mandated to render commensurate services to taxpayer. Tax may be direct or indirect and may be imposed on individual basis, entities, assets and transactional basis. In Nigeria, taxes are imposed on the following bases:

- i. On Individuals
  - a. Personal Income Tax<sup>30</sup> – Imposed on the income of all Nigeria’s citizens or residents who derive income in Nigeria and outside Nigeria.
  - b. Development levy – A flat charge imposed on every taxable persons typically within a state.
- ii. On Companies (Corporate entities)

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<sup>28</sup> Federal Inland Revenue Service (Establishment) Act, 2007. Section 69

<sup>29</sup> Federal Inland Revenue Service (FIRS)(2012) General Tax Guide for Tax Administrators and Practitioner, June, P.10

<sup>30</sup> Personal Income Tax Act (PITA) 2011, section 1 and 2



- a. Company income tax<sup>31</sup> – imposed on the profit of all corporate entities that are registered in Nigeria or derive income from Nigeria, other than those engaged in petroleum operations,
- b. Petroleum profit tax<sup>32</sup> – imposed on the profit of all corporate entities registered in Nigeria or who derive income from oil and gas operations in Nigeria.
- c. Education Tax<sup>33</sup> – imposed on all corporate entities registered in Nigeria,
- iii. On transactions
  - a. Value Added Tax<sup>34</sup> – imposed on the net sales value of non-exempt, qualifying goods and services in Nigeria;
  - b. Capital Gains Tax<sup>35</sup> – imposed on capital gains derived from the sale or disposal of chargeable assets, and
  - c. Stamp duty<sup>36</sup> – imposed on instruments executed by individuals and corporate entities in Nigeria.
  - d. Excise duty<sup>37</sup> – imposed on the manufacture of goods within the government territory collected by Nigeria Customs Services.
  - e. Import duty<sup>38</sup> – imposed on the import of goods into the government territory collected by the Nigeria customs service.
  - f. Export duty<sup>39</sup> – imposed on the export of goods out the government territory collected by the Nigeria Customs Service.

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<sup>31</sup> Company Income Tax Act (CITA), 2011, section 9.

<sup>32</sup> Petroleum Profits Tax Act (PPTA), Cap P13, LFN 2004, section 8 and 9.

<sup>33</sup> Tertiary Education Trust Fund (Establishment) Act 2011, section 1, 2 and 3.

<sup>34</sup> Value Added Tax Act, Cap V1 LFN 2004, section 1, 2 and 4.

<sup>35</sup> Capital Gains Tax Act, Cap C1 LFN 2004, section 1 and 2.

<sup>36</sup> Stamp Duties Act, Cap S8, LFN 2004, section 3 and 4.

<sup>37</sup> Olakanmi, J.(2012) op cit. note 25, p. 13.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

- iv. On Asset – This includes taxes, such as property tax and other such taxes imposed on land or landed property.<sup>40</sup>

## **2.2 Distinction between Tax and Revenue**

Having provided a working definition of taxation, there is a need to differentiate taxation from revenue for a proper understanding of the role of taxation in the development of the Nigerian economy. This is particularly necessary; as there is usually the misconception that every form of revenue obtained from the public is a tax.

Revenue is defined as income received from all activities engaged in by the receiving entity. In governmental terms, revenue is the entire amount received by the government from sources within and out the government entity.<sup>41</sup>

In Nigeria, government revenue include proceeds from sale of crude oil, taxes (including import and excise duties), penalties, fine, charges and other earning received from government investment (bonds, dividends etc), and the like. Revenue therefore encompasses the entire gamut of government income, which is realized and available for expenditure by government within a particular fiscal year or period. However, the Nigerian government has over the years depended heavily on the petroleum sector for its taxable revenue and neglected to adequately regulate other potential sources of tax. A potential area of revenue generation by the Federal Inland Revenue Services (FIRS) is in the solid minerals sector. Nigeria is endowed with numerous mineral resources and recent policy reforms have brought mining activities to the fore. Solid mineral deposits in Nigeria include limestone, gold, talc, iron ore, gold, bitumen, rock salt, gypsum, lead, zinc,

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<sup>40</sup> Olakanmi, J. (2012) op.cit. p. 896

<sup>41</sup> Ibid p. 897

bentonite and barite, coal, gemstones, kaolin and tantalite. These ought to be a major source of revenue for the Nigerian government.

An audit report by the Nigeria Extractive Industries Transparency Initiative (NEITI) has however revealed that Nigeria is losing billions of naira that should accrue to the federation account from the mining sector because of inefficient regulation. The maiden report that covers 2007 to 2010, shows that over 70 percent of mining title holders in Nigeria solid mineral sector are inactive companies, causing Nigeria's government huge revenue losses.<sup>32</sup> Mineral titles were issued by Mining Cadastral Office (MCO) to many companies, but only few are paying their annual fees and other fees as stated in the Nigerian Minerals and Mining Act, 2007, thereby making the government to lose revenue.<sup>33</sup>

Sources of revenue generation in the mining industry are: royalty payments, ground rents/annual surface rents, taxation and levies. According to the Report, total revenue yield from royalties paid by the major players between 2007 and 2010 was ₦2.21 billion, earning from ground rent/arrival surface rents for the period was about ₦173.9 million; tax, ₦51.37 billion, and levies ₦122.9 million.<sup>34</sup>

The Report revealed that the government is losing huge revenues from royalty payment on minerals since it is not based on current market valuations. The current template being used is the 2002 royalties approved price list by the Federal Ministry of Mines and Steel Development, which is outdated. For instance, the report showed that government was losing an average of ₦1,960 and ₦2,960 from royalty payment for every ton of granite at the outdated price of ₦40 per ton. This translates into an aggregated

revenue loss of ₦4.05 billion to the federation account arising from price variation in the payment of royalty on granite, laterite and sand by companies.<sup>35</sup>

Some other way in which losses are made are that the regulators and its appointed officers have no proper way of assessing what amount of solid minerals are produced, sold or consumed by companies. Royalty payments and taxes made by the companies are therefore based on what the operators disclose to the regulators.<sup>36</sup>

The report also identified the refusal of the operators to file their annual returns with the Corporate Affairs Commission (CAC), as stated by law; which frustrates efforts by FIRS to determine the current amount to be paid by the mining companies. Improper assessment and smuggling also robbed the country of much revenue from the solid minerals sector.<sup>37</sup>

NEITI further revealed that Chinese and Indian companies are involved in illegal mining of Nigeria's solid minerals deposits across the country. This was confirmed by the Chairman of the National Stakeholders Working Group (NSWG) of NEITI, Mr. Ledum Mitee, who stated that several illegal artisanal operations in Nigerian's solid mineral sector were being sponsored by Chinese and Indian companies but with support from corrupt local authorities.<sup>38</sup>

Mitee noted that base line information gathered from scoping studies that were conducted earlier in the sector, revealed discrepancies in government receipts and operating companies' payments within the periods.<sup>39</sup>

### 2.3 Administrative Reforms

Administrative reform is a universal phenomenon, which reflects determination of governments to constantly review and improve their service delivery. The concept has been used interchangeably as administrative improvement, administrative modernization and administrative change. Definition of the concept too has varied. In other words, it is a policy for enhancing the role of public service, its ethical values, professionalism, and modifying organizational structures and functions for improved service delivery and socio-economic and political development.<sup>42</sup>

Administrative reform is both an event and a process. It is an event in the sense that it has a beginning and is associated with time and personalities, who are either given the responsibility of formulating and implementing the reform policies, or governments themselves<sup>43</sup>. Reform is also a process in that when it starts, its implementation becomes a process until its overall objectives are achieved or not achieved, and other reforms are made or until it becomes internalized and becomes a routine work.

The need for administrative reform in Nigeria and other developing countries was more conspicuous than in developed countries. Subsequently, reforms have been carried out for a variety of reasons to address some nagging problems. The following are some of the nagging problems that necessitated most reforms in Nigeria:

- i. Wide gap between developmental needs and funding
- ii. High level of tax evasion
- iii. Over reliance on the revenue.

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<sup>42</sup> Wali, M.A. “Administration Reforms in Africa” available at <http://maali.org/node/42>. Last accessed on 28/8/2012

<sup>43</sup> ibid

- iv. Weak and incapacitated poor administration of the desire to achieve other fiscal objectives e.t.c <sup>44</sup>

## **2.4 Objectives of Nigeria Tax System**

The Nigeria Tax System is expected to contribute to the well-being of all Nigerians and taxes, which are collected by government, should directly impact on the lives of citizens. This can be accomplished through proper and judicious utilization of the revenues collected by government.

In line with the above, there are certain objectives, which the tax system is expected to achieve. These objectives include:<sup>45</sup>

### **2.4.1 To Promote Fiscal Responsibility and Accountability**

One of the primary objectives of the National Tax Policy is to create a tax system, which ensures that government transparently and judiciously accounts for the revenue it generate through taxation by investing in the provision of public goods and services, demanded by her people. If these objectives had been effectively implemented, Nigeria would have had a tax system that would have played its proper role as a catalyst for national development.

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<sup>44</sup> Olajide, Y.O. 'Nigeria Tax Reforms', Available at <http://www.olajideassociates.am/olajide/news604.htm> (last accessed on 1/5/2011).

<sup>45</sup> Olakanmi, J. (2012) op.cit . p. 904. See, also, FIRS General Tax Guide for Tax Administrators and Practitioners, op.cit. p.10

#### **2.4.2 To Facilitate Economic Growth and Development**

A major objective of the Nigeria Tax System is to achieve economic growth and development. The system should be a catalyst for investment, that grows the economy and not stifle entrepreneurship and productivity, as it is only through sustained economic growth that the potential ability to offer improvement in the well being of Nigerians will arise. The tax system should therefore not be a burden but should be applied proactively with other policy measures to stimulate economic growth and development.

#### **2.4.3 To Provide the Government with Stable Resources for the Provision of Public Good and Services**

For Nigerian to pursue an active development agenda and carry out the basic function of government its tax system should generate sufficient revenue for government to provide basic public good and services (e.g. Education, Healthcare/ Infrastructure /Security etc.) It is therefore a primary objective of taxation to provide the government with revenue that it shall invest in judicious expenditure that will ultimately improve the well being of all Nigerians.

#### **2.4.4 To Address Inequalities Income Distribution**

Nigerians tax system should take cognizance of our peculiar economic circumstances and seek to narrow the gap between the highest and lowest income groups. Those with the highest income should pay the highest percentage of tax and tax revenue should be utilized to provide Nigerians with affordable social amenities.

#### **2.4.5 To Provide Economic Stabilization**

Nigeria should use its tax system to minimize the negative impacts of volatile booms and recession in the economy and also to help complement the efforts of monetary policy in order to achieve economic utilities.

#### **2.4.6 To Pursue Fairness and Equity**

Nigerian's tax system must be fair and shall institutionalize horizontal and vertical equity. Horizontal equity ensures equal treatment of equal individuals. The Nigerian tax system should therefore seek to avoid discrimination against economically similar entities. Vertical equity on the hand address the issue of fairness among different income categories in this regard/the Nigerian tax system shall recognize the ability to-pay principle in that individuals should be taxed according to their ability to bear the tax burden. Individuals and entities that earn high income should pay a corresponding high percentage of tax.<sup>46</sup> Overall tax system shall therefore be fair so that similar cases are treated similarly in addition any ambiguity or conflicting provision in the law shall be resolved in a manner as to ensure fairness to taxpayers and the tax authorities.

#### **2.4.7 To Correct Market Failures or imperfections**

One of the objectives of Nigerian tax system is the ability to correct market failures in cases where it is the most efficient device to employ; in this regard taxes may be reviewed upward or downward as may be necessary to achieve government's intentions.

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<sup>46</sup> FIRS, General Tax Guide for Tax Administrators and Practitioners, op.cit p. 15



Market failures which the Nigeria tax system may address are those that are as result of externalities and those arising from natural monopolies.<sup>47</sup>

## **2.5 Principles of Nigeria Tax System**

The section provides the fundamental features that taxes in the Nigerian tax system must exhibit. Accordingly any tax that substantially violates these fundamental features should not be part of the tax system of Nigerian.

### **2.5.1 Simplicity, Certainty and Clarity**

Taxpayers should understand and trust the tax system; and this can only be achieved if Nigerian tax policy keeps all taxes simple; creates certainty through considerable restriction on the need for discretionary judgments and produces clarity by educating the public on the application of relevant tax laws. It is therefore imperative that the Nigerian tax system should be simple [easy to understand by all and acceptable to the public]; certain [The Tax which every one is bound to pay ought to be certain and not arbitrary] and clear [stakeholders must understand the basis of its imposition].<sup>48</sup>

### **2.5.2 Flexibility**

The tax system should be flexible enough especially in a federal and democratic country where there are always changes of government. It should not be rigid so that if for any reason a tax system becomes obsolete, the system should be able to eliminate such a tax and bring a new and better one. Taxes in Nigeria should be flexible enough to respond

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<sup>47</sup> <sup>47</sup> FIRS, General Tax Guide for Tax Administrators and Practitioners, op.cit p. 15

<sup>48</sup> Ibid. see also, Olakanmi, J. (2012) op.cit

to changing circumstances. Prevailing circumstances should be considered by the induction of new taxes or the review of existing ones.<sup>49</sup>

### **2.5.3 Low Compliance Cost**

To enable a high level of compliance the economic cost of time required and the expense which a taxpayer may incur during the all procedures for compliance shall be kept to the absolute minimum at all times. Furthermore, taxpayers should be regarded as clients with the right to be treated respectfully. The convenience of the taxpayer and minimal compliance cost should guide the design and implementation of very tax in Nigerian.

### **2.5.4 Low Cost of Administration**

A feature of a good tax system is that the cost of administration must be relatively low when compared to the benefits from its imposition.

## **2.6 Nigerian Tax System**

The present structure of taxation as stipulated by the Constitution of the Federal Republic of Nigeria reflects the three-tier system of Government at the Federal, State and Local Government levels. Under the Constitution each tier of Government has been granted powers and responsibility in respect of the imposition and collection of taxes<sup>50</sup>. A tax system of a country comprises the tax policy, the tax laws and the tax administration<sup>51</sup>.

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<sup>49</sup> National Tax Policy, Guide Lines and Rules, Fortune News, May 28, 2012. Available at [www.vanguard.ngr.com/2012/...national.tax.policy.guidelines.and.rules](http://www.vanguard.ngr.com/2012/...national.tax.policy.guidelines.and.rules)

<sup>50</sup> Somorin, T.(2010) Tax Reform –Efforts of Nigeria, available at [www.cafrad.org/workshop Tanger 29.11.11/ Fiscal/Somorim11.ptf](http://www.cafrad.org/workshop/Tanger29.11.11/Fiscal/Somorim11.ptf)

<sup>51</sup> Ibid, p.10

The policy sets out the guidelines, principles and objectives to be achieved through the instrument of taxation. The laws create tax types, impose rates, prescribe penalties for default and generally provide the enabling legal and regulatory framework for the system. Tax administration involves the implementation of the tax laws through the activities of the authorities vested with the responsibility of assessing, collecting and accounting for tax revenue.

### **2.6.1 Tax Policies**

Tax Policies are the fundamental principles which guide the orderly development of the tax laws and administration and therefore form the foundation of the entire tax system. If tax policies are inconsistent or weak, it is certain that the entire tax system would be dysfunctional.

The implementation of the National Tax Policy will be based on an approach that recognizes fiscal federalism in the promotion of a tax culture in Nigeria. This approach will also ensure that taxation becomes a sustainable instrument for national development. In this respect, a fundamental tenet of the strategy would be encouraging investments and job creation within the Nigerian economy in an environmental friendly manner. The strategy therefore, recognizes the imperative of using the tax system to grow investments, create employment, while maintaining stable and predictable revenue flow that enables sustainable government expenditure at all tiers of Government. The policy will be deliberate in that the tax system is favourable enough to attract investments and improve significantly Nigerian's competitive advantage. There will also be deliberate effort to shift

towards taxation, which is easier to administer and more difficult to evade than income tax.<sup>52</sup>

In implementing the Policy, attention is focused on eleven critical areas of action; which will guide the design of strategic interventions for the tax Policy implementation in Nigeria. The critical areas, for which action is required, include:

- i. Development of strategies to ensure fiscal optimization
- ii. Improve equity and fairness
- iii. Promotion of fiscal responsibility and accountability
- iv. Reflect fiscal Federation
- v. Creation of Employment
- vi. Creation of a competitive advantage in Nigeria's Tax System
- vii. Reduction in Income tax rates
- viii. Policy shift towards Indirect taxation
- ix. Simplification of tax laws
- x. Reduction in cost of administration
- xi. Transparency and accountability.<sup>53</sup>

#### **2.6.1.1 Rationale for and Purpose of the Policy**

Taxation remains a veritable instrument for national development. Apart from being a major source of revenue for government to provide goods and services needed by their people, taxation policies, can stimulate economic growth and job creation through its impact on investment and capital formation in the economy. In this respect, reforms in the

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<sup>52</sup> Olakanmi, J.(2012) op.cit p. 957

<sup>53</sup> Ibid

tax sector that ensures effectiveness, equity and efficiency are necessary conditions for a healthy public finance.

The decision to reform the tax sector and to develop a national tax policy that would serve as a guide to tax administration in Nigeria was necessitated by government's desire to address structural, institutional and other inherent problems in the existing tax system in order to enhance efficiency and transparency. Those challenges include:

- i. Increased demand to grow internally generated revenue, which has led to the exercise of the powers of taxation to the detriment of taxpayers who suffer multiple taxation and bear a higher tax burden than anticipated;
- ii. Insufficient information available to taxpayers on tax compliance requirement, which create uncertainty and room for leakages in the tax system.
- iii. Multiple taxation by Government at all levels, which impacted negatively on the investment climate in Nigeria. Elimination of multiple taxation is therefore of major concern at all levels of Government;
- iv. Lack of accountability for tax revenue and its expenditure;
- v. Lack of skilled manpower and inadequate funding, which led to the delegation of powers of revenue officials to third parties, thereby creating uncertainty in the tax system and increasing the cost of tax compliance;
- vi. Use of aggressive and unorthodox methods for tax collection;
- vii. The non refund of excess taxes to tax payers, due to the obsolete laws, that do not reflect Nigeria's current realities; and the lack of a specific policy direction

for tax matters in Nigeria and the absence of laid down procedural guidelines for the operation of the various tax authorities.<sup>54</sup>

These and other problems plaguing Nigeria's tax system have not been adequately addressed. One of the reasons for this was government's heavy reliance on revenues derived from oil, as a result of which little or no attention had been given to revenue from other sources, such as taxation. However, there is now renewed commitment by the Federal Government to diversify the economy by growing the non-oil tax revenue in order to develop a stable and sustainable revenue source to finance development projects.

Although there had been several reforms in the past, these reforms were not pursued under any policy direction and in some cases, were carried out in an uncoordinated manner. This informed the decision of the Government to pursue a comprehensive reform of the tax system under the umbrella of national tax policy that would provide a direction for Nigeria's tax system and establish a framework that all stakeholders would subscribe to and to which they would be held accountable.

## **2.6.2 Tax Laws**

The pre-2004 tax laws were vestiges of military rule, and the existence of a large body of legislation as seen in the pre 2004 tax laws as well as the imposition of taxes and levies outside the ambit of the law gave birth to multiplicity of taxes, a development that is acknowledged as antithetical to regulatory compliance and good taxation practice<sup>55</sup>.

However, the Study and Working Groups amongst other things recommended that the existing tax laws should be revised and updated to conform to current realities and

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<sup>54</sup> Olakanmi, J.(2012) op..cit p. 899-907

<sup>55</sup> Omogui-Okauru, I.(2012) op.cit, p. 45

contemporary trends comparable in other jurisdictions. The FIRS also made recommendations to the Federal Executive Council (FEC) on the proposed comprehensive reform of the Nigerian Tax Sector. Some of the recommendations were that the Personal Income Tax Act, the Company Income Tax Act (CITA), the Petroleum Profit Tax Act (PPTA), the Value Added Tax Act (VATA) be amended, while the Education Tax Act should be repealed. Sequel to the Extra Ordinary Meeting of the FEC on the 18 October 2004 and the constitution of the Presidential Technical Committee to draft a bill on tax reform, the Committee identified the issues to be addressed by the legal reforms as follows:

- (a) Clearer definitions of ambiguous words in tax legislation
- (b) Autonomy and secure funding for the FIRS
- (c) Clearer definitions of the functions of the FIRS
- (d) New governance structure for the FIRS in view of the proposed autonomy.
- (e) Mechanism for refund of over paid taxes,
- (f) Abolition of special purpose taxes and streamlining of tax types<sup>56</sup>,

The initial concept at the time of constituting the Committee was for the Committee to produce a draft bill on tax reforms. However, the Committee came out with different bills focusing on the issues encompassed in the reform of the tax system. In each bill the Presidential Technical Committee identified critical areas of amendment and provided justification for the amendment proposed in the existing law between 2005 and 2011, six (6) of these bills were passed by the National Assembly, while two (2) are still pending<sup>57</sup>. Perhaps, the most critical of these new laws is the FIRS (Establishment) Act 2007.

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<sup>56</sup> Omogui-Okauru, I. (2012) op.cit, p. 45

<sup>57</sup> Ibid

### 2.6.3 Tax Administration

The tax administration in the country is conveniently divided between three tiers of government, namely, the Federal, the State, and the Local government. The tax authorities of these three tiers of government derive their creation from the Federal Tax Law and they include the Federal Inland Revenue Service (FIRS) which is the administrative agency for Federal Government, the State Boards of Inland Revenue (SBIR) which is the tax authority for the States, the Local government Tax Revenue Committees which is the tax authorities for the local government.<sup>58</sup>

More than ever before, tax administration witnessed a boost in 2010 despite the shortcomings mentioned earlier. At the Federal level, the Federal Inland Revenue Service (FIRS), which is the tax administrative agency for the Federal Government, did more in enforcing its powers as provided for in the FIRS (Establishment) Act of 2007 that gave the body its autonomous status.

While more attention was given to bringing in eligible tax payers outside the circle into the tax net, sanctioning those caught on the wrong side of the law also got a boost. At the federal level, there was war against touting and fraud. Within the year, some culprits caught for defrauding the government by diverting government cheques into personal accounts were arraigned and jailed<sup>59</sup>, while those caught for forging tax related documents were liable on conviction to a fine of ₦500 plus twice the tax payable by him or to imprisonment for three years or both fine and imprisonment<sup>60</sup>. These were part of the efforts to discourage touting and sanitise the system.

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<sup>58</sup> .Sani, A.(2005) op.cit p. 11

<sup>59</sup> <http://www.google.com.ng/tat+appeal+tribunal>

<sup>60</sup> Personal Income Tax Act, 2011,Section 85 (n) (a and b), and FIRS (Establishment) Act, 2007, Section 48, were the offence is named “Counterfeiting Document”



At the state level, enforcement of the Personal Income Tax ACT (PITA) especially the distraint clause became a serious issue. In the face of the realities of inadequate funds to execute projects, states were forced to restructure their tax administrative system and work around the tax law to make their tax agencies autonomous.

While enforcing the distraint provisions, more companies and corporate organizations refusing to live up to their responsibilities were shut down in accordance with the distraint clause as provided for in PITA. States like Edo, Lagos, Adamawa and a few others were able to recover tangible amounts that were due but not remitted<sup>61</sup>. For example, Lagos State was able to recover over ₦22billion as unremitted taxes partly through its enforcement exercise that was given momentum. Administratively, the state kept its lead as the number one state in terms of optimizing Internally Generated Revenue (IGR).<sup>62</sup>

While the federal and the state governments are struggling to make tax administration easier and convenient, the outdated tax laws remain an impediment. There are forty (40) tax levies and fees collectible in Nigeria. Nine (9) by the Federal (Federal Inland Revenue Services), eleven (11) by States Internal Revenue Service and twenty(20) by the Local Governments.<sup>63</sup> They are:

**(a) Federal Taxes and Levies**

Withholding Tax on companies, residents of the FCT and non-resident individuals, Petroleum Profits Tax, Value Added Tax, Education Tax, Capital Gain Tax, Stamp Duties, Personal Income Tax

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<sup>61</sup> FIRS,(2009) Toward a Modern Tax Agency, Thisday Newspaper, August 8, p. 37

<sup>62</sup> Ibid.

<sup>63</sup> Philips, D. (2003) Nigerian Tax Reform in 2003 and Beyond, op. cit. p. 5. See also, Taxes and Levies (approved list for collection) Act, No. 21, 1998 cap. T2, LFN (2004) and Sani, A.(2005) op.cit. p.6

**(b) State Taxes and Levies**

Personal Income Tax in respect of, Pay-As-You-Earn (PAYE) and direct Taxation (Self Assessment), Withholding Tax (individuals only), Capital Gains Tax, Stamp Duties on instruments executed by individuals, Pools bathing, lotteries, gaming and casino taxes, Business premises registration fees, Development levy (individuals only), Naming of streets registration fees in state capital, Right of Occupancy fees, Market taxes and levies

**(c) Local Government Taxes and Levies**

Shops and Kiosks rates, Tenement rates, On and off liquor fees, Slaughter Slab fees, Marriage, Death and Birth registration fees, Naming of registration fees, Right of Occupancy fees in lands in rural areas, Market taxes and levies, Motor park levies, Domestic animals license fees, Bicycle, Truck, Canoe, Wheelbarrow and Cart fees, Cattle tax payable by Cattle farmers only, Merriment and Road Closure levy, Radio and Television license fees, Vehicle Road license fees, Wrong Parking charges, Public convenience, Sewage and Refuse Disposal fees, Customary Burial Ground permit fees, Religious places establishment permit fees, Signboard and Advertisement permit fees. In the addition to the above, there are following other major taxes provided for under different laws, Customs and Excise Duties, Mining Royalties, Premium on Petroleum, etc.

**2.7 Nigerian Tax Laws**

In order to promote uniformity, the Constitution vested the legislative power for income tax, whether individuals or corporate on the Federal Government. It only delegates

the administration of the various taxes to the three tiers of government. The existing tax legislations in Nigeria are:<sup>64</sup>,

- i. Capital Gain Tax (CGT) cap. C1 LFN 2004.
- ii. Casino Taxation Act.
- iii. Capital Transfer Tax (CTT).
- iv. Companies Income Tax Act (CITA) cap. C21 LFN 2011.
- v. Deep Offshore and Inland Basin Production Sharing Contracts Act updated up to 2011,
- vi. Education Tax Act
- vii. Federal Inland Revenue Service (Establishment) Act 2007.
- viii. Income Tax (Authorized Communication) Act
- ix. Industrial Development (Income Tax Relief) Act (IDA)
- x. Industrial Inspectorate Act
- xi. National Information Technology Development Act
- xii. Nigerian Export Processing Zones Act
- xiii. Oil and Gas Export Free Zones Act
- xiv. Personal Income Tax Act (2011)
- xv. Petroleum Profits Tax Act (PPTA) Cap. P13 LFN 2004),
- xvi. Stamp Duties Tax Act (SDA) Cap. S8 LFN 2004,
- xvii. Tax Administration (Self Assessment) regulations, 2011.
- xviii. Value Added Tax Act (VATA) Cap. V1 LFN 2004,
- xix. Taxes and levies (Approved list for collection) Act, N21, 1998. Cap T2 LFN 2004.

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<sup>64</sup> FIRS(2009) Towards a Modern Tax Agencies, op.cit. p..36. See also, Olakanmi, J.(2012) op.cit. p. 960

## CHAPTER THREE

### Evaluation of Federal Inland Revenue Service

#### 3.1 Introduction

The Nigerian Federal Inland Revenue Service was created in 1943 when it was carved out from the erstwhile Inland Revenue Department that covered what was then the Anglophone West Africa (including Ghana, Gambia and Sierra Leone) during the colonial era<sup>65</sup>. In 1958, the Board of Revenue was established under the Income Tax Ordinance of 1958. The name was changed in 1961 when the Federal Board of Inland Revenue (FBIR) was established under Section 4 of the Companies Income Tax Act (CITA). In 1990, when the companies Income Tax Act re-established the Federal Board of Inland Revenue, it equally enacted the Federal Inland Revenue Service as the operational arm of the Board. 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”. However it was when a further transformation of the FBIR took place in 1993 that the Federal Inland Revenue Service was really established as the operational arm of the Board<sup>66</sup>.

The internal structure of the FIRS was characterized with many serious weaknesses such as: The structures mixed the tax type organization structures with the tax function type. It was tax oriented as opposed to tax payer oriented, the structure was more suitable for a tax authority administrating only critical areas of tax administration like tax compliance and tax data were not obvious and emphasized, the structure largely blurred delineation of responsibilities lever-loaded functions that do not recognize limitation in

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<sup>65</sup> FIRS(2006) Operational Manual for Integrated Tax Office, op. cit. p.2

<sup>66</sup> Finance (Miscellaneous Taxation Provision) Decree No.1, 1993 see also, Adedokun, K.A.(2010) op. cit. p. 98

available resources, its engendered jurisdictional conflicts among the management cadre in the organization, it lacked facility management and maintenance, absence of criminal investigation, enforcement, attention to the security of staff life and property<sup>67</sup>.

As part of the Federal Government's Economic Reform Agenda, tax reforms were a genuine part of the process and were jump started in 2002 with the inauguration of the Study Group to review the Nigerian Tax System<sup>68</sup> The terms of reference of the Group include among others, review of the entire tax administration and recommendation of improvement in the structure for the whole country as well as the administrative structures, of the Federal, State and Local Government levels, with a view to enhancing performance and efficiency<sup>69</sup>.

The outcome of the report submitted in 2003, has triggered a whole range of changes one of which was the reform of the Federal Inland Revenue Service. One of such reforms within the Service was the need to recognize the tax payer as king, within the confines of the law and organize the Service accordingly<sup>70</sup>. Government accepted the recommendation and approved increased autonomy for Federal Inland Revenue Service outside the Civil Service in human resources development and funding with increased enforcement powers to be codified in an FIRS Charter.

The tax reform culminated into the promulgation of the Federal Inland Revenue Service (Establishment) Act, 2007 which is a distinct statute establishing the Federal Inland Revenue Service and spelling out its objectives. The Act grants both financial and

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<sup>67</sup> Philips, D. (2003) Nigeria Tax Reforms in 2003 and Beyond, op.cit. p. 50-60, see also Adedokun, K.A.(2010) op. cit. p. 100, FIRS(2006) Operational Manual for ITO op.cit. p. 5-6.

<sup>68</sup> FIRS Operational Manual for ITO, ibid, P.22

<sup>69</sup> Philips, D. (2003) Nigerian Tax Reform in 2003 and Beyond, op cit. see also Adedokun, K.A.(2010) ibid

<sup>70</sup> FIRS(2006) Operational Manual, op. cit. p.1 note 68

administrative autonomy to the Service together with the power to appoint, promote and discipline its staff.

### **3.2 Establishment and Powers of the Service**

#### **a. Establishment**

The Federal Inland Revenue Service (Establishment) Act 2007 (Hereinafter referred to as “the FIRS (Establishment) Act” established the Federal Inland Revenue Service as an autonomous parastatal charged with assessment and collection of Federal Taxes and accounting for tax revenues accruable to the government of the federation<sup>71</sup>. The FIRS replaced the former Federal Board of Inland Revenue (FBIR) and took over all the functions that were formally performed by the Board<sup>72</sup>. At the commencement of the 2007 Act all assets, funds, resources and other movable and immovable properties which immediately before the inception of the Act were vested in the former Federal Board of Internal Revenue or erstwhile Federal Inland Revenue Service are now vested in the new Service<sup>73</sup>.

The Act states that the Service shall be a body corporate with perpetual succession and common seal, may sue and be sued in its corporate name and may acquire and dispose of any property<sup>74</sup> and that the object of the service shall be to control and administer the different taxes and laws specified in the first schedule or other tax laws by the National

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<sup>71</sup> FIRS (Establishment) Act, 2007, Section 1 and 2. The legislation administered by the service are provided for in the first scheduled of the FIRS Act and include Company Income Tax Act, Petroleum Profits Tax Act, Personal Income Tax Act, Value Added Tax Act and Stamp Duty Act, among others.

<sup>72</sup> Ibid, Section 62 (1), and (2)

<sup>73</sup> Ibid, Section 64 (2), see also Adedokun, K.A.(2010) op.cit. p.102

<sup>74</sup> Ibid. Section 1

Assembly<sup>75</sup>. The FIRS Management Board (hereinafter referred to as the Board) shall have overall supervision of the service as specified under the Act<sup>76</sup>.

The administration of all enactments listed in the First Schedule to the Act and any other enactment or law on taxation has also been vested in the service. Enforcement powers of the service are provided for in Part V of the FIRS (Establishment) Act. The service may request from individuals, corporate bodies or organizations, returns of their income or profits for purpose of tax<sup>77</sup>.

**b. Powers and Functions of the Service**

On conviction, a person who contravenes this section shall be liable to 100% of the amount of the tax liability<sup>78</sup>. The Service may give notice in writing to any person it considers necessary requiring such a person to deliver within a reasonable time specified further returns in request of any matter relating to the functions of the service under the Act<sup>79</sup>. The Act provides for the addition for Non-Payment of tax and Enforcement of payments if a tax is not paid within one month of the service of a demand notice by the service, a sum equal to 10% of the amount due shall be added thereto<sup>80</sup>. The Court of Appeal in determining what constitutes a proper notice of tax assessment, held in *Nigeria Breweries Plc v Lagos State Internal Revenue Board*<sup>81</sup> that:

*A notice stating the amount of any assessable total or chargeable income, the tax charged, the place at which payment should be made setting out the rights of the taxable person shall be served on or sent by registered post to each taxable person or person in whose name appears in the assessment list ... an ordinary letter indicating revision of the appellant's tax liability*

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<sup>75</sup> FIRS Act, 2007 Section 2,

<sup>76</sup> Ibid, Section 3

<sup>77</sup> Ibid, Section 25

<sup>78</sup> Ibid, Section 26 (3)

<sup>79</sup> Ibid, Section 27

<sup>80</sup> Ibid, Section 32 and Personal Income Tax Act, 2011, Section 76 (1)

<sup>81</sup> (2002) 5, NWLR (pt. 759), 1.

*does not conform with the requirement of the law as to what constitute proper notice of tax assessment.*

A penalty imposed under this section shall be deemed to be part of the tax paid for the purpose of claiming relief under any provision of the Act<sup>82</sup>. A person who without lawful justification or excuse, fails to pay the income tax within the period prescribed by the Act, shall be guilty of an offence under the Act<sup>83</sup>.

The Service is also empowered to authorize an officer of the Service to execute a warrant of distraint on any defaulting tax payer<sup>84</sup>. The officer is permitted to break open any building if necessary to distraint the defaulting tax payer by his goods or other chattels, land, securities or premises and these things shall be kept for 14 days within which the taxpayer is allowed to pay and if no payment is made within the grace period, the things so distraint shall be sold to offset both the amount of tax due and any distraint cost.

The FIRS Act, 2007 also empowers the Service to employ Special Purpose Tax Officer to assist in the investigation of any offence under the Act<sup>85</sup>. The Service may pay reward to any person irrespective of any information supplied that may be of assistance to the Service in the discharge of its duties and his identity must be kept confidential<sup>86</sup>. The Act also states that any person who having obligation to deduct tax, fails to deduct, or after having deducted fails to remit the deductions to the Service within 30 days after the duty to deduct arose shall be liable upon conviction for the amount of tax withheld or not remitted in addition to a penalty of 10% of the tax withheld or not remitted per annum<sup>87</sup>.

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<sup>82</sup> Personal Income Tax Act (PITA), 2011. Section 76 (3)

<sup>83</sup> Ibid, Section 76 (4)

<sup>84</sup> FIRS Act, (2007) Section 33 (3)

<sup>85</sup> Ibid, Section 35 (1)

<sup>86</sup> Ibid, Section 37 (1) and (2)

<sup>87</sup> Ibid, Section 40



In *Commissioner of Internal Revenue v J.A.O Aworeni*<sup>88</sup>, the case against the defendant concerned his failure to pay tax deducted to the Government Treasury. The defendant was sued in respect of the 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<sup>89</sup>.

Thus, if an employer is in arrears of remittance of tax deducted or required to be deducted under this provision, it incurs liability. The liability may be penalty and prosecution as the institution of criminal proceedings for imposition of a penalty, fine or terms of imprisonment under the Income Tax Acts shall not relieve a person from liability to payment of any tax for which he is or may become liable<sup>90</sup>. Although, it is not expressly provided in the Personal Income Tax Act whether this tax offence is compoundable or not; it can be implied from the wording of Section 98 of the Act that it is not compoundable.

*A person who for the purpose of obtaining deductions, set-off, relief or an overpayment in respect of tax for himself or any other person, who in a return, account or particulars made or furnished with reference to tax, knowingly makes a false statement or false representation, or aid, abets, assist, counsel, incites, or induces any other person to make or deliver a false return or statement under this act; or to key or prepare false account or particulars concerning any income on which tax is payable under this act; or unlawfully refuses or neglect to pay tax, is guilty of an offence or liable on conviction to a fine of ₦50,000 for individuals and ₦500,000 for corporate bodies or to imprisonment for not more than six months.*

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<sup>88</sup> Suit No. 1/404/72 in the High Court of Western Nigeria see also the cases of *Commissioner for Finance v Ukpong* (2000) 4, N.W.L.R (pt. 653) p. 363; *R v IRC* (1987) STC p. 211

<sup>89</sup> Ola, C.S. (1974) *Nigerian Income Tax Law and Practice*, Heinemann Nigerian Limited, p. 183-184

<sup>90</sup> Personal Income Tax Act (PITA), CAP P8, *Laws of the Federation of Nigeria* FN, 2004, Section 98

It therefore means, if any tax defaulter is arraigned for any tax offence that attracts term of imprisonment, the fact that the defaulter opted to pay does not preclude the relevant tax authority from continuing the criminal prosecution against him and it does not change the nature of the proceedings from criminal to civil.

On false declaration, any person who makes, produces, signs or cause to be produced documents, certificates or declaration which are false, inaccurate or incorrect returns for the purpose of reducing the amount of tax payable or getting overpaid in respect of any repayment of tax shall be liable upon conviction to a fine not exceeding ₦200,000.00 in addition to payment of the tax unpaid or the amount of over payment or to imprisonment for a term not exceeding 3 years or to both fine and imprisonment<sup>91</sup>. In *Inland Revenue v Ruffle*<sup>92</sup> the Supreme Court of England held that an accountant who assisted in the preparation of incorrect company accounts, which were used, incidentally for tax purposes was not caught up by the section similar to the one under discussion. It was also held that the section, being penal, had to be construed strictly and, the proceeding being of a quasi-criminal nature, the standard of proof is proof beyond reasonable doubt. The terms “incorrect return” and “incorrect information” may be willful or inadvertent under the done honestly, whether it is done negligently or not. To this extent therefore, if the error of incorrect return is done honestly, it can be discerned from the provision of the Act that it does not intend to penalize same. In other words, the reasonable excuse envisaged by this provision is innocent incorrect returns done honestly.

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<sup>91</sup> FIRS Act, 2007 and Section 96, PITA, 2011, Section 42

<sup>92</sup> (1979) S.C. 371

In *Attorney General v. Till*<sup>93</sup>, The Attorney General claimed from the Respondent a penalty of fifty pounds in respect of an alleged neglect or failure to deliver such a statement of his profits or gains for the year of assessment. The Respondent admitted that the return mentioned in the Attorney General's information was not in fact a true and correct statement of the assessable profits and gains of the Respondent as required by the English Act. The Respondent's counsel argued that the mistake in the return was due to inadvertent neglect of the Respondent. The trial court entered judgment against the Respondent. On appeal to the House of Lords, the court allowing the appeal held that:

*Hundreds of thousand, if not millions, of people are required to make returns. It is necessary therefore that there should be a sharp weapon available in order to prevent the requirements of the Act being trifled with. On the other hand, the making of the return or statement is not always easy, and mistakes may occur notwithstanding that care may have been used to avoid them, still more when proper care has not been used. Accordingly, provision is made for penalties, which are to fall in the event either of unpunctuality or of inaccuracy in the return or statement required. But alongside of that are to be found provisions to relieve a man from the penalty if he mends his mistake.*

The English Act interpreted by the House of Lords in the above case reads: Notwithstanding the fact that neglect or carelessness if practiced on any large scale, would make the collection of the tax an intolerable business, anyone who, though honest, has been neglectful may redeem his neglect. It therefore means that honest mistake in returns does not expose a taxpayer to the penalty under the Income Tax law in Nigerian and in England. For a person to be liable to penalty the Nigeria Personal Income Tax Act under this Section 96 the complaint concerning the offence must be made in the year of assessment in respect of and during which the offence is committed or within six years

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<sup>93</sup> (1910) A.C. 50

after the expiration thereof<sup>94</sup>. [This offence is compoundable and the relevant tax authority may stay or compound any proceeding under this section before judgment<sup>95</sup>. It is observed that what the Act punishes under this section is making incorrect returns: The law is silent on ‘making no returns’ at all. There is no prescription for imposition of a penalty on making no returns. Then, what would happen if the Revenue Authority finds that a taxpayer had made no return in respect of a particular year? In that circumstance can the relevant tax authority imply that such a taxpayer has equally committed an offence? If so, under what section of the law would he be charged? More so that the *Constitution of the Federal Republic of Nigeria 1999* expressly provides that a person shall not be convicted of a criminal offence unless that offence is defined and the penalty thereof is prescribed in a written law. The case of *Moschi v General Commissioners for Kensington and Another*<sup>96</sup>, tried to provide an answer to this kind of circumstance. It was the argument of the counsel in that suit that making an improper return is not the same as making no return and it is only no return which (should) justify the imposition of a penalty. The common sense answer proffered by the court is that when the commissioners say that they were satisfied that the taxpayer ‘had not made proper returns of his income complying with the requirements of the law, they mean that he had not made any return complying with the requirements of the law. The use of the word ‘proper or correct’ there in its context is quite obviously no more than saying ‘valid or anything else indicating legal existence. It is therefore reasonable to conclude that the Personal Income Tax Act cannot envisage punishing “incorrect returns, while ‘failure to make returns’ at all is left unpunished.

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<sup>94</sup> PITA, 2011, Section 95 (2)

<sup>95</sup> Ibid, Section 95 (3)

<sup>96</sup> (1980) STC p.1

However in *R. v Hudson*<sup>97</sup> the Appellant was convicted for making false statement to the prejudice of the Crown and the Public Revenue with intent to defraud, in that he had sent to the Inland Revenue accounts, which falsely stated the profits of his business and a certificate of disclosure, which he know to be false. On appeal against conviction, the appellant contended that the offence with which he was charged were unknown to the Common Law and were not indictable. It was held that he had been rightly convicted since the offences charge disclosed the offence of fraud on the Crown and the public, which was indictable as a Common Law misdemeanor.

It is noteworthy that the offence under this section is compoundable. However, leave of the court is needed to compound any proceeding under the section before judgement is delivered<sup>98</sup>. And the above penalty applies to any person who counterfeits or falsifies any document meant to be delivered to the Service or knowingly accept a counterfeited document or alters any document after being officially issued or counterfeits the seal, signature, initials used by any official for the verification of a purpose relating to tax.

Section 44 of the FIRS (Establishment) Act 2007 provides that any person who is appointed for the due administration of the Act or employed in connection with the assessment and collection of a tax who demands from any company an amount in excess of the authorized assessment of the tax, withholds for his own use or otherwise any portion of the amount of tax collected, renders a false return of the amount of tax collected or recovered by him, defrauds any person or embezzles any money or uses his position to deal wrongfully with the Service, steals or misuses the document of the Service or

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<sup>97</sup> (1956) 1 All E.R. 814 C.A.

<sup>98</sup> Personal Income Tax Act, 2011, Section 96 (2)

compromises on the assessment of any tax commits an offence and shall be liable to a fine equivalent to 200 percent of the sum in question or to imprisonment for a term not exceeding 3 years or to both fine and imprisonment. In a recent case the North Central Zone of the Tax Appeal Tribunal (TAT) sitting in Jos ordered the Department of Public Prosecution (DPP) office of the Attorney General of Plateau State to arraign seven members of staff of the Service for alleged tax fraud. The suspects were alleged to have forged Federal government tax receipts to claim over ₦17 million from the State Universal Basic Education Board (SUBEB). The forged tax receipts were uncovered by the tribunal when the Service dragged SUBEB before the TAT for tax evasion. The forged documents which were tendered by SUBEB before the court to substantiate their claim to having remitted some tax led the court to suspect that the documents were fraudulently produced and subsequently ordered the state police command to investigate the forged documents. The police command said it had investigated the matter and discovered the said documents were truly forged<sup>99</sup>.

**c. Prosecution**

The Service shall have powers to employ its own legal officers who shall have powers to prosecute any of the offences under the FIRS (Establishment) Act 2007 subject to the powers of the Attorney General of the Federation<sup>100</sup>. The power conferred on the Service to prosecute tax offences is important in tackling tax evasion which has bedeviled tax compliance in Nigeria. It is a fact that despite the low level of tax compliance in

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<sup>99</sup> Adinoyi, S. 'Tribunal Orders Trial of Seven FIRS Workers over Fraud', Thisday, 29 June 2013. Available at <http://www.google.com.ng/tat+appeal+tribunal> (last accessed 2/7/2013)

<sup>100</sup> FIRS Act, 2007, Section 47

Nigeria, very few persons have been successfully prosecuted for tax offences in Nigeria<sup>101</sup>. One of the reforms introduced under the FIRS Act, 2007 is the power given to the Service to institute and undertake criminal proceedings in its own name for offences committed under the FIRS (Establishment.) Act, 2007 which reads:

*There is established a body to be known as the Federal Inland Revenue Service (in this Act refer to as “the service”). The service shall be a body corporate with perpetual succession and a common seal; may sue or be sued in its corporate name; and may acquire, hold or dispose of any property, movable, immovable, for the purpose of carrying out any of its functions under this Act.*

The service can therefore institute and undertake criminal proceedings in its own name for offences committed under the FIRS (Establishment) Act 2007. This has the effect of laying to rest any controversy that has arisen in the past over the powers of the tax authorities to prosecute tax offences. This controversy arose in Edo state in the case of *Unipetrol Nigeria Plc v Edo State Board of Internal Revenue*<sup>102</sup> where the Supreme Court was, for the first time presented the opportunity to pronounce on the capacity of a tax authority to prosecute offences in its name.

The facts of the case are that the appellant was charged before the Mobile Revenue Court of Edo State with a refusal to pay ₦1,506.00 being outstanding Pay-as-You-Earn (PAYE) and withholding tax to the Respondent contrary to section 51 of the Income Tax Law, Laws of Bendel State, 1976<sup>103</sup>, applicable in Edo State. The charge was filed by a state counsel in the Edo State Ministry of Justice, but in the name of the respondent tax

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<sup>101</sup> Abiola Sanni notes that most of the Prosecutions in Nigeria relating to taxation are usually for forgery of Tax Clearance Certificate brought under section 473, Criminal Code Act, Cap. C.28 LFN Nigeria 2004 and can therefore not be regarded as a tax offences. See Sanni, A. The Power to Prosecute Tax Offences: A critique of *Unipetrol Nigerian Plc v Edo State of Inland Revenue*. Available at [http:// www.nials.nigeria-org/journals/abiola%20sanni](http://www.nials.nigeria-org/journals/abiola%20sanni)

<sup>102</sup> (2006) 8, NWLR (pt 983) 624 see also Sanni, A. op.cit. p. 201

<sup>103</sup> Cap. 71, Vol. III

agency. The Appellant filed a preliminary objection to the action on the ground that the charges were defective and incompetent. The trial judge dismissed the preliminary objection. The Appellant appealed to the Court of Appeal which also dismissed his appeal. The appellant, dissatisfied, further appealed to the Supreme Court. The sole issue for determination was whether the Respondent could validly undertake the criminal charge in its corporate name rather than that of the Attorney-General (AG).

The Appellant contended that the law establishing the Appellant gave it power to sue and be sued only and that since the word 'sue' connotes civil responsibilities; the law does not give the Respondent power to institute criminal proceeding in its own name.

The learned counsel for the Appellant contended further that the constitution of the Federal Republic of Nigeria, 1979 empowered only the AG to initiate and undertake criminal proceeding against any person before any court in law in Nigeria. Consequently a State Council has no power to prosecute charges in the name of incompetent persons

In reply, the respondent argued that although the AG is constitutionally empowered to sue and be sued on behalf of the state, the AG can exercise the power either directly or through officers of his Ministry. He also submitted that the charges filed by a State Council were competent, valid and in compliance with the provisions of the Edo State Mobile Revenue Court Edict<sup>104</sup>.

In its decision, the Supreme Court unanimously held that the word 'sue' in section 4 (2) of the Income Tax Law of Edo state was not confined to civil ones but covered both criminal and civil actions. Furthermore, that section 51 (1) of the Income Tax Law of Edo state 1976 threw more light on the provision of section 4 of the same law.

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<sup>104</sup> No. 1 of (1995)



Section 51(1) provides-

*Any person guilty of an offence against this law, or any person who contravenes or fails to comply with any of the provisions of the law or any rule made there under for which no other penalty is specifically provided, shall be liable on conviction to a fine of four hundred naira and where such offence is the failure arising from the provisions of part 4 to furnish a return, statement or information or to keep records required, a further sum of ten naira for each and every day during which such failure continues, and in default of payment to imprisonment for six months.*

Their Lordship unanimously held that the Respondent can sue the Appellant in their corporate name; furthermore that the AG of a State has the power to delegate his power to officers of his Ministry to prosecute and defend matters in Court on his behalf, be it criminal or civil and therefore the action and the charge framed was competent. The appeal was accordingly dismissed.

While the Supreme Court dealt extensively on the power of the AG to institute, undertake, take over and discontinue criminal proceedings; they failed to critically examine the question of whether a charge filed by a State Counsel in the name of the Respondent is valid. According to Sanni, a careful reading of section 51 of the Income Tax Law of Edo state 1976 shows that it is a general penalty provision for any infraction of the provision of the Personal Income Tax law of Edo state, for which no specific penalty was provided and it does not answer the question of whether the prosecution should be at the instance of the AG or the Respondent.

On this basis, he opines that while the AG has power to prosecute, such prosecution should not be done in any name other than that of the office of the AG or of the State<sup>105</sup>. Moreover, the fact that a statute creates an offence is not sufficient to vest in a body

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<sup>105</sup> Sanni, A. op.cit p. 208-209

created by the statute the power to prosecute; but that the power to prosecute has to be specifically provided for in the statute<sup>106</sup>.

The insertion of section 47 of the FIRS Act 2007 is a step in the right direction and an express recognition of the prosecutorial powers of the FIRS. It is therefore clear and beyond any controversy or ambiguity that the Service can institute both civil and criminal actions in its own name under the above section which reads:

*The service shall have powers to employ its own legal officers who shall have powers to prosecute any of the offences under this Act subject to the powers of the Attorney General of the Federation.*

This power is, of course, subject to the powers of the Attorney-General of the Federation to undertake, institute, take over and discontinue any criminal proceedings as provided for in the Constitution<sup>107</sup>.

The Service administers Personal Income Tax on persons employed in the Nigeria Army, the Nigeria Navy, the Nigeria Air Force, the Nigeria Police Force other than in a civilian capacity, the officers of the Nigerian Foreign Service, every resident of the Federal Capital Territory Abuja and a person resident outside Nigeria who derives income or profit from Nigeria<sup>108</sup> and it equally administers companies' income tax among others<sup>109</sup>. The Service as it is presently constituted is established by the Federal Inland Revenue Service (Establishment) Act 2007<sup>110</sup>, as a body corporate which can sue and be sued in its own name, with perpetual succession and a common seal and may hold, acquire and

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<sup>106</sup> Sanni, A. Ibid, p. 210

<sup>107</sup> FIRS Act 2007, Section 74

<sup>108</sup> Personal Income Tax Act, 2011. See also, Adedokun, K.A.(2010), op.cit p. 101, Section 2 (b) (i-iv)

<sup>109</sup> FIRS (Establishment) Act 2007, Section 8, FIRS (Establishment) Act, 2007, Section 1(2) (a-c)

<sup>110</sup> FIRS (Establishment) Act, 2007, Section 8

dispose of any property or interest in properly, movable or immovable<sup>111</sup>. At the commencement of the 2007 Act all assets, funds resources and other moveable and immovable properties which immediately before the inception of the Act were vested in the former Federal Board of Inland Revenue (FBIR) or erstwhile Federal Inland Revenue Service (FIRS) are now vested in the new Service which is an offshoot of 2007 Act<sup>112</sup>. In addition, all rights, interest, obligations and liability of the former Board and management of the previous Service existing before the birth of the 2007 Act under any contract or institution shall by virtue of the new Act be assigned to and vested in the new Board and Service<sup>113</sup>. The Service is also bestowed with succession to powers, duties and functions previously inherent in the old Board and Service<sup>114</sup>. It is informative to note that the Service is now recognized as an arresting and prosecuting authority on tax related matters<sup>115</sup>.

### **3.1.2 Organizational Re-Structuring**

The outcome of the Nigerian Tax reform in 2003 is the idea of having a one-stop point for the taxpayer to meet all tax needs. As a result of this a new organizational structure was introduced, which is known as Integrated Tax Office (ITO)<sup>116</sup>.

An organization's structure is the articulated composition of that organization detailing hierarchy, functional areas and the chain of command<sup>117</sup>. Organizational structure is central to the optimal performance of any system. The organizational structure of the

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<sup>111</sup> FIRS (Establishment) Act, 2007, section 64 (1)

<sup>112</sup> Ibid, Section 64 (2) and see also Adedokun, K.A.(2010) op.cit p. 102

<sup>113</sup> Ibid, Section 64 (4)

<sup>114</sup> Ibid, Section 35

<sup>115</sup> Ibid, Section 7

<sup>116</sup> FIRS Act, (2007), Section 8 (n)

<sup>117</sup> Omoigui-Okauru, I.(2012) op.cit. p.3

FIRS has undergone several changes over the years. This has reflected in the name of the organization, scope of powers and functions, types of officers or organs of employee's responsibilities over time.

### **3.1.3 Challenges Posed By the Pre 2004 Structure**

There used to exist different offices for different tax types for instance, a tax payer resident in Abuja, willing to pay Company Income Tax (CIT), Value Added Tax (VAT), Capital Gain Tax (CGT), Education and Stamp Duties would have to visit four different FIRS offices to pay the taxes<sup>118</sup>. This was because each FIRS office collected a different type of tax. This structure was problematic because, first, taxpayers could not promptly obtain basic information about their tax obligations or verify the status of their tax accounts or obtain their Tax Clearance Certificates (TCCS) in one office. Secondly, the structure was costly. Thirdly, the structure robbed the FIRS; there were too many offices that added less value to the essence of the existence of the Service. Fourth, separation of tax offices along tax types robbed offices of knowledge of the other taxes outside their daily routine. Apart from the structure being problematic to tax in 2004, it was already a popular demand that some offices should be integrated. The demand led to the creation of a Large Tax Payment unit in Lagos which was dedicated solely to the needs of the Large Tax Paying Company in selected sectors of the economy and those with turnover of over one billion naira<sup>119</sup>.

Another problem occasioned by the structure in place before the 2004 reforms was improper delineation of staff responsibilities and reporting lines. The flow of field reports

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<sup>118</sup> Wahab, G. "*Restructuring FIRS*" Being a Unpublished Script Submitted to the Reforms Documentation Project Team

<sup>119</sup> Ibid

to the head office all ended up in the executive chairman office. The assessment function of the field offices executed by the heads of the assessment units in the Area Tax Offices and supervised by the Area Tax Controllers, were reported to the zonal coordinators during monthly reconciliation meetings with as many as 30 fields offices within a zone, there were too many offices reporting to the chairman and these made effective supervision difficult. Furthermore, the procedure created jurisdictional disputes between VAT offices and Area Tax Offices.

Essentially, the structure reorganization in the Service manifested at two levels, namely the creation of tax payer needs offices (as opposed to the Tax-type based structures that existed hitherto) and the creation of new groups, departments and units. While the former was aimed at shifting to the needs and convenience of Tax payer the later was aimed at enhancing work flow and reporting lines.

### **3.1.4 The Evolution of Integrated Tax Office and Large Tax Offices**

#### **a. Integrated Tax Offices**

The Integrated Tax Office concept placed emphasis on taxpayer's convenience rather than tax type. In October 2004, the new ITOs were established as one-stops to deal with all tax types. The ITO was supervised by the Regional Coordination Department (RCD), through the regional coordinators. The Department was also in charge of non governmental organizations, Federal Institutions, Local and State Governments. The ITO also handled several taxes for companies and enterprises amongst which are: companies with turnover of less than ₦1 billion, withholding tax and value added tax from State, Local, Government, Ministries, Agencies and Parastatals, withholding tax and Valued

Added Tax from Federal Government Agencies located where no LTO existed i.e. outside Abuja, Lagos, River and Kano States, Oil and Gas Companies having turnover of less than ₦1 billion, Oil and Gas serving Company with turnover of less than ₦1 billion, international tax cases of turnover below ₦1 billion (to be located in an ITO in Lagos and Abuja).

ITOS are headed by Tax Controllers who have the responsibility for the management of the office. Apart from liaising with taxpayers to rectify errors, major areas of pre-occupation of the ITO since their creation have been the registration and education of taxpayers, production of all statutory forms and issuance of Tax Clearance Certificates (TCC) as required by tax payers. ITO has also been mandated to collect and enforce arrears, coordinate payment and maintain cashbook and administer bank collection monitoring and reconciliation processes.

One of the goals of the reforms was to strengthen the enforcement function of the Service. Thus, there were some quick changes that accompanied the restricting of tax administration at the FIRS headquarter and in the field.

One major feature of the ITO which marks it out from the old area offices is the central registry. This makes the administration of each ITO easy. This is because it eliminates the problem of file location, file mutilation, file misplacement and file corruption.

**b. Large Tax Offices**

Large Tax Offices were created in 2004 to cater for the needs of large Taxpayer making a case for LTO, former Coordinating Director, Tax Operations Group and Pioneer Director LTD. At the time of its creation the concept was not entirely new as the Service had prior to this recognized the need to cater for the needs of large taxpayer. Thus, it was created out of the needs of the following units in the old system: the Larger Tax Units in Lagos and the Monitoring Unit (Government Agency Compliant Unit).

Management of the Service believed that the realization of its mission, tripling revenue collection by 2007 relative to 2004 levels, and raising tax collection by at least 20 percent year on year basis, were achievable largely by focusing on large tax when though comparatively few in number, accounted for the bulk of the tax revenue collected by the Service<sup>120</sup>.

Large Taxpayers are organs or individuals whose turnover averaged one billion naira and above. They include the over 100 Oil Companies doing business in Nigerian Banks, Government Ministries, Department and Agencies, (companies in the shipping business, all Airlines, all Oil and Gas Companies and some Stock Broking Firms amongst others. Its creation aimed at enlisting Nigeria in the global trend.

The pre-reform organizational structure was such that combined tax types and functions and reporting relationship that over concentrated workload on the chairman, bred indiscipline and fraud on the part of the officers and yielded little in terms of revenue collection. A structure “that facilitates work flow from bottom to top, with work designed around work teams” was required if the objectives of the reform were to be achieved. What follows is an annotation of role of each of the department:

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<sup>120</sup> Omogui Okauru, I. (2012) op.cit.

**i. Audit Department**

Another department that was established at the onset of the reform in October 2004 was the audit department. The Service has always had an audit division as a utility service unit. But the audit branch was not a directorate. Yet tax audit and investigation was considered one of the core operational priorities of the new FIRS hence, its identification as one of the strategic flanks of the reforms.

**ii. Investigations and Intelligence Department**

The establishment of the investigation and intelligence division was one of the strategies flanks of the reforms. The division had three units namely Civil Investigation Unit, Criminal Investigation Unit and Intelligence Division.

**iii. Regional Coordination Division**

The regional coordination division was established to coordinate the activities of all ITO nationwide. Part of the department mandate was to increase the contribution of non-oil revenue to overall collection to increase tax compliance amongst small to medium enterprises, State and Local Government.

**iv. Modernization Department:**

In November 2005 modernization department was created. The department was mainly comprised of the procurement and due process units of POD. The new department had amongst others, a project office for the purpose of coordinating the various projects teams. Its major role is to strive for maximum efficiencies in the collection of the accounting for all schedule taxes and all critical work processes service wide<sup>121</sup>.

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<sup>121</sup> Omogui Okauru, I. (2012) op.cit. p. 14



**v. Administration and Supply**

The Administrative and supply unit is to ensure the proactive development and implementation of appropriate policies and practices; that the Service is manned at all times, with the right mix of staff as required to ensure effective discharge of its responsibilities (i.e. identify training needs and ensure effective training and development of all personnel).

Several changes have also occurred in the structure of the Service between 2007 and 2011, some Departments were separated along functional lines where it was felt that such separation could best address the goals of the reforms. In June 2007, the management of the Service introduced the “group system” structure in which roles and functions flow from the group levels to departmental levels down to units level and finally to individual levels. The five groups are as follows: Corporate Development Group (CDG), Support Services Group (SSG), Tax Operation Group (TOG), Compliance and Enforcement Group (CEG), Chairman’s Office Group (COG).

**3.2 Modernization of the Management of Tax Authority in Nigeria.**

The tax authorities as represented by the FIRS and the States Board of Inland Revenue are responsible for the administration of tax laws and are also entrusted with the responsibility for advising government on all tax related matters. Tax authorities have a responsibility for ensuring that tax administration at all levels of Government is carried out in transparent manner and in accordance with statutory provisions, so as to safeguard the integrity of the tax system<sup>122</sup>.

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<sup>122</sup> Somorin, T.(2010) op.cit.

### 3.2.1 Modernization of the FIRS

Before the passage of and signing into law of the FIRS (Establishment) Act 2007, the Federal Board of Inland Revenue existed as an Extra Ministerial Agency under the Federal Ministry of Finance (FMF)<sup>123</sup>. The main objective of the modernization of the FIRS reform is encapsulated in the mission statement of the service. “To operate a transparent and efficient tax system that optimizes tax revenue and voluntary tax compliance”<sup>124</sup>.

The modernization of the Service was pursued through seven strategy’s flanks and three foundational blocks: the strategy flanks includes: increase funding for the Service and to obtain administrative autonomy in line with other modern revenue authorities; build capacity through an enduring mission of the service whist enabling the development of professionals job specialization; re-engineering and automate the human resources finance and procurement functions of the Service; provide for and intensify taxpayer education and services; strengthen the investigation and enforcement functions of the Service, Audit Oil, Gas, Large Sector taxpayers, automate the collection and tax administration system<sup>125</sup>;

With the enactment of the FIRS Establishment Act, 2007, the Service became a parastatal of government with improved funding and powers to appoint, promote and discipline staff<sup>126</sup>. This Act also confers on the Service the power to control and administer the different taxes and laws specified in the First Schedule or other laws made or to be made from time to time, by the National Assembly or other regulations made there under by the Government of the Federation and to account for all taxes collected.

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<sup>123</sup>FIRS (2009) Towards a Modern Tax Agencies, op. cit. p. 34

<sup>124</sup> Ibid

<sup>125</sup> Ibid

<sup>126</sup> Ibid, Op.cit. p35 see also Question and Answer with FIRS Chairman. Available at [www.proshareng.com/articles/..../Question and .Answer. with .FIRS .Chairman](http://www.proshareng.com/articles/..../Question and .Answer. with .FIRS .Chairman)

Other work done to date, with significant improvement still required, and which was made possible by the unparalleled support of the National Assembly and various stakeholders are as follows:-

**a. Tax bills**

Passage of the four bills and ongoing contribution to the passage of other improvement in tax laws in 2005, nine tax bills were recommended through the Federal Executive Council to the National Assembly. This was the first comprehensive amendment to tax laws passed in the last twenty six (26) years<sup>127</sup>. Of the nine bills debated at the National Assembly, one bill on the amendment of Education Tax Act was withdrawn and four bills were signed into law in April, 2007. The FIRS (Establishment) Act, the VAT Amendment Act, National Automotive Council Act, and the Company Income Tax Act<sup>128</sup> the most notable in Tax Administration is the FIRS (Establishment) Act, (FIRSEA) 2007, which provided a solid basis for pursuing improved tax administration with increased vigour. The current National Assembly is particularly interested in ensuring the passage of the outstanding four bills.. And they are actively participating in the ongoing review of the fiscal provision of the Petroleum Industry Bill that is before the National Assembly. The National Assembly is also working on a further wholesome internal review of all tax laws for further improvement. Amendments to tax laws are all part of the ongoing process.

**b. Reorganization and Restructuring of the Service**

The reorganization of the operations of the FIRS has enabled alignments of the structures of the FIRS to the expectations of a modern tax authority<sup>129</sup>. It has also led to the

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<sup>127</sup> FIRS, (2009) Towards a Modern Tax Agencies. Op.cit p.34

<sup>128</sup> Ibid

<sup>129</sup> Ibid, Op.cit p.35

merger of offices. The reorganization and restructuring efforts have contributed to providing improved career opportunities to staff of the Service.

### **c. Job Creation and Career Development**

As a result of the reorganization and realignment of functions over 2,000 new job openings in specific skill driven areas, have been created with improved opportunity for career growth and development within the Service through training<sup>130</sup>. The Service is encouraging staff without the required skills to acquire the necessary skills through institutional support for training and personal improvement of their competency levels. The Service filled existing vacancies with qualified personnel within and without the system.

### **d. Training**

By May 2009, virtually all management, senior and junior staff have enjoyed specialized and specific training and study tools within and outside the country within the last five years<sup>131</sup>. See table below.

#### **FIRS TRAINING (Local and Offshore Training 2004-2009)**

SN	YEAR	FOREIGN (TYPE)	ATTENDANCE	LOCAL (TYPE)	ATTENDANCE	
1.	2004	5	5	6	673	673
2.	2005	12	34	30	980	1014
3.	2006	26	106	32	2031	2127
4.	2007	7	23	16	146	129
5.	2008	23	141	16	1216	1335
6.	2009	7	35	21	2413	3448
7.			344		1453	3763

**Source:** Learning and Development Department FIRS

<sup>130</sup> FIRS, (2009) Towards a Modern Tax Agencies. Op.cit p.35

<sup>131</sup> Ibid, p.36

### **e. Refund System**

Given the several complaints by taxpayers, the FIRS Establishment Act 2007 now has provision for refund to taxpayers within 90 days, with suitable amounts to be appropriated by the National Assembly<sup>132</sup>. Although this is yet to be fully functional<sup>133</sup>, Once appropriation for this is effective, the pains of taxpayers in this area will be fully addressed.

### **f. Labour Relation**

The year 2007 is regarded as a watershed in union activities at the FIRS. In 2004, the new FIRS management resolved some of the lingering problems that afflicted, especially the senior staff union of the FIRS staff. However the conferment of autonomy on the service in 2007 by the FIRS Establishment Act removed the union from within the mainstream of the Federal Civil Service Structure<sup>134</sup>. The immediate implication for the union was the transformation on their structure from mere units to branches. In 2010, the Service based on its autonomy, employed closed to 2000 new staff.

Another positive development that came with autonomy in 2007 was improved funding for the Service through the cost of collection mechanism that ensure the Service retained a certain percentage of its non-oil collection for its operation. The Union keyed into the improved funds available to the Service and negotiated for new welfare package for staff of the Service. The new improved salary was implemented in 2001. In 2011 in addition to the salary increment, the FIRS management also approved housing and car loan scheme for staff members of the service commencing from the 2011 budget year.

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<sup>132</sup> FIRS Act, 2007, Section 23

<sup>133</sup> "Top 50 Tax Issues in Nigeria" (2010), Price Water Cooper, Retrieved October, 2012 from <http://www.pwc.com/ng/en/publications/top-50-tax-issues>

<sup>134</sup> Omogui Okauru, I. (2012) Op.cit.

### **g. Domestic and International Cooperation and Collaboration**

Collaboration with external shareholders has been part of FIRS culture for a long time. However the new orientation that is an intrinsic attribute of the reform agenda placed greater emphasis on collaboration. The Service has renewed its relations and cooperation with relevant domestic institutions<sup>135</sup>. For instance, the cooperation with the Joint Tax Board (JTB) has resulted in the development and management of the Tax Identification Number (TIN) project. The Service has also cooperated with the Tax Appeal Tribunal (TAT), the Nigeria Custom Service (NCS), and Central Bank of Nigeria (CBN). Federal Ministry of Finance, Corporate Affairs Commission (CAC), National Assembly (NASS), The Nigeria National Petroleum Corporation (NNPC), the National Salaries Income and Wages Commission (NSIWC), Revenue Mobilization, Allocation and Fiscal Commission (RMAFC), Economic and Financial Crimes Commission (EFCC), Banks and other Government, Ministries, Department, Agencies and other tax agents as well as tax payers who are the most important.

Apart from Nigeria Stakeholders, the FIRS interfere with numbers of international development partners in order to achieve excellence in its operation.

### **h. Joint Tax Board**

The Joint Tax Board keyed into the reform process by defining a new vision. This included a resolve to be innovative, dynamic and proactive in its assigned functions of advising, monitoring, implementing and evaluating and efficient and uniform tax revenue generating systems for the benefit of the nation<sup>136</sup>. In pursuit of the above vision, the board

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<sup>135</sup> Omogui Okauru, I. (2012) Op.cit

<sup>136</sup> Ibid p. 26

embarked in institutional and operational reforms which include organizational restructuring at both administration and operational levels.

#### **i. Adoption of Information Technology**

This has ensured that tax collected daily by the FIRS from all parts of the country is swept automatically, electronically into the Central Bank of Nigeria (CBN) through the collection by FIRS and lead Banks. This has largely addressed the issue of trapped funds in the banks and reduced fraud in the collection system<sup>137</sup>. In addition to tax collection, other processes such as procurement and payroll administration, which, because of the manual nature, were prone to abuses are also been automated to ensure system integrity.

#### **j. Audit and Investigation**

This is continually being strengthened and has yielded increased revenue. Large taxpayer especially these in the Oil and Gas Sector are being audited<sup>138</sup>. The FIRS has also computed the arrears of tax liability of some Federal, State and Local Government Ministries, Departments and Agencies (MDA) and are in the process of enforcing the collection of all liabilities dues<sup>139</sup>.

#### **k. Taxpayer Education**

Tax education is one of the strategic flanks of the tax reform agenda. At the onset of the reforms, International Monetary Fund (IMF)/ focus visitation mission report identify taxpayer education service as a major area within the Nigeria tax system that needed intervention by way of reform. The conduct of tax payer education prior to the reforms was adequate to promote voluntary compliance which is a key attribute of a modern, robust and vibrant tax system. After several permutation aimed at improving taxpayer education, the

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<sup>137</sup> Omogui Okauru, I. (2012) Op.cit

<sup>138</sup> Ibid

<sup>139</sup> FIRS(2009), Towards a Modern Tax Agencies, op.cit P. 34

service finally rested with the creation in April 2011 of the taxpayer service policy, process and programmes department to drive all policies, programmes and processes relating to taxpayer education services<sup>140</sup>. Since tax must be collected in a professional manner, the FIRS owe the taxpayers the required education and support services.

### **l. Communication and Liaison**

Between 2004 and now, corporate communication has been carried out using different platform and media<sup>141</sup>. This include the use of television awareness programme called Tax Matters, publications such as Gauge Magazine a quarterly Newspaper, the monthly bulletin, meetings with staffs and stakeholder sections amongst others the service is liaising with the Federal Ministry of Education to introduce taxation as a study course at all levels of education in a bid to institutionalized taxation as an integral part of our national culture.

### **m. Adjudication Machinery**

To provide for a robust and efficient dispute resolution mechanism, the erstwhile Body of Appeal Commissioners and Value Added Tax Tribunals were rested. In their place and as provided for by the FIRS (Establishment) Act 2007, Tax Appeal Tribunals which now cover all taxes have been constituted and have been in operation since 2009<sup>142</sup>. Automation gives the Federal Government reports on taxes collected by the FIRS. Cases of trapped and unmerited funds were rampant when the FIRS operated the manual system. FIRS are also being computerized to complement automation; a taxpayer identification number has been introduced and linked to the FIRS collection system.

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<sup>140</sup> FIRS(2011), Handbook on Reforms in Tax System 2004-2011, Safari Book Limited, Ibadan p.31  
Retrieved June 12, 2013 from [www.africanbookscollective.com/.../FIRS-handbook-on-reforms-in-the-tax-system](http://www.africanbookscollective.com/.../FIRS-handbook-on-reforms-in-the-tax-system)

<sup>141</sup> Ibid

<sup>142</sup> FIRS (2011), Handbook on Reforms in Tax System 2004-2011, op.cit



According to Mrs Omoigu I. a Tax Card Scheme that will provide a one-stop access to taxpayer records and with which the taxpayers could now pay taxes has been released. Taxpayers could now pay taxes from the comfort of their homes through the FIRS online portal at [www.firsonline.com](http://www.firsonline.com).

#### **n. Law Enforcement**

Enforcement has been weak and continually requires strengthening. The FIRS Act, 2007 provides clear and additional enforcement powers to the service. In defining the functions of each of the field tax offices, the Filing and Debt Enforcement Unit was set up as one of the integral functions of office<sup>143</sup>. It is expected that this unit with time will increase the effectiveness of enforcement action. To support this Unit, the Legal Department at the headquarters identifies cases for prosecution and also prosecutes cases referred to it. The Service is stepping up activities in the non-oil sector and has renewed focus on enforcement; the Service is trying to strengthen the ability of the Service to enforce payment of taxes. The Service has now fully implemented the Provisions of Section 35 of the FIRS Act which provide for special purpose Tax Officers with powers of the Police Officers to assist in the investigation and enforcement of cases<sup>144</sup>.

An independent unit has been set up under the office of the Executive Chairman with an initial complement of officers seconded from the Nigerian Police Force<sup>145</sup>. The Service is working with the Senate and those Committees on Public Accounts who have been fulfilling their Constitutional Mandate to ensure that erring taxpayers are brought to book. Thus, while the Service is empowered to prosecute Tax Offenders, Tax Related Offences may also be referred to the office of the Attorney General of the Federation, all

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<sup>143</sup> FIRS (2011), Handbook on Reforms in Tax System 2004-2011, op.cit p.36

<sup>144</sup> FIRS(2009), Towards a Modern Tax Agencies, op. cit. p.36

<sup>145</sup> Ibid

government security and law enforcement agencies, in the enforcement and eradication of Tax related offences. This is in line with section 8 (e) and (p) of the FIRS Act.

Section 33 of the FIRS Act 2007 provides that:

*where an assessment has become final and conclusive and a demand notice has, in accordance with the provision of the relevance tax laws tax in the first schedule to this act, been served upon then taxable person or upon 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 notice, the board may in the prescribed form for the enforcing payment of the tax due-distrain the tax payer by his goods or other chattels, bonds or other securities; distrain upon any land, premises, or place in respect of which the tax payer is the owner and, subject to the following provisions of this section, recover the amount of tax due by sale of anything so distrain.*

The Service embarked on distraint exercise on some companies in Ogun, Lagos, Osun and Benue states in the month of May 2009. As a consequence of these activities, the sum of 108 million naira, 4 million naira and 1 billion naira resulting in a total amount of about N168 billion was paid to the Service. Additional payments were made in June 2009. Agreements were reached with three Companies involved for conclusion of reconciliation efforts and finalization of liabilities due for payment. FIRS is auditing companies suspected to be evading taxes due and it is expected that this would lead to further enforcement action in the months ahead.

**o. Improved Revenue Accruing to Government for Appropriation:**

The Federal Inland Revenue Service has generated about ₦10 trillion from various taxes in the last twelve years<sup>146</sup>. A large part of this revenue was generated in the last four (4) years. Though these figures show that the revenues generated by the FIRS have grown over time; the reality is that we should do a lot more as the revenues generated are not

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<sup>146</sup> Somorin,T.(2010), Op.cit.

sufficient for development. With respect to tax collection, tax revenue grew from ₦1.2 trillion (about \$7.9 billion) in 2004, to over ₦4.6 trillion (over \$30 billion) in 2011 (over 4 times the collection figure of 2004). This represents growth in both oil and non oil revenue as follows<sup>147</sup>:

OIL TAXES		NON OIL		YEAR
407.1b	163.3b	2001		
224.4b	204.4b	2002		
438.0b	255.4b	2003		
878.6t	316.2b	2004		
1,52.2t	389.2b	2005		
1,352.5t	513.7b	2006		
1,132.0t	716.3b	2007		
2,060.9	911.3b	2008		
939.4b	1,147.2tn	2009		
1,480.9t	1,359.1tn	2010		
3,070.59	1,557.8tn	2011		

Within the period, FIRS consistently surpassed the revenue target set for the service.

### 3.2.2 Changes Brought About By the Modernization

- i. Put in place an administrative structure that is tax-payer focused.
- ii. As part of the reform processes, the tax-types offices were changed to the Integrated Tax Offices i.e. one-stop shop. Consequently 5 offices were created for large tax payers.
- iii. Improved Bank Collection remittance system;
- iv. Improved funding for FIRS
- v. Branding of FIRS
- vi. New vision and Mission

<sup>147</sup>Omoigui-Okauru, I.(2012) op. cit. p.1

vii. Administrative and funding autonomy;<sup>148</sup>

### **3.3 Problems of Tax Authorities in Nigeria**

The Nigerian tax administration faces serious complex and multi-dimensional problems. However, in order to provide some specifics, the research did a quick case study of the largest tax revenue agency in the Nigerian tax system i.e. Federal Inland Revenue, Service.

#### **i. FIRS Staff Recruitment, Discipline and Training.**

In the past, the Federal Inland Revenue Service was an organization within the Federal Civil Service. It did not recruit its own staff; rather, its staff was recruited for it by the Federal Civil Service Commission. This has not been of advantage to FIRS over the years. More often than not, the quantity, quality and timing of recruitment do not suit FIRS purposes, given that it is a sensitive professional organization. To take the example of just one year: in 2001, the Federal Civil Service Commission recruited 104 tax staff for FIRS, 75 of which have the tax cognate degrees in accountancy, law and economics, when all of them ought to have these disciplines. FIRS cannot be an effective professional organization with this type of staff recruitment being done for it by outsider.<sup>149</sup>

Mr. Val. Akeredolu<sup>150</sup>, in a statement explained that the on going recruitment of professionally qualified persons and staff was meant to engender efficient tax administration that conforms to international best practice. According to him FIRS Board and management ensured the recruitment was done fully with the laws of the land and the

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<sup>148</sup> Omogui Okauru, I. (2012) op.cit

<sup>149</sup> Philips, D.(2003) Nigerian Tax Reform in 2003 and beyond op.cit note 24

<sup>150</sup> Nwoji, C.(2010), FIRS Targets 6,244 to Drive Reforms, Champion Newspaper, Abuja, September 14, Retrieved June 12, 2011 from <http://www.champion.com.ng/displaycontent.asp?pid=409>

policies of FIRS to achieve the desired level of professionalism to drive quality service delivery.<sup>151</sup>

Mr. Akeredolu pointed out that a total of 1,858 persons were successful out of over 105,000 candidates who applied (Over 100,000 online applications and over 5,000 manual application (curriculum vitae) and partook in a very competitive process which spanned a two year period and that the 2008 promotion exercise was down in full compliance with the guidelines of the Federal Civil Service Commission.

Similarly, on staff training most tax staff in the past had not gone for any formal training in tax matters and the few who had gone for learning were concentrated at the top management levels. Staff training was not predictable, compulsory, periodic and patronage free. There was no linkage between training on the one hand and staff promotion and advancement on the other. Training funds declined instead of rising. Mr. Akeredolu argued that under the FIRS Act 2007, the number of trained staff since the Act came into effect has increased. He also said, this year alone, 889 staff have been trained to date with an additional 3,900 staff embarked for training before the end of the year. Notwithstanding, more still needs to be done to achieve the capacity desired.

## **ii. FIRS Staff Nomenclature, Emolument and Structure**

### **a. Staff Nomenclature**

The central words for the Tax Administrators in Nigeria used to be the “Inspector” e.g. The Inspector of Taxes, Senior Inspectors of Taxes or Chief Inspector of Taxes. These

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<sup>151</sup> Nwoji, C.(2010), FIRS Targets 6,244 to Drive Reforms, Champion Newspaper, Abuja, September 14, Retrieved June 12, 2011 from <http://www.champion.com.ng/displaycontent.asp?pid=409>

nomenclatures are archaic and colonial with a connotation of Master/Servant Adversarial relationship. All these are antithetical to our position that Nigeria's tax authorities should henceforth become tax payer-friendly organizations.

**b. Structure**

It is submitted that it would be detrimental to the dynamism of the new autonomous FIRS for it to carry over extended Civil Service staff and salary structure which it currently operates. The researcher is of the view that the modern FIRS should drop the counter productive structure of the Nigerian Civil Service .The Salary Structure would be unsuitable for the new autonomous FIRS for many reasons which include the following<sup>152</sup>: The Civil Service emoluments are starvation wages which are totally inadequate to secure a reasonable standard of living for even a civil servant whose functions are routine and non- monetary, Current Civil Service emoluments are so inadequate that bribe taking and other sharp practices cannot be ruled out as part of the strategies of the Nigerian Civil Servant that must be avoided in a more serious financial organization like the FIRS whose staff must be insulated against such negative practices.

**c. Emolument**

**iii. Funding**

Government funding of its two major revenue collection agencies is not only declining, this is happening in the face of continued inflation in the economy and government pressure for significantly more revenue to meet it growing activities, it is also unstable. More disturbing is that the appropriations for overhead cost exhibits the features

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<sup>152</sup> Phillips, D. (2003) Nigerian Tax Reform in 2003 and Beyond op.cit., p.80 note 24

of decline and instability most<sup>153</sup>. It is the overhead votes which directly finance the tax operations of the agencies. It is a case of seeking large output with little input.

#### **iv. Logistic**

Again, to highlight some specifics of the problem, the research case studied the logistic situation in Nigeria's largest tax authority — FIRS from its FIRS headquarters in Abuja where the situation is said to have improved in the last two years, it is still a far cry from the minimum required. Of the field offices of FIRS only those in Marina and Apogbon in Lagos appeared to approximate what a tax office should be like<sup>154</sup>.

#### **v. Data and IT Management**

Generally, in Nigeria data is not available were and when it is required, therefore, this is not applicable to the tax system. In country where the number of inhabitants is unascertainable, it is almost impossible to have any data that could be used for any efficient system.<sup>155</sup> Even where data is available, this are not put into proper use e.g information received from application for tax clearance certificates are treated on ad-hoc basis instead of being used as a base for collecting information about applicable tax payer. In the last two (2) years, the Service has made significant progress in its IT installations but the scope and impact of the achievement are still insignificant The weakness become more compelling when it is appreciated that Oil Companies which account for well over half of revenues collected by the Service are all computerized when itself is hardly so<sup>156</sup>.

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<sup>153</sup> Phillips, D. (2003) Nigerian Tax Reform in 2003 and Beyond op.cit., p.80 note 24

<sup>154</sup> Information sought by a personal interview with one of the staff at FIRS Abuja.

<sup>155</sup> Sani, A.(2005) op.cit. p.38

<sup>156</sup> Phillips, D. (2003), op. cit. p. 93

## **vi. Administrative Issues**

### **a. Tax Collection Problems**

The age-long practice of the tax payer paying his tax at the office has virtually disappeared in Nigeria. Now, the taxpayer is made to pay tax into banks. This change to bank collection of taxes was caused by the growing in advance of dishonest practices by tax collection staff in tax offices and the consequential growing loss of revenue. Regrettably, the study<sup>157</sup> found that the current reliance on bank collection of tax has caused far more problems than the old direct collection method. The study found the Service to be particularly prone to these serious weaknesses in bank collection of tax revenue: The study learnt that even though the Service designates which banks would collect its revenues, it failed to open FIRS — designated accounts in such banks, thereby giving such banks great freedom to manipulate collected tax revenue funds paid into them by taxpayers. Fortunately, the current management of the Service has been doing commendable lot in the last two years to reduce these weaknesses and recover a lot of tax funds which would have been lost permanently. This sensitive trend should be sustained and strengthened. Hence, the research recommends that Taxpayers should henceforth have the option of paying either directly at the tax offices or at designated banks.

Although, some progress has been made by the present administration, there is still room for improvement.

### **b. Collection by Ministries and Government Agencies**

Even where required to do so by tax laws e.g. Personal Income Tax Act (PITA), Company Income Tax Act (CITA) and Value Added Tax Act (VATA) Ministries and

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<sup>157</sup>Phillips, D. (2003), op. cit. p. 95



Government Agencies are generally unhelpful in tax collection matters<sup>158</sup>. They create three major problems for tax authorities at federal and state levels: They fail to charge and deduct prescribed taxes, when they deduct tax, they fail to remit it to the relevant tax authority and instead, convert the revenue to their own use, they fail to supply the tax authorities' full information on their taxable transactions.<sup>159</sup>

In some cases, default by these organization is deliberate, in other cases default is force on them by inadequate and none released of budgeted funds to the organization by government itself leading to a situation of robbing Peter to pay Paul and for a few of the organizations, default arises from financial mismanagement. Whatever be the case, tax collection problems by ministries and government agencies should no longer be condoned as government cannot afford even temporary revenue loss.

#### **vii. Refund Scheme**

The research found out the Nigerian Customs Service (NCS) has a refund schedule, the FIRS Establishment Act<sup>160</sup>, PITA, CITA, VATA, etc all provides for refund to taxpayers. Despite the provision for refund as far back as 2007, there is to date no instance where the FIRS has made a refund to any tax payer. This has been attributed to the cumbersome procedure involved in seeking reform by tax payer. The current practice by FIRS is to give credit against future tax liability instead of returning the tax payers excess tax payment to him. Yet the organization is always quick to impose penalties and interest on taxpayers who are adjudged to have underpaid<sup>161</sup>.

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<sup>158</sup> Phillips, D. (2003), op. cit. p. 99

<sup>159</sup> Ibid

<sup>160</sup> FIRS Act, 2007, Section 23

<sup>161</sup> Phillips, D. (2003), op. cit. p.99

A tax system with no effective refund scheme is an incomplete and inequitable tax. The absence of an effective refund scheme also discourages voluntary tax compliance and dislocates business finances. There should be appropriate funds allocated or retained out of tax collection to carter for tax reforms both at the federal and state levels.

### **viii. Voluntary Compliance**

The research found that low level of voluntary tax compliance among Nigerians is largely ascribed to weak and unfriendly tax administration in the country. Accordingly, voluntary compliance is promoted not only by awareness of rights and efficient treatment but also by clear simple and user-friendly administrative systems and procedures

### **ix. Tax Enforcement**

Tax laws in Nigeria are complex and difficult for the common tax payer to understand, and some cases are problematic even for literate officials. In addition to lack of understanding many taxpayers are unaware of the existence of certain taxes. The research recommends that tax administrators must be friendly and helpful to taxpayers, they must also be firm in enforcing the tax laws ensure that taxpayers and potential taxpayers do not succeed in avoiding or evading taxation.

### **x. Tax Clearance Certificate**

One of the Nigerians most vivid index of tax system failure is the widespread use of Tax Clearance Certificate (TCC) as a precondition for accessing any public service or benefit in the country. Even the 1999 Constitution prescribed TCC as a precondition for several things. According to the Constitution, every citizen has some legal rights which entitle him to a just and valid claim from the government, its agencies or an individual<sup>162</sup>.

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<sup>162</sup> Constitution of the Federal Republic of Nigeria, (CFRN) 1999, Section 33 – 46, see also Adedokun K.A,(2010) op. cit, p. 74.

The citizens also have legal duties to perform to the government the violation of which lead them to punishment. One of such is tax obligation of every citizen/tax payer. A person who benefits from a society or wish to assume a position of leadership in a society must establish that he has performed his tax responsibility i.e. by showing his tax clearance certificate. Therefore both the Independent National Electoral Commission of States Electoral Commission must cooperate with the revenue authorities to actualise compliance of this law. The role of case law is to verify into the compliance of payment of tax as and when due by producing tax clearance certificate to evidence same. And yet, there would have been no need for TCC if income tax administrators in the country had been effective. In the case of *Lanto v Wowo*<sup>163</sup>, it was held that the qualification of a person to contest the election as regards tax and other matters are not matters within the competence of election tribunal. According to the court,

*The issue is entirely within the jurisdiction of the Independent National Electoral Commission. INEC is the Electoral body charged with the Responsibility of clearing nominated candidates to be eligible to contest in an election. They have their guidelines, of which is that a candidate must have paid his tax for the relevant previous three years as and when due. And it is only when they are satisfied that a candidate has complied with all their conditions that he is issued with a clearance certificate making him eligible to contest. Where they are so satisfied, it is not open to an opponent to challenge his eligibility*<sup>164</sup>.

In other words, if the Independent National Electoral Commission is satisfied at the stage of screening before a candidate is declared competent to contest an election, that such candidate has paid the requisite tax for the prescribed period, a petition seeking the nullification of such candidate's election on the ground that he did not pay his tax as and

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<sup>163</sup> (1999) 7 NWLR (pt 610) P. 227 see also Adedokun, K.A,(2010) op. cit, p. 79.

<sup>164</sup> Ibid, p. 240 - 241

when due is incompetent. It is obvious from the foregoing judicial authority that INEC has a vital role in ensuring that a candidate for election into any public office is ascertained to have paid his/her tax as and when due. The only evidence to prove it is by presentation of genuine tax clearance certificate during screening of candidate by the electoral body.

For residents of Nigeria tax clearance certificates are now required in virtually all dealings with the States or Federal Government<sup>165</sup>.

### **xi. Judicial Problems**

In the course of this Thesis, it was discovered that most tax cases which go to Court become “dead” affairs. So, both the tax administrator and payers alike do everything to avoid recourse to the Courts. Courts hardly assist effective taxation in Nigeria for many reasons including: Lack of expertise on the part of most judges, Interminable delays in Court processes, widespread ambiguities in Nigerian Tax Laws, court sympathy for taxpayers vis-a-vis tax authorities in the few tax cases handled by Courts, largely unhelpful attitudes of the Attorney General’s Office<sup>166</sup>.

### **xii. Best Judgment**

The research considered the reported abuses of Best of Judgment (BOJ) assessments and is rather reluctant to advocate its continued use in tax administration in Nigeria. Ordinarily, BOJ assessments by tax officials are condonable as a last resort when a taxpayer becomes absolutely uncooperative. But when this last resort is invoked almost routinely and has begun to adversely affect the expected benefits of self-assessment, then a fundamental review is imperative<sup>167</sup>. In the researcher’s discussion with some tax officers,

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<sup>165</sup> Adedokun , K.A. (2010) op. cit, p. 74.

<sup>166</sup> Philips, D.(2003) op.cit, p. 108

<sup>167</sup>Ibid ,p. 111

they were categorical in their conclusion that BOJ assessments are inevitable in a society like Nigeria which is prone to dishonesty and non disclosure.

### **xiii. Taxpayer Friendly Tax Administration**

The researcher expects that if the recommendations in this chapter are accepted and implemented it should result in the emergence of a tax payer friendly tax administration in Nigeria. The recommendations would produce tax officials who are well paid, well motivated, well organized, well equipped, well disciplined, well professionalized.

This being the case, there is little reason why such professionalized tax officials should not be friendly, helpful, polite, trusting and fair in the performance of their tax duties. There will be no reason for tax officials to criminalize every result in the tax system. The tax laws and regulations are simple, clear and unambiguous, assessment and collection procedures are simple and taxpayer driven, tax compliance cost is minimal, Tax offices are physically pleasant, open and easily assessed. However, the enhanced tax payer-friendliness of tax administration should be constantly protected by all tax staff (from top to bottom) against external negative factors by mounting and sustaining a psychological warfare against the general Nigeria environment of lawlessness, greed, corruption, dishonesty and master-servant relationships, sustainedly blazing the clarion calls that “God always overawes Satan”, “Good eventually conquers evil”, “the customer is king”, “the taxpayer is king”.

### **xiv. Tax Evasion and Avoidance**

There is often some confusion as to the distinction between tax evasion and tax avoidance. Tax avoidance is legal while tax evasion is illegal. This however does not say much. The tax avoider is simply one who arranges his affairs in such a way that he pays

little or no tax at all while the tax evader is one who for a number of reasons refuses to fulfill his civic responsibilities under the law. He is for all intents and purposes a criminal. In the words of Professor Wheatcroft<sup>168</sup>, tax avoidance is the ‘art of wining games without actually cheating; thereby beating the Internal Revenue and the Government at their own game.

No Tax payer has been successfully prosecuted of Tax evasion in Nigeria; this is largely because tax authorities at the Federal and State levels prefer to institute civil actions to recover any tax due with interest and penalty ostensibly with the aim of meeting their revenue target. However there is an emerging trend whereby the Federal Inland Revenue Service (FIRS) and a few States are beginning to show interest in tax prosecution. The recent decision of the Supreme Court in *Unipetrol Nigeria Plc V Edo State Board of Interval Revenue*<sup>169</sup> presented the first opportunity for the Supreme Court to pronounce on the capacity of a tax authority to prosecute tax offences in its name. In that case, the Supreme Court held the Edo State BIR could institute a criminal action in its name by virtue of section 4 (2) of the erstwhile Income Tax Law, Laws of Bendel State 1976, applicable in Edo State which vested the Board with the power to sue and be sued. The power to prosecute has generated a number of cases and robust literature in academic circle, but not a whimper has been heard about the decision in Unipetrol’s Case since 2006 when it was delivered by the Supreme Court.

There is no such reported case on tax evasion in Nigeria. Most of the prosecutions are usually for forgery of tax clearance certificate brought under section 473 of the Criminal Code (Cap. C. 28 Laws of the Federation of Nigeria 2004) on forgery and this

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<sup>168</sup> Sani, A.(2005), op. cit, p. 54

<sup>169</sup> Suprar, note

cannot be regarded as a tax offence. Also, there is no known case of a high profile personality or celebrity who has been committed for the offence of tax evasion as is common in developed countries. In the United State of America (USA) and Europe, Court have found public figures guilty of tax fraud and ordered them to pay back taxes and penalties, as well as serve terms in confinement to serve as deterrent to others. For instance, the following celebrities have been convicted of tax evasion: Boris Becker, Martha Stewart, Wesley Snipes, Willie Nelson Nicolas, Berry, Richard Hatch, Anthony, Annie Leibovitz, and 10 celebrities have also been convicted of tax evasion.

Nigeria is one of few countries in the world where it is fashionable to evade tax. The various structures which are required to work together to make tax evasion difficult are not properly coordinated<sup>170</sup>. For instance, it is possible to register with the Corporate Affairs Commissions (CAC) without registering with the FIRS when it could have been one of the conditions in the company registration process.

### **3.4 Bridging the Gap between the Tax Payers and Tax Administrators**

There is no love lost between Taxpayers and Tax Administrators. What exists is a cat and mouse situation. This is understandably so in that while a revenue official tries to maximize revenue by putting a big shovel in the income of the taxpayer, the taxpayer also seeks to protect, by all possible means, his hard-earned income from the eagle eyes of the revenue officials.

Revenue officials do not expect to give pleasure to the taxpayer, but no tax system can succeed without the taxpayer's co-operation. More than for most other government departments, it is important for the Revenue Departments to secure the respect and trust of

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<sup>170</sup> Top 50 Tax Issues in Nigeria (2010) op.cit. p.4

the public. Effective administration of tax laws and revenue programme depends in large part on public support, but the public will not support something that it does not understand. Tax programmes must be described such that the average citizen can understand them and they must be publicized through all kinds of media. The common practice of reprinting the law or parts of it and sending it to taxpayers in the expectations that they will understand it is misconceived. Tax laws are written in legal terms, which are not necessary in explaining the tax, to taxpayers. To simplify the task of the taxpayer, the assessment and collection procedures should be carefully reviewed and evaluated. Tax forms should be less complex. Vast improvements can be made by improving the design of forms and by improving office layout.

Public support for tax programmes will also be greatly improved if people know how the tax money collected in the past year has been spent. Experience has shown that the taxpayers would more readily pay their taxes if they could see some visible result of their taxes, no matter how small. The researcher believes that tax information and research services should be embarked upon by the various tax departments to ‘enlighten’ the people. The taxpayers should be constantly reminded of how capital projects and other amenities can only be possible if everybody pays his tax promptly. The various State governments should as much as possible let the taxpayers see the benefits of their taxes by providing them with modern amenities like pipe-borne water, electricity, health services, etc. Finally, the gap between the Taxpayers and Tax Administrators will be further narrowed, if tax officials are well paid, motivated, disciplined, professionally equipped and above all courteous<sup>171</sup>.

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<sup>171</sup> Sani, A.(2005) op cit. p. 41



### **3.4.1 Bridging Tax-Compliance Gap**

With tax compliance level in Nigeria still low, Onuba<sup>172</sup> analyzed efforts being made to deepen its administration. Taxation is the means by which government raises revenue to finance developmental programmes. And it is compulsory levy imposed by the government on its citizens in order to provide public services and ensure their social and economic well-being. In Nigeria, the most potent fiscal instrument is taxation because not only does it facilitate the reduction of private consumption, it also increases investments as well as transfer resources to the government for economic development.

However, experts contend that there is need for the federal government to reposition the nation's tax system for effectiveness. This according to him is imperative, owing to the high level of tax evasion in the country. In recent times, the perception of taxpayer that the government was not accountable to them had been identified as a major challenge facing the tax authority. The Minister of Finance, Mr. Olunsegun Aganga gave credence to this during the enlargement management meeting of the FIRS held in Abuja, when he said that there was the need to bridge the tax compliance gap to boost revenue for the country. Aganga noted that the Federal Government generated N2.8trillion in 2010 as tax revenue. The Minister, however said that if the issue of voluntary compliance was taken seriously the level of dependence on revenue from oil would be reduced.

The Federal Government have initiated a lot of reform in order to assist the FIRS succeed in its voluntary compliance campaign. Some of the reforms are the approval of the NTP the first of its kind in the history of Nigeria, the establishment Tax Appeal Tribunals setup to adjudicate on tax disputes arising from the administration of tax laws by the FIRS

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<sup>172</sup> Onuba, I.(2011) Bridging Tax Compliance Gap, Sunday Newspaper, 13<sup>th</sup> March, 2011.

Act, 2007 and the approval and payment of tax refunds to tax payers for the first time since the passage of the FIRS (Establishment) Act in 2007.

Aganga noted that there was need to deepen tax administration at all levels of government in Nigeria adding that tax administration is a dynamic area in which constant improvement was required in order to keep up with the ever changing face of the global economy improvement like these are required in developing nations such as Nigeria, which does not have fully developed tax coverage or voluntary compliance culture.

Voluntary compliance on its own will not completely bridge tax compliance, it would go a long way towards bridging overall compliance gap in this regard, we can harness tangible and intangible benefits from voluntary compliance such as a reduction in compliance cost and time and an overall better interface between taxpayer and tax authority.

On how to achieve voluntary compliance there is need to employ tools such as tax payment education, increased interaction with taxpayers, academia and other stakeholder in the tax system and as well as the use of the mass media to promote a deeper tax culture amongst Nigeria. The chairman of the FIRS, Mrs. Okaauru, said that the success of the voluntary tax compliance campaign being spearheaded by the Service would be achieved if a tax friendly environment was put in place.

### **3.5 Achieving Voluntary Compliance through Self Assessment**

The self assessment tax regime is a system of tax administration whereby the tax payer is granted the right by law, to compute his own tax liability, pays the tax due (at the designated bank) and produce evidence of tax paid at the time of filing his tax return at the

tax office, on due date. On the other hand, the tax authority has the responsibilities of enablement to check on the tax payer to ensure compliance with tax administration process. In other words, self-assessment tax regime is characterized by partnership and shared roles and responsibilities between the tax payer and tax authority. The paradigm shift in the regime is that having left the taxpayer with the burden of filing tax returns, the tax authority ensures through enablement compliance and compliance enforcement activities that right amount of tax due is paid at the time, and if otherwise to strictly apply sanctions as provided by the tax laws. It is emphasized that this tax regime is complete with a continuum of activities, from tax payer enablement, filing of tax returns processing, debt management, and compliance/enforcement<sup>173</sup>.

The taxpayers' service function supports the promotion of voluntary compliance so that taxpayers who self-assess can carry out their tasks as easily as possible. The services to be provided shall include direct assistance to the taxpayer who contacts that tax office; education outreach programmes to promote accurate and timely compliance as well as development, publication and distribution of tax forms and related information including those on the website, with the overall aim of increasing voluntary compliance<sup>174</sup>. Taxpayer service can be best described as the aggregate of taxpayer assistance, education and administration.

However, in order to assist the taxpayer in meeting his obligations and achieve the expected levels of voluntary compliance, the tax authority must ensure that a high standard of services is provided to help them determine their obligations under the laws and to

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<sup>173</sup> Retrieved June 12, 2011 from [www.catatax.org/.../achieving](http://www.catatax.org/.../achieving) voluntary compliance

<sup>174</sup> FIRS (2011), Handbook on the Implementation of Self Assessment Tax Regime in Nigeria, September, p.3

complete the steps required, so that taxpayers are not unduly sanctioned for the lapses of the tax authority.

It is important to note that this tax regime is a response to a challenge in the application of a tax rule, under government assessment tax regime, that no tax lien should arise until the revenue makes a demand for it. The applications of this rule brought about delays in the payment of taxes, in between, dispute were common with the attendant increase in the cost of tax administration and compliance.<sup>175</sup> In addition, the regime was introduced to elicit voluntary compliance. Voluntary compliance; as we know engenders more efficient and cost effective tax administration thereby it can be said that self assessment tax regime is a vehicle for voluntary compliance.

### **3.6 Reforms in the Self Assessment Regime in Nigeria: The Implications on Tax Payer**

Under the Self Assessment Regime (SAR), taxpayers are required to compute their tax liabilities based on applicable tax laws provisions, and complete their tax return forms in manner prescribe by the Relevant Tax Authority (RTA). The completed forms are to be submitted to the RTA by the due date of filling returns, while payment of all or part of the tax due is to be made within the statutory time line of payment<sup>176</sup>.

The Self Assessment programme was introduced as part of Nigerian Tax System in 1992. The Regime has suffered setback in its implementation due to lack of understanding

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<sup>175</sup> FIRS (2011), Handbook on the Implementation of Self Assessment Tax Regime in Nigeria, op.cit, p.3

<sup>176</sup> Retrieved June 12, 2013 from <http://www.kpmg.com/global/en/issues> and insight

of its concepts among tax officers and taxpayers<sup>177</sup>. As a matter of fact, government assessment became the dominant future of the self assessment regime contrary to acceptable practices. In order to correct the anomaly, coupled with demand for guidelines, on 12<sup>th</sup> December 2011, the Federal Inland Revenue Service (FIRS) Board made regulations to set out the processes and procedures that would guide the implementation of the SAR in Nigeria. The Tax Administration (Self Assessment) Regulations, 2011 (TASAR or the Regulation), which is dated 19<sup>th</sup> December 2011, was made available to the public in April 2012.

Bellow are the highlights of the provisions of the regulations and their implications on tax payers.

### **3.6.1 Legal Basis, Date of Commencement and Scope of the Regulations**

The Federal Inland Revenue Service Board, with the approval of the Ministry of Finance in exercise of the powers conferred on it by section 61 of the FIRS (Establishment) Act, 2007 (FIRS Act) issued the Tax Administration (Self Assessment) Regulation 2011 which was officially gazatted on 19 December 2011 which reads:

*The Board may with the approval of the Minister, make rules and regulation as in its opinion are necessary or expedient for giving full effect to the provisions of this Act and for the due administration of its provisions.....*

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<sup>177</sup> Arogudade, J.A. (2005) *Nigerian Income Tax and its International Dimension*, Spectrum Books Limited, Ibadan, p. 311 see also FIRS (2011) *The Hand Book on the Implementation of Self Assessment Tax Regime in Nigeria*, First Edition, 2011, at Page 1

The Regulations apply to all self assessment requirements under the FIRS Act, and the tax laws, rules and regulations covered by its provisions<sup>178</sup>.

### **3.6.2 Mode of Filing Self Assessment Returns**

Under the SAR a company can file returns in person or through an accredited agent being a person certified by the Association of National Accountants of Nigeria (ANAN), the Chartered Institute of Taxation of Nigeria (CITN), and the Institute of Chartered Accountants of Nigeria (ICAN)<sup>179</sup>

It is important to know that the requirement of CIT return forms to be signed by a director/company secretary has always existed in the CITA, but has never been strictly enforced. The implementation of the requirements under the TASAR, will represent a shift from the current practice, where CIT return forms are signed by any authorized company (such as financial controller, finance manager or tax manager).

### **3.6.3 Time for Filing Self Assessment Returns**

The Regulation also prescribed the time within which the returns must be submitted and it is not later than six months from the end of the companies accounting year. While a newly incorporated business is allowed to submit its returns within 18 months from the date of its incorporation or not later than six (6) months after the end of its first accounting period, whichever is earlier,<sup>180</sup> all taxpayers including those granted exemption from tax are required to file their tax returns to the service every year. The audited accounts of the

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<sup>178</sup> Tax Administration (Self Assessment) Regulation, 2011 (Here in after known and referred to as the ‘regulation’) Regulation 2

<sup>179</sup> Ibid, Regulation 5

<sup>180</sup> Ibid, Regulation 12 (2)

business for the preceding accounting year must be accompanied by Income Tax computation, Capital allowance computing and evidence of payment of tax being assessed.

#### **3.6.4 Extension of Time for Filing Returns**

The Regulation also spelt out the condition for granting extension of time for making returns which provides that a taxpayer may apply in writing to Board of the relevant tax authority for an extension of time within which to file returns provided the taxpayer makes the application before the due dates or show good cause for its inability to comply<sup>181</sup>. In granting extension of time under the above regulation the Board of the relevant tax authority takes into consideration in the case of a company, the death of any principal officer of the Company such as the Chairman, Managing Director or Company Secretary, within the period of filing of the returns and where the company experienced a fire or natural disaster within the period of filing the returns<sup>182</sup>. Both circumstances are to be supported by verifiable evidence.

Furthermore, the TASAR provides that the extension of a taxpayer's filling deadline should not be construed as an extension of the deadline for paying the tax due under the applicable tax laws provisions. This position, though seemingly harsh, is consistent with the provisions of the relevant tax laws on the deadline for payment of income tax. Consequently, the taxpayer whose deadline for filling an income tax return has been extended would still be required to determine and pay the tax within the statutory deadline, or to be exposed to penalty and interest charges.

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<sup>181</sup> Regulation 13 (1),

<sup>182</sup> Regulation 14 (1) (b) and (c),

### 3.6.5 Payment of Self Assessed Tax

The provisions of the TASAR on payment of self assessed tax are, perhaps the most controversial of all the provisions. Regulations 3 (1) attempts to redefined SAR as system that requires “the concurrent filling of returns and payment tax due on or before the due date”, while regulation 3 (2) state that a taxpayer “must compute his tax liabilities, pay the tax due and file the relevant returns with evident of payment of the tax on or before the due date”.

These provisions, together with those contained in part (iii) and regulations 18 of the TASAR, suggest that the tax must always be paid by the due date of filling returns, to avoid penalties and other sanctions. However, the provisions contradict the provisions of company income tax that allow taxpayers to pay their taxes after filling deadline.

It is however necessary to consider how the above regulation relate to the provisions of the Companies Income Tax Act (CITA). Section 77 (5) of CITA deals with the payment of taxes where returns are filed on self assessment basis. It states that:

*A company filing self assessment shall pay the tax due within two months from the date of filling the assessment in one lump sum or such number of monthly installments (not being more than six) as may be approved by the Board*

- a. Provided further that where request for installments expires after the 30<sup>th</sup> day of November within the year of assessment for which the tax have been charged, the payment of any balance of such tax may be made not later than that day.*
- b. Provided further that where a request for installment payment has been made, the request shall be accompanied with proof of payment of the first installment to the designated bank.*



The section thus modifies the requirement under section 55<sup>183</sup> for the CIT return to be filed with the evidence of payment of all or part of tax due. The implication of this modification is that companies wishing to make one lump sum payment of CIT are required by law to file other component of their CIT return by the filling deadline, while payment of CIT due is to be made within two months from the date of filling. This provision of the principal Act necessarily nullifies the requirement of the TASAR that CIT be paid by the filling deadline.

From the above, the Regulation which provides for the lump sum to be payable on the date of filing of the self assessment returns appears to negate the clear provision of the law, which gives the taxpayer up to two months there from, to effect the payment<sup>184</sup>. Similarly, Company Income Tax Act provides for the first installment to be paid at the time of filing the returns, rather than at an earlier date as currently contemplated by the Regulation<sup>185</sup>. The provision for the final installment to be payable when the return is being filed is also inconsistent with the 30<sup>th</sup> November deadline given by the company income tax.

The provision by the Regulation to levy late filling penalty as well as charge interest and penalty on the tax liability, even where the taxpayer has been granted an extended time to file its returns, is also unusual<sup>186</sup>. What, one might ask, is the point in asking for extension of time for filing the returns, if you are going to be liable to interest and penalty charges, just as the taxpayer that has not been granted extension to file the returns.

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<sup>183</sup> Company Income Tax Act, 2004

<sup>184</sup> Company Income Tax Act 2011 Section 77 (5)

<sup>185</sup> Tax Administration (Self Assessment) Regulation 2011, Regulation 18 (2) (a)

<sup>186</sup> Regulation 30

The workability of the self assessment regime is hinged on the concurrent filing of returns and payment of tax due on or before the due date. Thus, the tax payer is compulsorily required to compute his tax liabilities pay the tax due and file the relevant returns with evidence of payment of the tax on or before the due date<sup>187</sup>. The tax authority (The Service) shall accept all tax returns submitted by the taxpayer and carry out necessary checks to ensure that all required information have been appropriately entered into the tax return forms<sup>188</sup>. Failure to submit the tax return forms, on or before the due date is a breach of the Regulation and renders the taxpayer liable to pay fines with interest as prescribed by the Regulations or under applicable tax laws<sup>189</sup>. The due date for filing self assessment returns under the Company Income Tax Act is six months from the end of the accounting year.

The time stipulated in respect of self assessment is significant for it is only when the due date has elapsed that administrative assessment can be raised. Any administrative assessment raised before the expiration of the time provided for self assessment would be null and void. The principle that a condition precedent laid down by the law must be fulfilled for an assessment to be valid was established in the case of *Federal Board of Inland Revenue v. Rezcallah and Sons Ltd.*<sup>190</sup> The Appellants in the case brought an appeal from the decision of the High Court of the Northern Region of Nigeria dismissing a claim by the chairman of the Board of Inland Revenue for a sum of £2,520, being income tax and penalties for the years of assessment 1958-1959 and 1959-1960. The reason of the decision

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<sup>187</sup> Tax Administration (Self Assessment) Regulation 2011, Regulation 3 (1) and (2)

<sup>188</sup> Ibid, Regulation 3 (3),

<sup>189</sup> Ibid, Regulation 12 (2,) see also, Company Income Tax Act . Section 55 (2) (a)

<sup>190</sup> (1962) All N.L.R. 1

was that the two assessments upon which the claim was based were not made in accordance with the law because:-

- (a) In neither case did the plaintiff Board prove that the defendants were given notice requiring them, within the period limited by the notice, to deliver a return of income;
- (b) The chief inspector of taxes did not exercise his discretion to the best of his judgement in making the assessment under section 53(3)) of the revised edition of the Income Tax Act

The appellant appealed to the Federal Supreme Court and argued the following grounds of appeal:

- (a) The learned trial Judge erred in law in holding that the merit and/or legality of the assessment were matters which could be raised in a proceeding for recovery of the tax in the High Court
- (b) The learned trial Judge erred in law in the following passage of his judgement:

*Accordingly I do not agree with the submission of counsel for the plaintiff that it is entirely irrelevant how the chief inspector made the assessments under section 55 (3) because if he did not exercise his discretion properly it follows that he did not make the assessments in accordance with law, and this claims which is based upon those assessments, must fail.*

- (c) That the learned trial judge erred in law in that as there was no objection against the assessment and no appeal to the Appeal Commissioners on the assessment of tax assessed (notwithstanding an omission to prove the service of a 'Return') became an absolute and conclusive debt due to the government of Nigeria.

The Federal Supreme Court considered whether the trial judge was entitled to consider the validity of the assessment, having regard to the fact that the special procedure for appealing against an assessment had not been followed.

The Court having considered the relevant provision of the Income Tax Act held that the High Court had jurisdiction to inquire into the validity of an assessment.

The Court further held that by virtue of section 55 of CITA, the request to render a return is a condition precedent to assessment; the waiting for the time allowed in the request to pass is also a condition precedent; both conditions are intended to protect a person by affording him an opportunity of stating his income and other relevant matters; and an assessment which does not fulfill either of those conditions is made without jurisdiction, and is null and void.

Accordingly, the Federal Supreme Court held that since the assessments for 1958-59 and that for 1959-60, failed to fulfill the condition precedent (being the notice to deliver a return) were null and void and the claim in respect of those purported assessments must fail. The Court therefore, set aside the invalid assessments.

Section 55 (1) of CITA also provides generally for self assessment. Thus, every company, with or without notice from the FIRS is required to file a self assessment return with the service in the prescribed form at least once a year. The returns are to contain the audited accounts, tax and capital allowances computation for the year of assessment; a duly completed self assessment form attested to by a director or secretary of the company as to the truth and correctness of the particulars given; and evidence of payment of the whole or part of the tax due into a designated bank<sup>191</sup>. Where the Service is not satisfied with returns filed by a company, it may give notice to the Company to deliver fuller or further

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<sup>191</sup> (1962) All N.L.R. 1Section 55 (1) (a-c)

returns<sup>192</sup>. The Service, for the purpose of obtaining full information of the profits can give notice to any person<sup>193</sup> requiring him to complete and deliver to the Service any return specified in such notice, appear personally before an officer of the service for examination with respect to any matter relating to such profits, produce for examination books, documents and any other information at the place and time stated in the notice; or give orally or in writing any other information<sup>194</sup>.

The Service is empowered to verify by tax audit or investigation any matter relating to the profits of any Company or any matter relating to any return or entry in any book, or document or accounts including those stored in a computer, digital, magnetic, optical or media as may, from time to time be specified in any guideline issued by the Board<sup>195</sup>. The recognition of digital technology and other forms of storing data by the CITA is appropriate in an age of information technology where accounts are no longer limited to books of accounting but are increasingly being stored in electronic form.

The company filing a return under section 58 CITA (dealing with further returns) or filing returns within a period of extension granted to it is also regarded as making self assessment, even though self assessment is made outside after due date has elapsed<sup>196</sup>. Notwithstanding the application of self assessment in the assessment regime, the tax authority is still mandated to assess the tax payer. This is government assessment, also described as “Administrative Assessment”. Regulation 35 (1) (c) defines Administrative Assessment as an assessment issued by the relevant tax authority as defined in Regulation

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<sup>192</sup> (1962) All N.L.R. 1, Section 58

<sup>193</sup> This should be understood to include both Natural Artificial Persons section 105, the interpretation section defined ‘person’ to include a company or body of persons.

<sup>194</sup> Company Income Tax Act, 2011, Section 60 (1)

<sup>195</sup> Ibid, Section 60 (4)

<sup>196</sup> Ibid, Section 53

22 of these Regulation<sup>197</sup>. Regulation 22 defines Administrative Assessment as an assessment raised by a relevant tax authority where a tax payer has failed to file returns pay taxes due on or before the due date or where there is an understatement of tax in the returns filed.

### **3.6.6 Administrative Assessment**

Administrative assessment is raised in the course of an authorized audit of a taxpayer's books, in the course of an authorized investigation into the affairs of provisions of the Personal Income Tax Act The section also states that the authority shall within the year of assessment or within six months after the expiration of the year of assessment serve a notice of assessment on every employee to be assessed<sup>198</sup>.

The procedural requirements for making administrative assessment amongst others, are that tax officers shall obtain relevant records and document from taxpayers offices or premises or through such other means as are appropriate to determine the total assessable profit or chargeable income, computation of tax liabilities based on records and accounts obtained from taxpayer sources during of course of visit to taxpayers offices or premises and the preparation of issuance of a notice of assessment on taxpayers by the relevant tax authority<sup>199</sup>.

A determination of the tax payable through administrative assessment shall not relieve taxpayers from the obligation to file returns of their businesses, in the case of a company of full disclosure of income from all sources in the case of an individual<sup>200</sup>.

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<sup>197</sup> Self Assessment Regulation, 35 (1) (c)

<sup>198</sup> Ibid, Regulation 22 (2)

<sup>199</sup> Ibid, Regulation 23

<sup>200</sup> Ibid, Regulation 24

Administrative assessment includes penalties and interests imposed as part of the liability due effective from the time the returns became due<sup>201</sup>. This later provision which is similar to be provision of regulation 28, contradicts certain tax law provisions on the imposition of interest for non payment or late payment of tax. For instance, it contradicts section 85<sup>202</sup> and section 32<sup>203</sup> which provide that interest should be imposed on taxpayers for non payment or late payment of CIT from the date when the tax becomes payable which based on sections 77 (2), (4) and (5) of the CIT Act is distinct from the time the return becomes due).

The tax authority may issue an administrative assessment where a taxpayer fails to file returns or as a result of underpayment arising from an audit investment. The minimum notice period to conduct an audit is 7 days. No notice period is stated for an investigation. Taxpayers can object to such assessment in line with the objection procedures in the relevant Acts. The penalties in the regulation are consistent with those under the principal Tax Acts<sup>204</sup>, but the situation that triggers these penalties are more stringent and in some cases not consistent with the principal laws where a taxpayer fails to file returns or pay the tax due the relevant tax authority shall impose penalties and interest on the taxpayer, agent or employer for late payment on the amount due<sup>205</sup>. The tax authorities cannot penalize agents for failure of the taxpayer especially given that the taxpayer appends the self assessment return forms and has a direct obligation to remit taxes due.

Appeal procedure was also provided for in situations where a taxpayer is dissatisfied with any administrative assessment levied on him under the established self

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<sup>201</sup> Self Assessment Regulation, 25

<sup>202</sup> Company Income Tax Act., 2007.

<sup>203</sup> FIRS Act, 2007.

<sup>204</sup> Ibid, Regulation 32

<sup>205</sup> Ibid, Regulation 30

assessment regime. He may seek redress by lodging an appeal with the appropriate tax office of the relevant tax authority responsible for the assessment<sup>206</sup>. If dissatisfied with the decision of the appropriate tax office of the relevant tax authority, he may appeal directly to the executive chairman of the relevant authority or its equivalent<sup>207</sup>. In the event that the assessment complained of remains unresolved, the taxpayer may appeal directly to the Tax Appeal Tribunal.<sup>208</sup> Any further appeal from Tax Appeal Tribunal may be lodged at the Federal High Court for resolution<sup>209</sup> and time within which to appeal or raise objection shall be as prescribed by the relevant legislation<sup>210</sup>.

Taxpayers are free to raise objection to any assessment which they believe are incompatible with the relevant tax laws or where they are of the opinion that such assessments were objectionable<sup>211</sup>. An objection can either be valid or invalid. A valid objection must be made in writing. It must be filed within the stipulated period of time (usually 30 days) and must state the precise grounds of objection. It must be accompanied with the relevant audited accounts and computations.

Any objection that fails to possess the quality of a valid objection is rendered invalid. Where all grounds of objection are rejected by the relevant tax authority a notice of refusal to amend the assessment is sent to the taxpayer. The taxpayer has the option to appeal within 30 days of the receipt of the notice of refusal to amend or pay the assessment<sup>212</sup>.

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<sup>206</sup> FIRS Act, 2007, Regulation 33 (a)

<sup>207</sup> Ibid, Regulation 33 (b)

<sup>208</sup> Ibid, Regulation 33 (c)

<sup>209</sup> Ibid, Regulation 33 (d)

<sup>210</sup> Ibid, Regulation 33 (e)

<sup>211</sup> Federal Inland Revenue Service, Informational Circular on Assessment Procedure, Last Assessed on February, 2013

<sup>212</sup> Ibid



Thus, self assessment does not do away with Government assessment. The two exist side by side. Government Assessment basically is to supplement self assessment where self assessment is not properly done for example where companies under declare etc.

The Service, in its bid to promote self assessment, initially did so in the form of Administrative guidelines but they were of limited effectiveness, not having the force of law. The enactment of the Tax Administration (Self Assessment) Regulations in December 2011 is commendable as it serves to clarify hitherto grey and cloudy areas relating to self assessment.

For Self Assessment to have root there is need for the government to streamline both filing systems. The tax practitioners, taxpayers as well as the tax administrators must be guided by enabling laws and regulations. Although the system works to provide a steady flow of revenue to the government, the awareness especially among small companies needs to be improved on.

Ahead of the due date for filing tax returns the Service is to ensure that the relevant tax return forms are available to taxpayers, the tax payer is aware of filing and payment obligations and sanctions for default, due date for filing method of payments documents to be attached interest and penalty for late filing and payment. All these should be provided in order to help the taxpayer determine their obligations under the law so that taxpayers are not unduly sanctioned for failure to file on due dates. It is also the responsibility of corporate tax payers to keep themselves informed of recent developments in the law as “ignorance of the law is no excuse”.

## CHAPTER FOUR

### Examination of Nigerian Tax Reforms

#### 4.1 Introduction

Reforms are deliberate changes aimed at improving structures and systems. Such improvements that generate changes are usually required when existing structures and systems are failing to satisfactorily achieve their objectives and when the circumstances change<sup>213</sup>. And sometimes, reforms can also be periodic habits even when there are structural systems' failures or circumstantial changes. Reform simply means to do things in a different way. It used to be done before now leading to the attainment of faster and better results.

#### 4.2 Background to the Ongoing Tax Reforms

The report of the Study Group on taxation set up in 2002 and the private sector Working Group of 2004 formed the basis for the ongoing reforms in the tax system. These reports identified the following challenges:

1. Delays in tax policy initiation and implementation;
2. Inadequate funding with the attendant result of lack of adequate infrastructure and equipment needed for modern tax administration;
3. Weak emphasis on capacity building;
4. Poor Remuneration;
5. Inadequate attention in rewarding and recognizing deserving staff;

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<sup>213</sup> Philips, D.(2004) 'Nigerian Tax Reform: which way forward? A paper presented at the 6<sup>th</sup> Annual Conference of the Chartered Institute of Taxation in Nigeria, held at Abuja, May 13, p.1

6. Inadequate attention and delays in discipline staff<sup>214</sup>.

Other militating factors against the running of an efficient and effective tax administration system include: obsolete and inadequate tax laws, wholesale corruption and corruption within the system. These reforms were further heightened in 2008 by the realities of the global economic meltdown and severe discipline in oil price and production levels<sup>215</sup>. The need for Nigeria to rebuild its tax system as a major source of sustainable revenue for country had become a critical requirement in the move for Nigeria to become one of the twenty largest economies by the years 2020<sup>216</sup>.

#### **4.3 Objectives of the Tax Reforms**

The objectives of the ongoing tax reforms include:

- i. Crafting a national tax policy that will set a common agenda for all government taxing authorities;
- ii. Achieving a more equitable tax system mechanism that will take cognizance of all income brackets within the Nigerian economy;
- iii. Building more efficient and effective tax administration systems;
- iv. Achieving increased voluntary compliance;
- v. Empowering the revenue agencies adequately;
- vi. Increasing tax revenue collection;
- vii. Eliminating obsolete tax provisions in the existing tax laws;

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<sup>214</sup> FIRS(2009), Towards a Modern Tax Agency, op. cit. p.34

<sup>215</sup> Ibid

<sup>216</sup> Ibid

viii. Eliminating multiplicity of taxation in accordance with the Nigerian Constitution<sup>217</sup>.

#### **4.4 Necessity for Tax Reforms**

Over the years, several factors have been identified as being the hindrances to the successful administration of tax system. These problems are in fact the reason for the ongoing reformation of tax system in order to give room for efficiency and ineffectiveness.

The following can be cited as the need for the reform agenda in Nigerian tax system: Wide gap between developmental needs and funding, high level of tax evasion, over reliance on oil revenue, weak and incapacitated poor administration and the desire to achieve other fiscal objectives, etc<sup>218</sup>.

To achieve these set goals therefore, a number of procedures must be put in place which is regarded as the tool needed to be used to attain these objectives. The procedures on the other hand, are to be applied on the identified roles and responsibilities of FIRS.

#### **4.5 Need for Tax Policy Reforms**

Over the years, several factors have been identified as being hindrances to the successful administration of tax system<sup>219</sup>. These problems are in fact the reasons for the drive and clamour for reformation of tax system in order to give room for efficiency and effectiveness.

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<sup>217</sup> FIRS(2009), Towards a Modern Tax Agency, op. cit. p.34

<sup>218</sup> Olajide, Y.O. op. cit. Retrieved May 1, 2011 from [www.olajideassociate.com/olajide/news604.htm](http://www.olajideassociate.com/olajide/news604.htm)

<sup>219</sup> Ibid

Firstly, there is a compelling need to diversify the revenue port folio for the country in order to safeguard against the volatility of crude oil prices and to promote fiscal sustainability and economic viability at lower tiers of government<sup>220</sup>.

Secondly, Nigeria operates on a cash budget system, where proposals for expenditures are always anchored to revenue projections.

Thirdly, Nigerian tax system is concentrated on petroleum and trade taxes while direct and broad-based taxes like the Value Added Tax (VAT) are neglected. This is a structural problem for the country's tax system<sup>221</sup>.

Fourthly, the widening fiscal deficit that over the years has threatened macroeconomic stability and prospects for economic stability and prospects for economic growth makes the prospect of tax reform very appealing<sup>222</sup>.

Fifthly, the study groups on the review of the Nigerian tax system in 1999 and 2003 highlighted the need to increase tax revenue and reduce expenditure as the major fiscal issues to be addressed. Though, the primary objective of the committees was to optimize revenue from various sources within the country.

Finally, the necessity to improve the tax notification procedure was underscored in order to facilitate effective evaluation of the performance of the Nigerian tax system and to promote adequate planning and implementation.

In spite of the importance of a result-oriented tax policy review for the country's attempts have not been made to assess development over the years.

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<sup>220</sup> Olajide, Y.O. op. cit. Retrieved May 1, 2011 from [www.olajideassociate.com/olajide/news604.htm](http://www.olajideassociate.com/olajide/news604.htm)

<sup>221</sup> Ibid

<sup>222</sup> Ibid

## **4.6 Tax Policy Reforms**

The policy objectives of any government tax system are aimed at achieving the following: creating a fair and equitable society, economic society free from distortion to investment decision, encourage a fair allocation of savings among investment opportunities, etc. It is also in the policy to reduce evasion and avoidance in the growth of underground economy and encourage voluntary compliance.

In this section, the researcher shall divide this policy reform into six categories namely:

- i. Legislative reforms
- ii. Administrative Reforms
- iii. Government
- iv. International agencies
- v. Media

### **4.6.1 Legislative Reforms**

1. The Federal Inland Revenue Service (Establishment) Act 2007

The emphasis of the Presidential Technical Committee on Tax Reform in Nigeria was on seven key areas namely: management of human resources, funding, composition of the Board, tenure of the board, tax refund, power of the Accountant General of the Federation to deduct unremitted tax at source and stiffer for infractions of tax laws.

- a. Management of human resources: Hitherto, the responsibility of managing the human resources of the Service was on the Federal Civil Service Commission, the Commission was responsible for recruitment, promotion, discipline and sundry

matters affecting employees of the Service. The Committee determined that the existing trend did not serve the needs of a modern and efficient organizational structure with special skill and recommended that powers of appointment, promotion and discipline should be conferred on the Service.

- b. **Secure and Sustained Funding:** For the service to drive the transformations required to be implemented there was need for sustained and adequate funding of the Service. However, in the light of the Supreme Court decision in *Attorney General of the Federation v Attorney General of Abia State and others No. 2*<sup>223</sup> the Supreme Court held that it is only after the distribution of the monies in the Federation Account amongst the Federal, States and Local Governments that these tiers of governments can validly make disbursements or deductions from their respective shares of the Federation Account. The Court further held that the practice of deducting NNPC's cash call payments as a first line charge was unconstitutional.

According to the Supreme Court:

*It has transpired also that other deductions are being made from the Federation Account in respect of Monies paid to the National Judicial Council for funding the Federal and State Judiciaries; for servicing external debts and for funding Joint Venture Contracts and Nigeria National Petroleum Corporation priority projects. All these deductions are carried out as first line charge for by the 1999 Constitution, ... so that even if any enactment has provided for them, like the Appropriation Act by the National Assembly, such enactment is inconsistent with the Constitution and is therefore invalid to the extent of the inconsistency.*

- c. **Offences and penalties:** Penalties already existed for infringement of the existing tax laws. However, most of the penalties having been in existence for so long were

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<sup>223</sup> (2002) 6 NWLR (Part 764) 542

no longer adequate in deterring anti-tax behaviour. The bill therefore proposed stiffer penalties than those contained in the prevailing laws.

- d. The bill for an Act to establish the FIRS as an autonomous agency passed by both Houses of the National Assembly in February 2007 as the Federal Inland Revenue Service (Establishment) Act 2007 and on 16 April 2007 the Act received Presidential Assent and assumed force of law.

#### **4.6.2 Administrative Reforms**

The reforms were also extended to the administrative angle of the tax system. There has been a restructuring of the field officers to have a one stop shop so that the tax payers can conveniently exercise their statutory obligations. The tax structures of the Service have also undergone reformation. The current structure of the Service (known as the Integrated Tax Office) is taxpayer focused and the aim is to be more responsive to the needs of the taxpayer and to elucidate a voluntary tax payment culture. It has led to the merger of offices and creation of one stop shop for improved service delivery to the taxpayer. This has lessened the burden of taxpayer who can transact their tax business at a single point instead of going to different tax offices for different services<sup>224</sup>. The review of the structure has led to the creation of new departments/units such as The Regional Coordination Department, Audit Department, Modernization Department, Investigation and Intelligence Department, and providing improved career opportunities to staff of the service.

Several changes have also occurred in the structure of the Service between 2007 and 2011; some Departments were demerged along functional lines where it was felt that

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<sup>224</sup> (2002) 6 NWLR (Part 764) 542



such demerged could best address the goals of the reforms. In June 2007, the management of the Service introduced the “group system” structure in which roles and functions cascade from the group levels to departmental levels down to units level and finally to individual levels. The five groups are as follows: Corporate Development Group (CDG), Support Services Group (SSG), Tax Operation Group (TOG), Compliance and Enforcement Group (CEG), Chairman’s Office Group (COG).

As a result of the organizational realignment of functions, over 2000 new job openings in specific skill driven areas, have been created with improved opportunity for career growth and development within the service delivery through training. The Service is encouraging staff without the required skills to acquire the necessary skills through institutional support for training and personal improvement of their competency levels. Also virtually all staffs have enjoyed specialized and issue specific training and study tours, within and outside the country in the last five years.

#### **4.6.3 Government**

The assistance of the government is surely needed for dividend to be seen in many tax systems. It therefore has rendered tremendous support to the entire FIRS reform process. The fast and quick tracking of the process of approval of the FIRS Draft Bill and other eight (8) amendment Bills was done through the special presentation section of the Federal Executive Council and setting up of a Presidential Technical Committee to review the proposals put forward by the FIRS<sup>225</sup>.

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<sup>225</sup> Source: FIRS, Abuja

#### **4.6.4 International Agencies**

Apart from the support of the government, several international donor agencies (IDA) have also made their inputs. This trend is already changing the tax system performance. The World Bank has rendered or granted \$8 million in support of the reform agenda, as part of the \$140 million economic reform and government project<sup>226</sup>.

The Open Society Initiative (OSI) formed by George Soros has also made a pledge of \$1 million towards the reform. Another agency has also agreed willingly to the financing of some of the reform project at the Joint Board Tax Board (JTB) to give training support to JTB. The agency offered to train three (3) FIRS staff slated for a workshop in “risk assessment and audit strategies in tax administration”<sup>227</sup>.

Other international agencies who also pledged their commitment include the International Monetary Fund (IMF), the British High Commission, and the European Union.

#### **4.6.5 Media**

The media is also not left out here in the reform strategies. There is a lot of solicitation going on in the media to ensure that the reform of our tax system has sustainable success. They are to pass correct information about tax issues to members of the public to enable them imbibe the good habit of voluntary compliance to the tax laws. Other areas include self assessment programme, rendition of tax reforms, taxing the affluent, enforcing and monitoring.

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<sup>226</sup> Source: FIRS, Abuja

<sup>227</sup> Ibid

Financial constraint is a major factor facing the reformation process. Most of the expected funds including the 4% non-oil collection approval are not yet assessable. Human resource is another factor which also draws the problem of inaccessibility of the pledged facilitator capability builders are not yet recruited<sup>228</sup>.

#### **4.7 Past Efforts of Tax Reforms**

Since the main theme is *Tax Sector Reforms in Nigeria* it is only pertinent that this sub-section will briefly appraise some past efforts at Tax Reforms in Nigeria. Quite a number of countries have had tax reforms: Tanzania (1995) - the base of her Sales Tax was widened to include services. In New Zealand in 1995, there was a reform in the country's Foreign Investment Tax Credit (FITC). Bolivia's 1990 reforms focused on Indirect Tax system<sup>229</sup>.

The current reform is not the first attempt by the government to address deficiencies identified in the Nigerian Tax System over the years. Several tax reforms have taken place in the Nigerian Tax System between 1978 and 2012<sup>230</sup>. The analysis of these reforms shall be divided into two periods: pre-2007 and post-2007.

##### **4.7.1 Tax Reforms Pre-2007**

###### **4.7.1.1 1978 Tax Reform - Tax Force on Tax Administration**

In 1978, a Tax Force on tax administration headed by Alhaji Shehu Musa was set up by the Federal Government. The Task Force was requested amongst others to: examine the resources of tax revenue and the structure of tax administration in Nigeria, assess the

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<sup>228</sup> Source: FIRS, Abuja

<sup>229</sup> Somorin, T.(2010) op. cit. p. 2

<sup>230</sup> Sani, A.(2005) op. cit.

effectiveness in the management of existing taxes both at the Federal and State levels and suggest ways and means of making the administration of the tax system more effective.

The thrust of the reforms include: Introduction of the Withholding Tax Regime, Imposition of ten (10) percent special levy on banks' excess profits, imposition of 2.5 percent turnover tax on building and construction companies. These recommendations were accepted by the Federal Military Government and incorporated into Companies' Income Tax decree No. 28 of 1979<sup>231</sup>. It is in operation till date together with later amendments, now known as CIT (Amendment) Act, 2004, Act to amend the Companies Income Tax Act CAP., 60 LFN, 1990 2007 LFN 2004<sup>232</sup>.

#### **4.7.1.2 1991 Study Group on Nigerian Tax System and Administration**

In 1991, a Study Group on the Nigeria System and administration headed by Professor Emmanuel Edozien was set up to review the tax system and make recommendations. The recommendation of the 1991 Study Group led to the establishment of the Federal Inland Revenue Service (FIRS) as the operational arm of the Federal Board of Inland Revenue (FBIR). This was made possible through the Finance (Miscellaneous Taxation Provision) Act No. 3 of 1993<sup>233</sup>. The Act also created the office of the Executive Chairman of the Board and also established State Boards of Internal Revenue for all the States of the Federation as well as Local Government Revenue Committee for the Local Governments in the country<sup>234</sup>.

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<sup>231</sup> Sani, A.(2005) op. cit. see also Omogui- Okauru,I.(2012) op.cit and Somorin, T. (2010) op.cit p. 3

<sup>232</sup> Somorin, T. (2010) Ibid

<sup>233</sup> Ibid

<sup>234</sup> Paragraph 32 (a) and (b), Ibid

There was the recommendation that tax authorities should be completely removed from the Civil Service structure to give it greater autonomy and to enable it operate with the efficiency typical of a commercial outfit<sup>235</sup>. Government agreed to the recommendation with some modifications and directed that tax officials needed to be better treated hence an autonomy similar to the Ghana Revenue Service which is already partially in place in Nigeria be accorded to the Nigeria Revenue Service to enable them carve out at least a separate fringe benefit package to be worked out administratively with the approval of the Honourable Minister of Finance, to enable them operate more efficiently and to be able to attract more qualified persons into the Board.

Other changes brought about by the reform were: *Personal Allowances* increased from ₦2,000.00 to N3,000.00 plus 15% of earned income, *Children Allowance* increased to N500.00 from N400.00 per child. Maximum of 4 children, *Wife Allowance* abolished and enhanced personal allowance was approved to take care of the loss. Wife allowance was abolished because it generated complaints, people said it was discriminatory and should be changed to “spouse allowance” *Tax Rates* reduced from 55% to 45% *Tax Clearance Certificates* to be issued within 2 weeks of application or reasons to be given for denial *Capital Allowance* clarification on claim of Capital Allowance with respect to equipment leasing; provided that for “finance leases”, the lessee should claim the Capital Allowance and for “operating lease” the less or is to claim the Capital Allowance<sup>236</sup>.

In 1992, a Study Group on indirect taxation headed by Dr. Sylvester Ugoh was again set by the government; the recommendations of the group provided the basis for the direction of the focus of the Nigerian Tax Policy away from direct to indirect taxation. As

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<sup>235</sup> Paragraph 142 (I), Main Report of the Study Group on Nigerian Tax System in Nigerian Tax Reform in 2003 and Beyond

<sup>236</sup> Somorin, T.(2010) op cit. P.4

a result of this, Value Added Tax (VAT) was introduced in Nigeria in 1993 through the promulgation of the Value Added Tax Decree No. 102 of 1993<sup>237</sup>.

On 29 May 1999, the Military Government of General Abdulsalam Abubakar handed over power to the democratically elected government of President Olusegun Obasanjo. The new government identified sectors that were in critical need of reforms and the economy was the centre piece of the reform agenda. The tax system was identified as one of the areas that needed intervention within the context of the government economic development blueprint [The National Economic Empowerment Development Strategy (NEEDS)]. it was within this context that the 2002 Study Group on the Nigerian Tax System was delivered.

Another landmark reform that took place in our tax laws was the introduction of self assessment scheme, a system widely acclaimed as an effective system of assessment in countries like USA, Canada, Japan and New Zealand<sup>238</sup>.

The self assessment tax regime, though a part of the Nigeria tax system since 1992, had suffered setback in its implementation due to lack of understanding of its concept among tax officers and taxpayers. It was embraced only by big enterprises that stand to gain from the 1% filing bonus and the installment payment concessions it confers. The problem with this system was the law; long after the programme was introduced into the Nigerian tax system, there was no legal backing. It was implemented on administrative basis. When, at last the law came, it introduced confusion and uncertainties into the applicability of the self assessment system as a tax measure which otherwise would have enhanced the level of voluntary compliance in the country for the self assessment to have

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<sup>237</sup> Cap. VI Laws of Federation of Nigeria, 2004

<sup>238</sup> Somorin, T.(2010) op cit. P.5

root, the Act as it is now, has to be comprehensively reviewed. The law, as it is, provides for the operations of a self assessment within a government assessment structure. This is comparable to putting a new wine in an old wine skin.<sup>239</sup> One would definitely spoil the other. New rules must be made for the new programme for effectiveness.

#### **4.7.1.3 2002 Study Group on Review of Nigerian Tax System**

The Nigerian government confronted the problems of inefficient tax administration by setting up in 2002 yet another study group to review the tax system. Notable among the Terms of Reference of the Group were: review all aspects of the Nigerian Tax system and recommend improvements therein; review all tax legislations in Nigeria and recommend amendments where necessary; review all assessments and collection procedures including payment procedures, objection and appeal procedures and Court proceedings and recommend appropriate improvements; consider and recommend the possibility of the grant of operational and financial autonomy to the Revenue Authorities, review and recommend the jurisdiction and scope of Tax Authorities at the Federal, States and Local Government levels<sup>240</sup>.

The report contained 275 recommendations, 127 amendments to existing laws and constitutional amendments<sup>241</sup>. It recommended a complete reform of the tax system through the review of the tax laws and the granting of autonomous status to the Service. Government accepted the recommendations and approved increased autonomy for the Service outside the Civil Service in human resources development and funding with increased enforcement powers to be codified in an FIRS Charter. Government also

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<sup>239</sup> Arogundade, J.A.(2005) op. cit. p. 316

<sup>240</sup> Ibid

<sup>241</sup> Philips, D.(2003) Nigerian Tax Reforms in 2003 and Beyond, op. cit. p.2

approved the harmonization and realignment of sanctions in the various tax laws and to eliminate, as much as possible, the multiplicity of taxes.

#### **4.7.1.4 National Tax Policy**

After the submission of the Report, a private sector Working Group (WG) reviewed the recommendations of the Study Group, addressed macro and micro issues in tax policy and the outcome of the meetings and consultations was *“a general agreement that Nigeria is in need of a National Tax Policy which will prescribe a set of guiding principles and also provide a stable point of reference which all stakeholders in the tax system can refer to...<sup>242</sup>”*

It is expected that the National Tax Policy and other tax legislation would resolve the issue of who collects what, how it is collected, who controls what is collected, how what is collected is shared, who is responsible for spending what is collected and who is ultimately responsible and accountable to the taxpayers for the revenue collected and its expenditure.

The Tax Policy would provide a workable and acceptable platform which should be adopted by all tiers of Government for the proper application of the doctrine of separation of powers in relation to taxation. It is believed that adherence to these principles would bring an end to disputes on the limits and powers of the tiers of Governments in our Federation on fiscal matters. It will also bring clarity and certainty to tax administration and the entire Nigerian tax system.

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<sup>242</sup> Somorin, T.(2010) Op cit p.6



In putting together a National Tax Policy, it was paramount to uphold the concept of Federalism, as practiced under the Nigerian Constitution. The National Tax Policy has been approved by the Federal Executive Council and it is being considered by the National Assembly<sup>243</sup>.

#### **4.7.1.5 Tax Bills**

Another outcome of the 2002 Review was the setting up of the Presidential Committee on October 18, 2004 to review the tax laws. Precisely in 2005 the above step crystallized into the recommendation of nine Tax Bills through the Federal Executive Council to the National Assembly. This was the first comprehensive amendment to tax laws passed in the last 20 years. Of the nine bills debated at the national assembly, one bill on the amendment of the Education Tax Act was withdrawn and four Bills were signed into law in April 2007. Amongst which are: The Federal Inland Revenue Service (Establishment) Act, 2007, Companies Income Tax (Amendments) Act 2007, Value Added Tax (Amendments) Act, 2007, National Automotive Council (Amendment) Act 2007 and the Company Income Tax Act. The most notable and impacting on tax administration is the FIRS (Establishment) Act 2007 which provided a solid basis for pursuing improved tax administration with increased vigour. According to the Chairman of the Service, their active participation in the ongoing review of the fiscal provisions of the petroleum industry has encapsulated in the Petroleum Industry Bill that is before the National Assembly. Furthermore, the Service is working on a further wholesome internal review of all tax laws for further improvement.<sup>244</sup>

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<sup>243</sup> Somorin, T.(2010), Op cit p.6

<sup>244</sup> FIRS(2009), Towards A Modern Tax Agency, op. cit. p. 35

## **4.7.2 Tax Reforms Post 2007**

### **4.7.2.1 The Laws Reviewed**

As a follow up to the Tax Law Review, Tax Consultants, the International Monetary Fund (IMF) mission on tax administration, the Federal Ministry of Finance, the Economic Management Team, the management of the Federal Inland Revenue Service and a range of other stakeholders made input into the recommendations of the two groups and the auspices of the Open Society Initiatives (OSI)<sup>245</sup>. These inputs were incorporated into the tax reforms documents and by August 2004, the FIRS had distilled an agenda for the implementation of the reforms. The main objective of the reform was to diversify the revenue base of government beyond oil and oil related sources. One of the highlights of the reform agenda as presented to Federal Executive Council by the Executive Chairman was that the Nigerian tax administration system should be reformed by adopting the following measures:

- i Making the FIRS autonomous with respect to funding, procurement, recruitment and remuneration.
- ii Reviewing the organizational structure of the FIRS and ensuring the computerization of its operation.
- iii Reduction of tax evasion
- iv Abolition of levies imposed by regulatory bodies which constituted incidence of double taxation and
- v The discontinuation of the use of tax consultants for revenue collection by government and all level.

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<sup>245</sup> Omoigui-Okauru, I.(2012) op.cit p. 19

Nigerian Tax Laws are being rewritten to simplify them. The recent economic reforms of the Nigerian government have brought about changes in the tax environment to ensure effective administration and efficient tax drive at all levels. To this end, amendments to the relevant Tax Acts have been recently passed to law by the National Assembly in Nigeria. This information has been prepared to serve as a guide and as a form of tax planning to ensure compliance to the relevant sections of the law. The Tax Amendment Bills passed to Act on 23 April 2007 are: The Companies Income Tax Amendment Act 2007 Income Tax, Value Added Tax Amendment Act 2007 and FIRS Establishment Act 2007.

Below are the highlights of the new changes to the relevant tax laws:

### **1. Income Exempted from Tax**

The profit of any company established within an Export Processing Zone or free trade zone is to be exempted from tax provided that 100% production of such company is for export otherwise tax shall accrue proportionately on the profit of the company<sup>246</sup>.

### **2. Donations Allowed**

The new amendment has approved any amount of donation made to a University, Tertiary or Research Institution for either research or developmental purpose as tax deductible. Such amount of donation shall be treated as tax deductible notwithstanding that the donation is of a Revenue or Capital nature, and shall not exceed an amount which is equal to 15 per cent of the total profits or 25 per cent of the payable in the year of the donation, whichever is higher<sup>247</sup>.

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<sup>246</sup> Companies Income Tax Act (CITA), CAP C21 LFN, 2004 Section 19,

<sup>247</sup> CITA, 2004 Section 21 (a) (i),

### **3. Investment Tax Credit (ITC)**

The new amendment has also abrogated the claims of Investment Tax Credit on plant and machinery in addition to capital allowance<sup>248</sup>.

### **4. Payment of Pro-Operational Levy**

A Company which is yet to commence business after at least six months of incorporation shall for each year pay a levy of: N20,000 for the first year ;and N25,000 for every subsequent year before a tax clearance certificate can be issued<sup>249</sup>.

### **5. Penalty for Failure to File Annual Returns on Due Date**

The new amendment provides direction on the requirement for the submission of audited accounts as stated below: The penalty for late filing has been increased to N25,000 at the first instance and N5,000 for each subsequent month for as long as lateness continues<sup>250</sup>.

### **6. Bonus for Early Filing of Self Assessment Returns.**

The amendment has also repealed the provision of 1% bonus payment on the ground that, since 1998 all Companies are mandated to file self - assessment returns. Companies will no longer be entitled to claim the bonus for prompt submission of accounts<sup>251</sup>.

### **7. Tax Refund Requirement.**

The new amendment has also created an avenue for tax refunds to be paid to deserving tax payers. After a proper audit conducted by the Service of the overpayment of

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<sup>248</sup> Ibid, Section 28 (f),

<sup>249</sup> Ibid, Section 29,

<sup>250</sup> Ibid, Section 41 (6)

<sup>251</sup> Ibid, Section 41 (a)

tax due any refund established shall be made within 90days of the decision, with the option of setting off against future tax by the tax payer<sup>252</sup>.

#### **8. Rendition of Withholding Tax Returns (WHT)**

The amendment has reviewed the time period within which WHT should be made to the revenue authority from 30 days to 21 days. Also the penalty for late rendition has been reviewed downward to 10% from the initial 200% of the amount not deducted in addition to the principal sum, plus interest at prevailing commercial rate. The imposition of the sanction is no longer tied to conviction<sup>253</sup>.

#### **9. The National Technology Development Agency Act 2007 (NTDA).**

Furthermore, the National Assembly has also passed the National Technology Development Agency Act 2007 (NTDA). The Act imposes a levy of 1% on the profit before tax of Companies<sup>254</sup>.

#### **4.7.2.2 Companies Income Tax (Amendment) Act 2004**

The amendments includes: The old Federal Board of Inland Revenue (FBIR) has been replaced with Federal Inland Revenue Service Board (FIRSB). The provisions of Part X of CITA relating to the Body of Appeal Commissioners have been deleted in view of the establishment of the Tax Appeal Tribunal under the new FIRS Act. The Amendments in the new section provides a new basis for ascertaining the profit of Insurance Companies, Removal of 4 years restriction for carrying loss forward (deleting S.27 (iii))<sup>255</sup>.

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<sup>252</sup> Ibid, Section 63(5),

<sup>253</sup> Ibid, Section 64

<sup>254</sup> Ibid, Section 12(a)

<sup>255</sup> Company Income Tax Act (CITA), 2004 see also Somorin, T. Op cit. at P.8 Section 14

## Overview of the Tax Amendments

- i. Losses can be carried forward indefinitely
- ii. Information Technology Tax of 1% enacted
- iii. Oil and Gas industries to Withhold VAT
- iv. 1% bonus on self assessment replaced
- v. Tax refund now possible in 90 days
- vi. FIRS quarterly returns for Banks
- vii. Insurance companies new tax provisions
- viii. Withholding tax penalty reduced to 10% from 200%
- ix. FIRS Establishment Act

### 4.7.2.3 FIRS Establishment Act 2007

The FIRS (Establishment) Act established the FIRS as a juristic person who may sue or be sued in its corporate name, unlike under the former provision which regarded the Board and not the Service as juristic person.<sup>256</sup> Funding is to be obtained from a percentage to be determined by the National Assembly from all non-oil revenue sources<sup>257</sup> FIRS is mandated to establish Tax Refund Account from which there shall be refund to tax payers on any over payments of taxes due to remittance after proper auditing has been carried out. The ongoing reform in the Nigerian tax system has yielded huge dividend to the government, for example the Service says it collected and remitted about ₦29.99 billion in taxes due to the FCT administration for the year 2011<sup>258</sup>. The FIRS Act further provided

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<sup>256</sup> FIRS (Establishment) Act. 2007, Section 1 (2)

<sup>257</sup> Ibid, Section 15

<sup>258</sup> 'FIRS reforms yields ₦30 billion tax remittances from Federal Capital Territory'. Retrieved June 12, 2011 <http://premiumtimesng.com/business/3896.FIRS.remittances>

for approved refund to be made within 90 days from the date of decision, wide powers to enforce the payment of tax liabilities, power to call for returns, books, documents and information, further returns and payment of tax due from tax payers, power to impose various penalties and proceed to enforce payment of such debts. Of importance also is the fact that the Service can also carry out search and seizure procedure on erring tax payers. This procedure carried out on some taxpayers within the Federal Capital Territory, Abuja yielded a lot of success<sup>259</sup>.

#### **4.7.2.4 Power to Distraint**

The power of Distraint can be utilized in the enforcement of tax payment of tax due from a tax payer where an assessment has become final and conclusive and a Demand Notice in accordance with the tax laws been served on the tax payer. This is provided for in Sections 33 and 36 of the Federal Inland Revenue Service (Establishment) Act. Under these Sections, special purpose tax officers can provide assistance to any relevant Law Enforcement Agencies. The FIRS has been utilizing this power in levying an Order of Distraint on some Companies and the exercise has generated substantial revenue<sup>260</sup>.

#### **4.7.2.5 Establishment of Tax Appeal Tribunal (TAT)**

The Federal Inland Revenue Service (Establishment) Act, 2007, provides a robust and official dispute resolution mechanism, i.e. Tax Appeal Tribunal which now covers all taxes. This tribunal provides for all tax payers with the opportunity for redress if dissatisfied with the decision by the relevant revenue authority. In the case of Personal

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<sup>259</sup> FIRS (Establishment) Act, 2007, Section 27 (2)

<sup>260</sup> Somorin ,T.(2010) Op cit. P.7

Income Tax where, states have not set up any independent dispute resolution machinery, this tribunal will also be available for such appeals and provides a cheaper avenue than the court system<sup>261</sup>. This notwithstanding, taxpayers, dissatisfied with the dispute resolution mechanism provided are at liberty to pursue their cases further at the Federal High Court, Federal Court of Appeals and Supreme Court as may be required<sup>262</sup>.

The FIRS Act is vested with the power to settle disputes arising from the operations of the Act. Hitherto, tax disputes were referred to the VAT Tribunal, the Body of Appeal Commissioners and the Federal High Court. However with the FIRS Act, the TAT is the first line of adjudication from where appeal will lie to the Federal High Court. The Tribunal shall consist of five members Appeal commissioners to be appointed by the Federal Minister of Finance<sup>263</sup>.

#### **4.7.2.6 Value Added Tax (Amendment) Act 2007**

An important landmark in tax reform in Nigeria was the adoption of the Value Added Tax (VAT) in January through the VAT Act No. 102 of 1993 but its implementation actually began in January 1994. Since its introduction, 15 of the 42 sections of the Act have been amended. Some of the considerations driving the amendment of VAT Act include the need to simplify the administration of the Act, introduce more accountability and use the Act to introduce some relief in order to stimulate growth and ensure that more income is generated from this source and to bring the Act into conformity with the FIRSEA 2007. For instance, Nigeria realized ₦659 billion in 2011 as

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<sup>261</sup> Question and answer with FIRS Chairman. Retrieved November 10, 2012 from [www.proshareng.com/articles/.../Question\\_and\\_Answer\\_with.FIRS.Chairman](http://www.proshareng.com/articles/.../Question_and_Answer_with.FIRS.Chairman)

<sup>262</sup> Ibid

<sup>263</sup> FIRS Act, 2007, Section 59



revenue from Value Added Tax VAT up from ₦163 billion which the country realized in 2004. This represents an increase of about 400 percent and overall it has been the third highest contributor to tax collection in the last eight years behind Petroleum Profit Tax and Company Income Tax. These were disclosed by the acting Executive Chairman of the FIRS, Alhaji Kabir Mansir at VAT stakeholders meeting in Abuja<sup>264</sup>.

In the case of Halliburton<sup>265</sup>, a landmark judgment was passed where Tax Appeal Tribunal exempted Halliburton from paying \$167.7 million as tax to FIRS, Nigeria. There was a notice of assessment dated the 24th February, 2009 exhibits 'HE 3: The Respondent raised an assessment of US \$167,700.00 being 30% of US \$559,000 which it described as 'Disallowed expenses' and "profits". By way of clarification the Respondent sent a covering letter dated 25<sup>th</sup> February, 2009 exhibits "HE4".

The Appellant objected to the assessment, by its letter dated 3<sup>rd</sup> March 2009, exhibit 'HE5' which was rejected by the Respondent's letter of 17<sup>th</sup> March, 2009. The Notice of Refusal to Amend exhibit 'HE6' was served on the Appellant on 19<sup>th</sup> March, 2009 where upon it filed the present appeal by Notice of Appeal dated 16<sup>th</sup> April, 2009.

The appeal succeeded and the assessment raised on the Appellant by the Respondent was set aside on the ground that the said assessment is defective as being speculative, contradiction and inconsistent with the relevant tax laws and that while foreign companies may be liable to the imposition of tax in Nigeria in appropriate cases Halliburton Insurance USA is not chargeable to tax in Nigeria with regard to the fine it paid to the American Government in the circumstances of the case.

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<sup>264</sup> Retrieved November 12, 2012 from <http://dailyindependentng.com/2012/11/nigerian-earn-695b-VAT-earn>

<sup>265</sup> Retrieved June 12, 2012 from <http://www.kslegal.org/wp.content/upload/2012>

The Service now has powers to by Notice determine and direct Companies operating in the Oil and Gas sector to deduct VAT at source and remit same to the Service. The new Section 11A now requires a taxable person who makes a supply to furnish the purchaser with a tax invoice containing the following:

- i. Tax Payer Identification Number (TIN)  
Name and Address of tax payer
- ii. VAT Registration number Date of supply Name of client or purchaser
- iii. Gross amount of transaction
- vi. A Tax charged and rate applied<sup>266</sup>.

#### **4.8 Ongoing Reforms of FIRS**

The Service has embarked on several modernization projects that would plug many, if not all leakages and make revenue collection or voluntary compliance easy. The Service has issued Tax Identification Numbers (TIN) to all Companies and taxpaying individuals in the Federal Capital Territory<sup>267</sup>. They have also collaborated with state to issue what is known as it TIN. And this will make tax shopping difficult. The Service has developed what is known as Integrated Tax Administration System (ITAS) that will consolidate all out tax administration, automation and modernization projects. The Service has also launched online payment that makes it easy for taxpayers to pay from the comfort of their homes on internet enable portals.

However, to reduce delay remittances and incidences of trapped funds, the Service have signed new agreements with lead and collecting banks and spelt out penalties that

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<sup>266</sup> Somorin, T.(2010) Op cit. p.8

<sup>267</sup> FIRS(2009). Towards a Modern Tax Reforms, op.cit p. 37

will follow, should the banks fail to adhere to the regulations under these agreements<sup>268</sup>. The Service have requested all banks to submit to the Service a list of all their corporate taxpayers to enable them issue Taxpayer Identification Numbers (TIN) to them, new remuneration package was also introduced to ensure that staff are not tempted to tinker with collectible funds or assessment.

#### **4.8.1 Taxpayer Identification Number (TIN)**

The Taxpayer Identification Number (TIN) is a 14 digit sequential number generated electronically as part of the registration process of the Service and assigned to all taxpayers whether they are Companies, Enterprises or individuals. The idea is to enable each taxpayer have a unique identification mode. This is also in line with the Service mandate of the Federal Inland Revenue under the FIRS (Establishment) Act 2007 stipulates that the FIRS shall issue a Taxpayer Identification Number to every taxable person in Nigeria in collaboration with the State Boards of Internal Revenue and Local Government Councils. The TIN has been a major success on the part of the FIRS and it has been widely embraced by corporate entities<sup>269</sup>. The best step is to extend the registration to all taxable individuals including those under the jurisdiction of the State Boards of Internal Revenue. This project is currently being run by the Joint Tax Board with the assistance of the FIRS and the SBIRs. This is called U-TIN, The Joint Tax Board JTB was privileged to brief State Governors at their last meeting early July. The JTB also made a presentation to the National Council of State.

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<sup>268</sup> FIRS(2009). Towards a Modern Tax Reforms, op.cit p. 37

<sup>269</sup> Ibid

It is expected that when the TIN is fully operational nationwide, it would enable the Service and State Board of Inland Revenue (SBIR) have complete and the accurate data of their taxpayers<sup>270</sup>. The number would be quoted on every documents executed or transaction carried out by the taxable person. This will lead to greater voluntary compliance, reduction in the cost of compliance for taxpayers and the tax authorities and increased tax collection<sup>271</sup>. It would also expand Nigeria's tax system and bring it in line with international best practices. In addition, the TIN could be used for National Planning and Security Purposes. The FIRS worked with the Senate and House Committees on Public Accounts who have been fulfilling their constitutional mandate to ensure that erring tax payers are brought to book.

Pursuant to Section 33 of Federal Inland Revenue Service (Establishment) Act 2007, the Service embarked on distraint exercises on some Companies in Ogun, Lagos, Osun, and Benue States in the month of May 2009. As consequence of these activities the sum of \$108.4M and ₦1B resulting in a total amount of about ₦16.8B was paid to the Service<sup>272</sup>. Additional payments were made in June 2009 and agreements were also reached with three of the Companies involved for conclusion of reconciliation effort and finalization of liabilities due for payment<sup>273</sup>. The FIRS also audited companies suspected to be evading taxes due and it is suspected that this would lead to further enforcement action in the months ahead.

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<sup>270</sup> FIRS(2009). Towards a Modern Tax Reforms, op.cit p. 37 see also Question and Answer with FIRS Chairman

<sup>271</sup> Question and Answer with FIRS Chairman, Ibid

<sup>272</sup> Ibid

<sup>273</sup> Ibid

#### **4.8.2 An Expansion of Treaty Network**

Up to 2004, Nigerian had signed tax treaties with only eight countries namely United Kingdom, France, Canada, Belgium, Romania, Pakistan, Netherlands and Italy. The tax treaty with Italy is on transportation only<sup>274</sup>. This constitutes a very small pool of countries and does not augur well for the expansion of Nigerian businesses as well as investors, desirous of investing in Nigeria. Accordingly, one major area of focus is to expand treaty network. Within the last five years Nigeria has finalized tax treaties with South Korea, South Africa, Spain, China and Sweden. While the Service is working with the following countries to conclude treaty negotiations: Bulgaria, Mauritius, Russia, India, Ethiopia, Syria and Iran<sup>275</sup>.

#### **4.9 An Overview of the Tax Reform**

1. Tax reforms carried out in major areas are:-
  - i. Tax policy
  - ii. Tax legislation
  - iii. Tax administration
2. The FIRS strategic plan (2004 -2007) was articulated and implemented.
3. The implementation of the 2008-2010 plan is ongoing.
4. Effective funding has been channeled to the tax system, FIRS now retains a percentage of its collection.
5. Improvement in the tax system achieved through legislative, administrative, and policy reforms.

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<sup>274</sup> FIRS (2009). Towards a Modern Tax Agency, op.cit. p.38

<sup>275</sup> Ibid

6. Several legislations have been passed into law that is, the first comprehensive amendments to tax laws in two decades.
7. Autonomy granted to the Federal Inland Revenue Service.
8. First National Tax Policy awaiting approval by the Federal Executive Council.
9. Holistic reorganization of operations has been undertaken.
  - a. New groups and units were created with specialized functions. E.g. Audit and enforcement functions are being enhanced.
  - b. One stop offices have been created- Integrated Tax Office (ITO) and Large Tax office (LTO).
  - c. Employees are to be recruited in specialized fields and over 2000 jobs openings are being filled.
  - d. Units are now more cohesive and inter-linked.
10. Automation of systems has been carried out.
  - a. Electronic registration of taxpayer through Tax Identification Number (TIN).
  - b. Electronic payment and remittance systems were installed and have minimized or plugged leakages in tax collection system.
11. An integrated Tax Administration Systems (ITAS) is being implemented.
12. Capacity building initiatives are being implemented
  - a. Training policy in place
  - b. Training and retraining of employees at all levels is ongoing.
  - c. Identified skills gaps are constantly addressed.
  - d. Improved staff remuneration, welfare and general working conditions.
13. FIRS has also facilitated increased inter-agency collaboration.

14. With reference to tax collection, tax revenue grew slightly from ₦1.2 trillion (about \$7.9 billion) in 2004, to over ₦4.6 trillion (over \$30 billion) in 2011 (over 4 times the collection figure of 2004). This represents growth in both oil and non oil revenue<sup>276</sup>.
15. Other projects conceptualized and in progress include data integration with the Nigerian Custom Service, Corporate Affairs Commission, various information and communications technology project, VAT collection automation, contact management centre, ISO certification, internal management documents system and the business process reengineering of tax and non-tax processes. Manuals are also been developed for various tax administration functions in the Service<sup>277</sup>

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<sup>276</sup> Tax Reform for Foreign Investors in Nigeria, Retrieved November 29, 2009 from [www.nbf-swiss.org/.../tax-incentives](http://www.nbf-swiss.org/.../tax-incentives) -in-Nigeria. last assessed on 29/11/09.

<sup>277</sup> *ibid*

## **CHAPTER FIVE**

### **Summary, Recommendations and Conclusions**

#### **5.0 Summary**

#### **5.1 Introduction**

The thesis, which concisely examines the Reforms in Tax Administration System in Nigeria under the Federal Inland Revenue Service (Establishment) Act, 2007 (FIRS, Act) with particular emphasis on the tax reforms in the administration, is in five chapters.

The first chapter examines the history of taxation in Nigeria which is traceable to the reforms initiated in the first decade of the 20<sup>th</sup> century. The enactment of the FIRS Act in 2007 and the granting of financial and administrative autonomy to the FIRS was an actualization of some of the reforms initiatives that arose from the recommendations of the Study and Working on Nigerian Tax Systems. The scope of the research is limited to the period covering 1978-2012. The second chapter centers on the conceptual clarifications of key terms such as taxation, administrative reforms, objectives and principles of the Nigerian Tax System. The research noted that the tax administrative reforms in Nigeria were necessitated by wide gap between development needs and funding; high level of tax evasion; over reliance on oil revenue; weak and incapacitated poor administration of tax and the desire to achieve other fiscal objectives.

In chapter three, we examined the past attempts by the Federal Government to reform the tax system, and the impact of the tax reforms under the FIRS Act on the tax administration at the Federal level together with the gaps and challenges being faced in the implementation of the reforms, it examines the law and its implication as well as its effect on other existing tax legislations in Nigeria. Chapter three also discussed the challenges



posed by the pre-2004 structure as a result of which a new organizational re-structure was introduced which is known as the Integrated Tax Office (ITO), the modernization of the Service and the changes brought by the modernization was also looked at. Chapter four dealt with some past efforts at Tax Reforms as well as on-going efforts, that is, improvement in the tax system achieved through legislative, administrative and policy reforms; the grant of autonomy to the FIRS; automation of systems; electronic registration of tax payer through Tax Identification Number (TIN); the aggressive use of modern information technology, while the last chapter summarises the thesis, makes findings and proffers recommendations.

## **5.1 Findings**

Based on this research, it is found that:

- i. A major achievement of the recent tax reforms is the entrenchment of Self Assessment Regime as a means of generating revenue and saving costs. While the Tax Administration (Self Assessment) Regulation (TASAR) 2011 made Regulations to set out the processes and procedures that would guide the implementation of the Self Assessment Regime (SAR) in Nigeria and introduced some level of consistency in the filling of self assessment tax returns, for instance, the requirement for Company Income Tax (CIT) return forms to be signed by a director/company secretary as always existed in the CIT Act, but has never been strictly enforced. The implementation of the requirement under the TASAR represents a shift from the current practice, where CIT return forms are signed by any authorized officer of the company such as Financial Controller, Finance Manager or tax manager but the conflict between the regulations and section 77(5)

of the Company Income Tax Act as it relates to the time for payment needs to be amended and that of Regulations 18 of the TASAR on payment of self assessed tax which is seen to be the most controversial of all the provisions, for example Regulations 18, suggest that tax must always be paid by the due date of filling returns, to avoid penalties and other sanctions and this contradict the provisions of CIT that allow taxpayers to pay their taxes after filling deadline. The enabling section 61 of the Federal Inland Revenue Service (Establishment) Act only grants power to the FIRS Board to make rules and regulations for giving full effect to the provisions of the law and not to amend relevant tax laws. Therefore any provisions of the regulations which run contrary to the relevant laws will be of no effect.

- ii. The taxation of the solid minerals sector is a major area that demands the vigorous efforts of the FIRS in collaboration with the Ministry of Mines and Solid Minerals. Measures have to be developed and equipment procured to verify the production. Furthermore, while self-assessment by the companies is welcome, there ought to be proper verification by the FIRS and other regulatory agencies as doing otherwise would amount to leaving a loophole for unscrupulous operators. There is also the need to upwardly review the royalties approved price list to reflect current market realities and increase the revenue accruing to the government.
- iii. The research found that low level of voluntary tax compliance among Nigerians is largely ascribed to weak and unfriendly tax administration in the country. Accordingly, voluntary compliance is promoted not only by awareness of rights

and efficient treatment but also by clear simple and user friendly administrative systems and procedures.

- iv. Reforms in the area of tax payer education and increase in the use of modern information technologies have led to substantial increase in public awareness of tax issues. The computerization of the revenue collection has reduced the risk of cheque diversion, thus improving tax generation. The impact of the reforms has positively affected the whole system although the issue of ‘ability to pay’ on the part of the taxpayers is yet to be fully or completely satisfied.
- v. An examination of some tax litigation such as the Halliburton case reveals that the service is much more aggressive in its tax generation effort. The Tax Appeal Tribunal has proved to be a robust dispute resolution mechanism. It has also introduced measures to expedite cases that come before for it as evidenced by the increase in tax dispute adjudicated by the Tax Appeal Tribunal.
- vi. The introduction of the Integrated Tax Office (ITO), as opposed to the multiple tax offices under the previous tax system, has served to streamline and simplify tax administration and tax compliance. The present structure is tax payer focused and is aimed at elucidating a voluntary tax payment culture. The establishment of the FIRS Large Tax Offices (LTOs) has enabled specialization in dealing with the biggest contributors to income tax revenues. The Service is ensuring that closer relationships are established with largest taxpayer services as expressed in the National Tax Policy.
- vii. Tax consultants are one of the major developments in Nigeria Tax System since the 1980s. The inclusion of such tax consultants into regular tax administrative

functions of assessment and collection, particularly at the state and local level should be curtailed. They emerge to exploit lower level of government for much higher internally generated revenues by multiplying taxes, only the tax consultants themselves see their relevance in the contemporary Nigeria Tax System and only they fail to see the enormous damage they are doing to taxation in Nigeria by acting unprofessionally.

- viii. It is often difficult and slow to obtain a ruling from the tax authorities. This makes voluntary compliance difficult for willing tax taxpayers. As is the case in some countries, Nigerian tax authorities should adequately resource the relevant department in charge of ruling and if necessary charge for ruling request especially on urgent matters. And where a tax payer is aggrieved, there is no recourse in most cases as states do not have a body of appeal commissioners in place. This leaves the tax payer with the unattractive option of directly approaching the High Court. Also, notwithstanding the due process clearly led down in the tax legislation, many tax authorities especially at the state and local levels rarely follow due process in the activities by harassing and intimidating tax payers without regard to the provision of the law.
- ix. The implementation of the reforms have actually led to the emergence of the FIRS as an efficient and effective tax body with well trained and specialized staff. Provision of incentives have attracted the best and brightest in to the FIRS and served to motivate them in performance of their duties as well as discourage corruption. Mechanisms have also been put in place for disciplining of erring staff.

## 5.2 Recommendations

The result of the research findings formed the basis of these recommendations. Against, this background, it is aimed at contributing some lasting solutions to the problems highlighted by the thesis which may lead to the emergence of a tax payer friendly tax administration in Nigeria.

Taxation system aims to ensure sustainable fiscal policy. The need to avoid revenue volatility, inability of the lower levels of government to meet their ever-increasing fiscal responsibilities makes the expansion of non-oil revenue vital. Increasing non-oil revenue requires the various government tiers to seek improvement in (i) the treatment of both tax payers and tax administration; (ii) adequate investment for the tax system; and (iii) judicious spending of tax payer's money.

- i. The various government levels need to focus on simple tax rules and procedures, low tax burden, convenience to taxpayers, minimal compliance costs, easy access to information, and mutual trust and fairness. Reforms that ignore these issues may not achieve the desired results.
- ii. The Tax Administration (Self Assessment) Regulations 2011 should be amended as to the time of payment. The changes introduced by the Regulations are no doubt intended to improve the timely collection of tax revenue by tax administrative. However, some of the changes are such that can only be legitimately effected through the amendment of relevant tax laws, since the changes contradict clear tax law provisions as explained in the thesis.
- iii. In addition to addressing the problem of corruption and entrenching real value-for-money in public service delivery, there is need for continuous dialogue

between the government and citizens on taxation matters. This does not, however, replace the need for tax education and information campaigns on critical issues relating to tax administration. The government must be honest and more transparent with regard to the way public funds are dispensed. Defaulters must be prosecuted for tax evasion, or the general public will not take taxation seriously.

- iv. In order to achieve long term benefits of the ongoing reform there is urgent need to properly implement the National Tax policy from which other measures would derive. A tax policy that is not properly implemented cannot achieve the desired objective. In fact, this is a practice globally and Nigerian cannot be an exception.
- v. Despite the increase in tax awareness as evidenced by tax awareness programmes on the Nigerian Television Authority and various radio stations, awareness is still low. There is need for tax education to be introduced into the Primary and Secondary School social studies curriculum as well as ensuring that tax awareness programmes are also in the indigenous languages, not just English. Tax laws, guide lines, forms, information circulars, regulations, tax ruling, administrative procedures, tax treaties etc should be easily accessible to the public and freely available on the internet for instance on the website of the Joint Tax Board (JTB), Federal Inland Revenue Service (FIRS) and state authorities.
- vi. A tax division of the regular high court system in Nigeria should be established to handle tax cases by High Court judges with expertise in tax matters. Appeal tribunals and Body of Appeal Commissioners should be constituted and functional at all time and the Nigeria tax authorities should adequately resource the relevant department in charge of ruling and if necessary charge for ruling

request especially on urgent matters. If a request for ruling is not replied by the tax authority within a specified period of, say 60 days, the tax treatment of the situation under analysis as proposed by the tax payer is to be considered as approved.

- vii. Professional associations e.g. Institute of Chartered Accountants of Nigeria, Chartered Institute of Taxation of Nigeria, Association of National Accountants of Nigeria, Nigeria Bar Association etc. should discipline recalcitrant tax consultants who breach the laws in the process of involvement in tax assessment and collection and government should encourage Nigerians to defend themselves against these tax marauders as tax consultants. The Joint Tax Board (JTB) could explore the possibility of centrally recruiting, training and deploying personnel to collect taxes at local government level to ensure professionalism and reduce multiple taxation.

### **5.3 Conclusion**

Tax reform is a vital key to bringing about changes in the system in order to bring in more revenue and initiate improved tax administration in the country. The impact of the reforms have started to manifest as noted in the following: enhanced uniformity and standards in application of laws and procedures, co-ordination of the various types of companies and proper monitoring of their activities, reduction in functional duplication and waste, faster service delivery to the tax payers and higher revenue collection.

The Federal Inland Revenue Service (Establishment) Act, 2007 has laid the foundation for the emergence of a modern and efficient tax administrative agency. The

Federal Inland Revenue Service has also redefined the role of taxation in Nigeria as an important condition for a healthy nation and redirected national attention to the primary role of a functional tax system in sustainable national development. The FIRS has also embarked on several modernization projects that would plug many, if not all leakages and make revenue allocation or voluntary compliance easy.

The FIRS has issued Taxpayer Identification Numbers (TIN) to all companies and taxpaying individuals; Integrated Tax Administration System (ITAS) that would consolidate all tax administration automation and modernization projects; new remuneration packages were also introduced to ensure that staffs are not tempted to tinker with collective funds. The reforms have also led to administrative restructuring which now gives the service four major groups. The groups are: Corporate Development Group (CDG), Support Services Group (SSG), Tax Operations Group (TOG), Compliance and Enforcement Group (CEG), and Chairman's Office Group (COG). The enactment of the National Tax Policy, Legislation, Taxpayers Education, Dispute Resolution Mechanism, Taxpayers Registration, Refund Mechanism and several other areas, which are explained in this thesis, are notable achievements engendered by the reforms. In an age of information technology, the computerization of its operations by the FIRS saves time, energy and resources and has resulted in a more efficient and effective tax administration.

The emphasis on self-assessment as the primary means of assessment is aimed at entrenching voluntary compliance and would undoubtedly cut costs of tax administration. There is, however, the need to make the tax refund system functional in order to ensure an equitable tax system. The FIRS also need to put in place measures that would ensure accountability for all taxes collected by banks on behalf of the FIRS.



## BIBLIOGRAPHY

### BOOKS

- Abdulrasaq, M.T. (1993) *Nigerian Tax Offences and Penalties*, Bataway Law Publications Ltd., Ilorin.
- Aboki, Y. (2009) *Introduction to Legal Research Methodology*, 2<sup>nd</sup> Edition, Tamaza Publishing Co. Ltd, Kaduna.
- Adedokun, K.A. (2010) *Enforcement and Recovery of Income Tax in Nigeria*; Corp. Trans. Ltd, Ketu, Lagos.
- Arogundade, J.A. (2005) *Nigerian Income Tax and its International Dimension*, Spectrum Books Ltd, Ibadan.
- Ayua, I.A. (1996) *The Nigerian Tax Law*, Spectrum Books Limited, Ibadan.
- “FIRS (2002) General Tax Guide for Tax Administrators and Practitioners.
- “FIRS (2002) Reforms and Change Management, FIRS Policy and Research Department.
- FIRS (2006), Operational Manual for Integrated Tax Office (ITO).
- FIRS (2011) Handbook on the Implementation of Self Assessment Tax Regime in Nigeria, 1<sup>st</sup> Edition, September.
- FIRS (2011) Handbook on the Reforms in the Tax System 2004 – 2011, Safari Books Ltd, Ibadan.
- Ojo, S. (2003) *Fundamental Principles of Nigerian Tax*, Sagriba Tax Publications, Lagos.
- Okauru-Omoigui, I. (2012) *FIRS and Taxation Reforms in Democratic Nigeria*, Safari Books Ltd, Ibadan. Retrieved June 15, 2013 from <http://book.google.com.ng/book>
- Olakanmi, J. (2012) *Compendium of Tax Laws*, 3<sup>rd</sup> Edition, Law Lords Publications.
- Philips, D. (2003) *Nigerian Tax Reforms in 2003 and Beyond Main Report of the Study Group on Nigerian Tax System.*

## ARTICLES AND CONFERENCE PAPERS

- Philips, D. (2004) “Nigeria Tax Reforms: which way Forward?” A Paper Presented at the 6<sup>th</sup> Annual Conference of the Chartered Institute of Taxat of Nigeria, Held at Abuja, May 13.
- Sani, A. (2005) “Tax Reforms in a Democracy”, A Paper Presented at the Conference Organized by the Joint Tax Board, Held at Sheraton Hotels and Towers, Ikeja, Lagos.
- Somorin, T. (2010) “Tax Reforms – Efforts of Nigeria”, A Paper Presented at the Workshop on the Reforms of Tax Policy, Tangier, Morocco, retrieved November, November 29 2011 from [www.cafrad.org/workshop/tanger29.11.11/Fiscal.Somorin.11.pdf](http://www.cafrad.org/workshop/tanger29.11.11/Fiscal.Somorin.11.pdf).

## NEWSPAPERS

- Anonymous (2012) National Tax Policy Guidelines and Rules, *Fortune News*, May 28 Retrieved June, 2013 from [www.vanguard.ngr.com/2012/...national.tax.policy.guidelines.and.rules](http://www.vanguard.ngr.com/2012/...national.tax.policy.guidelines.and.rules)
- Olashere, O. (1999) “Strategies for Economic Revival”, *The Guardian Newspaper*, Friday, July 23.
- Oni, B. (1998) “Impact of Tax in Industrial Development”, *The Guardian Newspaper*, November.
- Onuba, I. (2011) Bridging Tax Compliance Gap, *Sunday Newspaper*, 13<sup>th</sup> March.

## E-SOURCES

- “Centralization of Tax Administration in Nigeria” Retrieved August 10, 2011 from <http://www.icmaservices.com/ICMA/articlehtm>.
- “FIRS Reforms and Transformation” Retrieved June 18, 2013 from <http://www.firs.gov.ng/pages/firs>
- FIRS, Informational Circular on Assessment Procedure, Retrieved June 18, 2013.
- Mahmud A. Y. “Tax Policy in Nigeria” Retrieved August 10, 2011 from [www.buzzle.com/articles/tax.policy.in.nigerian.html](http://www.buzzle.com/articles/tax.policy.in.nigerian.html).

Olajide, Y.O.

*Nigerian Tax Reforms*, Retrieved June 18, 2011 from  
[www.Olajideassociate.com/olajide\\_news.604.html](http://www.Olajideassociate.com/olajide_news.604.html).

“Top 50 tax issues in Nigeria” Retrieved June 2013 from

[www.pwc.com/en-ng/pdf/nigerian-top-50-taxissues.pdf](http://www.pwc.com/en-ng/pdf/nigerian-top-50-taxissues.pdf)