LEGISLATIVE AND JUDICIAL EXAMINATION OF TAX COMPLIANCE STRATEGY FOR REVENUE GENERATION IN NIGERIA

BY

Umar Etsu MOHAMMED
LLM/LAW/10384/2008-2009P16LAPU8099

A THESIS SUBMITTED TO THE SCHOOL OF POSTGRADUATE STUDIES, FACULTY OF LAW, AHMADU BELLO UNIVERSITY, ZARIA IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF MASTER OF LAWS DEGREE -LLM

OCTOBER, 2018

DECLARATION

I hereby declare that the work in the dissertation entitled: **"Legislative and Judicial Approach towards Developing Tax Compliance Strategy for Revenue Generation in Nigeria"** has been performed by me under the supervision of Prof. D.C John and Prof. A.R Agom

The information derived from the literature has been duly acknowledged in the text and list of references provided. No part of this dissertation was previously presented for another degree or diploma at any university**.**

Umar Etsu MOHAMMED	.....	.....
P16LAPU8099/LLM/LAW/2016-2017	Sign	Date

CERTIFICATION

This dissertation entitled: **"Legislative and Judicial Examination of Tax Compliance Strategy for Revenue Generation in Nigeria"** by **Umar Etsu, MOHAMMED** meets the regulations governing the award of Master Degree in law (LLM) of Ahmadu Bello University, Zaria and it is approved for its contribution to knowledge and literary presentation.

Prof. D.C John	**.....**	**.....**
Chairman, Supervisory Committee	Signature	Date
Prof. A.R Agom	**.....**	**.....**
Member, Supervisory Committee	Signature	Date
Dr. S.A. Apinega	**.....**	**.....**
Head of Department, Commercial Law	Signature	Date
Prof. S.Z Abubakar	**.....**	**.....**
Dean, School of Postgraduate Studies	Signature	Date

ACKNOWLEDGEMENTS

I strongly acknowledged the contributions of my first supervisor, Prof. D.C. John, of Commercial law department for his immense literary and academic scholarship towards the success of this dissertation. Also, my thanks goes to my second supervisor, Prof. A.R Agom of Public law department, Ahmadu Bello University, Zaria for his marvellous and temporal inspiration in every aspect of the work.

Perhaps, my acknowledgement will be incomplete without mentioning all members of my family, who always urged me to speed up my master of laws degree dissertation against time. My thanks and gratitude goes to all academic and non academic staff members of Commercial law Department as well as all my colleagues of postgraduates in the faculty of law, for their moral and academic support.

The administrative ingenuity of the Dean of law Dr. A.M. Madaki and the Assistant Dean, Post Graduate, Dr Apinega of the Commercial law department are specially acknowledged for processing the basic requirements of this dissertation.

DEDICATION

I dedicate this dissertation to my wife and children.

ABBREVIATIONS

A.P.	African, Pacific and Caribbean Union
A.U	African Union
B.O.J	Best of judgement
C.A.M.A	Companies and Allied Matters Act
C.G.T.A	Capital Gains Tax Act
C.J	Chief Justice
C.O.P	Commissioner of Police
C.I.R	Commissioner for Inland Revenue
C.I.T.A	Companies Income Tax Act
C.T.A	Capital Transfer Act
E.C.O.W.A.S	Economic Community of West African States
E.F.C.C	Economic and Financial Crimes Commission
E.T.A	Education Tax Act
E.U	European Union
F.B.I.R	Federal Board of Inland Revenue
F.C.T	Federal Capital Territory
F.H.C	Federal High Court
F.I.R.S	Federal Inland Revenue Service
F.R.C	Federal Revenue Court
G.A.T.T	General Agreement on Tariff and Trade
I.C.P.C	Independent Corrupt Practices Commission
I.M.F.	International Monetary Fund
I.R.C	Inland Revenue Commissioner
I.T.M.A	Income Tax Management Act
J.T.	Joint Tax Board
L.F.N	Laws of the Federation of Nigeria
M.A.N	Manufacturing Association of Nigeria
N.C.S.T	National Commission on State Taxation
N.E.C	National Economic Council
F.I.R.S	Federal Inland Revenue Service

N.S.W	New South Wales
O.P.E.C	Organization of Petroleum Exporting Countries
P.A.Y.E	Pay As You Earn
P.A.Y.S	Pay As You Spend
P.I.T.A	Personal Income Tax Act
P.P.T.A	Petroleum Profits Tax Act
S.D.A	Stamps Duties Act
T.C.C	Tax Clearance Certificate
U.K	United Kingdom
U.N.C.T.A.D	United Nations Cooperation on Trade and Development
U.N	United Nations
U.S.A	United States of America
V.A.T	Value Added Tax
W.T.O	World Trade Organization

TABLE OF STATUTES

Page

Nigerian Statutes

Capital Gains Tax Act Cap.42 LFN, 1990 - - - - - - 55
Companies and Allied Matters Act, 1990 - - - - - - 39
Companies Income Tax Act, 1968 - - - - - - 18,41,123
Companies Income Tax Act, Cap 60 LFN, 1990 - - - 1,2,9,37,43,45,60,121
Constitution of Federal Republic of Nigeria, 1960 - - - - - 97
Constitution of Federal Republic of Nigeria, 1963 - - - - - 97
Constitution of Federal Republic of Nigeria, 1979 - - - - - 97
Constitution of Federal Republic of Nigeria, 1999 - - - - - 79
Criminal Code Cap. 42 Laws of Nigeria, 1958 - - - - - 73
Criminal Procedure Act, 1958 - - - - - - - 79,84
Education Tax Act vol. 5 LFN, 2004 - - - - - - - 55
Federal Inland Revenue Service Act, 2007 - - - - - - 5.79
Income Tax Management Act, 1960 - - - - - - - 75
Nigerian Income Tax Ordinance 1943 - - - - - - 27
Penal Code Law of Northern Nigeria, 1963 - - - - - - 73,139
Personal Income Tax Act, vol.13, LFN 2004 - - - - - 1,37,55,73,151
Personal Income Tax Law (Lagos) 1975 - - - - - 75,131
Petroleum Profits Tax Act, Cap.354, LFN, 1990 - - - - - 55
Stamp Duties Act Cap. 411 LFN, 1990 - - - - - - 55
Value Added Tax Act Cap. 4 LFN, 1990 - - - - - - 4,55,95

Foreign Statutes

British Income Tax Act, 1952- - - - - - - - 5
British North America Act, 1967 - - - - - - - 101
Canadian Constitution 1967 - - - - - - - - 101
United States Internal Revenue Code, 1954 - - - - - - 61

TABLE OF CASES

Page

Nigerian Cases

Aburime V. NPA (1978) NSCC 11 - - - - - - - 141

Aderawos Timber Trading Co. Ltd V FBIR (1966) LLR 195 - - - - - 103

A.G Lagos State V A.G of Federation (2004) 18 NMLR 904 - - - 94

A.G Ogun State V Aberugba (1985) 1NWLR pt.3 1327 - - - - 146

Akinsete Syndicate V Snr. Inspector of Taxes suit no.FSC/164/63 - - 18,26,146

Aluminium Industries V FBIR (1971) NMLR 339 - - - - - 40,42

Ayeni V University of Ilorin (2000) 2NWLR pt.844 - - - - 108

Arbi Co Ltd V FBIR (1966) LLR 223 - - - - - 113,146

Clegg V COP (1949) 12 WACA 379 - - - - - - - - 81

CIR V Attah (1970) NCLR 121 - - - - - - 131,132

First Bank Nig. Plc. V A.G Anambra State (2000) 1NRLR 129 - - - 67

FBIR V Joseph Rascallah (1962) NLR 96 - - - - - - 113

FBIR V Blue Pelican co.ltd suit no.FRC/PH/2/76 - - - - 128,143

F.B.I.R v West African Pictures Co Ltd suit no. FRC/L/8/73 - - 128,134,143

FBIR V Animashaun suit no. FRC/L/7/73 - - - - - - 128

FBIR V Wilmer Publication ltd suit no. FRC/L/19/73 - - - - 128

FBIR V Solanke suit no. FRC/L/6/76- - - - - - - 128,134

FBIR V Omotosho (1973) NCLR 369 - - - - - - 133

FBIR V Nasr (1964) NSCC 30 - - - - - - - 146

FBIR V Nig.Gen. Insur. ltd (1969) NSCC 6 - - - - - - - 146

FBIR v Adenubi (1963) NSCC 3 - - - - - - - 146

Ihekwoba V CIR (1958) NSCC 2 - - - - - - - 146

Mandilas Ltd V I.G.P (1958) 3 FSC 20 - - - - - - 80

Manu. Asso. Of Nig. V A.G Lagos State (2004)ALLFWLR pt.199 - - - 22,92

Marina Nominees V FBIR (1986) 2NWLR 48 - - - - - 146

Mobil Oil Nig. Co. ltd. V FBIR (1977) 3 SC 113 - - - - 19,83,146

Obaji V The State (1965) NSCC 210 - - - - - - - 139

Okupe V FBIR (1971) NSCC- - - - - - - - 146
Ola V FBIR suit no.FRC/L/IA/73- - - - - - - 134,143,145
Reiss Nig. Ltd. V FBIR suit no. FRC/IA/76 - - - - - - 12,40
R V Anglo- Nig. Tin Mines ltd. (1930) 10 NLR 69 - - - - - 81
Re DPP W/Region V Asso. N/paper ltd. (1960) 12 NLR 10 - - - - 81
Shell Petroleum Co. Ltd. V Burutu LGA (1989) 9 NLR pt.165 - - - 74
S.A Authroity v Regional Tax Board (1970) NSCC 6 - - - - 146
Trade Bank Plc.V Nig. Ltd. (2000) 13 NWLR pt.685 p.483- - - - 108
W/Sudan Exporters V FBIR (1973) 1 CCHJ 17 - - - - - 113

Foreign Cases

A.G V Canter (1938)2 KB 828 - - - - - - - 70
Annis V Colls (1960) 39 TC 148 - - - - - - - 64
Bradbury and Edlin (1921) 1KG 565 - - - - - - 136,138
Cape Brandy Syndicate V IRC (1921)1 KB 71 - - - - 82,103,112,131
Cenlon Fin. Co. ltd. V Ellwood (1962) ALLER 859 - - - - - 59
Clixby V Poutney (1968) 1ALLER 804 - - - - - - 64
CIT MP V Punjab Shah (1968) AIR 106 - - - - - - 85
Dayton Bronze co. V Gilligan (1922) CCA 281 - - - - - 124
Fides A.G V CIR 137 F2 CCA 4th (1943) - - - - - - 125
Free State V Casa (1930)IRR 163 - - - - - - - 70
IRC V Fisher's Executors - - - - - - - - 2
IRC V Latilla (1943) AC 377 - - - - - - - - 12
IRC V Willoughby (1997) STC 995 - - - - - - - 16
IRC V R.S Securities Ltd. (1964) ALLER 699 - - - - - 102
Jones V Mason Investment ltd. (1966) 43 TC 570 - - - - - 59
Parki V Cartell (1971) 48 TC 20 - - - - - - - 39
Potts' Executors v IRC (1951) A.C. 443 - - - - - - 131
R V Allen (1999) STC 846 - - - - - - - - 15
R V Hudson (1956) 2 WLR 914 - - - - - - - 136
R V Bradbury (1921) 1KB 565 - - - - - - - 140
R V Jones (1970) 1 ALLER 379 - - - - - - - 137

R V Curtis 36 TC 41 - - - - - - - - - 146
Russell V Scott (1948) AC 442 - - - - - - - 102
Tavine V Bester 10 TC 1031 - - - - - - - - 124
Tenant V Smith (1892) AC 150 - - - - - - - 130
U.S V Archer (1936) 174 F2 ,353,CCA 1 1848 - - - - - 125

TABLE OF CONTENTS

		Page
Title Page	- - - - - - - - - -	i
Declaration	- - - - - - - - - -	ii
Certification	- - - - - - - - - -	iii
Acknowledgment	- - - - - - - - - -	iv
Dedication	- - - - - - - - - -	v
Abbreviations	- - - - - - - - - -	vi
Table of Statutes	- - - - - - - - - -	viii
Table of Cases	- - - - - - - - - -	ix
Table of Contents	- - - - - - - - - -	xii
Abstract	- - - - - - - - - -	xvi

CHAPTER ONE

GENERAL INTRODUCTION

1.1	Background to the study - - - - - - -	1
1.2	Statement of the Research Problem - - - - - -	2
1.3	Aim and Objectives of the Research - - - - - -	4
1.4	Scope and limitations of the Research - - - - -	5
1.5	Significance of the Research - - - - - - -	6
1.6	Methodology of the Research - - - - - - -	8
1.7	Literature Review - - - - - - - -	8
1.8	Organisational Layout - - - - - - - -	13

CHAPTER TWO

CONCEPTUAL FOUNDATION AND CLARIFICATIONS OF KEY TERMS

2.1 Introduction - - - - - - - - - 15

2.2 Tax Evasion - - - - - - - - - 15

2.3 Tax Mitigation - - - - - - - - - 16

2.4 Tax Planning - - - - - - - - - 17

2.5 Tax Evasion and Tax Avoidance - - - - - - 19

2.5.1 Basis for Tax Evasion and Tax Avoidance - - - - - 28

2.5.2 Methods of Tax Evasion and Tax Avoidance - - - - - 37

2.5.3 International Corporations and Tax Avoidance in Nigeria - - - 38

2.5.4 Fictitious Transactions - - - - - - - 45

2.6 Effects of Tax Evasion and Tax Avoidance - - - - - 49

CHAPTER THREE

CIVIL AND CRIMINAL OFFENCES AND SANCTIONS

3.1 Introduction - - - - - - - - - 54

3.2 Civil Offences - - - - - - - - - 57

3.3 Civil Fraud Sanctions - - - - - - - - - 57

3.3.1 Discovery - - - - - - - - - 59

3.3.2 Fraud - - - - - - - - - - 61

3.3.3 Wilful Default or Neglect - - - - - - - 64

3.4 Other Civil Offences and Penalties - - - - - - 65

3.4.1 Failure to File a Return - - - - - - - 65

3.4.2 Refusal to Give Tax Assessment or Paying Less Tax Assessment - - 66

3.4.3 Failure to Pay Tax Arrears - - - - - - - 67

3.4.4 Failure to Deduct tax - - - - - - - - 68

3.5 Criminal Offences and Sanctions - - - - - - 72

3.5.1 Incorrect Returns - - - - - - - - 73

3.5.2 False Statements and Returns - - - - - - - - 74

3.5.3 Obtaining Bribes from Taxpayers and Frauds by Tax Authorities and Unauthorised Tax Persons - - - - - - - 76

3.5.4 Failure to Remit Tax Collected by Agents of Revenue Authorities - - 77

3.5.5 Contravening the Provisions of the Tax Law - - - - - 78

3.6 Imputing Criminal Elements in Income Tax Offences - - - 79

3.6.1 Elements of Mens Rea in Income Tax - - - - - 80

CHAPTER FOUR

LEGISLATIVE AND JUDICIAL ATTITUDE TOWARDS CIVIL AND CRIMINAL SANCTIONS

4.1 Introduction - - - - - - - - - 82

4.2 Legislative Attitudes Towards Tax Sanctions - - - - 86

4.3 Sanctions for Tax Evasion - - - - - - - 113

4.4 Sanctions for Tax Avoidance - - - - - - - 120

4.5 Other Penalties - - - - - - - - 123

4.6 Judicial Attitudes to Tax Evasion - - - - - - 129

4.7 Case for Prosecution of Tax Offences - - - - - 136

4.8 Courts' Verdict - - - - - - - - 145

CHAPTER FIVE

SUMMARY AND CONCLUSION

5.1	Summary - - - - - - - - -	149
5.2	Findings - - - - - - - - -	149
5.3	Recommendations - - - - - - - - -	152
	Bibliography - - - - - - - - -	156

ABSTRACT

The issue of tax can be understood to mean a compulsory and mandatory contribution by way of payment of money made by the citizens of a country to their government for the purpose of financing public activities. Its major objectives are to raise money to finance government or public expenditures on utilities so as to achieve efficient and economic development and to distribute the nation's wealth in a manner as equitably as possible. All governments in the world rely on revenue from taxation to finance public utilities and other essential services .Taxation therefore is a civic responsibility on the part of the citizens. Until this idea is inculcated on the tax payers, the question of voluntary compliance to tax payment becomes a mirage. Consequently, this can lead to tax evasion and tax avoidance which eventually warrants the imposition of civil and criminal sanctions against the tax defaulters. The problem of this study hinges upon the idea that tax payers in developing countries particularly in Nigeria detest tax payment. The origin of this negative attitude is from the colonial era when the government were considered alien. The citizens were compelled to pay tax and the revenue so raised was seen as it is used for unknown reasons. The majority of the citizens who were illiterates do not consider it important to pay tax. However, this is not to say that taxes were alien to Nigeria. Before the colonial rule taxes were imposed in some parts of Nigeria. The refusal to pay tax by the Nigerian citizens continued even after independence both in the public and private sectors of the economy. It is in this vain that this study examines ineffectiveness or otherwise of the various tax legislative provisions against tax offences. The penalties were made to guard against any prospective tax evaders or avoiders. However, in spite of the fact that several taxing provisions provided sanctions for any breach of tax, it seems the penalties are not formidably effective to control tax evasion and tax avoidance. Hence this study is to review the state of penal provisions relating to tax offences and penalties by examining the doctrinal method of research into the tax statutes, case laws, text books, legal seminars and articles as well as internet sources to achieve is goal. Thus, it was observed that, there is the need to examine the criminal and civil sanctions under the Nigerian income tax legislation with a view to ascertain their effectiveness. Hence, it is recommended that a comprehensible tax law reforms, good taxpayers awareness of their duty to pay their taxes coupled with effective penal sanctions against tax defaulters that can guarantee tax compliance strategy for revenue development in Nigeria.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the study

Income tax is wholly the creature of statute. That is to say, there is no common law of taxation. No principles of law are applicable other than those principles, which are found in the taxing Acts themselves according to their true meaning and effect. In any tax case, it is consequently necessary for the court or tax commissioners to determine the true meaning and effect of the particular statutory provisions in question. The actual problem in connection with tax administration is that of enforcing tax payment. It is against this background that the Personal Income Tax Act of 1993 (as amended)[1] as well as Companies Income Tax Act of 1990 (as amended) made penal provisions against any violations of their provisions. These are categorized into civil and criminal offences and penalties.

The Personal Income Tax Act[2], (P.I.T.A) for instance, lays down income tax offences and penalties for their breach, such as legal proceedings, distraint of property, public auction of seized properties and monetary penalties for various income tax offences.[3] Likewise, part XXI of Companies Income Tax Act (C.I.T.A) 1990, (as amended) listed various offences and penalties against any tax defaulter such as failure to comply with the provisions of C.I.T.A or rules, failure to comply with notices or summons, failure to answer questions on tax matters, failure to furnish returns, statement, information or keep correct records of income.[4]

Preliminary examination of these penal provisions reveals their ineffectiveness to check the activities of tax defaulters. This study examines and analyse the penal provisions with a view

[1] Cap. P.4 Laws of the Federation of Nigeria, 2004
[2] Sections 87, 88,and 89
[3] S.S. 87(1) 88, 89-96 of P.I.T.A Cap. P 4 LFN, 2004
[4] SS. 66(5) a & b 71-73 of C.I.T.A Cap.C1. LFN, 2004

to suggest better methods of making effective penal provisions in our tax statutes. The present penalty provisions do overlap and are in some places mutually inconsistent, especially in terms of the severity of the penalties and are thus defective and ineffective to deal with current economic trends in our fiscal policies. This calls for thorough review and re-arrangement of the penalty provisions on a more adequate and rationale basis.

Additionally, the attitude of the tax officials, the law makers and the courts leaves much to be desired as a result of their lukewarm behaviour towards tax offences. This adversely affects income tax compliance efforts.[5] The courts responses are usually slow and are passive in taking decisions.[6] Thus, even though the law provides sanctions against those defaulters, these provisions are hardly used by the tax officials.[7]

1.2 Statement of the Research Problem

The basic problem that these studies seek to work on, is the difficulty in the assessment and ascertaining of the areas in the penal provisions that are weak and ineffective in all the income tax statutes which are numerous. There is no clear cut demarcation between tax evasion and tax avoidance, since even the tax statutes do not offer us any cogent definition of the two terms.[8] Neither do the case law also offer us any help.[9] Thus, it is hard to assess the effectiveness or ineffectiveness of the civil and criminal sanctions under the Nigerian income tax laws.

What is more, most of the penal provisions seem to overlap against each other. A good example is the penal provisions relating to monetary sanctions which are found in both the Personal Income Tax Act[10] and the Companies Income Tax Act[11]. In addition to this, Nigerian

---

[5] Layade, P.S.A (1976); Tax evasion in fifth annual senior officers conference of F.B.I p. 301
[6] *F.B.I.R. v. Omotesho* (1971) N.C.L.R 6
[7] Surrey S.S.(1975) 'Tax Administration in underdeveloped countries, John Hopkins, University Press, Baltimore & London . p. 486
[8] Abdulrazaq M.T, (1993)"Nigeria Tax Offences and Penalties' Batay Law Publication Ltd. Ilorin pp. 1-4
[9] *I.R.C. V. Fishers Executors* (1924) A.C. 395, *Latila v I.R.C* (1943) A.C. 377
[10] Sections 84 P.I.T.A Cap p 4, LFN, 2004

fiscal policies seems to have undergone drastic changes over the years as a result of constant increase in the revenue generation through the oil companies income tax and petroleum profit taxes, value added and withholding taxes since the military regimes up to the present day civilian democratic governments.[12]

The result is that, several amendments were made in the whole tax statutes in Nigeria especially the penal provisions. Hence, going through these large volumes of the fiscal policies that touches on several aspects of the penal provisions, and also, the effects of courts decisions due to these changes as stated above is a difficult task. Another problem which the research work faces includes the differences between offences that depend on the presence of fraud, and proceedings in respect of which offence should be taken before the superior courts of record such as the High Court and Federal High Court on the one hand, and other offences which may not be of great culpability which can therefore be taken to tribunals like the Tax Appeal Tribunals or inferior courts. In some developing countries, there are problems associated with the appropriate courts to which tax offences should be taken for adjudication.[13]

Assessing the effectiveness of penal provisions in income tax becomes problematic especially in the process of assessing the reasons for negative tax compliance attitude by the tax payers and the tax authorities due to their limited knowledge of tax legislation generally. It is not easy to assess the effectiveness of the tax system unless it can be seen by what degree the penal provisions deal with tax offences. The legislation made to counter tax offences can be among the most complex in our tax code, but, it can also be among the simplest. The case law on penal provision will show us the problems posed by legislation and statutory purpose in this study.

---

[11] Section 71 (1-4) C.I.T.A Cap C 2 LFN, 2004

[12] The Federal Military Governments Budget Proposals from 1980-1998 and the Civilian Government Budget proposals from 1999 to date especially the fiscal budgets of 2000-2006 respectively.

[13] Surrey S.S (1994) :' Tax administration in underdeveloped countries' Ibadan University Press p. 486

Hence, the research questions are:

a. Why are the penal provisions in the tax statutes not effective to control tax frauds?
b. Why is it difficult to really ascertain the difference between tax evasion and tax avoidance?
c. Why do the penal provisions overlap?
d. Why is there negative tax compliance by the taxpayers?

1.3 Aim and Objectives of the Research

The aim of this study is to examine the legislative and judicial approach to income tax compliance for revenue generation in Nigeria through the following objectives:

1. One of the objectives of the research is to assess the effects of the Civil and Criminal Provisions dealing with the violation of income tax laws in Nigeria with a view to observing whether these penal provisions are effective enough in controlling the effects of tax evasion and tax avoidance in the field of revenue generation within the Nigerian economy.
2. The study takes special consideration and analysis of the personal income tax, Companies tax, Capital gains tax, Petroleum Profits tax, Value added tax and Investment income with the aim of studying the efficacy of penal provisions enshrined in them. This will help to explain whether the civil and criminal offences committed by tax payers are properly provided for by the taxing statutes and suggestions and recommendations are made in that respect.
3. An additional objective is also to examine the reason why some tax payers do not pay their taxes according to the laid down tax laws.

4. It also seeks to answer the question; whether the defaulting tax payers are prosecuted or not, based on the legal position on the issues as stated above.
5. Furthermore, it is the concern of this study to analyse and verify such facts as the competence of the revenue authorities in all ramifications such as the general administrative functions like management of staff, work place, machines and equipments, finances, custody of revenue collected, prosecution of tax offenders and tax officials. Any lapses from the above factors can adversely affect revenue collection and implementation of taxing policies and laws considerably.

1.4 Scope and limitations of the Research

The scope of the research is determined by the aim and objectives of the research and issues mentioned in the table of contents such as; the reasons and problems of tax evasion and avoidance in Nigeria, ineffectiveness or otherwise of the civil and criminal sanctions in the tax laws, legislative and judicial approaches towards the penal sanctions in the income tax laws respectively. Nigerian cases and materials on tax regime relating to the offences and penalties are also considered.

However, since most of Nigerian laws are derived from foreign sources such as the British Income Tax laws, as well as other commonwealth countries such as Canada, Australia and India. In view of this, recourse was had to foreign statutes and case laws on the civil and criminal sanctions from these jurisdictions.

Also, Nigeria is signatory to significant trade, economics, fiscal and tax treaties with foreign countries and organizations such as United Kingdom, U.S.A, European Union Countries (E.U), Organisation of Petroleum Exporting Countries (OPEC), African Union Countries (A.U), Economic Community of West African States (ECOWAS), International Monetary Fund

(I.M.F), World Bank, World Trade Organisation (WTO) and some Asian countries such as China, Malaysia, Indonesia, Japan and South Korea.

The study therefore, considers both these bilateral and multi-lateral tax treaties, statutes and case laws on income tax at the national, regional and international levels.

Consequently, the research delved into all information dealing with taxing offences and the penalties under the Nigerian tax laws.

Recently, between 2005 and 2006 a bill on reforming the Federal Inland Revenue Service[14] was sponsored by the Federal Inland Revenue Service (F.I.R.S). It was an Act to establish the Federal Inland Revenue Services (N.I.R.S) as an autonomous institution to replace the former Federal Board of Inland Revenue.

The study examined this new service (i.e. F.I.R.S) its powers and functions to administer certain taxes in Nigeria, appointment of the personnel, enforcement and collection of taxes for the government.

1.5 Significance of the Research

This study is very important and significant because it touches on sensitive areas of the Nigerian income tax regime such as the penal provisions dealing with civil and criminal sanctions.

The study is also significant because, it assesses the legislative and judicial approach on effectiveness or otherwise of the penal provisions relating to the civil and criminal sanctions under the Nigerian Income tax laws. In assessing these penal provisions, the weaknesses of our taxing provisions shall be examined analysed and processed with a view to making laudable

[14] The bill for Nigerian Inland revenue service Act, 2004 (prepared by F.I.R.S November 2006). It was eventually enacted into law as Federal Inland Revenue Service Act, 2007.

suggestions and recommendations that will improve the efficacy and knowledge of our tax legislation.

Since taxation is strictly statute based and mandatory for all taxpaying persons earning any income in Nigeria, the study is justified in the sense that the taxpayers will see the rationale for paying tax and will appreciate the reasons behind the imposition of heavy penalties for the breaches of tax laws.

In this study, we shall be able to know what happens to those persons who refuses to pay tax? Are they properly arrested and punished according to the penal provisions or not? And by whom? Questions like: 'what is the legal position of tax defaulters? What did the law says about the tax offences and penalties? 'Are the penal provisions such as the civil and criminal sanctions effective enough to deter future ability to commit tax offences? This study will answer these questions clearly and on the other provide good information on the subject to the public, government and the tax authorities in general.

Thus, the tax payers will understand the dangers involved in failure to pay tax which result in heavy penalties. They will also be willing to pay their taxes as and when due and the revenue officials will find it easy to collect taxes. This will in turn, improve the revenue of the government through taxes.

Likewise, the tax policy objectives of the Federal government centres around the best ways to make the tax system more efficient and improve the revenue base by diversification of the economy to foster economic growth and check negative tax compliance efforts justifies the research in this area. This is because there is no how the government can achieve the above objectives without making proper tax legislation that will not only encourage people to pay their taxes, but also to deal with the basic problems of tax evasion and tax avoidance.

1.6 Methodology of the Research

This research work is largely doctrinal. Consequently, both primary and secondary sources were consulted. Hence, it involves analysis of statutory provisions and case law reports on Nigerian and foreign income tax laws specifically on the penal provisions under the income tax laws.

Also, text books on income tax written by both Nigerian and foreign authors were made reference to in this research.

Likewise, legal journals, magazines, newspapers, conference papers and government gazettes relating to the penal provisions particularly those dealing with the civil and criminal offences and penalties under the Nigerian income tax laws were examined and analysed in light of contemporary literature on the subject of income tax legislation in Nigeria.

The work was therefore, largely based on documentary and other research sources stated above.

1.7 Literature Review

The subject of Nigerian income tax laws is very important and indeed significant to the economic and fiscal policies of Nigeria as well as many countries in the world. It affects the social, cultural religious and political lives of the people and government. Hence, it is not an understatement to say that there are some written literatures on income tax.

In this regard, a prominent legal scholar and tax consultant who wrote on some aspects of the subject matter is Abdulrazaq, who wrote on the Nigerian Tax Offences and Penalties.[15] In this book, he postulated among other things that the words; "evade" and 'avoid' are generally used interchangeably and they connote the idea that they mean the same thing but, to the

[15] Abdulrazaq M.T, (1993) "Nigerian Tax Offences and Penalties" Batay Law Publications Ltd Ilorin Nigeria. pp.1-2

professional and judicial mind, there are very sharp and fundamental differences in the idea or conception behind the words.[16] He also categorized the sanctions into civil and criminal penalties. The learned writer did not consider the effectiveness or ineffectiveness of the penal sanctions against tax offenders that might be part of the causes of tax evasion and tax avoidance and deterrent factor. This work attempts to address the shortcomings.

Ayua, in his book,:[17] stated that the final problem in connection with tax administration is that of enforcing payment of tax which resulted into the provision of offences and penalties in the Personal Income Tax Decree 1993 and the Companies Income Tax Act 1990.[18] Of course, the learned scholar is right in his submission quoted above but, it could have been better if he had mentioned something on the legislative and judicial approaches towards the issues on tax evasion and avoidance. Thus, the book is also found wanting in that respect and which this study is out, to examine.

Whereas, Ola specified several areas in the Nigerian tax laws where tax offences and penalties (civil and criminal sanctions) are provided, they tend to be ineffective like a toothless bulldog under the current tax administration in Nigeria.[19] Despite the proposition of the learned scholar which comes closer to the area of this research, there are still some areas which escaped his attention. That is, the actual assessment of the effectiveness or otherwise of the penal provisions in our tax laws. Hence, this research is undertaken to address this issue.

Arogundade, is another ardent and prolific writer on the subject matter. He made several references to modern trends in relation to the general principles and international dimensions in

[16] Ibid pp. 1-2
[17] Ayua, I.A, (1996)"The Nigerian Tax Law" Spectrum Law Publishing Co Ltd. Ibadan, Owerri, Kaduna, Law
[18] Ibid p. 296
[19] Ola, C.O., (1999)"Income tax law and practice in Nigeria" published by PTF and Ibadan University Press (1st ed. 1993) (2nd Ed. (PTF).

the Nigerian income tax.[20] He cited specific areas in Nigerian tax administration relating to income tax default at international level and how the Nigerian tax laws could be made to address the issues squarely.[21]

Unfortunately, little or nothing, was mentioned in the book on the judicial or legislative exposition on the income tax defaults. He did not also examine the effects of the penal sanctions as it relates to tax evasion and avoidance.

Another writer, Meshach wrote on,: "Tax law and its implications for foreign investments in Nigeria".[22] In the book, he examined the Nigerian Tax regime vis-a-vis the attractions to foreign investments in the country and further highlighted the prospects through which the Nigerian tax laws could be made to achieve these objectives.[23]This do not fall within the ambit of this research as it only concentrated on tax laws as it affect foreign investments in Nigeria and nothing was said on the penal sanctions under the income tax laws. Thus, this study is embarked upon to cover these areas left out by scholars in this field.

Some additional materials on Nigerian income tax policies at the federal, state and local government levels were collated and presented in a coherent whole, by the Nigerian Institute of Advanced Legal Studies (NIALS) Lagos[24] In this book several articles on Nigerian income tax were presented as part of the conference series of the institute. Under this, we find interesting topics such as: "The government, the constitution and the tax payers;" "An analyses of federal and state taxing powers", "Interpreting and understanding Nigerian tax legislation", "Tax administration; the problems of assessment and collection," "A new framework for tax

[20]Arogundade, J.A.,(2005) "Nigerian Income Tax Law and its International Dimension." Published by Spectrum Books Ltd. Ibadan.
[21] Ibid Chapter 16 and 17 of the book
[22] Meshachi, N.U., (2008) Nolix Educational publications Nig. Ltd Enugu
[23] Ibid chapters 2-3
[24]Ajomo M.A and Akanle (1991).'Tax Law and Tax Administration in Nigeria" Published by Nigerian Institute of Advanced Legal Studies

administration in Nigeria", "State taxation; the problems of interstate commerce and trade and federal government instrumentalities" and "Nigeria; tax treatment of business concerns with international connection"; to mention but few.[25] An examination of the above collation of articles and conference papers shows that, it deals with some aspects of this research.

For example, the article on the government, the constitution and the tax payers discusses on the role of the government as it relates to the tax payers' income tax compliance efforts under the Nigerian Constitutions.[26] It did not reflect on the statutory provisions in the Income Tax Acts dealing with defaulting tax payers. Also, the article on the analyses of the federal and state taxing powers only relates to issues on the application of division of taxing powers between the various tiers of government under the Constitution without mentioning something on tax offences and penalties.[27]

However, the articles on interpreting and understanding Nigerian tax legislation[28]and the one on tax administration; the problems of assessment and collection[29], provided an insight to the issues relating to income tax assessment generally, by looking at statutory role that tax administrators play in the collection of government revenue and the problems they encountered.[30]

The two articles, mentioned above contained some ideas closely linked to this research but, failed to address the inadequacy or ineffectiveness of penal sanctions in respect to situations where the tax payers refused to be assessed tax or tax collected are not remitted to government. This gives more room for research under this topic.

[25] Ibid Chapters 1-7
[26] Ibid pp3-10
[27] Ibid pp 11-20
[28] Ibid pp 21-31
[29] Ibid pp32-45
[30] Ibid pp 21-45 respectively

Apart from the text books and journal articles mentioned above, there are some committee and conference reports on the subject matter of this research. There is the Presidential Commission on Revenue Allocation.[31] This report contain various findings and recommendations to the government on how more revenue can be realised by government through taxation and controlling the negative effects of tax evasion and avoidance under the income tax laws.[32] It is also clear that the purport of this Commission is not to address the issues of the effectiveness or ineffectiveness of penal sanctions in the tax laws. However, it did mention something on the causes of tax evasion and avoidance and the way forward which has some aspects relevant to this research just like the Aboyede Fiscal Commission of 1979.[33]

There is also the government gazette on Tax Reforms[34], that enumerated several anti tax evasion and avoidance measures which revenue Boards are oblige to comply. The gazette did not mention anything specifically on tax offences and penalties that are relevant to this study.

Some Newspapers and magazines[35] gave a wide publicity on the menace of tax evasion and tax avoidance and Minister of Finance was heard complaining that the penal provisions in the tax laws are weak and ineffective in an answer to criticism from the press.[36] This is one of the essential factors that made it necessary to embark on this research. Income tax statutes dealing with criminal and civil sanctions and case laws on tax offences and penalties had been consulted and it is discovered that penalties imposed by the statutes[37] and court decisions[38] were not

[31] Known as the Okigbo Commission (1980) vol. 1 paragraph 396
[32] Ibid para. 6-10
[33] These Commissions are similar in role like the U.K Raisman's Tax Report/Commission of 1958
[34] Gazette no.55, published by the Government Printers, January, 2000.
[35] Business Times no.2,1981, Punch Dec. 1, vol. 13, 1988 and Guardian, Feb. 27, 1989
[36] Ibid p.11 of Punch Dec.,1988.
[37] Sections 71-75 C.I.T.A Cap C21 LFN 2004, Ss. 86-90 P.I.TA, Cap. P.4 LFN 2004 etc.
[38] *Reiss Co. Ltd V FBIR* suit no FRC/LIA/76, *Aluminium Indus. Ltd V FBIR* (1971) NMLR 339; *IRC V, Latilla* (1943) A.C 377 etc

sufficient to deter tax evasion and tax avoidance. This makes the research necessary so as to address these shortcomings.

Finally, it can be seen that some literature exist on some aspects of the work but, only few are relevant, leaving a very significant field for this research to be undertaken as part of its contribution to knowledge.

1.8 Organisational Layout

This dissertation is divided into six chapters.

The first chapter gives a general introduction covering the conceptual framework and scope of the research. It also highlighted the objectives, problems, significance and methodology of the study plainly.

Chapter two exposes the rudimentary basis on the economics of taxation as it relates to the fundamental factors which affect revenue generation from income tax. This includes the subject matter of tax evasion and the tax avoidance by tax payers. The reasons, methods and effects of tax evasion and tax avoidance are carefully examined. Here, also the objectives and basis of civil and criminal sanctions are distinguished elaborately.

Chapters three delve deeper into the civil and criminal offences and penalties (sanctions) which the taxing statutes provided. Under this chapter, the effectiveness or otherwise of the penal provisions dealing with the civil and criminal offences are examined, analysed and assessed so as to bring out the required results of the research work in the subsequent chapter. This is why chapters three form the core or body of the main research work.

In chapter four, the dissertation considers the legislative and judicial attitudes towards these penal provisions. Here also, the types of income tax laws that are made against the tax offences and how the judiciary interprets these laws while adjudicating on income tax violations

are highlighted. This enables us to measure tax compliance and how to approach non-tax compliance situations.

Finally, chapter five is the concluding part of the study. It presents the major findings, suggestions and recommendations on how best penal provisions can be made to be very effective against all tax offences associated with income tax violations under the Nigerian income tax laws.

CHAPTER TWO

CONCEPTUAL FOUNDATION AND CLARIFICATIONS OF KEY TERMS

2.1 Introduction

Politicians, tax officials and practitioners spend a lot of time and energy on the problem of tax avoidance. No one seems to have a very precise idea of what is meant by the term[39] but, it is to be distinguished from tax evasion, which is illegal. If two people marry in order to reduce tax burden they are practicing tax avoidance if they tell the revenue that they are married when they are not, they are guilty of tax evasion, and may well be prosecuted. There is also an important distinction between a scheme under which no liability to tax arises (tax avoidance) and one under which a charge arises but the tax cannot be collected.[40] The later may be tax evasion and subject to penalty. Other terms used in discussion and in case law – are tax mitigation and tax planning which may be seen as subsets of tax avoidance or as independent categories, depending on the context in which one finds oneself; they are all, however to be distinguished from tax evasion.

2.2 Tax Evasion

Unfortunately, tax evasion itself has developed a number of "frayed edges". Thus, it is sometimes used to cover all cases of non compliance[41] may be deliberate or accidental and may give rise to penalties under tax legislation, prosecution under criminal law, or both. Evasion may even result from taking a position on tax legislation, which is later shown to be incorrect.[42] If

[39] Abdulrazaq M.T (2005)"Revenue Law" Malthouse Press. p. 7-10. See also IFS Tax Law Review Committee (TLRC) Report on Avoidance.
[40] See comments of *Brightman J in Roome v Edwards* (1979) STC 546, 561-5 (removed from bound volume – see (1979) BTR 262). See also the comments of Trempleman I.J in RC Stype Investment Ltd (1982) STC 625.
[41] On Causes of non – compliance, See Cooper (1994) 50 Tax Law Review 35
[42] R v Allen (1999) STC 846.

these are all examples of tax, its greatest cause may not be fraud or greed, but the complexity of the tax legislation.

2.3 Tax Mitigation

Tax mitigation[43] is distinguished from tax avoidance because judges, when dealing with a provision turning on the presence of tax avoidance, invented the term "mitigation" in order to mark off transactions, which would not be caught by the provision[44] in this context, therefore tax mitigation and tax avoidance are mutually exclusive. Today, tax avoidance rises where the tax payer reduces a liability to tax without incurring the economic consequences that the National or State Assemblies intended to be suffered by any taxpayers qualifying for such reduction in that liability.[45] Tax mitigation arises where the taxpayer takes advantage of a fiscally attractive option afforded by the tax legislation and genuinely suffers the economic consequences and legislative intent. The first element asserts that there should be some genuine economic consequences, while the second enables the court on a case-by-case basis, to control which consequences will qualify. Today, a couple marrying to reduce tax would be treated as examples of tax mitigation.

The problem with tax mitigation is that, while it provides a coherent reason for saying, in a particular case is that, the facts do not amount to tax avoidance and so do not trigger the applicant of some rules, it does not provide a clear way of telling whether those particular facts fall one side of the line or the other – it can be a conclusion, not a test and so restates the problem rather than solve it.[46]

[43] See eg. Lord Templeman in Ensign Tankers (Leasing) Ltd. V Stokes (Inspector of Taxes) (1992) A.C 655 – 676 – 7 (1992) STC 226, 240, - 164 TC 617, 741 – 2 and Lord Goff at 684 244-5 and 746-7 respectively.
[44] E.g Lord Templeman in Commissioner of Inland Revenue v Challenge Corporation (1987) AC 155, 167-8 (1986) STC 548, 554-5 PC (New Zealand).
[45] IRC v Willoughby (1997) STC 995
[46] See Rosenberg (1988) 87 Michigan L.R 365 - 497

2.4 Tax Planning

Tax planning is what all sensible people do in order to reduce their tax liabilities. The boundary between tax avoidance and tax planning is shadowy at best, what matters is the boundary between successful and unsuccessful tax planning. Tax planning is best understood by reference to the word "who", "what", "when", and "where". [47]

"Who" means that, tax planning may involve the careful selection of the particular taxpayer who will for example, receive the income or realize a loss; thus it may be another member of the family with little other income or relief, or a subsidiary of a company.

"What" means that, with care, it may be possible to influence the type of receipt, whether capital or income, or one type of income rather than another e.g. employment income or business income

"When" means that timing is also important, and paying attention to time may enable the taxpayer to postpone a liability to tax, for example by taking advantages of a deferral rule, or to avoid being caught by an artificial rule which forbids, for example, the carrying back of an unused capital loss.

"Where" emphasizes that location is important since paying income or assets outside the tax jurisdiction may mean no liability to Nigerian tax, or no liability until income is remitted to Nigeria. The downside of this is that, liability may be incurred under the foreign tax system. However, the foreign tax system may be different from the Nigerian system and the exploitation of gaps between tax systems is the fore of international specialist.

The importance of tax avoidance are three fold. First, from the wider perspectives, it is not possible to assess the effectiveness of a tax system unless it can be seen by what degree of avoidance is practiced and permitted by the system.

[47] See Tiley (2000) Revenue Law (Hart Publishing) pp. 85, 86, 87.

Thus, to have a rule that trading profits of charities are not exempt from tax is one thing; to learn that this is routinely avoided by having separate trading company which assigns its profits to its charitable owners makes the rule less fierce.

Secondly, while legislation to counter avoidance can be among the most complex in our tax code, it can also be among the simplest.

Thirdly, from the lawyer's perspective, the case law on avoidance tells us much about the problem posed by legislation and statuary purposes.

The statute law for a particular tax is to be found in the state which introduced it is subsequently amended. Sometimes the amendments are made to the text of the original Act, or it is consolidated, such as the Companies Income Tax Act of 1961, 1979, and 1990 respectively. But, the perfection of the consolidation is often marred within weeks. Codification has been suggested from time to time however, no action was taken in this light.[48] It is unlikely that the tax law will be codified in the foreseeable future into a single text, except of course the various individual efforts are made at the compilation.

Nigerian Income tax, just like other tax jurisdiction, is an annual tax and the charge is imposed by the National Assembly in each year in the Finance Bill. The result is that tax Acts are really in the nature of income tax clause Acts and apply whenever any Act imposes an income tax.[49] The Finance Bill also amends the rules for the other taxes.[50] The resulting combination of measures of great economic importance and matters of great technical subtlety discussed against the background of hurly – burly of legislative procedure is not surprisingly, capable of errors.[51]

[48] Ibid p. 86
[49] Per Atkin I.J in Martin v Lowery (1976) 11 TC 297; Akinsete Syndicate v Insp. Of income Tax, F.S.C 164/63
[50] Report of Presidential commission on Revenue Allocation{Okigbo commission] 1980 vol.1 para.396
[51] Aboyade fiscal commission,1978 and Raisman 's Tax Report, 1958.

2.5 Tax Evasion and Tax Avoidance

One of the greatest problems facing the country is the problem of tax avoidance and tax evasion which is prevalent in the country. There is general agreement from many quarters that there is a tremendous gap between actual and potential tax collections. The federal government for instance' has repeatedly complained of the widespread incidence of tax avoidance and evasion in the country with companies and other taxable persons employing all kinds of tax avoidance, decides to escape or minimise their taxes not to talk of deliberately fraudulent ways and means of evading tax altogether, sometimes with the connivance of the revenue officials.

It must, however, be pointed out that these are problems that face every tax system but ours seem to be unique in the sense that considering the scale of corrupt practices there is no comprehensive tax avoidance and evasion legislation, as there is in Britain, to curb tax evasion coupled with the lack of skilled tax personnel and consequently with the inertia of our tax authorities. We shall, therefore, in this chapter be looking into the problems of tax avoidance and evasion with a view to highlighting the major weaknesses in the income tax legislation on the subject and making the necessary suggestions for the improvement of the situation.

A proper appraisal of the problem of tax evasion and avoidance in Nigeria, and understanding of the distinction between 'tax evasion" and "tax avoidance" is, therefore, a pre-requisite in that, they have not been defined in Nigerian tax legislation.

Bello JSP (as he then was) commented bitterly on the difficulty in ascertaining the differences between tax evasion and tax avoidance. He submitted that: "Tax evasion" is usually defined to mean the failure to pay one's tax or the reduction of one's tax liability through illegal or fraudulent returns or failure to make a return or even failure to' pay tax on time.[52] The evasion is therefore not only morally wrong, but also, involves a breach of the tax law. Tax evasion must

[52] *Mobil Oil Nig. Ltd. V FBIR* (1977) 1

be distinguished from tax avoidance, which is the minimisation of tax liability by so arranging one's affairs as to take advantage of provisions in the tax law. In this way, the tax payer pays less tax than otherwise would have been payable.[53]

Tax avoidance does not necessarily denote an activity that is in all cases obnoxious. Indeed, tax avoidance may be considered by some people as being legal. Of course, at first sight, it might seem difficult to see why a taxpayer should not get the benefit of statutory provisions which are part of a tax structure by adopting its legal position for that purpose. But, the matter is not as simple as this might appear. Where there are manipulations of various kinds which have the effect of reducing considerably, the revenue that is due to the government, such practices should be prevented. No one says that a person should so arrange his personal affairs that the Revenue Authority can put the largest shovel in it, however, the tax law requires and expects the observance of its rules, the underlying purpose of which is to ascertain the true amount of taxable income.

Where a taxable person embarks on artificial arrangements for the purposes of escaping or reducing tax liability otherwise due, such arrangements would be circumscribed and condemned as reprehensible or obnoxious. There is an even greater justification in a developing country like Nigeria where capital formation is badly needed for penalising tax avoidance schemes. We shall now consider the two terms beginning with tax avoidance and later on tax evasion

The Nigerian tax statutes provides no legislative definition of tax evasion but from the various offences and penalties sections, the offences provide an insight into what may be regarded as tax evasion. Tax evasion may thus be perpetuated in some of the following ways:[54]

[53] Ibid pp. 2-5
[54] Abdulrazaq M.T op.cit pp17-18

a. Failure to make return for income tax or capital gains tax;

b. Failure to make return for corporate tax;

c. Incorrect return or accounts.

The various acts must be done with fraud, wilful default or neglect[55] and knowingly[56] for them to constitute the offence of tax evasion. This approach of stating acts which constitutes tax evasion is similar to other common law jurisdictions.

In the United Kingdom[57] United States[58], Australia[59] New Zealand[60] Canada[61] and India[62] the law recognizes the distinction between tax evasion and tax avoidance but, there is no statutory definition. It is however accepted that to come within the ambit of tax evasion an activity must include some element of fraud or unlawful conduct, accompanied by intent on the tax payers' part to deliberately defraud the Revenue. The inability to statutorily define tax evasion has however not precluded its usage in the various laws.

In the Australian Income Tax Assessment Act 1936, for example, the terms "avoidance of tax' and 'evasion' both appear in paragraph (a) of S. 170(2) which provides that where a tax payer has not made to the commissioner a full and true disclosure of all the material facts necessary for his assessment and there has been avoidance of tax, the commissioner may amend the assessment where he is of the opinion that the avoidance of tax has been due to fraud or evasion at any time.

[55] Companies Income Tax Act (CITA) 1979 S> 47 (1)
[56] Personal Income Tax Act (PITA) 1961 s. 56
[57] Taxes Management Act 1970 Part X
[58] Internal Revenue Code 1954
[59] Income Tax Assessment Act 1936
[60] Income Tax Act 1976
[61] Income Tax Act ss. 239(1)
[62] Income Tax Act 1961 Chapter 21

The use in this subsection of the terms "avoidance of tax" and "evasion" was considered by Fullagar J in Westgarth's Case[63], according to his lordship: *"the word 'avoidance' is, I think, to be contrasted with the word 'evasion'. It involves, I think notion of escaping by any device or artifice but, conveys simply the notion of actually escaping through not being called up to pay."*

In its context in s. 170, the word 'evasion' appears to mean something more than avoidance but, something less than fraud. The views of Dixon J in a case involving the Commissioner of taxation of New South Wales seem to outline its accepted meaning[64] *"... that it means more than avoid and also more than a mere withholding of information or the mere furnishing of misleading information. It is probably safe to say that some blame worthy act or omission on the part of the tax – payer or those for whom he is responsible is contemplated"*

Within the context of S.170(2), it seems that both "avoidance" and "evasion" means payment of less tax than is legally required, but in the case of evasion, this is achieved by deliberate or wilful acts or failures to act on the part of the tax payers.

Although the word "evasion" has not been explicitly defined, it does seem that, it has a slightly different meaning for the purpose of S.170(2) than it might have for ordinary purposes, particularly because, it distinguishes between different types of evasion that is, those resulting from deliberate actions of tax – payer and those resulting from failure to act. Where the tax payer escapes payment of tax by mere failure to furnish information, mere furnishing of misleading information or where for some other reasons, he is not called upon to pay the correct amount of tax on his true taxable income, then the term "avoidance of tax" is applicable. This distinction

[63] *Federal Commission of Tax v Westgarth* (1985) 18 Commonwealth Law Report (C.L.R) 396 at p. 414
[64] Denver Chemical Manufacturing Co. v Commissioner of Taxation (N.S.W) (1949) 79 (C.L.R) 296 at p. 313 quoted with approval by Fullagar J in *Australasian Jam Co. Pty Ltd v Federal Commissioner of Taxation* (1953) 88 (C.L.R) 23 at pp. 37 and also quoted by Wallschutzky I G (1985) op cit p. 50

would only seem relevant in S.170(2) since, elsewhere, these elements would be characterized as evasion.[65]

Thus, in the absence of any statutory definition of the term "tax evasion", a review of some of the approaches by certain government enquiries provide an alternative to the statutory definition, since these enquiries are set up by government and nearly in all cases, the government adopts their recommendations.

No commission of enquiry on Taxation in Nigeria has offered any definition of tax evasion till date as they all seem to concern themselves with matters more relevant to politics than taxation.[66] From the Philipson Commission of 1946 to the Aboyade Technical Committee on Revenue Allocation of 1978, the terms of reference was mainly with Revenue Allocation[67]and Division of Taxing Powers[68]. The approach in the United Kingdom, Canada and Australia has been for the government enquiries to attempt a definition of the term, in particular those of ;

(1) The Royal Commission on Taxation of Profits and Income, United Kingdom 1975 often referred to as "the Radcliffe Commission"[69]

(2) The Royal Commission on Taxation, Canada 1966 referred to as the Carter Commission[70]

(3) The taxation revenue committee, Australia 1975 referred to as "the Apsrey committee".[71]

The Radcliffe Commission defined tax evasion as a situation which denotes:

> All those activities which are responsible for a person not paying the tax that the existing law charges on his income. *Ex hypothesis*,

[65] Wallschutzky I.G (1985)Understanding Tax Evasion{public finance} no.3, vol.40
[66] Abdulrazaq M.T (1993) "Nigerian Tax Offences and Penalties" Batay Law Publication Ltd. Ilorin Nig. pp 5-7
[67] Hicks/Phillipson Committee (1951), Chicks Commissions 1953 Binn's Commission 1964 Dina's Interim Revenue Allocation Review Committee 1968 Aboyade Technical Committee on Revenue Allocation 1978
[68] Raisman Commission 1958
[69] Final Report , Cmnd 97474, London 1955
[70] The Report of the Royal Commission on Taxation, Canada 1966
[71] Taxation Review Committee, Full report, 1975 it should be noted that the Asprey Committee was not a Royal Commission as were Radcliffe and Carter Commissions.

> he is in the wrong, though his wrong doing may range from the making of a deliberate fraudulent return to a mere failure to make a return to pay his tax at the proper time. [72]

This definition was also accepted by the Carter Commission

The Asprey Committee stated that:

> The Phrase tax evasion describe an act in contravention of the law whereby a person who derives a taxable income either pays no tax or pays less tax than he would otherwise be bound to pay[73]Tax evasion includes the failure to make a return of taxable income or the failure to disclose in a return the true amount of income derived.

This definition of tax evasion is no different from that already outlined by the two Royal Commissions. What emerges from all these definitions is the underlying distinction made with tax avoidance. The view of the tax Authorities in this respect is also relevant as to what amounts to tax evasion.[74]

Abdulrazaq further commented that the definition offered by the Canadian Department of National Revenues[75] is quite comprehensive and of immense assistance in the quest for an acceptable definition. They stated that:

> Tax evasion is the commission or omission of an act knowingly with intent to decide so that the tax reported by the tax payer is less than the tax payable under the law, or a conspiracy to commit such an offence. This may be accomplished by the deliberate omission of revenue, the fraudulent claiming of expenses or allowances, and the deliberate misrepresentation, concealment or withholding of material facts.[76]

[72] As quoted in Prof. Abdulrazaq's book (1991):" Tax Offences and Penalties" Batay publications ltd, Ilorin, Nigeria. Pp20-22
[73] Ibid
[74] Abdulrazaq M.T op. cit p. 8
[75] Canada Narrow Information Circular No. 73 – 10R
[76] Abdulrazaq M.T op.cit p.9

An adoption or endorsement of this view in Nigeria would indeed make the routes of escape extremely narrow, but, opinions or circulars or legislation is not self – operative. Their applicability depends on the interpretation given to them by the courts.[77]

Abdulrazaq further that it is the function of the judicial branch of the government to resolve the doubt, and in performing their judicial function the courts are called upon to determine whether in view of the facts proven and the language employed in the statute the individual is or is not subject to the prohibition or burden of the statute.[78]

In determining the question what is tax evasion? Lord Hobhouse pointed out in ***Simms v Registrar of Probates***[79] that:

> It does not appear to their Lordships that an examination of the decisions in which the word 'evade' has been the subject of the comment leads to any tangible result. Everybody agrees that the word is capable of being used in two senses, one which suggests underhand dealing, and another which means nothing more than the intentional avoidance of something disagreeable.[80]

Tax evasion was also considered in the case of ***Bullen v Wisconsin***[81] by Justice Oliver Wendell Holmes where he said:

> We do not speak of evasion, because, when the law draws a line, the case is on one side of it, or the other, and if on the safe side, it is more the worse legally that a party has availed himself to the full of what the law permits. When an act is condemned as an evasion, what is meant is that it is on the wrong side of the line indicated by the policy if not by the mere letter of the law.[82]

---

[77] Ibid
[78] Abdulrazaq M.T op.cit pp 23. See also Angell M.B (2000) Interpretation of Taxing Statutes: An overview. B.TR.pp 50-61
[79] (1900) A.C at p. 334:
[80] Ibid
[81] 240 U.S 625 630- 631 (1916)
[82] Ibid

These decisions have added little to the legislative meaning and in essence have adopted them. The meaning of tax evasion is therefore, dependent upon a descriptive definition setting out the acts that constitutes evasion in contrast to tax avoidance.[83]

This view was endorsed by the Supreme Court of Nigeria in Akinsete Syndicate v Senior Inspector of Income Tax[84] where Bairamian, J.S. C stated that "*a person may use lawful means to avoid tax' what he may not do is to try to evade it. What he does should be genuine not merely a veil to hide or dissemble the reality of things".*[85] The cases quoted above show that the basic ingredient in tax evasion is mens rea and absence of any credible explanation for fraud, wilful default or neglect.[86]

As was correctly stated by Williams J. in ***Baripp v Commission of Taxation (N.S.W)***[87]

> It is sufficient for the purpose of the appeal to say that where a tax payer makes a profit which he knows to be taxable income and wilfully omits this profit from his income tax return, he would be guilty of evasion in the absence of some satisfactory explanation for the omission.

It now appears that the definition of tax evasion is dependent upon the presence of two elements in the acts prohibited by the tax statutes. These two elements are the act itself (false statement of evasion of tax) and the guilty intent of the accused (mens rea).[88] A lengthy list of cases confirms this conclusion and the bulk of jurisprudence currently being elaborated in the area of tax evasion addresses itself to determine whether the relevant facts demonstrate these two elements. It is therefore necessary for the prosecution to prove that the evader knowingly made a

[83] Abdulrazaq M.T op. cit pp.10-11
[84] F.S.C 164/63 30/10/64 (Unreported)
[85] Ibid
[86] Obi J. I (1983) Tax Evasion and Its Solution Paper presented at the Seminar on Taxation held by the West African Sub – regional Committee of the Association of African Tax Administrators 22nd – 24th February, 1983, Lagos Nigeria pp. 22, 23 see also s. 56 P.I.T.A 1961 and S. 68 C.I.T A 1979
[87] (1941) 2 Australian Income Tax Report (A.I.T.R)
[88] Abdulrazaq M.T op. cit

false or deceptive statement in his return of income or that he wilfully (with guilty intent) evaded or attempted to evade payment of taxes.[89]

To the professional mind, the phrase "tax evasion and tax avoidance" has been familiar for many years, for the legal problems which are implied by the phrase arose with the passage of the Nigerian Income Tax Ordinance in 1943.[90]Through official use and wide appearances in the press, the phrase has now brought home to the public generally; with it are feared, rather bewildering consequences. Charges of "tax evasion and avoidance" have been made broadcast; public outcry has been raised against "evaders and avoiders".[91] Care in language and precision of statement have been lost and laymen unversed in the fundamental canons of statutory interpretations which have been applied for centuries, have lead to conclusion which in many instances are unwarranted.[92]

The confusion perhaps, is the result of the use of words, rather than of any difficult wording which often occurs where a word or phrase is employed for the sake of brevity."Avoidance" – "evasion": in the defined meaning, as appearing in the Oxford English Dictionary, is perhaps, only a slight difference in shade between the two.[93] The verb "avoid" is defined as "to avoid escape form by guilt or trickery; avoid doing or answering directly".[94] Each is given as a possible synonym of the other. Thus, in common use, the two words have only a shade of difference, though, that shade indicates the fundamental difference between the two

[89] Potvin J. (1977) Tax Evasion in Canada, Canada tax journal Vol. XXB No 2 May – June 1977 p. 240
[90] Section 17
[91] Olorunleke, D.A (1981) Business Times No. 2 1981 see Punch Dec. 1 1988 Vol. 13 where it was reported that the Minister of Finance and Economic Development has appealed to the public to help fight tax evasion by passing confidential information to the tax authorities through P.M.B 77 GP Marina Lagos, See also Ogun Y. (1989) The Guardian Feb. 27 1989 and Ayua I.A (1982) op cit p2.
[92] Abdulrazaq op. cit
[93] Ibid
[94] The Oxford Dictionary of Current English 1985 Ed.

words have always had in the field of income tax interpretation, or in fact, in the application of any statute which undertakes to draw within its field certain situation, while excluding others,

2.5.1 Basis for Tax Evasion and Tax Avoidance

Observing the problems of tax evasion demands some basic knowledge on the reasons for the individual's decision to pay or evade his taxes.[95] Notice is taken that, while government sanctions may play a role in this decision, tax attributes attitudes towards tax system and tax payers' norm may also be important.[96] This suggests that policy directed towards evasion is simply a matter at arriving at the right combination of penalties and enforcement activities, subject of course to financial constraints on the level of enforcement activities and political and ethical constraints on the type of enforcement activities and the acceptable level of penalties.[97]

Consequently, empirical research posits that, the choice between compliance and evasion is a complex one. Cross-national survey research carried out in some European countries, including Britain indicates that, positive attitudes of tax payers towards the tax system and negative attitudes towards tax offenders can make an important contribution to the level of compliance within a nation.[98] Field experimental research undertaken in the United States suggests that tax payer norms are an important factor underlying the choice between evasion and compliance and those normative appeals may be more effective than threats in inducing compliance.[99]

In Nigeria, there has been no empirical study on the tax payer's attitudes to Income Tax Evasion, other studies which touches on evasion indicate several reasons likely to be responsible

[95] Abdulrazaq M.T op. cit. pp 10-13
[96] Ibid
[97] Spicier, M.W and Lundstedt, S.B (1976) Understanding Tax Evasion, Public Finance No. 2 Vol. 31; Spicer, M.W (1975) New Approaches to the Problems of Tax Evasion, B.T. R pp. 152, 153, 154
[98] Sturmpel, B. (1969) Contribution of Survey Research to Public Finance, Quantitative Analysis in Public Finance Edited by Alan Peacock, New York p. 26
[99] Schwar4ts, R.D and Orleans S. (1967) On Legal sanctions. The University of Chicago Law Review, Vol. 34 pp. 274 -299

for tax evasion in the country.[100]. These reasons range from social, economic and political to religious.[101] They include excessive corruption on the part of government officials, problems of assessment, collection and enforcement of tax, administrative incompetence on the [part of tax authorities, general dishonesty among Nigerians, low political culture, ignorance, unfairness of the tax system, lacks of regard for equity, law and justice, historical and unpatriotic.[102]

Some of these studies however, assume wrongly, that, there is greater tax evasion in Nigeria than elsewhere and that these reasons are peculiar to Nigeria alone. As pointed out above, studies carried out in the more economically advanced nations, particularly on tax evasion shows that there is a large percentage of tax evasion in these countries. Some of the reasons for the high rate of tax evasion include, income level, age and sex of the taxpayers and fairness of the tax system.[103]

The most affluent income level has been used to explain tax evasion because of the belief that, it affects the opportunity to under – report income. Certainly, income from non-withholding sources, professional consulting or writing, interest, dividends, rental and the sale of capital goods is likely to be concentrated among the affluent.[104] But, low paying occupations also furnish sources of non withholding income. Service workers such as taxi drivers and waitresses, for instance, receive much of their income in tips and gratuities.

---

[100] Philips O.A (1975) A note on the determinant of income tax evasion, Nigerian Journal of Public affairs, October, Omoroguiwa, P.A (1984) Administrative Problems of Tax Collection and Tax Evasion in Nigeria. Paper presented at the Seminar and Workshop on New Avenues in Tax Collection in Nigeria, University of Jos, Oladunjoye, O. (1984) Tax Administration; The Problems of Assessment and Collection Paper presented at the National Seminar on Tax Laws and Tax Administration. November Nigerian Institute of Advanced Legal Studies. Obi J.I (1983) op cit Okorodudu, M.T (1985) op cit; see also the President, op cit.

[101] Abdulrazaq M.T op. cit pp 14-16

[102] Ibid

[103] Mason R.T Calvin L.D (1978)"Analysis of British Tax system" published by Oxford press ltd pp75-78

[104] Barlow R. Brazer, H. E . T Morgan, J.N (1966) Economic Behaviour of the Affluent. Brookings Institute Washington D.C Groves, H.M. (1958) Empirical Study of Income Tax Compliance, 11 National Tax Journal 291

Critically observed, age and sex appears to be related to compliance because, these variables are so closely tied to income level and occupation. Older persons are likely to receive more of their income from non withholding sources than younger persons. Certainly, techniques of income tax evasion requires a knowledge of the law and of accounting practices that is only acquired through experience, and thus, may be associated with age. Men have greater access to occupations that produce non withholding income than do women, who have traditionally held such jobs as nurse, teacher, laboratory technician, clerical or sales worker or have been employed in service occupations.[105] In all of these occupations, salary is usually subject to withholding. In addition to this, age and sex may also have an independent influence upon compliance. It is noted that youth is generally associated with higher crime rates, although this varies considerably with the specific crime.[106]

The basis for this explanation advanced for such association is that crimes are committed by those who are physically strong or pre-disposed to take risks, both characteristics attributed to youth. But it is not clear whether or not, such an explanation should apply to white collar crimes.[107] Females apparently commit many fewer crimes than males, although again this ratio varies with the crime[108] and maleness per se is not a cause of crime, but that females are subjected to more rigorous and extensive social controls[109]

Hence, the method compliance may affect the belief about the fairness of tax system. A constructed tax compliance model stipulated positive relationships between rigidity of

[105] Ferber, M.A. T Lowry, H.M (1976) Women: The New Reserve Army of the Unemployed, I Sings; journal of Women in Culture and Society 213
[106] Sutherland, E.H and Cressey, D. R 8th Ed. (1970) *Criminology*, Philadelphia, Lippin Cott.
[107] M.T Abdulrazaq op. cit
[108] Hoffmann – Bustamante D. (1973) The Nature of Female Criminality 8(12) Issues in Criminology 117
[109] ibid

enforcement, an independent variable, willingness to cooperate, an intervening variable and tax compliance, the dependent variable.[110]

The model also postulated a negative relationship between rigidity of assessment and willingness to cooperate. Willingness to cooperate operationally is defined as attitudes towards taxation, perceived equity of the tax system and attitudes toward tax offenders which suggests that England achieves a level of compliance which is satisfactory, though far from perfect, by policies which foster a willingness to cooperate with tax officials at the expense of rendering enforcement procedures redundant which may not be the case in Nigeria.

Tax evasion also breeds more evasion in two other ways by dissemination of knowledge about opportunities to evade, and by generating resentment in those whose honesty compels them to bear the burden of others who have or make greater opportunities to cheat.

Empirical studies suggest several variables that may influence compliance with tax laws such as:[111]

a. Considerations concerning the level of taxation and the worth of public expenditure in which tax payers might be less willing to comply with tax laws if the general level of taxation appeared excessively high or if they felt that government expenditures are inefficiently or unwisely made. Objections to the distribution of public expenditure might also be of importance.[112]
b. Tax equity considerations which may induce tax payers to pay the tax demanded is the belief that others are paying their fair shares.[113] Equity has many meanings but a useful distinction is made between horizontal equity, tax equity between people with similar

[110] ibid
[111] Dean P. Keenan T and Kenney F. (1980) Tax payers' Attitudes to Income Tax Evasion; an Empirical Study, B.T.R pp 30, 31, 44
[112] Abdulrazaq op. cit pp20-22
[113] Ibid

taxable capacities and vertical equity, tax equity between people whose taxable capacities differ.

c. A perceived consequences of evasion estimates of the probability of detection and severity of subsequent penalties would influence potential evaders
d. Opportunity influences crime and anti- social acts.[114] An opportunity to evade tax is only a good one if the probability of detection and punishment is perceived to be extremely low.
e. Moral perceptions regard tax evasion to be dishonest. Strong moral principles concerning honesty and a sense of public responsibility towards making tax payment would promote tax compliance.
f. Economic considerations such as greed would decrease tax compliance. Evaders are "free riders" who impose general losses on other tax payers by way of higher tax burdens or lower benefits of public expenditure which are not matched by any specific loss to themselves even though they continue to derive benefits from public expenditure.[115]

To round up the discussion on tax avoidance, let us consider the reasons that spur people to avoid paying tax. One of the reasons usually put forward is that the tax rate is very high. This could not be the case in Nigeria. The tax rate either in the case of personal income tax or company's income tax cannot be said to be very high. Ordinarily, tax rates are moderate in Nigeria.[116]

The question of tax evasion is a much more serious issue. As stated earlier, tax evasion denotes activities which are responsible for a taxable person not paying the tax that he is under a legal obligation to pay;. Although no one can be exact on the extent of the problem of tax

[114] Crimes as Opportunity (1975) U.K. Home Office Research Study, No. 34, H.M.S.O
[115] Abdulrazaq op. cit. pp30-33
[116] Ibid

evasion in Nigeria, there seems to be sufficient evidence that it is on the increase manifested by the glaring fraudulent concealment of income through either false entries in the account books or failure to keep such books which is rampant among small firms especially.

Quite a large number of companies declare losses year in year out, yet it is surprising to find directors remuneration increasing every year as well as increases in luxurious goods or conspicuous and prestigious investments such as landed properties and expensive cars. There can be no clearer evidence of tax evasion than this.[117]

As far as direct personal taxation is concerned, the major problem lies in the collection of taxes especially from the self employed such as the businessmen, contractors, professional practitioners like lawyers, doctors, accountants, architects, surveyors and traders in shops among others. These persons blatantly refuse to pay tax by reporting losses every year.[118] Many of these self – employed professionals and owners of businesses live a lifestyle inconsistent with reported income which is usually unrealistically low for the nature of their business.

Civil servants and other salaried workers are the only class of people that actually pay tax in Nigeria. Even among civil servants and other salaried workers have turned the statutory personnel allowances and reliefs, particularly, the children and married allowances, into a fertile ground for tax evasion. Almost every Nigerian tax payer is married with four children.

Thus, the problems associated with assessment to personal income tax particularly of the self employed are firstly the problem of lack of voluntary compliance and secondly, non report or gross understatement, or deliberate omission of income and refusal to render returns which are all on a gigantic scale.[119] As Sosanya has observed[120]

---

[117] Ibid
[118] Ibid
[119] See the Text of the Speech of Mr. J.F Owoeye, Director of Internal Revenue, Oyo State at the First National Symposium on Taxation on Tuesday 13th October, 1981

> Tax evading has become the favourite crime of the Nigerian, so popular that it makes armed robbery seem like minority interest, it has become so widespread that here now exists a cash economy of vast proportions over which the tax – man has no control and which is growing at several times the rate of the national economy

The Federal Military Government was so alarmed by this situation that it had to set up in 1976 a nine member task force to examine the problems connected with tax administration in the country and in particular, to examine the equitable burden of taxation of self – employed individuals, professional practitioners, partnerships and unincorporated businesses and to make recommendations. They have since submitted their report which has not yet been published.[121]

The Federal Military Government, which also introduced several tax measures to discourage tax evasion such as the presentation of Tax clearance Certificate by those who may wish to transact any business with any government agency and the payment of provisional tax within 30 days by companies on declaring interim dividends. Now some states have introduced sales tax in respect of hotel and catering services among other things. The position has now however, improved significantly on the tax measures which are implemented half – heartedly and of course do not in them entail a complete overhauling of the tax structure.[122]

The general principle is that to prevent tax evasion it is necessary that each tax payer's tax is properly assessed and properly paid. This cannot be done merely by imposing penalties against those who fail to pay their taxes but only by introducing measures which will make it possible for tax authorities to assess the reasonably accurate taxable income of person in all cases with or without the assistances of the person concerned.[123] In Nigeria, there are some monetary penalties

---

[120] Taxation Reform in Nigeria by S.O.A Sosanya, NNA (1981) at p. 7
[121] Abdulrazaq M.T op. cit Cap. 2
[122] Ibid
[123] Ibid

and criminal sanctions in connection with tax evasion.[124] Including the Board's power to sell off the defaulting tax payer's goods or other chattels, bonds or securities as well as his premises so that the amount owned can be recovered.[125]

Notwithstanding this, the tax system is not adequate enough because, the tax administration is rather weak. Certain aspects of tax administration such as assessment and collection of tax are therefore directly concerned with the prevention of tax evasion. It is the view of many people that the loss of revenue caused by the widespread tax evasion in the country is due largely to our inefficient and inept tax administration. [126]

There exists therefore, an urgent need to improve our tax administration. The immediate goal of doing this, should be to maximize tax revenue in order to obtain, additional revenue for development. This will also lead to a significant improvement in tax equity by enhancing equal treatment of all taxable persons. For these reasons, it is proposed to mention what measures should be taken to prevent or at least reduce tax evasion. In this connection, it is commendable that the tax authorities have been given stronger powers by statute to aid tax assessment, such as the right of forcible entry into offices of companies and other taxable persons to examine documents.[127]

Even if we had efficient tax administrative machinery, we would still have to encounter some formidable problems in realising the required revenue from taxation. These include identifying the persons to be assessed, their addresses and place of residence so that notices can be served on the taxpayer. This aspect of tax evasion is commonly associated with people that

[124] See s. 86 of PITA 1993
[125] CITA 1990 s. 66
[126] See Phillips, A.O. (1968)"Nigeria's Companies Income Tax" The Nigerian Journal of Economic and Social Studies Vol. 1 No.3 November, at p. 338
[127] In Britain where there is such a power, it was attacked by the late Lord Denning in the Appeal Court see the Guardian Friday, August 17, 1987, from page 3-6 NB.[The passage of FIRS ACT 2004 in this regard is commendable action by the federal govt.]

are engaged in small and medium size industries all over Nigeria. This is particularly difficult in Nigeria as most of our urban centres are not properly planned and laid out with neither street names nor numbers or non – existent and difficult to find. There is also the difficulty of ascertaining the income for tax purposes of many Nigerians who do a lot of private businesses outside the country. Also, there is the failure of tax payers to notify tax authorities of changes in their postal or residential address and difficulties in tracing businessmen and women who do business without any registration or fixed address. Also, most business transactions are not recorded in writing. The types of businesses which the tax authorities associate with the above problems are mostly the small and medium scale enterprises.

To speed up the work of revenue officials and to increase their efficiency, more tax officials should be properly trained. The introduction of computer technology to assist in the calculation or alteration, as the case may be, of tax scales, exemptions and rebates by the tax authorities is a welcome development. The government should also consider introducing the use of prescribed vouchers with taxation registration numbers in respect of business transactions.[128] Monetary penalties and criminal sanctions should be drastically increased so as to make it not worthwhile for companies or their directors or other taxable persons to attempt evading tax. For this purpose there should be public exposure in the case of detection of fraud. There should also be a through reappraisal of the status and the obligations of the auditors with a view to ensuring that accounts presented by companies for tax purposes are drawn in an appropriate manner so as to show the true taxable income. There is no pretending that these measures would eradicate the problem of tax evasion. One thing is sure, and that is, that they will go some way in reducing the present uncontrollable trend to reasonable dimensions. From the foregoing discussion, we have

[128] See Nicholas K. (1986) Indian Tax Reform Published by New Delhi Publishers 1987.

seen that tax avoidance and evasion legislation alone will not solve the problem, these have to be buttressed by an efficient tax administration that is honest and dedicated.

2.5.2 Methods of Tax Evasion and Tax Avoidance

Actually, it is not possible to give a complete list of the various ways of tax evasion, because, new ones come into play now and then, there are some more common forms of tax evasion which both Nigerian and United Kingdom[129] Laws have identified and prevent them.[130]

First is failure to furnish a return statement or information or to keep records required.[131] Secondly, making an incorrect return by omitting or understating any income liable to tax. Thirdly, giving any incorrect information in relation to any matter or thing affecting the liability to tax of any taxable person.[132]

Fourth, refusing or neglecting to pay tax.[133]

Although there are statutory provisions in the Personal Income Tax Act 1993 and the Companies Income Tax Act 1990 to check the above abuses and fraudulent practices, the reality is that, they are implemented half – heartedly. [134]

For instance, tax officials show little or no concern in arresting and prosecuting tax evaders which is difficult to prove, but, it is a fact.[135]

Hence, to prevent tax evasion, it is necessary that each tax payer's tax is properly assessed and properly paid.[136] This, it would appears, cannot be done merely by imposing penalties against those who failed to pay their taxes but also, by introducing measures which

[129] Taxes to furnish a return, statement or information or to keep records required
[130] Abdulrazaq op cit cap.two.
[131] P.I.T.A 1961 S. 54 C.I.T.A 1979 S. 66I.T.M.A 1961 S. 30
[132] Ibid
[133] Ibid
[134] Abdulrazaq op cit p.40
[135] Ibid
[136] Ibid

make it possible for tax authorities to assess reasonably the accurate taxable income of persons in all cases without the assistance of the persons concerned.[137]

2.5.3 International Corporations and Tax Avoidance in Nigeria

The massive expansion of international companies and their economic activities has given rise to taxation problems in the sphere of international investment.[138] In a developing country like Nigeria, multinational business transactions usually take place between members of the group such as the sale of goods, the provision of services, the licensing of patents and know – how, the granting of loans and so on. No doubt that, tax factors affects the prices charged for such transfers which are usually not at arm's length prices.[139] These corporations adopt transfer prices which are not arm's length prices in order to minimise tax.

It is done for example, either by selling goods to a subsidiary in a tax haven at less than arm's length prices or by a parent company overpricing its exports to foreign subsidiaries so that by inflating the cost of imports of the final product or raw materials, a corporation can increase the margin of profit which of course will be concealed for tax purposes. This leads to artificially lower profits and therefore lower tax collections in the taxing company. Thus, by shifting profits from one company to another company, the taxable profits are consequently distorted. These manipulations can have adverse effect on market and industrial structures as well as the balance of payments. Indeed they are likely to adversely affect economic development generally and in particular domestic capital formation revenues of a developing country like Nigeria.

The question is, what measures have been adopted in Nigeria under the company tax legislation to counter these abuses which we shall now examine. The attempt made in 1968 by

[137] Ibid
[138] Dominant Positions of Market Power of Transnational Corporations Use of Transfer Pricing Mechanism, Study by the UNCTAB Secretariat United Nations, New York 1978 pp. 6-7
[139] Transfers Pricing and Multinational Enterprises, Report of the OECD Committee on Fiscal Affairs, 1979.

forcing expatriate companies doing business in Nigeria to incorporate as separate entities in Nigeria as distinct from their parent companies[140] though desirable for the purpose of ensuring adequate control over them in respect of their operation in Nigeria has not been all that successful.

As salutary as this measure is, it has one serious unfortunate effect, which the foreign companies were soon to exploit. By forcing foreign companies to form subsidiaries in Nigeria, the Companies and Allied Matters Act [CAMA] 1990 has thereby created two separate and distinct persons in law, both of which are under the centralised management of the multinational expertise, thereby giving rise to important problems regarding the taxation of corporate profits. In short, this opened up avenues for tax evasion and avoidance. Thus, as Mr. J. I . Obi has rightly observed:[141]

> Everyone knows that almost all the companies incorporated here in Nigeria by expatriate companies are not Nigerian companies under the definition of Nigerian Company in s. 2 of CITA, this is because these so – called Nigerian companies are not more than branch offices of their expatriate parent companies in so far as control and management of such companies are concerned. And yet for many years before Decree No2. of 1974, we persisted in the illusion that the so – called Nigerian Companies were independent legal entitles capable of negotiating and concluding agreements with their foreign parent companies at arm length. The predictable effect of course was that spurious agreements were made and honoured by the Revenue under which the foreign expatriate companies were able to dictate what portion of their income should be left to the Nigerian subsidiaries to emit their local Naira requirements an d pay a pre determined tax – usually what such companies consider in their absolute discretion as reasonable

This device gave expatriate companies the substance of income derived in Nigeria without liability to companies income tax. The device manifested itself particularly in such items like royalties, chooses in action and general contracts, the performance of which are in Nigeria

[140] Companies Act 1968 now Companies Allied Matters Act, 1990.
[141] Companies Act 1990 now called Companies and Allied Matters Act, 1990.

and the commission for hire charges for the use of tangible assets for example, machineries, rigs and so on in Nigeria. The courts were therefore called upon to pronounce on the property or otherwise of this tax avoidance scheme. Nigerian courts judgements on the matter leave much to be desired.[142] In particular, they displayed an apparent lack of judicial will to strike down the infamous device through piercing the corporate veil of the Nigerian subsidies as independent legal entitles to see the realities of the state as English court often do.

In ***Reiss and Co. (Nigeria) Ltd. V Federal Board of Inland Revenue***.[143] For example, this lack of judicial dynamism was quite glaring. In this case, the question arose as to whether the Federal Revenue Court could disregard the legal entity of the Nigerian subsidiary for the purposes of taxing the profits of the expatriate parent company Reiss and Co Amsterdam which were derived in Nigeria. Mr. Justice A.G. Karibi – Whyte has this to say:[144]

> *Considerable importance has been attached and emphasis laid on the relationship between appellants and Reiss & CO. (Amsterdam), it is evidence that appellant was before 23rd September, 1960 only an overseas branch of Reiss & Co (Amsterdam) following upon the promulgation of the companies Decree, 1968 and in compliance with the promulgation of the Companies Decree, the Nigerian branch became incorporated as a separate legal entity with its own managing Director and Board of Directors. There is however evidence before me that Reiss & Co (Amsterdam) still has a controlling share of 55 percent of the share of the appellant company.*

In spite of this evidence and that fact that the judge himself has conceded that there is a considerable dark cloud of suspicion regarding the genuineness of the transactions between the two companies, he surprisingly concludes that[145]

> The separate legal identity of appellants and Reiss & Co (Amsterdam) cannot be denied; Salmon v Salmon & Co.

[142] Aluminium Industries Aktien Geselishaft v F.B.I.R (1971) NMLR 339
[143] Suit No. FRC/LIA 76
[144] *Ibid* at pp. 19 -20
[145] Suit No. FRC/LIA/76 of P.2 6

> [146]Respondent cannot impugn the legal situation successfully without adducing sufficient evidence to the contrary.

From the foregoing it becomes evidence that our judges are just too ready to take the law and the legal consequences of transactions as they find them without the willingness to set aside the legal form of transactions and see what lies behind them. In this way, they seem to encourage tax avoidance schemes particularly those cleverly devised by multinational enterprises operating in Nigeria through subsidiaries. It can thus be seen that our judges lack the dynamism of some English judges such as Lord Denning in swiftly striking down tax evasion and avoidance devices.[147]

It is not therefore surprising that a number of sundry amendments have not been made to the Companies Income Tax Act, 1968 (now the 1990 Act) to take care of the problems relating to dues or allowances for services rendered in Nigeria and interest payments among other things.

First, any company entering into any agreement (whether oral or written) in respect of fees, dues and allowances (wherever paid) for services rendered in Nigeria must make a full disclosure to the Board in writing of the terms of such agreement. [148] This will certainly strengthen the Board's hand in dealing with cases where the main purpose or one of the purposes of the transaction is the avoidance of tax and consequently this could have a restraining influence on both the Nigerian and expatriate companies. Now, interest is deemed to be derived from Nigeria, if there is liability to payment of the interest by a Nigerian company or a company in

---

[146] For instance, Lord Denning in the case of *Littlewood (Mail Order Stores Ltd v McGregor* (1961) 45 T.C 519 and 536 said this "The doctrine laid down in *Salmon v Salmon & Co*(19897) A.C 22 has to be watched very carefully. It ahs often been supposed to cast a veil over the personality of a Limited Company through which the courts cannot see. But that is not true , the courts and can often do, draw aside the veil. They can and often do pull off the mask. They look to see what really lies behind." Thus in this case Lord Denning declined to treat a subsidiary of the Littlewoods as an independent company for tax purposes.

[147] ibid

[148] CITA 1979 S. 10

Nigeria regardless of where or in what form the payment is made or regardless of which every way the interest may have accrued[149]

Previously, interest was only taxable in the hands of the recipient if there was a right to payment of the interest in Nigeria. This, among other things as has been stated earlier, created a loophole through which expatriate companies could evade tax liability on interest they received in respect of operations carried on in Nigeria by so contracting that payment of interest was effected outside Nigeria by their subsidiaries.[150] The new law however is that interest is taxable irrespective of the place of payment.[151]

Another device through which foreign companies evade tax lies in the use they usually made of management fees, technical assistance fees and other similar fees to transfer profits ahead. A tax benefit is usually the reason for the discretionary use of both royalties and management fees. Thus, in the words of S. Robbins:[152]

> The use of royalties and management fees typically brings tax advantages to the system when a subsidiary's local tax rate is higher than that of its parent. The royalties and management fees are tax deductible locally; but if such a subsidiary remits by means of dividends, it must pay a tax on its earnings prior to the distribution. Though the parent receives a tax credit, the amount it is entitled to effect against the foreign payment is limited by the lower tax rate of the parent. Accordingly, the fee – paying subsidiary benefits to the extent of the differential between the tax rate prevailing in its country and that in the country of the parent.

Hence, multinational enterprises are more concerned with higher margin of profit than with the forms they take – whether for example, they are recorded as royalties, management fees, cost charges or dividends from their subsidiaries and if they can get higher profits through

[149] CITA Cap. C.2 LFN, 2004 S. 8(2) (a) & (b)
[150] See *Aluminium Industries Aktien Gesellschaft v Federal Board of Inland Revenue (1971)*NMLR 339
[151] CITA Cap.C2, LFN, 2004
[152] Robbins and Stobaugh, L, (1974) Money in the Multinational Enterprise: A study of Financial Policy (London) Longman Group Ltd; p. 89

management fees and royalties, they would surely accept these forms in order to prevent the avoidance of tax through the transfer of profits in these forms. Section 61 o f the Companies Income Tax Act 1990, provided for the taxation of management fees or royalty when one company pays or credits such fee to another company. Head office expenses incurred for and on behalf of any company in Nigeria were specifically prohibited as allowable deductions.[153]

This will be hard to believe that the above legislative measures would solve the problem of the tax avoidance by multinational enterprises. These corporations have as their fundamental objective the increasing of profits globally and so try to minimise their overall tax burden by manipulating as we have seen the prices of intra – corporate transactions in goods and services so as to raise profits in these countries where lower tax rates prevail and to reduce them in countries where they are higher.

This affects both developed as well as developing countries. Intra – firm imports of developing countries are larger in particular in industrial sectors such as chemicals, pharmaceuticals, electrical machinery, and so on. But, a developing country like Nigeria, is less equipped than a developed country to check these abuses. The United Kingdom, for example has a comprehensive set of rules which it uses to control the abuses. Thus, the Inland Revenue Department in Britain recovered about £20 million following investigations into the transfer pricing policies of foreign – owned corporations operating in Britain.,[154] Nigeria is seriously handicapped in several ways quite apart from the fact that existing provisions were drafted at the time the problem was not clearly recognised. Factors inhibiting the effectiveness of the government include the following.

[153] See Finance Miscellaneous Taxation Provisions Act 1993-1996, See also Finance (miscellaneous Taxation provisions) Decree 1979 Part III, S. 22
[154] See Financial Times 14 January 1977

Firstly, there seems to be difficulties faced by the tax authority in determining 'arm's length' prices as there are hardly comparable market substitutes. Arm's length pricing seems to be the best approach in arriving at profits for tax purposes where reliable accounts are not kept.

Secondly, there is the difficulty in obtaining from firms the data necessary to reconstruct prices on the basis of actual costs, and their position is further worsened by the fact that often the information necessary to determine the reasonableness of transfer prices for particular products has to be obtained from abroad.

The problem is accentuated by the possibility that subsidiaries may claim that they do not have access to the information required in that it is with the parent company and even where the companies are willing to provide the information to foreign authorities, their respective governments mat not allow them to do so.

Thus, therefore, it is necessary that in Nigeria, efforts should be devoted to enacting a more comprehensive legislation to check transfer pricing but it also seems that the effectiveness of such legislation has to depend on international cooperation. As the UNCTAD Secretariat United Nations has said;[155]

> Until more accurate methods of assessment of enterprises (in particularly multinationals), can be employed and this may very well imply and much more thorough application of the principle you were guilty of a high income unless you can provide (reliable) accounts to show you are innocent.[156]

This transcends us to consider on tax avoidance, which will include the omnibus or residual provision designed to strike down all kinds of tax avoidance schemes

[155] Dominant Position of Market Power of Transnational Corporation's Use of Transfer Pricing Mechanism, Study by UNCTAD Secretariat of the United Nations New York 1978 p. 4 1para 17
[156] See the National Income of Nigeria 1950- 51 London; Her Majesty's Stationery Office 1953 at p. 83

2.5.4 Fictitious Transactions

The fact of the matter is therefore that there are several other devices currently employed by companies and those who control them to avoid or reduce their liability to tax. It is at this juncture that section 18 of Companies income Tax Act,1990 comes in.[157]

Section 18 provides that where the Board is of the opinion that any disposition is not in fact given effect to or that any transaction which reduces or would reduce the amount of any tax payable is artificial, it may disregard any such disposition or direct that such adjustments be made as to counter the avoidance or reduction of tax. Thus, the board is empowered to disregard 'artificial or fictitious' transactions carried out with the intention of reducing the amount of tax payable. [158] In this connection the term "disposition" is given an extensive statutory definition and includes any trust, grant, covenant, agreement or arrangements[159] which a word of very wide meaning is thereby embracing a whole range of activities and so extending considerably the definition of disposition.[160]

Furthermore, transactions between persons one of whom either has control over the other or in the case of individuals who are related to each other to between persons both of whom are controlled by some other person are treated as artificial or fictitious unless they are affected "at arms length".[161] However, that this is not wide enough to cover transactions between a company and the relatives of its directors if the aim is to deplete the company's profit in order to reduce its tax liability since it appears a situation involving the directors' relatives and the company is not envisaged under this subsection.[162]

---

[157] See also Section 17 PITA Cap. P 4 LFN,2004 which is similarly worded.
[158] Adulrazaq op cit P.20
[159] CITA 1990 s. 18(2)(a)
[160] Abdulrazaq op cit
[161] Ibid s. 18(2)(b)
[162] M.T Abdulrazaq op. citp22

A company in respect of which any direction is made by the Board has right of Appeal against that direction under s. 1 as if the direction were the same as an 'assessment'. Apart from the qualification made above, s. 18 seems to be general in scope and could thus be employed to restrict substantially the scope for tax avoidance schemes.[163] The Nigerian courts seem to take note of the existence of s.18. But, it is rare indeed to find an important Nigerian court decision in which Section 18 has been relied upon to strike down any tax avoidance device.

The reason is that Section 18 is crafted in a vague an imprecise language so that, it places an enormous burden on our otherwise less skilled tax officials by requiring them to examine every transaction which can be sometimes very sophisticated and complicated and to make a ruling as to whether it is fictitious or artificial. Based on the level of their training, they are more likely to give up when confronted with difficult situations which are bound to be many in the face of a booming economy.[164]For example, they may find it difficult in some circumstances to say exactly what proceedings are within and what are outside the scope of Section 18. Commenting on s. 18, a Senior tax Official said this:[165] "*It involves so much preparatory work, that it would only use it as a last resort".*[166]

Thus, the reluctance by tax officials to use Section 18 could indeed make it counter – productive by causing loss of badly needed revenue. This same difficulty applies to companies and other taxable persons who may find it difficult to take important commercial or investment decisions as every such decision will be theoretically open to attack since the section is very pervasive. [167] Consequently, it is suggested that a more appropriate approach to the problem of

[163] Ibid
[164] M.T Abdulrazaq op cit
[165] Layade, P.S.A (2000)' Tax Evasion' in Fifth Annual Senior Officers' Conference of the Federal Board of Inland Revenues, op cit at p. 29
[166] M.T Abdulrazaq op cit
[167] Ibid

tax avoidance is by specific enactments which will identify the kind of transactions to strike at and prescribe with equal precision the consequences which are to follow.[168] In addition to the several advantages of this approach, it has an important advantage for the business community in the sense that it actually assists them by defining for them the obstacles they must be ingenious enough to get round.[169]

This paradoxically, creates in each particular anti- avoidance provision, the seeds of its own avoidance. This is, however a matter that cannot be satisfactorily concluded either way as there will always be a contest between the government desirous to plug all loopholes so as to obtain the maximum tax as much as possible and the commercial world intent on finding ways and means to reduce their tax liability. This notwithstanding, it seems that dealing with particular transactions with specific provisions is the more effective way of curtailing tax avoidance and it has the added advantage of inculcating confidence in the commercial firms.

Where, however, it is not humanly possible for the legislature to cover a particular situation effectively, the only alternative may be to introduce legislation of a more sweeping character, but this should be by way of exception only. So far, considering the fact that many companies now find it attractive to indulge in various tax avoidance schemes, it is suggested that s. 18 should be amended along the lines of S. 460 of the UK Income and Corporation Taxes Act 1970 which attacks any transaction in the securities, the purpose of which is to obtain a tax advantage. It defines both the types of transactions and the situations to be struck at.

This is further augmented by providing for consequences for other situations or transactions aimed at unduly minimising tax liability in several other sections. We should therefore have a similar tax avoidance legislation, as the UK have empowering the Board to

[168] Ibid
[169] See Cmnd. 9474 (U.K)

challenge any arrangement, operation or scheme of which the main purpose or one of the main purposes is the avoidance or reduction of liability to tax and to make adjustment to counter the avoidance of reduction. But, this legislation should be very detailed and comprehensive by specifying the kinds of transactions or arrangements that should be attacked, such as transfer or acquisition of shares in a company or a change in the persons carrying on a trade or business or increased relief from tax, or repayment or increased repayment of tax; the avoidance of a possible assessment and so on all designed to unduly minimise the tax burden.

The point must be made that operations, which result in a reduction of tax liability could well be undertaken for purely bona fide commercial or other non – tax savings reasons. This therefore raises the question whether for our own purposes, the British criteria of (a) genuine commercial purpose or (b) management of a portfolio of investments constituting a defence to the revenue ruling that the company's operation is to effect tax avoidance will be satisfactory in Nigeria.

The British courts have held that, the test to be applied in the above situation is a subjective one[170] - being a matter of intention which cannot be divorced from the directors who govern the company's policy or the shareholder's who are the proprietors and past resolutions which bind the company.[171] Apart from the subjective approach leading to serious practical problems, it opens the door to tax avoidance as there seems to be nothing to prevent the company pleading in the face of its transactions being challenged that they have been carried out bona fide, commercial reasons or in the ordinary course of making and managing investments.

Although, as can be seen from the above, the British criteria of justification have its shortcomings, it is nonetheless essential if genuine commercial business is not to be introduced

[170] See IRC v Brehner 91967) 43 T.C 705
[171] Ibid at p. 715

in Nigeria. But, there must be an express provision to the effect that the tax payer company must show to the satisfaction of the board or its representatives that the transaction or transactions were carried out for bona fide commercial reasons and that a tax advantage was not one of their main objects.

While this may help to prevent companies taking undue advantage of the criteria of justification it may lead to arbitrariness and indeed abuse on the side of tax officials against companies engaging in genuine commercial operations totally unconnected with tax avoidance. A safeguard should therefore be provided to protect the companies against abuses of this kind .In this respect, it is suggested that that aspect of the legislation should be amended to define what constitute or amount to "bona fide or genuine business" for tax purposes.

2.6 Effects of Tax Evasion and Tax Avoidance

Tax evasion is of serious concern in Nigeria for at least three reasons. First, it results in a loss of tax revenue.[172] Second, given that opportunities to evade taxes differ among tax payers, tax evasion impairs the chances of realizing the distributional or equity goals of taxation. Third, if tax evasion becomes too wide spread and out of control, honest tax payers may lose faith in tax administration and be tempted to join the ranks of tax evaders.[173]

Empirical investigations have shown that in Lagos state alone, a prime commercial centre, as much as N10 billion is lost annually through tax evasion as confirmed by the state's Financial Commissioner that Lagos State Government loses substantial revenue through tax evasion.[174]

[172] The Federal Board of Inland Revenue (FBIR) declined to give a specific figure on possible loss of tax revenue to the nation but admits that it is more than one billion Naira annually. See Jegede Osula J and Nwosu T. (1998) Five Billion Naira Lost through Tax Evasion The President 31 July 1 No. 3 p. 12
[173] Spicer M.W (1975) New Approaches to the Problem of Tax Evasion B.T.R p. 152
[174] See footnote 114 above

Accordingly, if 20 percent of the N10 billion loss suffered annually by the Lagos State Government is computed and projected for each of the remaining twenty states and Abuja, it means that each of the states loses an average of N20 billion annually. Cumulative total loss for all the 36 states and Abuja will be about N600 million annually.[175] Revenue losses owing to tax evasion as can be seen are enormous[176] as there appears to be a big gap between actual and potential income tax collections by the various levels of government.[177] In effect the end total of tax evasion is less revenue to the taxing authority. It also tends to shift the tax burden on the less fortunate members of the community.[178]

In a developing economy like Nigeria where all hands should be on deck to revamp the economy, the prevalent magnitude of the crime is indeed injurious. It is difficult to provide any reliable statistical evidence of the seriousness of tax evasion in Nigeria because of the persistent distrust of statistics. This is because statistics as shown above, has become immensely politicized[179] in Nigeria and it is linked to the distribution of the national resources. Therefore, the ability to manipulate statistics ultimately works in favour of the manipulator, hence, any benefit which might accrue from the use of statistics is lost. In a study carried out in Nigeria in 1976,[180] it was discovered that the paucity of tax statistics had been very serious. That there was no annual or quarterly bulletin on tax statistics issued from internal revenue department sources with the foregoing background, it is no surprise that few attempts have so far been made by the internal revenue departments to discover either on the state or local government basis, if the total

[175] ibid footnote 94
[176] Olorunleke D. A (1981) Business Times (Lagos) Monday November 2
[177] Rabiu S.A (1984) Tax Evasion and Offences. A paper presented at the National Conference on State Taxation; Problems and Possibilities under the auspices of the Institute of Administration, A.B.U, 28 – 30 November pp. 1-2
[178] Abdulrazaq op cit
[179] Such as been, the case with the various census undertaken in the country especially that of 1973
[180] Orewa (1976) Taxation in Western and Midwestern Nigeria, Nigerian Institute for Social and Economic Research (N.I.S.E.R0 pp. 118, 120

number of persons paying taxes to the government are keeping pace with the population trends.[181]

No doubt, the tax collection machinery of government at the moment lacks the capacity to correctly determine the total number of Nigerians who should pay tax and those who have not been performing their civic obligations.[182]A major handicap is the lack of a computerized tax collection machinery which would enable the inland revenue boards to keep accurate and up to date data on tax payers and be able to effectively apply and enforce the penal provisions in the various tax laws and acts. [183]

There are also the questions of lack of funds, inadequate staff training, poor pay and lack of motivation.[184] Despite the efforts of Lagos State and the Federal Inland Revenue Service, it is still difficult to accurately estimate the seriousness of tax evasion in Nigeria and all that can be presently done is to assume in the light of revenue collection and estimated population the problem of tax evasion is a serious one.[185]

Studies carried out in the United Kingdom also show that the use of the same criterion of economic cost shows that tax crime is more serious than other forms of property criminality.[186]

Moral precepts of tax evasion are, however considerably less clear cut than the economic aspects. The incidence of tax evasion should not be viewed in isolation.[187]

It is regrettably a reflection of the basic maladies of the present Nigerian society and to that extent it ought to be viewed in the context of the law generally. It is common knowledge that our present society has little regard for law and order.[188]

---

[181] Abdulrazaq opcit
[182] Ibid
[183] Ibid
[184] ibid footnote 94
[185] Ibid
[186] Levi M. (1982) The Powers of Revenue Agencies An Overview; B.T.R pp. 37 - 39
[187] M.T Abdulrazaq op cit p25

Laws are broken with impunity and very regrettably laws are disregarded by those who have benefited more from society and who on reflection are those who stand to gain much more from a well ordered law abiding society.[189]

It should be noted that armed robbery, theft and the replacement of stolen goods stimulates the insurance business, increases the population of goods, if the recipients of the stolen goods would not otherwise have bought them and possibly inhibits revolutionary demands by providing an extra form of income distribution yet, it is doubtful that we would wish to advocate theft and burglary on that account.[190]

People's perceptions of the seriousness of tax evasion are regarded far less seriously than the theft or burglary or the embezzlement of the same amount and there also appears to be no moral taint either. This probably accounts for the low level or even total failure of the various tax authorities to make use of the powers at their disposal. [191]

In the United Kingdom it was found[192] that two thirds of the sample of respondents in Scotland thought that most people would hide a small amount of income if they thought they could get away with it, and 44 percent thought that such conduct would not be "bad'. It was also found that a random sample of the Sheffield population thought that very small – scale tax evasion was the least serious of the property offences.[193] Surveys which compare non – tax fraud

---

[188] Ibid

[189] Obi, J.I (1983) Tax Evasion and Its Solution. Paper presented at the Seminar on Taxation held by the west African sub – regional committee of the Association of African Tax administrators, February 2 – 24 Lagos p.24; Ayua I.A (1982) The Problem of Tax Evasion and Avoidance in Nigeria. Paper presented at the First National Seminar on Commercial Laws, Ahmadu Bello University Zaria 4-9 October p. 25 See also president op cit p. 15. Although this statement appears rather sweeping, it will nevertheless be difficult to obtain any empirically support for it in view of the sensitivity and political nature of taxation in Nigeria as evidenced by the Aba women riots of 1929 and the refusal of the Ogbomoso populace to pay tax during the second republic.

[190] Abdulrazaq op cit p 33

[191] Ibid

[192] Dean P. Keenat T and Keeney F. (1980) Tax Payer's attitudes to Income Tax Evasion; An Empirical Study.

[193] Walker M. (1978) Measuring the Seriousness of Cries. 18 British Journal of Criminology (B.. Crim 348-364).

with other property crime also indicate that the size of defalcations is an important element to show how seriously they are regarded it.[194]

In Nigeria, members of the upper socio – economic groups are far more guilty of major tax evasion than poorer people are because, they do seem to enjoy an immunity from tax prosecutions.[195] However, it seems likely that taking the Nigerian public whose antagonism to tax payment arising from the basic lack of confidence in tax officials and the government, could be the major cause for the low tax compliance efforts generally.[196]

To crown it all, the public perceptions of tax evasions should be taken into account when framing social and legal policy, the Nigerian public does not seem to appreciate sufficiently the negative effects of tax evasions.[197]

In addition, there also remain the issues of what form the law in this area should take and which investigative powers should be granted to revenue agencies in respect to the aforementioned reasons.[198]

It is therefore advised that the revenue authority should create an investigating unit with special police powers to perform such functions.

[194] Levi M. (1977) The Seriousness of White Collar Crime; An Empirical Overview and Reassessment (unpublished research report); Sparks R. Genn, H and Dodd D Surveying Victims
[195] Obi J.O op cit p. 24 Ayua I.A (1982) op cit p. 25
[196] Surve S. (1967) Tax Administration in Developing Countries
[197] Abdulrazaq op cit p20
[198] Ibid

CHAPTER THREE

CIVIL AND CRIMINAL OFFENCES AND SANCTIONS

3.1 Introduction

Under Nigerian Income Tax Laws, sanctions are usually imposed against any breach committed by the tax payers. They are imposed as punishment aimed at enforcing income tax legal obligations. In this chapter, we shall consider the civil sanctions against tax offenders that constitute breaches of tax legislation. Criminal offences and sanctions shall be considered in the next chapter. Weak and inadequate sanctions cause the failure of legal control of income tax in Nigeria because it gives room to tax defaults by taxpayers leading to loss of revenue. This eventually leads to low rate of income tax compliance efforts in Nigeria.

Some of the civil breaches against tax laws include the abuse of civic rights; the civil fraud, delay in tax payment within reasonable time, refusal to pay tax, failure to deliver tax returns, failure to pay tax arrears, refusal to give tax assessment on demand or paying less tax assessment, failure to show tax clearance certificate, artificial and incomplete tax transactions, undistributed profits of companies in form of dividends, false application of commencement and cessation of taxable business and false claims of bona fide commercial transactions.

The revenue authorities needed court orders to sell off the defaulting tax payer's goods, chattels, bonds or securities as well as their premises to offset the amount owed to the tax authorities. In spite of this, the sanctions seems ineffective as will be examined later on. In addition, the tax administrative machineries appears to be weak, thus, accounting for the inadequate usage of the various sanctions. These weaknesses and ineffectiveness will be clearly discussed subsequently in chapters four and five respectively.

The Nigerian Income Tax Act also provides other coercive measures to prevent tax crimes and compel delinquent tax payers to fulfil their income tax obligations to the state and to encourage payment of taxes. These deterrent measures include imposition of fines, interest and imprisonment against the tax offenders by the revenue authorities and the courts. The Civil sanctions are those which are applied by the revenue authorities through court orders in the case of defaults committed by tax payers. The main objective of civil sanctions is to safeguard the revenue by making tax evasion unprofitable and to reimburse the state against serious losses caused by tax evaders. Civil sanctions are of great importance within the purview of income tax enforcement and compliance efforts in Nigeria.

The provisions dealing with imposition of civil sanctions are sections 60-78 of the Companies Income Tax Act [CITA][199], sections 86-93, 96 & 99 of the Personal Income Tax Act [PITA],[200] sections 6 and 7 of Education Tax Act [ETA],[201] sections 43, 48-53 of the Petroleum Profits Tax Act [PPTA],[202] sections 42 and 44 of the Capital Gains Tax Act [CGTA],[203] sections 14-16, 21 – 33 of the Value Added Tax Act [VAT][204] and sections 109 –114 of the Stamp Duties Act [SDA] respectively.[205].

The sentencing of tax offenders in Nigeria depended on the nature and scale of the particular offence. Many factors are taken into consideration by the judiciary when passing a sentence. However, specifically, the social disgrace suffered by the offenders in tax fraud cases has been presented as a form of punishment. Despite the level of fines imposed by the courts,

[199] Cap p.4 Laws of the Federation of Nigeria (LFN) 2004.
[200] Cap C 2 LFN 2004
[201] Cap. E 1 LFN 2004
[202] Cap. P 6 LFN 2004
[203] Cap c. 3 LFN 2004
[204] Cap c 4 LFN 2004
[205] Cap v 5 LFN 2004

many tax fraudsters are able to afford this cost when comparisons are made with either their average weekly earnings or monthly earnings.[206]

The general effect that court proceedings have on a tax fraudster's future employment and earning is taken into account in determining sentences sometimes resulting in significant mitigation of fines. In some cases, extremely serious tax offences have resulted in light sentences because of the pressures of the corporate business world.[207] The implication of light sentences was highlighted by a member of British parliament, Mr. D. Spencer, in the House of Commons where he observed:

> The problem with over lenient sentences is not the habitual over lenient judge but, misjudgement. Most judges are perfectly aware of Thomas on "The Principles of Sentencing", the Court of Appeal Guidelines, the Criminal Appeal Reports", sentences theories and all the relevant principles that are to be applied to hypothetical sets of cases. The problem arises when through an error of judgement, a judge of otherwise sound judgment make a mistake. If he errs against a defendant, the matter can be put right on appeal to the court of Appeal, but if he errs against the public interest by passing an over lenient sentence, nothing is done. That causes widespread demoralisation among the public and I suspect, members of the judiciary.[208]

The learned British Parliamentarian, may be right in his remarks, but he might not be aware of the rules governing the interpretation of taxing statutes. One of these rules states that the tax payer is entitled to stand upon a literal construction of the statutory provision, even if the result is anomalous.[209] Also, where the meaning of a tax statutory provision is ambiguous, the taxpayer must be given the benefit of the doubt.[210] In other words, if the tax provision is

---

[206] The Penalty of Civil Fraud in United Kingdom is £50 under S. 93 of British Taxes Management Act (1970) i.e just 30% of Average Weekly Earnings (AWE) in 1985/56. See B. I.R Annual Abstract of Statistics (1991), p. 21 there are no similar available records in Nigeria.

[207] See British Inland Revenue Annual Abstract of Statistics (1991) p.21 and footnotes 148 below. No similar records in Nigeria

[208] House of Commons, Parliamentary Debates, Sixth Series, Vol. 106, Criminal Justice Bill 1986 at page 509

[209] *Pryce v Mon MouthShire Canal and Ry Co.* (1879) 4 A.C. 197

[210] Adamson v AG (!933) A.C 257

reasonably capable of two meanings, the courts will prefer the meaning more favourably to the taxpayer.[211]

The Nigerian legislators are aware of these problems of lenient sentencing and weak penal provisions. That was why the Nigerian Inland Revenue Service Act (NIRS) 2004 was promulgated into law in 2007.[212] Some of the provisions will be examined subsequently.

3.2 Civil Offences

Civil means the ordinary life of citizens as distinguished from military, legal or ecclesiastical affairs or relating to the citizen as an individual civil rights. While offence is a breach of a rule or law or an illegal act and also is the behaviour which causes people to be upset or embarrassed. However, civil was a term of art in military law. In the Army Act 1995 and the Air force Act 1955, the expression "civil offence" meant any Act or omission punishable by law of England or which, if committed in England, would be punishable by that law.[213] Civil offences are usually defined by a nature of the offence and the punishment assessed. Civil offences involve violations of administrative matters.

3.3 Civil Fraud Sanctions

Civil fraud sanctions manifest when tax evasion and avoidance are derivate from what is to be found legal, fair and just. They occur frequently together. It is common in them that they result in losses in the tax revenue. Otherwise they are different from each other. tax evasion is associated with breaking the law: it is a gap developed due to the taxpayers' real conduct departing from what has been promulgated as statutory fiscal law. In contrast, tax avoidance dose not ensure the breaking of the law. It is yet the circumvention of law: taxpayers entangled in tax

[211] *I.R. C v Ross and Coulter Distillery Co. Ltd* (1948) 1 ALLER 616
[212] NIRS Act 2007 was sponsored as a Bill to the House of Representatives by Federal Inland Revenue Service on 15 Nov. 2004
[213] See. *Cox V Army Council* (1963) AC 48, HL.

avoidance attack what can be seen as the integrity of law.[214] It also manifests itself there must be a discovery of opinions. There must also be the loss of tax due to either 'fraud', 'wilful default or neglect'. Consequently, the income tax laws permits the revenue officials to assess the tax payer any amount or additional tax due to be taxed in order to cover the loss of tax caused by the 'fraud', 'wilful default' or 'neglect' on the part of the taxpayer. Of course, this will result in contestable litigation by the taxpayers in the law courts. The civil fraud sanctions are provided in most of the tax statutes.[215]

A recurring theme in cases concerned with civil fraud is the continuing struggle between the legislature on the one hand and the ingenious tax payer and his advisers on the other. In introducing provisions designed to impose tax, the legislature will seek to ensure that such provisions are effective and to block all potential 'loopholes'. The various methods of doing so were discussed by the British Royal Commission on the taxation of profits and income.[216] These include specific provisions and specific anti-tax avoidance provisions. The Nigerian Income tax provisions follow similar pattern especially in civil fraud sanctions.[217] But, it is disheartening to note that some of these provisions are ineffective. For instance, under section 71(1) of the Companies Income Tax Act[218] any person guilty of an offence against the Act or contravenes any specific provisions of the Act shall be liable on conviction to a fine of N200 for each day during which such failure continues or six months imprisonment.

For a company, N200 is too small liability against the offence. Many companies will not mind to breach the tax provisions in form of civil fraud if they will derive advantage by refusing

[214] Daniel D., (2004) "Society and Economy: Legal Considerations of Tax Evasion and Tax Avoidance", BUESPA, Department of Economic Law, Budapest, Hungary. p.57
[215] Sections 60-66, C.I.T.A Cap C.2 LFN, 2004; Sections 86-93, P.I.T.A Cap. P4 LFN,2004; S. 32 P.I.T.A 1961 S. 47 C.I.TA 1979 etc.
[216] (1955) Cmd. 1474 Para. 1020-1027
[217] Sections 71-77 C.I.T.A Cap C2 LFN 2004, Ss. 86-93 P.I.T.A. Cap P4 LFN, 2004
[218] C.I.T.A. Cap C 2 LFN, 2004 See also Sections 86-93 P.I.T.A Cap. P4 LFN, 2004

to disclose secret profits or disclose any information or withhold their financial records for the purpose of tax avoidance. The six months imprisonment only applies where the company defaulted in the payment of the N200 fine. To deter companies and other taxpayers from committing civil fraud, the revenue authorities should consider increasing the fine to N20,000 or more, for everyday during which the tax payer commit the civil fraud offence. This can be done by an amendment of the tax provision by the legislatures.

3.3.1 Discovery

Extensive exposition of the term 'discovery' has been given by the court in the case of ***Cenlon Finance Co. Ltd V Ellwood***[219] It was stated by Viscount Simonds that the words are apt to cover any case in which for any reason courts it newly appears that the tax payer has been undercharged. Hence, an assessment can be made if the tax authorities decide that a company should be treated as a dealing company, rather than an investment company.[220] Situations may also arise where the inspector of the tax takes a different view of the law from his predecessor; or to correct an arithmetical error to the computation.[221] Under Section 64 of C.I.T.A LFN 2004 and Section 88 P.I.T.A LFN, 2004, any taxpayer liable to income tax and has not been assessed, discovery can also be established. It can rightly be said therefore, that where a tax payer is under charged or not assessed to income tax amounts to discovery.

However, Section 80(3) of CITA provides:

> "...dividend received after the deduction of tax prescribed in this section shall not be charged to further tax as part of the profits of the recipient company. However, where such income is redistributed and tax is to be accounted for on the gross amount of distribution in accordance with subsection (1) of this section, the company may off-set withholding tax which had itself suffered on the same income".

[219] (1962) 1 ALLER at 859
[220] Abdulrazaq op cit. p. 51-52, Jones v Mason Investments Ltd. (1966) 43 T.C 570
[221] *Parki v Cattell* (1971) 48 T.C; *Vickerman v Personal Representative of Mason* (1984) S.T.C 231.

However, section 19 of CITA introduced anti-avoidance provisions as follows: "where a dividend is paid out as profit on which no tax is payable due to:

a. No total profits or
b. Total profits which are less than the amount of dividend which is paid, whether or not the recipient of the dividend in Nigerian company, is paid by a Nigerian company, the company paying the dividend shall be charged to tax at the rate prescribed in subsection (1) of section 40 of this Act as if the dividend is the total profits of the company for the year of assessment to which the dividend is declared related".

Based on the above provisions of Company Income Tax Act (CITA), tax authorities usually apply the conflicting provision of excess dividend tax to further impose tax on dividend income vice-versa.

Section 64 of Companies Income Tax Act (C.I.T.A)[222] specifically provided that any person authorised to deduct tax under Sections 60 –62 of C.I.T.A LFN, 2004 fails to deduct the tax within 30 days when it is due; shall be guilty of offence and liable to a fine of 200% of the tax not remitted in addition to the amount of the tax deducted plus interest at the prevailing commercial rate. For this type of offence, a discovery has to be made. This provision affects not only the federal, state and local government revenue authorities but also government organs, agents and parastatals. The various federal and states accountant generals are required to deduct the said tax from the federal, state, local governments, government agents, organs or parastatals' financial allocations. In this case, a discovery has to be made for the reasons why the taxes were not deducted or assessed.

This provision is very significant in the sense that the Pay As You Earn (PAYE) system of tax affects a lot of taxpayers who are civil servants. It is meant to check all government

[222] Laws of Federation of Nigeria (LFN) 2004

authorities and agencies including the public and private sectors that employed the tax payers in their organisations to ensure that they remit the PAYE taxes to the revenue authorities. In this way they become agents of the tax authorities based upon the principal and agent relationship. Most employers of labour more often hesitate to remit the PAYE to the revenue boards. This provision is laudable enough to serve as deterrence against any prospective private, public or government agency that will attempt not to remit these PAYE taxes.

But, it is also unfortunate to note that these provisions dealing with non – remittance of PAYE taxes are hardly evoked by the tax authorities, thereby, denying government substantial revenue from the PAYE taxes. This is because, there are no known cases on this subject matter before any court of law in Nigeria so far. Research did not reveal any issue on discovery of non – deduction or lack of remittance of PAYE taxes before any Appeal commissioners of taxes because, their findings or decisions are not reported or made known to the public. The various revenue boards should as a matter of necessity be encouraged to evoke these cases of incessant non – remittance of PAYE taxes. It is also submitted that the decisions of Appeal Commissioners should be reported in revenue law reports for public consumption.

3.3.2 Fraud

According to Abdulrazaq, the meaning of income tax fraud is very wide and all embracing.[223] This is because there are several ways in which the taxpayers evade tax. Even the provisions in the tax statutes which are meant to deal with the tax offences of fraud do aid taxpayers to evade tax instead of preventing it.[224] Hence, to determine the income tax fraud, we have to consider case law on the subject matter so as to observe how the courts interpret the statutes that relates to income tax fraud. However, it should be noted that the major factors which

[223] (1993)'Nigerian Tax Offences and Penalties. Published by Batay Law Publication Ilorin Nig. p. 51-56
[224] Sections 75-86 P.I.T.A Cap p4 LFN 2004, S. 293 (b) United States Internal Revenue Code.

the statutes cover in determining income tax fraud are; the deficiency in tax for the year in question and secondly fraud with intent to evade tax.[225]

In the United States case of ***Williams v. Mitchell***,[226] the tax return was prepared by an employee of the taxpayer called Nabor who testified that he had unintentionally made mistake in the entries. Before signing the return, the tax payer went through it in a general way with Nabor, but he did not check the clerical computations and details. The revenue board on tax appeal concluded that the above issues in the absence of a better explanation by the tax payer were convincing proof of fraud with intent to evade tax. The Circuit court of Appeals reversed the Board's decision and ordered further finding of facts it stated that:

> The board made elaborate fact finding but did not find the facts directly put in the issue of pleadings that Mithcell knew the return was false. The general conclusion that there was fraud with intent to evade tax is explained in an opinion by the majority which seems to us to indicate that they really held that Mitchel and Nabors were grossly careless and for that reason Mitchel ought not to be absolved. Negligence, whether slight or great is not equivalent to the fraud with intent to evade tax named in the statute. The fraud meant is actually intentional wrongdoing and the intent required is the specific purposes to evade tax believed to be owing. Mere negligence does not establish either.[227]

The board made additional findings, the second time in which Mitchell and Nabors were deemed to be grossly careless in preparing the 1930 tax return but were not aware of fraudulent return with intent to evade tax. The case depicts the standard of proving civil fraud as a subjective test of 'intent to evade tax'.[228] It is therefore not simple to prove fraud when it relates to facts in issue. There must be actual proof of intent to commit fraud. The existence of such an intent is never presumed as submitted above by Abdulrazaq. This means that in any issue relating

[225] Ibid.
[226] 118 F (2d) 308 (C.C.A 5th 1941)
[227] Ibid
[228] Abdulrazaq op. cit p. 54-55

to proof of civil fraud, evidence must be clearly adduced to establish the intent to evade tax beyond reasonable doubt.

Nigerian tax laws like most other legal jurisdiction do not define civil fraud. The reason is not farfetched. There are several ways of committing civil tax frauds. In addition to this, are the rather difficult tax statutes and 'crafty' tax payers who easily manipulate the tax statutes in order to evade tax. This can easily be seen in business transactions done at arm's length such as sale of bonds and securities to friends and relations at cheaper rates. This is common under the sale of assets under the capital gains tax.

Even though it is difficult to define civil fraud, there are series of factors that can be considered as 'badges' of committing income tax fraud. These includes any tax payer who;

a. Keeps two sets of account books;
b. Conceal his actual profits;
c. Keep fictitious accounts books;
d. Fictitious records;
e. Fictitious bank accounts;
f. Maintain false identity.

These make it easy for any revenue board to establish an evidence of income tax frauds. The reason being that in most fraud cases, the above elements are always found in income tax fraud. To be more precise, a hypothetical example may be given of an illiterate person whose literate staff excessively deducts a taxable income without his knowledge. He cannot be charged for civil fraud because; there is no element of intent to evade tax. However, this will not be the case where the excessive deductions are made by a tax consultant.

Hence, to establish income tax fraud, the tax payer must have filed the return with intent to commit fraud. Circumstantial evidence as opposed to testimonial proof is needed to establish the offence of civil tax fraud. Some revenue officials or tax consultants usually make excessive or low deductions which they are not supposed to do so by virtue of their professional ethics. Their actions constitute clear case of civil tax fraud.

3.3.3 Wilful Default or Neglect

Wilberforce J., in the case of Wellington v Reynolds,[229] stated that the main difference between neglect and wilful default is that wilful default requires knowledge or not knowing whether the return is accurate. Whereas, neglect do not require knowledge. That is, the person does not know that he ought to make the correct return. Also it was held in ***Clixby v Poutney***[230] that wilful default is making returns carelessly without knowing whether it was right or wrong. Impliedly, refusal by a taxpayer to make tax return is wilful default.[231] This is because; the taxpayer knows that his failure to make a tax return means that he failed to make a tax return absolutely.

In ***Brown v I.R.C***[232] a husband made a return of his wife does income not know the source of the income. It was held that he was not guilty of fraud or wilful default. It means that if he had refused to declare some of his wife's income he could have been guilty of wilful default.

It was established in the case of ***Clixby v Poutney***[233] that the offence of fraud or wilful default must have been committed by the taxpayer himself or acting on behalf of somebody else. This situation is common under principal and agent relationship. Usually, additional assessment

[229] (1962) 40 T.C. 209
[230] (1968) 1 ALLER 804
[231] *Amis v Colls* (1960) 39 T.C 148 at 163.
[232] (1965) 42 T.C. 583
[233] (supra) footnote 159

is made by the tax authorities always and anytime they reasonably suspect any wilful neglect to make returns.[234]

3.4 Other Civil Offences and Penalties

There are other forms of civil tax offences which may amount to tax frauds or wilful default or neglect to pay tax. These include, failure to file a return, refusal to pay tax, failure to deliver tax returns, failure to pay arrears of tax, refusal to give tax assessment or paying less assessment of tax, failure to show tax clearance certificate, artificial and incomplete tax transactions undistributed profits for tax, false application of commencement and cessation of tax business and false claims of "bona fide" commercial transactions or "genuine business purpose". These shall be discussed hereunder.

3.4.1 Failure to File a Return

Where a taxable person or company did not deliver income tax returns within reasonable time allowed and the revenue board is of the opinion that tax is chargeable upon such person or authority, the board may accord its judgement, determine the amount of the assessable tax. The total of the assessable tax, the total of chargeable income and make an assessment accordingly but such assessment shall not affect any liability otherwise incurred by such person either by reason of his failure or neglect to deliver a return.[235]

There is a 5% penalty based on the amount of tax due for each month during which the failure to file continues. The aggregate penalty is limited to 25% of the net amount due. If there is fraud, the penalty increase to 15% and an aggregate of 75%. The penalty can be avoided if the taxpayer can show that there was a reasonable cause for the failure and it was not the result of wilful neglect.

[234] S. 12 Nigerian Inland Revenue Service Act 2004 (soon to be assented by the President in 2007) See also S.75 P.I.T.A Cap p4 LFN 2OO4, S. 65 C.I.T.A Cap C2 LFN 2004
[235] S. 47(1) (3) and (4) C.I.T.A Cap C2 LFN 2004, S. 53 (1) (3) and (4) P.I.T.A Cap p4 LFN 2004

The penalty for failure to file a return is not strong enough because, the provisions simply stated that the tax authority should exercise its best of judgement (B.O.J) and assess the taxpayers' chargeable tax. It is only when the tax payer refused to pay the tax due that the liability arises. To forestall any possibility of delay in tax payment, the provisions should be amended to the effect that any taxpayer who delays in filing his income tax return when it is due, the tax payer should be made to pay additional 5% tax. This will make any prospective taxpayer to think twice of the consequences for any delay in tax payment. This issue will be revisited later under the legislative and judicial behaviour to tax offences and penalties.

3.4.2 Refusal to Give Tax Assessment or Paying Less Tax Assessment

If the board discovers or is of the opinion at any time that any person or company liable to tax has not been assessed or has been assessed at a less amount than that which ought to have been charged, the board may within the year of assessment or within six years after the expiration thereof and as often as may be necessary assess such person or company at such amount or additional amount as ought to have been charged and the provisions of C.I.T.A as to notice of assessment appeal and other proceedings shall apply to such assessment or additional assessment and to the chargeable tax.[236]

The proviso to these sections[237] further states that where any form of fraud, wilful default or neglect has been committed by or on behalf of any taxable person, the board may at any time and as often as may be necessary asses such taxable person at such amount as may be necessary for the purpose of making good any loss of tax attributable to the fraud.[238] It is noticeable here that there is no proper sanctions to deter taxpayers who refused to give tax assessment or pays less tax under the provisions. Section 48(1) of CI.T.A LFN,2004 and section 54(1) P.I.T.A

[236] S. 48(1) C.I.T.A Cap C2 LFN 2004 S. 54(1) P.I.T.A Cap p4 LFN 2004
[237] Ibid
[238] Ibid

LFN,2004 only gives the revenue officers the power to assess the chargeable tax or make additional assessment against the taxpayer. The revenue board can only make more monetary assessment on the taxpayer where it is proved that the acts of the tax payer also amount to fraud, wilful default or neglect. This is not good enough to deter taxpayers against paying less tax or give tax assessment. The provision should be amended by providing a fine of about N1,000 or imprisonment for 6 months or both. This is because, refusal to give tax assessment or paying less tax is a disrespect of one's civic responsibility and breach of taxing provisions.

3.4.3 Failure to Pay Tax Arrears

Where any assessment has become final and conclusive and a demand note has been served upon the taxable person or upon the person in whose name the taxable person is chargeable then, if the payment of the tax is not made within the time limited by the demand note, the board may, in the prescribed form for the purpose of enforcing payment of the tax due;

a. distain the taxpayer by his goods or other chattels, bonds or other securities;
b. distain upon any land, premises or place in respect of which the taxpayer is the owner and recover the amount of tax due by the sale of anything so distained.[239]

This is one of the few civil sanctions that actually provide a good deterrence for breach of tax provisions. It is good because, for any taxpayer who ought to pay tax arrears the tax authorities are allowed to not only distrain his goods and chattels but, also to sell the distrained property to offset the tax arrears as was decided in the case of ***First Bank of Nigeria Plc v A.G. Anambra State***[240]

Consequences of failure to pay tax arrears is a 0.5% penalty based on the amount of tax due for each month during which the taxpayer fails to pay, with the aggregate penalty capped at

[239] S.66 CITA Cap C2 LFN 2004 S. 96 PITA Cap P 4 LFN 2004
[240] (2000) 1 N.R.L.R pp. 129-142

25% of the net amount due. If there is a failure to file and failure to pay, the aggregate combined penalties cannot be more than 47.5% of the amount due. The taxpayer can avoid this penalty if he or she can show that the failure was due to reasonable cause and not wilful neglect.

In this case the plaintiff/respondent has filed this suit in the Federal High Court, Enugu to restrain the defendant/applicants from sealing off its banking premises at its branch office at No. 19 New Market road Onitsha and recovering a sum of N11,197, 331.00k allegedly being the unremitted Pay as You Earn (PAYE) deduction by the plaintiff/respondent. An interim order was obtained against the defendants/applicants on the 10th July 1996. the defendants/applicants in two separate motions applied to the court to strike out the suit and set aside the exparte order earlier made therein for want of jurisdiction. The court held that section 96(1) of the Personal Income Tax Act LFN 2004 gives the tax authority power to distrain for non – payment of tax,. Also section 73(1) of Edict No. 2 of 1996 Anambra state empowers the second defendant/applicants to seal off the premises and offices of a tax defaulter until the amount due is paid

3.4.4 Failure to Deduct tax

A person who being obliged to deduct tax under sections 62, 70 or 71 of the Personal Income Tax Act (P.I.T.A) LFN,2004 fails to deduct or having deducted fails to pay to the relevant tax authority within 30 days from the date of the amount was deducted or the time the duty to deduct arose is guilty of an offence and is liable on conviction to a fine of N5,000 or ten percent of the amount of the tax due in addition to the amount of tax deductible at the prevailing commercial rate.[241]

It is humbly submitted that the punishment provided for the failure to deduct tax is not viable enough to check corruption and embezzlement by tax officials or their agents whom the provision is meant to address. It goes without saying that those responsible for collecting

[241] S. 73 P.I.T.A Cap P4 LFN 2004 S. 64 C.I.T A Cap. C2 LFN 2004

government revenues from tax in Nigeria always use their positions to embezzle the taxes they collected from the taxpayers.[242] Since there are so many complaints against the tax officials or their agents in relation to the above issue, stiffer civil sanctions should be applied to deter such *malafide* behaviour of tax officials.

This can be done by increasing the penalty by the legislature amending the tax statute from N5,000 to N50,000 in addition to the amount of tax deductible and six months imprisonment or both. The Officials of the Economic and Financial Crime Commission (EFCC) and Independent Corrupt Practices Commission (ICPC) should be invited to investigate the issue whenever it occurs.

It appears that there are conflicting propositions as regards the sanctions discussed above.[243]

For instance, the relationship between the civil sanctions and the penalty provisions seems to be applied administratively. It could be asked, 'what is the basis for the sanctions to be imposed by the tax authorities?' Some courts present the notion that the sanctions are criminal whereas others held that the sanctions are civil and others held it to be quasi criminal[244] Under the Nigerian tax statutes, civil sanctions are imposed as part of the method of assessment and the sanctions are merely an additional tax imposed at certain levels for the wrongs committed by the tax payer.

The sanctions are listed under "collection, "recovery" and "repayment of tax" or "returns" and "assessments". They are imposed by the boards of inland or internal revenue that often requires the assistance of the courts and the police for its enforcement. However, further discussion on whether the sanctions are civil or criminal shall be analysed in chapter five of this

[242] Punch (Newspaper) of 1st December, 1988
[243] Abdulrazaq op cit pp. 46-47
[244] Schwarty R.D (1967) on Legal Sanctions (The University of Chicago Law, Review Vol. 34, pp.2 74-299

work which covers the legislative and judicial attitudes towards civil and criminal sections. Abdulrazaq however submits[245] that the characteristics of civil sanctions under the Nigerian tax statutes are that;

(a) it is imposable by the board of inland or internal revenue;

(b) it may be secured by courts endorsement;

(c) that tax can be recovered from the estate of the deceased person;

(d) No action may be brought after six years for payment of tax except there was under assessment due to fraud, wilful default or neglect;

(e) It may be sued for and recovered as debts due to the government;

(f) The proceedings are civil in nature and so normal rules as to pleadings in civil cases would apply;

(g) The Onus of proof is on the taxpayer to show that he has been excessively assessed.

The learned scholar is right in this respect since all the points enumerated above are backed by Nigerian statutory provisions.[246]

The position in the United Kingdom appears to be that penalty proceedings under the Income Tax Statutes are civil in nature. This can be inferred from the following statement made in the Halsbury's Laws of England that "Proceedings for the recovery of penalties are not criminal proceedings, nor, it seems, are they proceedings in tort(sic)".[247]

[245] (1993) "Nigerian Tax Offences and Penalities". Published by Batay Law Publications Ltd Ilorin, Nigeria pp. 47-48

[246] See generally sections 2, 7 46, 47 48, 55, 70, 80 of C.I.T.A 2004 and S.S 2, 7, 53, 54, 55, 56 P.I.T.A 2004

[247] Halsbury's Laws of England 715 (3rd Simon's Ed. 1957) *R. v Hausmann*, 73 JP 516 (1909) A.G, for *Irish Free State v. Casey*; (1930) 1 R. 163, *A.G v Canter* (1939) 1 KB 318, *Commisioner of Inland Revenue v Jackson*, 39 T.C. 357, (1960) T.M.A 1970 part 10 provides for imposition of penalties in Ss. 93 to 107, See S. 95, 96 ad valorem penalties.

This statement that such penalties are civil in nature was also approved by the Court of Appeal in ***C.I.R v Jackson***[248] where the act was to recover penalties under section 232 of the repealed Income Tax Act, 1952. The tax payer failed to submit particulars of his income for certain years within a specified time, as required by notice issued by the Commissioner of Inland Revenue. Thereupon, the Commissioner levied the penalty under section 232 of the Income Tax Act, 1952 for failure to submit the particulars required without reasonable cause.

The court rejected the appellant's contention that the proceedings, being criminal proceedings he could not be required to give the particulars of his income. It was held that, though the Commissioner's claim was one for a penalty, it was not a criminal proceeding and the normal rules as to pleadings in a civil action would apply. Sellers, L.J while delivering the judgement of the court said "One can simply take this case as a claim for penalties. It is not a criminal proceeding. The form of the pleading is of the usual kind and normal, so far as particulars are required, of the averments in the pleadings.

The civil nature of penalties is further affirmed by the fact that the penalty survives the taxpayer's death. The Court of Appeal in Attorney General v Canter[249] approved the judgement of Lawrence J which upheld the claim of the revenue to realize penalties under section 30(1)(b) of the repealed income Tax Act of 1918 from the deceased's executrix, in respect of incorrect statement made by the deceased in his income tax returns for the years ending 5 April 1942 and 4 April, 1933. No proceedings were taken against the tax payer during his lifetime, but proceedings were commenced against his executrix on 26 July 1937.

The question was whether the cause of action in such a case by virtue of section 1(1) of the Law Reform (Miscellaneous Provisions) Act 1934 would survive against the estate of the

[248] (1942) A.C 402
[249] (1938) 2 K.B 828 M.L.R March 1939 pp. 285, 286

deceased. Lawrence J held that the words of section 1 are perfectly general and included every cause of action subsisting against a person at the time of his death and also cited with approval a passage from ***David v Brittanic Merthyr Coal Co. Ltd***[250] where Fletcher Moultin, L.J distinguished an action for breach of statutory duty from an action to recover a penalty imposed by the statute for the breach of the duty.

> The civil liability arising from the breach of a statutory duty is of a wholly different nature from a penalty for such breach. The former gives no cause of action unless damage to a third party follows from it, and then it, in general gives ground for an action for the amount of such damage at the suit of such third party. But penalties for breaches of statutory duties apply whether damage has been caused or not. Their very object is to punish the act itself and thus prevent its commission, whether damage follows or not

The respondent argued that the Act of 1934 had no operation with regard to any penalty by the Income Tax Act and in particular under section 30, the reason being that such penalties were quasi-criminal in nature.[251] The Court of Appeal repudiated the respondent's claim and gave a wider interpretation to the expression "cause of action" in section 1(1) of the Law Reform Act so as to include cases in respect of penalties under the Income Tax Act and in particular in section 30. it was held that the 'cause of action' although belonging to the special class created by the income Tax Act was within the scope of the expression 'all causes of action' in sub-section (1) of Section 1 of the Act of 1934 and survived against the estate of the deceased.

3.5 Criminal Offences and Sanctions

The punishment or penalties for offences committed by taxpayers are generally understood to be criminal sanctions. These sanctions fall within the Tax Acts and those outside

[250] (1909) 2 K.B 146, 160

[251] The use of the word 'penalty' in a civil sanction was explained in Huntington v Attrill (1893) A.C. 150 at 156 by Lord Watson while delivering the judgment of the Privacy Council where he observed. The word 'panel may embrace penalties for infractions of general law which do not constitute offences against the state. It may for many legal purposes be applied with perfect propriety to penalties created by contract, and it therefore when taken by itself, fails to mark that distinction between civil rights and criminal wrongs

the Tax Acts such as the Penal Code[252] and Criminal Code[253]. The Nigerian Criminal Sanctions are similar to those in other commonwealth legal jurisdictions but vary in terms of scope and dimension.[254]

In this sub-topic, we shall consider the various offences and the penalties imposed against the breach of the tax laws as well as the formal aspect found in Nigeria Criminal laws. Some of these offences are: non-compliance with tax provisions, failure to comply with tax notices of assessment or answer queries, incorrect tax returns, inflation of tax claims, forgery of tax particulars, abetting and inducement to give false tax records.

3.5.1 Incorrect Returns

Section 72 of CITA[255] and 57 of PITA[256] provide for the criminal prosecution of any tax payer who makes in correct tax returns or fraudulently under declares his income without reasonable excuse. These provisions states that the party involved is guilty of an offence and is liable on conviction to a fine of ten percent of the correct tax and double the amount of tax which has been under charged in consequence of the incorrect information or incorrect returns, provided that the offence was committed in the year of assessment or within six years after the expiration of the period in which the offence was committed.

Thus, where the offender is a Company, a fine of N200 and doubles the amount of tax which has been undercharged.[257] Under the Personal Income tax, the offender is liable to pay10% and double the amount of tax under charged[258] These penalties above do not appear good enough because, the N200 fine for companies is too small compared with the 10% for

[252] Penal Code Cap. 89 of Northern Nigeria, 1963
[253] Criminal Code Cap. 42 Laws of Nigeria, 1958
[254] Gurin's (1960) Commonwealth Income Tax Law and Practice Para. 3446, p. 143
[255] Companies Income Tax Act, CITA Cap C2 LFN, 2004
[256] Personal Income Tax Act, (P.I.T.A Cap P4 LFN 2004
[257] Section 72 CITA Cap C2 LFN 2004
[258] Section 87 PITA Cap P 4 LFN 2004

individual taxpayer, since companies especially multinational corporations are the greatest culprits in making incorrect returns of their tax returns than individual tax payers. Hence, their punishment ought to be made higher by increasing it up to N2,000 and twice the amount of the tax charged. It is therefore suggested that the section should be amended to increase the fine for companies alone. This gives us the idea that the penal sanctions for this and similar tax offences are trivial and ineffective. In the case of ***Shell Petroleum Development Co. Plc v Burutu L.G.A***[259] The respondent raised an assessment of over N30million on the appellant as tenement rates for 1981-1993. Although the appellant did not object to the published rating, it refused to pay as assessed. Rather, it only paid N32,998.30 which it considered to be the amount due. The respondent sued to recover the balance. The court held that the respondent was wrong in levying the tax on the oil storage tanks or tank farms and oil pipelines which are not privately owned.

This is absurd. The court did not only deny the local government revenue but, it failed to apply any sanction against the company. This also buttresses the fact that the court also gives room in weakening the tax penal sanctions.

3.5.2 False Statements and Returns

Any person who for the purpose of obtaining a deduction set off, relief or overpayment in respect of tax for himself or any other person or in a return account or particulars made with reference to tax, knowingly makes false statement or representation is guilty of an offence and liable on conviction to a fine of five thousand Naira (N5,000) or imprisonment for five years or both.[260]This penal sections also covers any taxpayer who aids, abets, assists, counsels, incites or induces any other person to make or deliver false return or statement; keep or prepare a false

[259] (1989) 9 NWLR PT.165,318 C.A
[260] Section 88 P.I.T.A Cap P4 LFN 2004, Section 73 C.I.T.A Cap C2 LFN 2004

accounts or particulars concerning any income on which tax is payable under the Act. Such a person is guilty of an offence and is punishable under the Act.[261]

Subsection, 1 (b) (iii) of section 88 PITA[262] and section 73 (i)(b)(iii) CITA[263] further provides that any person who unlawfully refuses or neglects to pay tax is guilty of an offence and is liable on conviction and punishable for a fine or imprisonment as stated above, provided that where an offence under these provisions is committed by a person in relation to tax payable by or repayable to him in the year of assessment there shall be substituted for the amount of the fine as aforesaid, the amount of one thousand naira treble the tax chargeable on the person for that year whichever is greater[264]. The Act also made the offence compoundable by the revenue Board which may also stay proceedings with leave of court.[265]

It is worthy to note that the criminal sanctions for the offence of false statements and returns under P.I.T.A 2004 and C.I.T.A 2004 has been greatly improved upon vis-à-vis those of the Income Tax Management Act (I.T.M.A) 1961 and the Companies Income Tax Act (C.I.T.A) 1979.[266] For instance, under ITMA 1961 a fine of N400 and treble the amount of taxable income with six months imprisonment for both the offence of false statements or return and this varies from state to state.[267]For instance, the Personal Income Tax Law of Lagos State (PITL) enacted in 1981 pursuant to ITMA 1961 imposes tax on the income of persons other than Companies and the sanction for the offence of false statements or return is N5,000 and five years imprisonment or both.[268] However, under P.I.T.A 2004, the punishment for the same offence stated above is

[261] Ibid
[262] P.I.T.A Cap P4 LFN 2004
[263] C.I.T.A Cap C2 LFN 2004
[264] Ibid
[265] Ibid, section 88 (2) P.I.T.A 2004, S.73 (2) C.I.T.A 2004
[266] cf S. 69 C.I.T.A 1979, 63 ITMA 1961
[267] Ibid
[268] Section 1(1) PITL 1981.

a fine of N5,000 and imprisonment or conviction for five years or both.[269] In Kaduna State, it is N3,000 and three years imprisonment or both.[270]Also we can appreciate the reasons behind this high and serious sanctions against this offence of false statements or returns. This is because, it is an offence that is always committed by tax payers and it covers very wide range of false statements of returns such as aiding, abetting, inciting, inducing, refusal or neglects to pay tax.

The offence of false statement and returns overlaps between the civil and criminal sanctions as earlier pointed out. It is when we examine the judicial attitude towards these two sanctions that we will be able to draw a demarcating line between the dual sanctions. Given the seriousness of this tax offence, there is still much to be done with the penal provisions because these are manifestations of tax evasion as we shall discuss later.

3.5.3 Obtaining Bribes from Taxpayers and Frauds by Tax Authorities and Unauthorised Tax Persons

Both P.I.T.A 2004 and C.I.T.A 2004 made provisions against tax officials (i.e agents of the tax authority) and non – tax officials collecting bribes, embezzlement of tax and defrauding the government of revenue from tax.[271]These provisions states that any tax official employed to assess or collect tax demands from a person excessive assessable tax, withholds a portion of tax collected, renders false returns of tax collected or defrauds a person, embezzles tax or uses his position to deal wrongly with the tax authority is guilty of an offence and liable on conviction to a fine of one thousand Naira (N1,000) or to an imprisonment for three years or both.[272]Section

[269] S. 88 P.I.T.A Cap P4 LFN 2004, S. 73 C.I.T.A Cap C2 LFN 2004
[270] Sections 1-3 KDS PITL 1990.
[271] Ibid Section 89 P.I.T.A 2004, Section 74 C.I.T.A 2004
[272] Ibid Section 89(1)a (I-iv) P.I.T.A 2004, S. 74(1)(a)(I-iv), C.I.T.A 2004

89(1)(b),[273] also provided that any person who is not a tax official collects or attempts to collect tax is guilty of tax offence and punishable on conviction as provided above.

Looking at the above criminal sanctions for the offence of bribery and corruption by tax officials and non tax officials , the punishment do not commensurate with the gravity of the offences committed by the offenders. This is because in Nigeria today, corruption and embezzlement of income tax collected by tax officials or receiving monetary gratification for not collecting tax or collecting lower tax from tax payers by tax officials is seriously on the increase.[274] Daily Trust Newspaper reported that the Niger State Revenue Board lost N360 million to tax fraud.[275] Such similar tax frauds are found in all the 36 states and the federal capital territory, Abuja. This made the Federal Inland Revenue Service to initiate a tax bill to be called the Federal Revenue Service Act (F.I.R.S) 2004[276] so as to forestall excessive corruption within the Federal Revenue Service and its affiliates. Ultimately, heavier criminal sanctions should be imposed in this regard. This also points out why there is increase in the cases of tax evasion and tax avoidance because the punishment provided for them are ineffective. How to do this will be discussed in the last chapter.

3.5.4 Failure to Remit Tax Collected by Agents of Revenue Authorities

Any person or authority saddled with the responsibility of collecting tax from its employee or taxpayer such as under the 'pay as you earn' system of tax (PAYE) fails to collect the tax or collected the tax on behalf of the revenue board as agent, but fails to remit it to the tax authority (principal) within 80 days from the date the amount was deducted or the time the duty

[273] Ibid P.I.T.A 2004, and s74 (1)(b) C.I.T,A 2004
[274] Daily Trust Newspaper, Vol 12 No. 69 of December 1, 2005 pp. 1 and 5
[275] Ibid p.5
[276] Ibid p.5

to deduct arose shall be guilty of an offence and liable to a fine of 200% of the tax not remitted in addition to the amount of the tax deducted, plus interest at the prevailing commercial rate.[277]

These sanctions appears to be adequate because, most employers of labour usually collect the PAYE tax at source even before the employees get their salaries and emoluments. Some of the employers do not usually remit these income taxes to the various revenue boards. Hence, this sanction is to serve as deterrent measures against such tax offence. Also, the reason why the criminal sanction does not include imprisonment is that most of the employers of labour are not single individuals but corporate entities, institutions and establishments that cannot be jailed because, they are not entities that can be taken and confined in such places.[278] But, based on the principal and agency relationship under agency law, the agents (public and private institutions) can be made liable jointly or severally for this tax offence. That is, such agents who breach these tax laws should both be tried under agency law and the tax laws.

3.5.5 Contravening the Provisions of the Tax Law

Under section 84[279], any person who contravenes or fails to comply with any of the provisions of the tax laws or any rule or regulation made for which no other penalty is specifically provided shall be liable on conviction to a fine of N200. Where the offence is failure to furnish a return statement or information, the offender shall be required to pay the sum of N40 for every day during which such failure continues and in default of payments, to imprisonment for 6 months and the liability to such further sum shall commence from the day following the conviction or any day the court deems fit to order.

Section 86(2)(a-b) of the Act provides that any person who without sufficient cause fails to comply with the requirement of notice served on him or fails to attend in answer to a notice or

[277] Ibid S. 64 C.I.T.A 2004, S. 81 P.I.T.A 2004
[278] Salomon v. Salomon and co. (1897) AC 22
[279] P.I.T.A Cap p 4 LFN 2004 and Section 71 C.I.T.A Cap c 2 LFN 2004

summons served on him or having attended but refused to answer questions lawfully put to him is guilty of an offence and punishable as provided above.[280] This provision poses a constitutional problem as it relates to the right to remain silent and right not to incriminate oneself under the 1999 constitution of federal republic of Nigeria.[281] But, considering the wordings of the section above which state that it applies only to any person who without sufficient cause fails to comply with the requirement of notice or refuses to answer the questions put to him lawfully shall be guilty of the offence and hence punishable. By this qualification, it appears there is no conflict between the tax Act and the constitution in this respect. However, a magistrate may dispense with the personal attendance of the defendant if he pleads guilty in writing or through a legal practitioner notwithstanding the provisions of the criminal procedure code or criminal procedure Act.[282]

We may begin to wander why this sanction above was provided knowing that in virtually all the offences in the taxing Acts, penalties have been provided for their breach. Perhaps this sanction is provided to take care of any likelihood that the tax authorities, taxpayers or any government agent who may breach the provisions of the taxiing Act, the law will automatically catch up with him at any event or circumstances. In addition to the above, it is hoped that the newly enacted Federal Inland Revenue Service Act, 2004 will take care of the situation. This particular criminal sanction shall be revisited in chapter four because the punishment is too light to deter would-be tax defaulters.

3.6 Imputing Criminal Elements in Income Tax Offences

Another dimension in criminal offences and sanctions under the income tax is the requirements of "mens rea" (evil mind or intention) "reasonable excuse", or "sufficient excuse",

[280] P.I.T.A 2004 and Section 64(2)(a-b) C.I.T.A 2004
[281] Sections 35 and 36 of the 1999 constitution.
[282] S. 86 (3) P.I..T.A 2004, S. 64 (4) C.I.T.A 2004

and "burden of proof", fraud, failure to furnish returns, obtaining information and sentencing procedures. However, we shall only consider mens rea, reasonable excuse and burden of proof. While the remaining issues will be discussed more appropriately under chapter five.

3.6.1 Elements of Mens Rea in Income Tax

Mens rea under the law of crime means negative intention or guilty or evil mind or bad intention.[283] It forms the basis of committing crime. A sort of blameworthiness or knowledge to commit crime.[284] However, Mens rea go hand in hand with the actus reus (i.e. the action taken) to commit crime.[285]

The issue here is that, could the criminal elements of mens rea be applicable to income tax offences? This is the crux of the matter under discussion. The notion of criminal liability states that a person cannot be held criminally liable for any offence or crime until it is proven that he possess the 'mens rea' and actus reus to commit the crime. Nigerian courts actually do impute elements of crime in our Criminal Laws[286] In foreign jurisdiction such as the United Kingdom, mens rea has been imputed to cover income tax offences.[287] In the English Case of Sweet v Parsley[288] Lord Reid said:

> In such cases, there has been a presumption that parliament did not intend to make criminals of persons who were in no way blameworthy in that deed. That means that, whenever a section is silent as to *mens rea*, there is a presumption that in order to give effect to the will of parliament, we must read in words appropriate to require *mens rea.*

Thus, the presumption of *mens rea* is basically statutory interpretation of the concept to establish evil or guilty mind to commit any offence or crime be it under criminal law or income

[283] Prof. K.S Chukkol 'Law of Crimes in Nigeria, A.B.U Press Ltd Nigeria (1980) pp. 1-10
[284] Ibid
[285] Chukkol S.K (1982) "Defences to Criminal Inability in Nigerian law", ABU Press Ltd. pp. 1-20
[286] Mandilas & Karaberis Ltde v I.G.P (1958) 3 FSC 20
[287] 3 F.S.C 20 Sherras v Be Rutzen (1895) 1. Q.B 918
[288] (1970) A.C 132 AT 148

tax offences[289] Nigerian tax statutes and income tax cases applies the elements of *mens rea* in income tax offences and penalties.[290]

Abdulrazaq submits that, in Nigerian tax statutes, words such as 'wilful', 'knowingly' and 'unlawfully', are used to qualify the conduct forbidden by law and since qualifying words such as these imports the need for *mens rea*. It may be safely said that *mens rea* is an important ingredient in tax offences in Nigeria[291] In the Nigerian case of ***Clegg V C.O.P***[292], the word 'wilfully' was said to govern the whole definition of the offence and this requires knowledge of all facts constituting it. Views differs between judges as they try to define the terms ;wilfully' or ;unlawfully'.

In another Nigerian case of Re ***D.P.P v Associated Newspapers of Nig***.[293]; the court said; 'wilfully' means 'delibrately'. The word ;'unlawfully' is however simpler, and suggest a deliberate attempt to go against the provisions of the law.

Without going into further analysis of whether or not corporate bodies are criminally liable under the Companies Income Tax Act, they are indeed liable. This is because, the tax statutes provided so.[294]What is more, a company is a distinct legal person or entity; it can sue or be sued[295]. Thus, from the foregoing discussion, it can be said that the criminal element of mens rea is also applicable to all income tax offences be it an individual or a corporate body that breaches any income tax provision in Nigeria.

---

[289] . Abdulrazaq M.T (1993)Tax Offences and Penalties, Batay Publishers, Ilorin pp. 78-80
[290] SS. 86-89, P.I.T.A 2004, $ S.S. 64, 71-76, C.I.T.A 2004 and the cases of Clegg v COP (1949) 12 WACA 379, *R.V Anglo – Nigerian Tin Mines Ltd*, (1930) 10 NLR 69
[291] Abdulrazaq op.cit p80
[292] supra.
[293] [1960] 12 NLR 10
[294] ss.64, 71-77 CITA 2004
[295] Salomon v Salomon and co.[1897] A.C. p22

CHAPTER FOUR

LEGISLATIVE AND JUDICIAL ATTITUDE TOWARDS CIVIL AND CRIMINAL SANCTIONS

4.1 Introduction

This chapter will examine the legislative and judicial attitude towards the civil and criminal sanctions under the Nigerian Tax statutes. This is with the view to assess the effectiveness or otherwise of the penal sanctions. Also, an examination and analysis of the extent of the legislative provisions will be made to know whether they conform to the objectives of taxation and how adequate the provisions are in the light of the economic conditions, literacy and social awareness of the Nigerian people. In addition to the above, this chapter shall analyse the nature and attitude of judiciary and the courts approach towards tax evasion and tax avoidance. This will enable us give proper analysis of the effectiveness of penal pensions and advance legal solutions against tax offences and penalties in Nigeria.

It is perhaps no accident that our starting point should be the consideration of the legal framework. This is because the law forms the foundation upon which the structure of the tax system is built. It is trite law that there is no presumption about tax.[296] Tax being a compulsory levy by government and therefore a mandatory contribution by the subject, must be clearly imposed upon him by statute.[297] Consequently, the first cardinal principle of taxation is that there must be a clear manifestation of an intention on the part of the government to deprive the subject of his property. It is thereof pre-requisite for a good tax system to impose the tax clearly and unambiguously in a manner that who and what is being taxed is easily identifiable. Furthermore, there must be present in the government the power to levy the tax. While it is conceded that the

[296] Rowlatt J. In Cape Brandy Syndicate V.I.R.C (1921) 1 KB 64 at 71
[297] Lord Reid in Greenberg V.I.R.C (1971) A.C 109 at 137

power to levy tax is a necessary adjunct of the act of governance but Nigeria being a federation each tier of government is subject to Constitutional limitations on the exercise of its inherent powers. Another pre-requisite of good tax law is that, it must be easily accessible and as far as possible, there should be a codification of the law. This is because a clear picture of the different taxes imposed, the rate structures and those within their purview are important in the design of an administrative machinery for the administration of the law.

The various tax laws in the country are far from fulfilling the above requirements. Infact, tax legislation in Nigeria are in the main inelegantly drafted. Their provisions, in the words of Fatayi – Williams J.S.C (as he then was) are:

> *unnecessarily verbose and complicated. In some respect, they are not in harmony. Finding proper sequence of their provisions is like going through the maze*." [298] Another writer has also remarked about one of the tax laws thus; "*It's provisions are loose, cloudy and ambiguous in many places and riddled with loopholes. Implementation is not likely to be easy under such conditions*. [299]

This should have served as a warning about the certainty of which tax laws is to be cited.

Despite the forceful arguments that imposition of penalties are civil sanctions in other countries the Nigerian Income Tax Acts do not admit of such arguments because the use of the word 'penalty' does not convey the same meaning or connotation as employed in other jurisdictions except of course, we are to assume that 'civil penalties' means additional assessments and interests and no more.[300]

The use of the word 'penalty' does not feature in the sections dealing with civil sanctions but in sections 8 to 97 of P.I.T.A[301] and sections 71 to 78 of C.IT.A[302] under the heading

[298] Mobil Oil (Nig Ltd) V. F.B.I.R (1977) 3. S.C 53 at 113
[299] Philips A.O (1969)"Nigeria's New Capital Gains Tax" 3 Quarterly Journal of Admin pp. 125 at 37
[300] Abdulrazaq op cit. PP40-44
[301] LFN 2004
[302] LFN 2004

"Offences and Penalties" and its usage no doubt imports a criminal element. Furthermore the use of certain words such as "guilty, "conviction" and "imprisonment" in the sections shows that it is intended to be a criminal sanction.[303]

Firstly, if it was not intended that penalties as mentioned in the Income Tax Acts were criminal in nature why did it not feature in provisions dealing with additional assessments and interests which are civil sanctions or why was its usage brought into sections dealing with offences? The logic of heading a section "Offences and Penalties" is that the Penalties mentioned after offences are supposed to indicate the punishments for offences, if it were otherwise the word "Penalties" would have come without the commission of an offence.[304]

Secondly, the use of common criminal law terminologies like "guilty", "contravenes," "conviction", "fine", "Imprisonment" and "pleads" in sections 86y to 97 under P.I.TA[305] and sections 71 to 79 C.IT.A confirms that penalties are criminal.[306]

Thirdly the provisions in sections 7(3) of C.I.T.A and 86(3) P.I.T.A that notwithstanding any of the provisions of the Criminal Procedure Act or Code a magistrate may dispense with the personal attendance of the defendant if he pleads guilty in writing or so pleads by a legal practitioner, also shows that penalty proceedings are criminal in nature because if it were a civil proceeding there would have been no need to mention the Criminal Procedure Act or Code or even magistrate because, at least in the Northern states, magistrates hear only criminal cases if it were a civil action then it is a matter for the District judge. The only provision which may probably qualify as a "civil penalty" is in sections 66(4) C.IT.A, 2004 and 54(3) P.I.T.A, 2004

[303] Abdulrazaq op cit P 45
[304] Ibid
[305] LFN 2004
[306] See S 86-97 P.I.T.A 2004 and S.S 71 – 78 C.I.T. A 2004

and it is in the form of a settlement intended to limit prosecution and safe time in very clear cases of infraction of the law. Thus, the sections provide that:

> *In the case of failure of any person to comply with the requirements of any notice given by the board for the purpose of the income tax of any year of assessment to be charged upon such person, with respect to income from any source. The Board may in lieu of the institution of proceedings against such person impose a penalty upon him of an amount equal to the income tax chargeable upon him for the proceeding year of assessment.*[307]

The Nigerian Courts have not pronounced on it probably because, the tax authorities have always brought tax action including those with criminal element as civil actions. Therefore, the nature of penalties are to be gleaned from the statutory provisions themselves and judgements of the courts in other jurisdictions such as India.[308] In this respect the judgement of Madhya Pradesh High Court in C.I.T M.P v Punjab Shah[309] that the Penalty Proceedings, being in their very nature penal, the degree and quantum of proof necessary for adjudging an assesses guilty were the same as in criminal prosecution, is quite instructive. The court stated that;

> The assessment proceedings and penalty proceedings are different in their nature. The findings giving in assessment proceedings are no doubt relevant and admissible in penalty proceedings, but they do not operate as *res judicata*, so as to preclude the production of other evidence in penalty proceedings to show (for instance) that the assessee concealed his income or to rebut this charge …

The usual mode of punishment in the case of criminal offences is that of imprisonment, or a fine or both, but it is not so in the case of sanctions imposed by the tax authorities. The delinquent tax payers are asked to pay the additional assessment to compensate for the loss of tax suffered. The procedure for recovery of tax in the form of additional assessments is different from that provided for the recovery of a penalty in criminal proceedings. It has been clearly

[307] Sections 66 CITA 2004 and 54 PITA 2004
[308] Abdulrazaq op cit P36
[309] A.I.R (1968) M.P 103 at 106

stated by the Supreme Court of India in the case of ***Collector of Malabar v Erimmal ibrahim Hajee***[310] that the procedure for recovery of penalties under the Income Tax Act was similar to that adopted for recovery of a civil debt. This obviously means that such proceedings are civil in nature.

The sanctions that can be imposed by the tax authorities do not carry the stigma attached to criminal cases. Thus, a tax payer who is penalized for defaults by the tax authorities is not subject to disabilities attached to a conviction which an accused carries in a criminal case.[311]To hold sanctions levied by the tax authorities as criminal, in view of the facts stated above, would cast serious constitutional doubts upon the administrative powers of the tax authorities..However, the Nigerian Tax Statutes has authoritatively laid down the distinction between the nature of civil and criminal penalties by limiting criminal penalties to sections headed "offences and penalties"[312] This hopefully should settle any possible controversy on the subject.

4.2 Legislative Attitudes Towards Tax Sanctions

The 1979 and 1999 constitutions, unlike the 1963 constitutions, expressly conferred upon the National Assembly the power to tax incomes, profits and capital gains. Under the 1963 constitution, the Federal Government was exclusively vested with the power to tax the income and profits of companies and was also conferred with an exclusive power to make uniform principles for the taxation of income and profits other than the income and profits of companies.[313] The problem then under that constitution was that whereas the Federal Government had an exclusive power to tax the incomes, there was no express power so to do in respect of capital gains in respect of companies and whereas it has exclusive powers to make

[310] A.I.R (1970) K.D R510
[311] Abdlrazaq op cit p 68
[312] S.S 71
[313] See. S. 76 of the 1963 constitution

uniform principles in respect of the taxation of the incomes of persons other than companies, those powers did not extend to that of capital gains and other taxes not imposable on incomes and profits. The 1999 constitution has endeavoured to simplify that situation by sharing the taxes rather than persons.[314] This means that all taxes on incomes, profits and capital gains can only be imposed by the National Assembly no matter the taxable persons involved. Any tax therefore, imposed by a State House of Assembly possessing the main characteristics of these taxes would be unconstitutional, null and avoid.

It is obvious from the division of tax powers under the 1999 constitution that "taxable persons" an expression which includes companies, partnerships, societies, unions, communities and individuals may be taxed by any of the units in the federation in accordance with their respective powers under the constitution. The power to tax, it has always been argued, involves the power to destroy.[315] If this argument is stretched to the incorporation of companies which is exclusive to the National Assembly,[316] it would mean that in as much as the legal person "company" is brought into existence by the National Assembly, the power to impose a tax or taxes by the States in relation thereto must be exercised within the law, so as not to tax it out of existence. If this is done, the argument goes on, it may stultify the exclusive powers of the National Assembly. However a tax or fee may be imposed by any of the States in the Federation upon any taxable person provided the tax, duty or fee is not one that is exclusive to the National Assembly.

Excise duties are expressly vested in the National Assembly under Item 15 of the exclusive legislative list. There is no provision under the constitution expressly vesting Excise

[314] See.Item 58 of the Exclusive Legislative List 'Taxation of Incomes, Profits and Capital Gains except as otherwise prescribed by this constitution".
[315] See Mr. Justice Marshall in McCulloch v Marchland 17 U.S (4 Wheat) 316 4L Ed. 579 1819
[316] Se Item 31 of the Exclusive Legislative List.

duties or taxes in the State. The problem therefore is the meaning of this tax as envisaged by the Constitution. Excise duties are duties "payable upon articles produced and consumed at home".[317] There appears to be a lacuna in the constitution in relation to these taxes. It is not disputed that the legislature has an exclusive power over them. What is disputed is their scope. In the United Kingdom, an excise tax is given a very broad meaning which covers entertainments tax, betting, gaming gambling, taxes and excise of fiscal licenses.[318] In dealing with the name of Excise duties Halsbury's Laws of England[319] states:

> Excise duties fall under three main headings;
>
> (1) Those charged on articles or commodities, produced or manufactured in the United Kingdom.
> (2) Those charged on certain betting and gambling activities
> (3) Those charged on excise licenses, which are called excise licence duties. The last category includes licenses for mechanically propelled vehicles, licences relating to the manufacture or production of articles or commodities and licenses relating to the carrying on of a trade of business or other activity.

In treating entertainments duty it states:[320]

> An excise duty called entertainments duty was formerly chargeable on all payments for admission to chargeable entertainments. Chargeable entertainments were those which consisted wholly or partly of a cinematograph show or a television show. The entertainment in respect of which entertaining duty as originally enacted by the finance (new duties) act 1916 s (repealed) was imposed, included any exhibition, performance, amusement, game or sport to which persons were admitted for payments.

If this broad definition is given to excise duties under the 1999 constitution, it would operate to invalidate most of the taxes that can be imposed by the states. Income tax is one of the major sources of revenue of all governments in Nigeria. It is a factor to be reckoned with in both

[317] See Halsbury's Law of England, vol. 33 3rd Edn. At page 54
[318] See Stephen, D., (1965), History of Taxation and the Taxes in England 3rd Edn. Frank Cass & Co Ltd at pages 63
[319] Fourth Ed. Vol. 12 at p. 244 para 775
[320] See Halsbury's Laws of England vol. 33 3rd Ed. At p. 286

the state and federal governments' budget.[321] Its importance is also shown by the fact that one of the problems inherent in any federal system of government is the allocation of taxing powers between the Federal and State Governments.[322] Under the 1999 constitution, the Federal Government has the exclusive power to legislate on it. This has enhanced the Federal Government's taxing power by explicitly placing within its exclusive competence, this more important form of taxation;[323] which has unfavorable fiscal implications on the .state governments. This is due to the fact that the discharges of the functions assigned to the states involve expenditure and revenue. But the revenue available to the states is grossly inadequate for effective performance of their functions.

The inadequacy is more acute considering the mounting costs of state services such as, the sharp rise in the costs of providing education to meet the society's insatiable demand for trained people, paying the salaries of civil servants, providing hospitals and Medicare, providing adequate water supply and other valuable services to meet the growth in population.[324] The provision for all these services points to the need for the revenue base of the state governments to be progressively enlarged. But the latitude of state governments in respect of their internal revenue is curtailed, despite the fact that pressure on state governments becomes unbearable. Fajana asserts that:

> the function of state governments in the Nigerian federal system have, in addition to those specified on the concurrent legislative list, included some public services whose consumption could be confined to the areas within their jurisdiction. [325]

[321] S. 4, 2nd schedule, item 59 of 1999 constitution.
[322] Ibid
[323] Ibid
[324] Ibid P 26
[325] Fajana .O.(1996) 'Three and half decade of Fiscal Federalism in Nigeria', quoted in I. Elaigwu & R. Akindele edition of " Foundation of Nigerian Federalism NCIR" Abuja. p.109.

But unfortunately, the division of fiscal jurisdiction among the federal and state governments in Nigerian federation has been dictated more by the efficiency of tax administration than by the relative needs of the financial resources.[326] In other words, despite the expansion in responsibilities of the states, the scope for the enlargement of their tax jurisdiction seems disappointingly small. The allocation of revenue power, especially, personal income tax jurisdiction, is heavily weighted in favour of the federal government. This is in addition to its revenue sources being more buoyant and income elastic; but at the expense of the state government that is saddled with inelastic revenue bases. Nwabueze rightly observed that:

> While the state government's sources of independent revenue have shrunk, federally collected revenue available for sharing has increased considerably. The shrinkage of the states' independent revenue and the increase in the distributable pool' considerably increased rather than reduced the dependence of the states on federally-collected revenue.[327]

It is therefore clear, that a major challenge which fiscal federalism in the country faces is to reduce/eliminate inter governmental imbalances. In its stead, there is the need to ensure each level of government has adequate [at least in a relative sense] resources for the effective discharge of its statutory functions. A perusal of the 1999 constitution shows that it has not done much to improve the lot of the states in terms of allocation of financial sovereignty with the consequence that the federal government maintains its strong financial position.

However, it should neither be supposed that the states lack taxing power; nor that the proceeds of the personal income tax belongs exclusively to the federal government, being the authority vested with its legislative jurisdiction. Although, the Federal Government legislates on income tax, the proceeds there from go to the states. Thus, section 163(a)&(b) of the

[326] Ibid P 110
[327] Nwabueze B.O.(1983) -Federalism in Nigeria under the Presidential Constitution. Sweet & Maxwell, London, p. 182 quoted in Ayua LA. op. cit. P 38

constitution[328] provides that where under an Act of the National Assembly, tax or duty is imposed in respect of any of the matters specified in item D of part II of the second schedule to the constitution, the net proceeds ·of such tax or duty shall be distributed among the states on the basis of derivation and accordingly:

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

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

The probable reason for the above constitutional arrangement is simply to achieve uniformity in personal income tax liability and make it an economic tool for the Federal government for the purpose of influencing economic development in the country.[329] In consonance with this probability a source remarked that;

> In determining the balance between Federal Government and state government on jurisdiction over personal income tax, we have had to keep constantly in mind that the financial stability of Nigeria as a whole and that by its strength and solvency the creditworthiness of the country will be appraised. This will in turn have its influence on the investment of external capital, without which economic development must be painful and flow – the main factor of national policy must operate to restrain allocation of jurisdiction of such a tax to the states.[330]

[328] 1999 constitution of Nigeria.
[329] Ayua I.A : (1993)" The Nigerian Tax Law" Spectrum publishing co. ltd) Ibadan. P.25
[330] Report of Fiscal Commission, 1958 para. 28

However, as convincing and helpful as this constitutional arrangement seems, it is caught up with many formidable objections. In the first instance, it tends to produce a situation similar to that of a unitary government in its relations with state authorities. This is because; it negates the basic realities of co-equality in federation such as autonomy of the State and Federal Governments to develop at its own pace, It gives a decided advantage to the center. Apart from this, the attitudinal orientation of the operators of Nigeria Federalism makes the arrangement susceptible to abuse. Federal Government may refuse to distribute the net proceeds of this tax (as mandated by the constitution) to the concerned state. All in a bid to create an electoral political advantage, especially that in Nigeria, fiscal mechanism and political aspect are not treated as independent variables.[331]

A classical illustration of the abuse of the Principle of Federalism by the Federal Government to bend state government to its will is the Lagos State case. On the 8th April, 2004, the president wrote the Minister of finance instructing her not to release allocations from the Federation Account to the States where new Local Governments were created and elections held into them, including Lagos State. Despite the fact that the said letter of the President admitted that the States Houses of Assembly are empowered by the 1999 Constitution, to create new Local Governments, the president hinged his flagrancy on the fact that the National Assembly is yet to make the necessary consequential provisions for such newly created Local Government Councils to have constitutional recognition.[332]

The Supreme Court in the case has this to say:

> There is nowhere in the constitution where the President is expressly or impliedly authorized to suspend or withhold the statutory allocation payable to Lagos State or any other state

[331] Ayoade J.A.A. (1999) ; The Changing Structure of Nigerian Federalism. IN J. Elaigwu & R. AKindele (ed) op cit p. 56

[332] *A.G. Lagos state V A.G. Federation* (2004) 18 NWLR (pt 904) p. 14.

> pursuant to section 162(5) of the constitution on the ground of the complaints made against Lagos state by the Federal Government in this action or any ground at all. If the president has any grievance against all tier of Government, he should go to Court. He cannot kill them by withholding their statutory allocations. That will be brutal indeed. [333]

As a keen observer of Nigerian politics, particularly since the inception of this nascent democracy, one does not need magnifying glasses to know that the dispute that led into the above cited case is simply due to ideological asymmetry between the two levels of government concerned.

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

Although, the revenues collectible from this particular tax source are shared with state governments, this does not solve the jurisdictional imbalance between the two tiers of government (federal and states). Rather, it will perpetuate a relationship of fiscal dependency between the duo and hinder the ambition of each state to improve its percentage of internal revenue[334]

The imbalance in the fiscal economy between the federal and state governments has had some adverse implications for the economic and political development of the county. The heavy concentration of fiscal powers in federal government has been partly responsible for the

[333] Ibid Per KUTIG! J.S.C para. C-D
[334] Ola C. S(1984) "Income Tax for corporate and Unincorporatd Bodies"(Heineman Educ, pub. Co.) Ibadan Nigeria p.54

unhealthy inter-ethnic fracas and state competition for the control of the federal level of government. This constitutes a serious threat to the stability and continued co-existence of Nigeria.

Furthermore, the state governments are closer to the people than Federal Government. They have exclusive authority over the creation and control of the affairs of Local Government,[335] which tier of government (as an extension of state) touches the lives of the grass root people. Hence the bias against the state governments in the distribution of fiscal powers as regards personal income tax is a militating factor against grassroots development.[336]

However, as earlier posited, it should not be supposed that the state governments are stripped-off their fiscal jurisdiction/sovereignty completely under the 1999 constitution. The states are constitutionally competent to legislate on tax subjects as residual matters. Thus, the powers of the states in respect of taxation are plenary except in so far as the contrary are expressly provided in the constitution, which are the enumerated taxing powers of the Federal Government.[337] Thus, according to Ayua, since there is no specific mention of sales tax as an item both in exclusive and concurrent legislative lists, this makes it a residual subject on which only the state can legislate[338]. It is therefore the States that have an inherent taxing power and not the Federal Government. This view has gained judicial approval in the recent case *of* ***Manufacturers Association of Nigeria v. A.G Lagos State.***[339]

Before this suit was instituted [shortly after the inception of this democracy in the year 2000], the Governor of Lagos state declared his intensions to re-introduce the collection of sales tax as permissible under fiscal federalism, notwithstanding the existence of the Value Added

[335] See Section 7(1) 1999 CFRN
[336] Fajana O. op cit p. 120
[337] Ayua LA. op. cit. P 33
[338] Ibid P 33
[339] (2004) All FWLR (pt 199)@ 1327

Tax. In that year, the Lagos State Government in an effort to make true its declaration made Sales Tax [Schedule Amendment] order 2000 to streamline Sales Tax Law Cap. 175, Laws of Lagos State, 1994.

On 6th day of February 2001, the applicants [M.A.N] took out an originating summons for a declaration that both above quoted laws are inconsistent with, in contravention of and *ultra vires* the constitution,. the taxes and Levies (Approved List for Collection) Decree No, 21 of 1998 and Value Added Tax Decree and therefore illegal. They further contended that Lagos State Government has no power, right or jurisdiction to impose sales tax.[340]

The Lagos State High Court, having the benefit of the supreme court decision in the case of ***A.G. Ogun State v Aberuagba***.[341] held *inter-alia* that::

> In exercise of the powers reserved for a states House of Assembly not being one specifically provided for under the exclusive and concurrent list, the state Government can validly legislate on the sales Tax pursuant to item 9 enabling it in that behalf.[342]

An immediate deduction from the holding is that, sales tax is not an item on the exclusive legislative list as it relates to intra state trade and commerce. The power to legislate on it is residual. It is not on the concurrent list save and except as provided for under paragraph 9 of item D. However, notwithstanding this constitutional analysis, sight should not be lost of the fact that the state will be forced to seek every available source of revenue because, they have legislative jurisdiction on personal income tax. They will be tempted to impose sales tax and any other taxes on every available commercial transactions and properties. Consequently, this will bring about an unhealthy matter of economic survival for the states.[343]

---

[340] Ibid P 134
[341] (1985) 1NWLR (pt 3) P 3951
[342] Per FALASE .J. in:M.A.N Vs A.G. Lagos state (Supra) P 1356 Para f
[343] Ayua I.A op cit p.39

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

On a final note, each state has its own revenue needs. It can therefore use the various forms of taxation not only to raise revenue but also to perform other socio-economic functions. Therefore, there is need for a more rational and equitable allocation of fiscal jurisdiction. The state governments ought to have more independent revenue sources.[344] This is because, the needs of the states are always pitched against the needs of the Federal government.

By the doctrine of Federalism which Nigeria has adopted by virtue of section 2(2) of the 1999 constitution, the autonomy of each tier of government is essential to Federal arrangement.[345] The autonomy presupposes that each government exists not as an appendage of another government but as an autonomous entity in the sense of being able to exercise its own will in the conduct of its affairs free from direction by another government.[346] By extension it means each state has ambition to improve its percentage of internal revenue.

It has been canvassed that the introduction of uniform personal income tax throughout Nigeria erodes the autonomous power of the state government as highlighted above, to initiate and manipulate tax policies in areas where each state tax authority has exclusive or concurrent tax jurisdiction.[347] Each state has its own regulatory and taxing authority and revenue needs. It

[344] Ibid p.39, see also Fajana O, op cit p. 121
[345] *A.G.Lagos Slate V A.G Federation* (2003) 12 NWLR (pt 833) p. 119 - 120 pam H·f
[346] *A.G. Ogun State V A.G. Federation* (1982) 1·2 SC 13 @ pp 72 -73 per Udoma JSC
[347] Ola C.S. Op Cit 1".54

can use the personal income tax under its jurisdiction not only to raise revenue but also to perform other socio-economic functions on subject-matter within its jurisdiction.[348]

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

> A federal set up directed towards national unity – cannot be reconciled with a situation whereby there is an increasing trend towards rendering the state components of the federation ineffective, for income taxation is an elastic and fertile source of revenue to state government and can be made to yield more revenue as circumstances demand.[349]

Hence, taking it away from state government will foist a situation of complete financial dependence upon the Federal Government by the state thereby denying them of their autonomy in matters that directly concern them. This is particularly so that the control of the economy is not the exclusive preserve of the Federal Government alone. Both tiers of government are to exhibit concerted efforts towards revamping of the Nigerian economy.

Under the 1960 and 1963 constitutions of Nigeria, personal income tax was not an item under the exclusive legislative list on which only the federal government can legislate. It was equally not made an item under the concurrent legislative list. As such it was made an exclusively residual matter.[350] It can be discerned that the 1963 constitution gave more recognition to the regions then as autonomous government entities that can act unilaterally with a high degree of autonomy in matters that directly concerned them.

Surprisingly, under the 1979 constitution, for the first time in Nigerian tax history, personal income tax was removed from the state jurisdiction and was placed under the exclusive

[348] Ayua I.A op cit p.39
[349] Ola C.S op cit p.55
[350] Parts I and II of the Schedule to 1963 CFRN

preserve of the federal government to levy.[351] Thus, Professor Ayua's opinion with due respect, is not a recipe for the political unity of the heterogeneous country like Nigeria.[352]The federal government is so powerful to bend the will of the state governments to its own.[353] It can also make the state completely dependent financially and thereof generally, upon the federal government, thereby denying them autonomy in matters that concernedly affect them.[354]

Although, the provision of section 163(b) of the constitution[355] may seem to whittled down the potency of this argument. The section provides that a sum equal to the proportion of the proceeds of the tax or duty collected by the government of the federation or other authority shall be paid to the state from which such tax is derived. This does not assuage the state governments over the curtailment of their latitude in respect of their internal revenues. It is also not a substitute for taking away of this important kind of taxation from state governments to shape economic activities within their sphere of jurisdiction.

It is better to give state governments more autonomy in some tax matters so as to give them the ambition to improve their percentage of internal revenue. Also, the creation of states in federation like Nigeria accommodates healthy fiscal competition which leads to overall improvements of the Nigerian economy.[356]

Uniform personal income tax rate means a method whereby people who earn equal income pay equal tax to the government. This presuppose that a peasant farmer who is resident in a remote area like Shika[357] will be similarly rated with an effluent business tycoon who resides in Kaduna metropolis for income tax purposes. Whereas little or no presence of government

[351] Item 58, part 1, 2nd Schedule to 1999 CFRN
[352] Ayua I A o p cit p.25
[353] Nwabuweze B.O(1982). The Presidential constitution of Nigeria C. Hurst and Co Publishers Ltd London p.40
[354] Ayua I. A op cit p.25
[355] CFRN 1999
[356] Ola C.S op cit p.57
[357] A small town in Sabon gari Local Government Area of Kaduna state.

infrastructures is felt in Shika; almost every infrastructures that promote life comfort are enjoyed in Kaduna. This by implication is disadvantageous especially when it is closely examined from the point of view of low-income families. Thus Professor Ola reasoned that;

> "It implies, for example, that all such people who earn equal income are required to pay equal tax are also equally situated. This is an over-simplification of a complex subject because it ignores the distinction between equality by definition of income and equality by situation. The one relates to people as income earners and the other refers to them as individual taxpayers. The difference of course is that equality by definition of income is subjective while equality by situation of taxpayers is objective.[358]

Thus, rates of tax should be related to the services provided by the state government. If not, what justification can one offer for a situation like Lagos where the state government planned to provide taxpayers with free health, free education, good roads and adequate water supply.[359]In comparism with Ogun State where education is heavily paid for at all levels and one pays through one's nose to have good health and medication.[360] Taxpayers in those states pay uniform rates of tax.

More importantly, there is absence of uniform prices of essential commodities necessary for economic progress. Uniform rates of tax cannot work, more especially where amenities enjoyed by individuals differ from state to state. For instance oral interview conducted revealed that a two bedroom flat goes for N250,000.00 per annum in Lagos.[361] Whereas, it goes for N60,000.00 per annum in Zaria.

---

[358] Ola C.S op cit p.75

[359] The State is being controlled by Alliance for Democracy (AD). The cardinal objectives the party is executing includes free education, health ec. See AD (Lagos State) Party Manifestoes, 2003.

[360] The Oral interview conducted in the course of this research revealed that Ogun state, being governed by People's Democratic Party (PDP) has no free education programme etc like AD state.

[361] Being facts elicited from the oral interview conducted with the principal partner. Wole Ogungbola & Co, Estate Surveyors and valuers Lagos on 28th Day of March, 2005.

Therefore, the idea of uniformity of tax rates may render the whole structure of taxes and related services and infrastructures incongruous except the Join Tax Board (J.T.B) work up to its expected role in this regard.[362]

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

In effect, a taxpayer is not expected to work only for subsistence. His post-tax income should be such that he could save and invest. The savings and investment are not for him alone, but for the whole country. This is so because capital formulation for production depends very much on the level of savings and investment.[363] It is therefore arguable that a regime of uniform reliefs and allowances contradicts the policy rationale for those reliefs and allowances if we carefully observe the issues critically.

No Tax Law, no matter how sophisticated and progressive can be effective unless it is administered with competence and integrity.[364] It is observed that administrative defects, inefficiency and highhandedness may constitute a real bane to the socio - economic target from the uniform personal income tax system. By virtue of section 85 A (1) and 85 B (1) (B) of the Act,[365] the state board of internal revenue collects all taxes due to government under the Act, except on those tax payers highlighted under section 2 (2) of the Act.[366] to wit members of the

[362] Ola C. S op cit p.55
[363] Omughele J.(2002) An Appraisal of the Personal Tax Relief Regime in Nigeria (unpublished) p.3
[364] Abdurazaq M.T.(1993) - Nigerian Tax Offences and Penalties, Batay Press, Ilorin, p.131
[365] The Personal Income Tax Act 2004, Now CAP.P 4 LFN2004
[366] Ibid

Armed Forces, foreign employees, residents of FCT Abuja and non - resident. The Federal Inland Revenue Service shall administer the tax on this set of people.

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

a. Using its best endeavour to promote uniformity both in the application of the Act and in the incidence of taxation of individuals throughout Nigeria;
b. Impose decisions on matters of procedure and interpretation of the Act on any state for purposes of conformity with agreed procedure or interpretation.
c. Advise the Federal Government on request in respect of a double taxation arrangements conclude or under consideration with any other country.[367]

An immediate deduction from the above statutory provision is that the Federal government's utmost concern is about "uniformity" irrespective of the impairment it may likely cause to the economic development of each state. It follows from this corollary that should a state want to use income tax as a measure of achieving social equity no matter how genuine the measure may seem, the Joint Tax Board can make a persuasive decision on such a state. This results in inefficient and defective assessment and collection.[368]Research reveals that a lot of the staff of the two establishments do not even possess a working knowledge of the tax law.

Under the Canadian constitution, the dominion parliament has powers to make laws in relation to the raising of money by any mode or system of taxation"[369] The obvious and declared intention of tax legislation is to impose the taxes approved by the legislature on the subject affected. Like all statutes imposing pecuniary burdens on the subject, tax statutes are to be

[367] Section 85(9)(d), (c) & © PITA 1993 (Now Section 86(9) (c)(d) & (e) Cap. P.4 LFN, 2004 Abdulrazaq, M. T op cit p.131
[368] Abdulrazaq M.T Op cit p.131
[369] See s. 91 (3) of the British North America Act, 1867

construed strictly.[370] In the effort to construe, for the purpose of reaching expected results, ignore some of the rules of interpretation of ordinary statutes.[371] At the same time, it has been necessary to adhere to other rules for assistance.[372] In most instances, the courts often construe the clear words of the legislation according to its intendments. On the other hand, even in clear cases, the subject has been aided by presumptions such as against double taxation.[373] The general rule however encourages learning in favour of a strict construction of the provisions in respect off those on whom the burden is sought to be imposed.[374]

The history of tax legislation generally has disclosed that tax legislation is essentially preoccupied with the problems of control of tax avoidance and evasion. The intention to be gathered from all tax legislations is invariably either to introduce and declare a new formula for taxation, or to check the abuses of existing tax laws. Consequently, it is important in construing a tax statute to adhere strictly to the words used and to the 'full and fair application of particular statutory language to particular facts found. The desirability or not of one conclusion as compared with the other cannot furnish a guide in reaching a decision.[375] It is therefore important for the draftsman to express clearly and without ambiguity by the words of the statute what was meant by the provisions of a particular enactment. On a careful analysis of the decided cases two views which may be regarded as complimentary, would seem to be current. There are the cases in support of the view that the words of the statute must be construed strictly as they are found

[370] See Maxwell – The Interpretation of Statutes 12th Ed. P. 140 . See also, *Adrewaos Timber Trading Co Ltd v FBIR* 1966 L.L.R 195

[371] The rule construing provisions in favour of the subject is not adopted in some cases considering the intendment of the legislation as a whole

[372] Effect must be given to clear words even if unintended effects results thereby, See Westward Television v Hart (1968) 3 WLR 480

[373] *I.R.C v R.S Securities Ltd* (1964) ALL E.R at p. 699. This after all is the general principle on which rests the particular and well accepted rule that a form of income which is made the subject of taxation under one of the five schedules cannot be included, directly or indirectly as a taxable subject under another schedule, whatever general words or general theories might seem to require".

[374] See *Russel v Scott* (1948) A.C 442 per Lord Simonds.

[375] See *Shop and Store Developments Ltd, v I.R.C* (1967) 2 W.L.R 35, 2 N.L.R 35

without any gloss or calling in aid any intendments of the legislation, and that effect must be given to the words of the statute as they stand. The other view is that the mischief of the legislation must be protected but only by reasonable inference from the words used by the state construed as a whole. According to this view, it is allowed so to construe the words of the statute as to avoid any ambiguity.

A very strong dictum in support of the first view is the dictum of Rowlattt J in the case of ***Cape Brandy Syndicate v I.R.C***.[376] where it was said:

In a taxing Act one has to look merely at what is clearly said: There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fair at the language used.

This view was followed by Ikpeazu J in Aderawos Timber Trading co. ltd v FBIR[377] where he said:

It is the law that the language of a statute imposing a tax duty, or charge must receive a strict construction in the sense that there is no room for any intendment and regard must be had in the clear meaning of the words. If the state claims a tax under a statute it must show that the tax is imposed by clear and unambiguous words and where the statute is in doubt, it must be construed in favour of the subject, however must within the spirit of the law case might otherwise be, but a fair and reasonable construction must be given to the language used without leaning to one side or the other.

There is no doubt that the merit of certainty in a taxing statute cannot be better emphasized than to insist that the words used in the statute must be taken to mean what the legislature intend to convey and no more. The undesirability of ambiguity in the meaning of the

[376] (1921) 2 K.B. $03
[377] (1966) L.L.R 195

expression is as misleading as imposing into the statute what the interpreter conceives the legislature meant by the words used. It has been held that the language used is not to be stretched either in favour of the state, or narrowed down in favour of the taxpayer.[378] Hence, the language of the statute must be followed however wide. It is immaterial that its construction if given effect would apply to cases that were never intended. The words must be construed as they are.

Clarity and unequivocal interpretations are the guiding indices for the construction of revenue provisions. Anything outside them would lead to the conclusion that there was no intention to impose the tax prescribed in the provision. It has been observed that in some of the cases cited and discussed, the provisions of the statute whilst not ambiguous as to the liability of the tax payer have clearly not departed from the rational basis of the legislation. Thus, although nothing should be imposed or inferred into the provisions to give a different meaning, it would seem that a construction consistent with the national basis of the legislation arrived at from reasonable construction of the words of the provision will not offend any of the safeguards regulating the construction of tax statutes.

It has not always been the case that the substance of the legislation is ignored in favour of the form. It is generally accepted that the provisions are to be construed to avoid the incidence of double taxation. This is achieved by the aid of presumptions to that effect.[379] Hence where the mischief intended by the provision and the spirit of the legislation reasonably, infer effect ought to be given to such a construction. This approach may permit the courts to construe a provision to prevent evasion, but not necessarily narrowing it in favour of the subject or the legislature.

[378] C.H.W (Huddersfield) Ltd v I.R.C (1963) 1 W.L.R 767
[379] (1963) 1 WLR 396

There are important arguments in the overriding national interest to suggest that the Federal Government should wholly occupy Legislative power on income taxes. This view is supported by the experience of comparable Federations in operating systems of income Tax.[380]

Under the 1963 constitution of Nigeria, taxes on the income and profits of individuals was not made an exclusive item under which the Federal Government alone can legislate. That did not mean that the Constitution did not recognize the need for uniform principles for the computation of income and profit of individuals. Section 76 (2) (b& c) provides:[381]

a. Parliament may make laws for Nigeria or any part thereof with respect to taxes on income and profits other than the income and profits of companies for the purpose of:
b. Securing uniform principles for the taxation of income and profits accruing to persons in Nigeria from Countries other than Nigeria and of income and profits derived from Nigeria by persons outside Nigeria;
c. Securing uniform principles for the taxation of income and profits of all persons (including members of partnerships) for the purposes of assessment of tax and for the treatment of losses, depreciation of assets and contributions to pension or provident funds or schemes.

The above constitutional provisions has put lie to the argument that under the 1963 constitution, uniform tax was not provided for. Although, the parliament's power then to so legislate was discretionary, notwithstanding the constitution recognized the purpose for securing uniformity of tax. It also serves as pathfinder for the subsequent constitutions of Nigeria[382] in so far as their provisions affect incomes and profits of individuals.

One of the purposes that the 1963 constitution recognized for securing principles for the taxation of income and profits of individuals was for implementing any treaty, convention or agreement between the Federation and any other country or any arrangement with or decision of

[380] Report of the Fiscal Commission 1958 para 80
[381] CFRN 1963
[382] That is 1979 and 1999 CFRN

an international organization of which the Federation is a member with respect to taxes on income and profits[383].

This purpose is still recognized today as a vital reason why Federal Government, and not the state government should possess the power to legislate on the income tax. Nigeria has entered into a number of treaties with foreign countries, which undertake to limit or prevent, double taxation. One of the treaties is the Double Taxation Relief between the Federal Republic of Nigeria and United Kingdom and Northern Ireland Order of 1988.[384]

Whenever a problem is encountered which involves a person from Nigeria deriving income (or having a taxable estate) in one of these countries having income (or a taxable estate) in Nigeria or transactions between Nigeria and one of these countries, the provisions of the relevant treaty should be examined. The responsibility of such double taxation arrangement rests squarely on the Federal Government because the constitution gives the Federal Government exclusive power over trade and commerce between Nigeria and other countries including import of commodities from Nigeria.[385]

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

Secondly, the pursuit of macro-economic objectives and the need to coordinate the promotion of economic growth at the national level have necessitated the allocation of income

[383] Section 76(2) (a) CFRN 1963
[384] See Seventh Schedule to the PITA 1993 retained as such under PITA Cap. P. 4 LFN 2004
[385] See Item 62, 2nd Schedule part I CFRN 1999

tax (as a formidable revenue source) to the Federal Government. Under the 1999 constitution, defence, trade and commerce between Nigeria and other countries are under the exclusive preserve of the Federal Government to legislate.[57] To this end, section 5 (5) and section 16 of the constitution provide as follows:

> The President, in consultation with the National defence Council may deploy members of the armed forces of the Federation on a limited combat duty outside Nigeria if he is satisfied that the National security is under imminent threat or danger[386]

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

> The State (Federation of Nigeria) shall
>
> (a)harness the resources of the Nation and promote National prosperity and an efficient, a dynamic and self-reliant economy."
>
> (b) control the National economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity. [387]

The combined effects of the above constitutional provisions is that the responsibility of the Federal government for defence, and ultimately for meeting a major emergency which may arise has meant that in certain cases, when faced with a national emergency the cost of which could not otherwise have been met, the Federal Government had to assume complete control in the income tax field.[388] Thus the report of the 1958 Fiscal Commission states that:

> ...Income tax has proved to be an essentially valuable instrument of economic control in the hands of central government responsible for overall economic policy, and as a means of influencing both the level of investment and the extent of personal expenditure.[389]

[386] Section 5 (5) thereof
[387] See section 16(!) CFRN 1999
[388] Report of Fiscal Commission, 1958 para 81 P.18
[389] Ibid para 81 p.18

Furthermore, the uniform tax system has quashed the crises of overlapping income tax jurisdictions that exist in the Country before 1975. It is observed that where competing or overlapping income tax Jurisdictions exist, they have proved to be a constant source of hardship to the taxpayer and conflict between the governments concerned.[390] Should the Federal and state governments have separate income tax laws, there is bound to be jurisdictional problem similar to the one between Federal High Court and States High Courts today.[391]

In the same vein, it is observed that one peculiar habit of Nigerian trading is that goods often pass through as many distributors and or sub-distributors before they are finally sold to the consumers. Wide use is made of road and river transport, and both internal produce and imported goods often travel vast distances from their original source to the point of final sale. In the course of the trading activities, the traders used to come across frictions and barriers. In such, an economic system of interstate trade that allows an individual and his goods to pass from state to state without any restriction is achieved. What it means in effect is that, though tax payers may scatter in different geographical divisions of the country, uniform income tax system promotes a feeling of them belonging to the same nation under an open or unified national economy.

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

---

[390] Ibid para 81 p.18

[391] See *Ayeni v UNILORIN* (2000) 2NWLR (pt. 844) 290@306, see also the case of *Trade Bank Plc v Barilax* (Nig) Ltd (2000) 13 NWLR (pt.685) 483

Although, the Republican constitution of 1963 did not make personal income tax an item under the exclusive legislative list, the constitution saw the need to secure uniform principles for the computation of tax on income and profits of individuals. Thus, section 76 (2) (a) (b) (c) & (d) provides that:

> Parliament may make laws for Nigeria or any part thereof with respect lo taxes on income and profits oilier than the income and profits of companies for the purpose of:
>
> (a) Implementing any treaty, convention or agreement between the Federation and any other country or any arrangement with or decision of an international organization of which the Federation is a member with respect to taxes on income and profits;
>
> (b) Securing uniform principles for the taxation of Income and profits accruing to persons in .Nigeria from countries other than Nigeria and of income and profits derived from Nigeria by persons outside Nigeria;
>
> (c) Securing uniform principles for the computation of income and profits of all persons (including members of partnerships) for purposes of assessment of tax and for the treatment of losses, depreciation of assets and contributions to pension or provident funds or schemes;
>
> (d) regulating the liability to tax of persons within Nigeria by reference to their places of residence or otherwise for the purpose of ensuring that any income or profit does not bear tax under the Jaws of more than one territory.

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

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

In the same vein section 76 (5) states that: nothing in sub-sections (2) and (3) of this section shall preclude the legislature of a region from making laws with respect to the matters referred to in those subsections.

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

First, the parliament has discretionary power to make laws throughout Nigeria on taxes on income and profits of individuals in such a way that uniform principles for such taxes are secured.

Second, the parliament has power to make laws on taxes on income and profits of individuals in such a way that internal double taxation will be avoided.

Third, the parliament and regional Legislative Assembly have concurrent powers to make laws on taxes on income and profit of individuals,

Fourth, securing uniform principles of income tax is a necessary weapon for the Federal Government to implement any treaty convention or agreement it enters into with any other country.

Fifth, the powers conferred on parliament affects legislating alone. It does not extend to imposition of tax and prescription of rates of tax.

Although it is a strong argument that since the income tax is not an item on the exclusive Legislative list, parliament cannot legislate on it. Also, if it was the intendment of the constitution to make income tax a concurrent item, it could have been expressly placed under that list. As such, both Federal and Regional legislatures would have had powers to legislate on it. But in the absence of that, it is obvious that it was an exclusive preserve of the Regional Legislature and state governments will be avoided. It is a very familiar feature of the economic trend of modern commercial transactions that there is a perpetual battle of manoeuvre between

tax legislation and the subject of tax legislation. In the English Court of Appeal case of Lord Howard de Walden v Inland Revenue Commissioners[392] Lord Greene M.R said:

> For years a battle of manoeuvre has been waged between the legislature and those who are minded to throw the burden of taxation off their own shoulders on to those of their fellow subjects. In that battle the legislature has often been worsted by the skill, determination and resourcefulness of its opponents, it would not shock us in the least to find that the legislature has determined to put an end to the struggle by imposing the severest of penalties. It scarcely lies in the mouths of the taxpayer who plays with fire to complain of burnt fingers.

However, the view expressed by ***Lord Tomlin in C.I.R v Duke of Westminster*** ought to be kept constantly in mind. His Lordship said:

> Everyman is entitled if he can to order his affairs so that the tax attaching under the appropriate Act is less than it otherwise would be. If he succeeds in ordering them so as to secure this result, then however, unappreciated the commissioners of Inland Revenue or his fellow taxpayers may be of his ingenuity, he cannot be compelled to pay an increased tax.

It is therefore prudent in construing any tax provision whilst adhering strictly to the construction of the words used without importing inferences or intendment to start with a presumption that the description of the transactions on which the tax is imposed is intended to cover transactions into which people do in fact enter in real life.[393]

While, Diplock LJ in ***Commissioners of Customs and Excise v Top Ten Promotions***[394] has described as the rational basis of the tax. This is first, the kind of economic result the achievement of which was intended to give rise to a new fiscal liability. Secondly, how the

[392] (1942) 1 ALL ER 286 at p.289
[393] This is the principle in *Bank of England v Vagliano Bros* (1891 A.C 107
[394] (1969) 3 ALL E.R 39 at p. 69 His lordship said 'everyman is entitled if he can in order to his affairs so that the tax attaching under the appropriate acts is less than otherwise it will be if. He succeeds in ordering them so as to secure this result, then however un appreciate the commissioner of inland revenue or his fellow taxpayers may be of his ingenuity, he cannot be compelled to pay an increased tax.

amount of the liability is to be calculated and thirdly on whom it is so to be imposed. The rational basis of the tax seems not to change and remains constant.

It is clear that tax evaders and avoiders organize their activities to fall outside the description of the tax liability. The usual effect of subsequent amendments is invariably not to alter the rational basis of the statute in the light of the new experience. The intention of the legislation is merely to protect the revenue by applying the amendment to new and hitherto provided transactions, unless of course, the words of the statute lead to a contrary conclusion. Where the words are ambiguous it is preferable to maintain the rational basis of the taxation.

It has been clearly laid down in some decided cases cited above that a subject is not to be taxed unless the language of the statute clearly imposes the obligation.[395] It is however found to be relevant that to protect the rational basis of the tax legislation the subsequent enactments have adopted either or both approaches. This may be done by subjecting to a liability calculated on the same economic basis as that applicable to those transactions which were already subject to tax. It may also be done by penalizing the new transactions by subjecting them to a higher measure of fiscal liability.

Even the problems posed by each of these approaches are fairly difficult for a court to construe in the situations indicated above. It has been suggested that in construing the amendment, the court should start with a predilection for the view that parliament intended to adopt the less draconian remedy and should construe ambiguous expressions accordingly.[396]

The decided cases are unequivocal that in fiscal or penal legislation if the draftsman has not made his intention clear then the subject must be given the benefit of that

[395] *Cape Brandy Syndicate v I.R.C* (1921) 1 K.B 64,
[396] (1969) 3 ALL E.R at p. 70 per Diplock L.J

doubt.[397]Notwithstanding all that has been said above, it is clear that words are not crystals, and that no fixed and immutable meaning can be attached to them, words are to be construed based on the surrounding circumstances. This approach involves roving through the whole enactment to find the spirit and intendment of the enactment. But this cannot be done if the word of the legislation themselves cannot be brought within the mischief intended to be prohibited. The sum of what has been discussed above is that tax legislation are not *sui generis,* the rules of construction of statutes apply to them.

Furthermore, they do not constitute a code and have no specific interpretation provisions other than those provided in the definition sections of the various enactments and the rules provided in the interpretation Act and common law. Although indebted heavily to English and commonwealth judicial opinion in the interpretation of our tax enactments, it is obligatory to look at the working of the Nigerian legislation coming to a decision.[398] The provision construed has as its background, the political, social, economic considerations for its enactment. Thus, even when the roads used are identical with another construed in a common law jurisdiction, the political, social and economic considerations may be widely different. They must be protected by construction of the intendment of the provisions.

4.3 Sanctions for Tax Evasion

Tax evasion is the illegal evasion of taxes by individuals, corporations and trust. It often entails taxpayers deliberately misrepresenting the true state of their affairs to the tax authorities to reduce their tax liability and includes dishonest tax reporting, such as declaring less income, profits or gains than the amounts actually earned, or overstating deductions.

[397] I.T.P (London Ltd v Win Stanley (1947) 1 ALL E.R 177 See also Sachs L.J. (1969) all E.R 39 at p. 83 Commissioner of Customs v Top Ten Promotions (supra)
[398] F.B.I.R v Joseph Rascallah & Sons (1962)(1 at p. 9 Western Sudan Exporters v F.B.I.R (1973) 1 C.C.H.C J 12 at p. 17 ArbiCo Ltd v F.B.I.R (966) L.L. 223 at p. 225

The question of tax evasion is a much more serious issue. As stated earlier in chapter 2.2, tax evasion denotes activities which are responsible for a taxable person not paying the tax that he is under legal obligation to pay. Although, no one can be exact on the extent of the problem of tax evasion in Nigeria as observed and discussed under chapter 2.2.1 of this work, there seems to be sufficient evidence that it is on the increase as manifested by the glaring fraudulent concealment of income through either false entries into the account books or failure to keep such books which is rampant among small firms especially. Quite large number of companies declare losses year in year out yet it is surprising that such companies do not voluntarily wind up, neither are they compulsorily liquidated. Rather they still continue in business unabated with directors remunerations increasing every year as well as increases in luxurious or conspicuous and prestigious investments such as landed properties and expansive cars. There can be no clearer evidence of tax evasion than this.[399]

As far as direct personal taxation is concerned, the major problem lies in the collection of the taxes especially from the self – employed such as the businessmen, contractors, professional practitioners like lawyers, doctors, accountants, architects, surveyors and traders in shops.[400] These persons blatantly refuse to pay tax by reporting losses every year. Many of these self employed professionals and owners of business live a lifestyle inconsistent with reported income which is usually unrealistically low for the nature of their businesses. The civil servants and other salaried workers are the only class of people that actually pay tax in Nigeria.[401]

Even among the civil servants and other salaried workers many have turned the statutory personal allowances and relief particularly the children and married person allowances into a

[399] See footnotes 68 in chapter two.(infra) footnotes 369 in cap.5.2.1
[400] Ibid cap. 2.2.1
[401][Infra] footnotes 369

fertile ground for tax evasion. Almost every Nigerian tax payer is married with four children. There is a proposed bill to abolish these personal allowances.[402]

Thus, the problems associated with assessment to personal income tax particularly of the self employed are firstly the problem of providing for voluntary compliance and secondly non report or gross understating or deliberate omission of income, refusal to render returns which are all on a gigantic scale. As Mr Sosanya has observed [403]

> Tax evading has become the favourite crime of the Nigerian, so popular that it makes armed robbery seem like minority interest. It has indeed, become so widespread that there now exists a cash economy of vast proportions over which the tax – man has no control and which is growing at several times the rate of the national economy.

The Federal Military government was so alarmed by this situation that it had to set up in 1979 a nine member task force to examine the problems connected with tax administration in the country and in particular to examine the equitable burden of taxation on self employed individuals, professional practitioners, partnerships and unincorporated businesses and to make recommendations. They have since submitted their report which has not yet been published. The Federal military government also introduced several tax measures to discourage any business with any government agency and the payment of provisional tax within 30 days by companies on declaring interim dividends. The position has not however improved significantly as the tax measures are implemented haphazardly and of course do not in themselves entail a complete overhauling of the tax structure.

The general principle is that to prevent tax evasion, it is necessary that each tax payer's tax is properly assessed and properly paid. This cannot be done merely by imposing penalties against those who fail to pay their taxes but only by introducing measures which will make it

[402] i.e The proposed Personal Income Tax (amendment) Bill (2008) before the National Assembly.
[403] Sosanya S.O.A (1981)"Taxation Reform in Nigeria" Published by University Press Ibadan at p. 7

possible for tax authorities to assess the reasonably accurate taxable income of persons in all cases with or without the assistance of the persons concerned. In Nigeria there are some monetary penalties and criminal sanctions in connection with tax evasion.[404] Including the Board's power to sell off the defaulting tax payers goods or other chattels, bonds or securities as well as his premises so that the amount owed can be recovered.[405] These seem not to be adequate and moreover the tax administration is rather weak. Certain aspects of tax administration such as assessment and collection of tax are therefore directly concerned with the prevention of tax evasion.

It is the view of many people that the loss of revenue caused by widespread tax evasion in the country is due largely to our inefficient and inept tax administration.[406]

There exists therefore, an urgent need to improve our tax administration. The immediate goal of doing this should be to maximize tax revenue in order to obtain additional revenue for development. This will also lead to significant improvement in tax equity by enhancing equal treatment of all taxable persons. For this reason, it is proposed to mention what measures should be given stronger powers in aid of assessment such as the right of forcible entry into offices of companies and other taxable persons to examine documents[407] and the right to go through the bank accounts of suspected evaders or alternatively all banks should be under a legal duty to informs tax authorities on request any income standing in the account of any taxable person. Even if we had efficient tax administrative machinery we would still have to encounter some formidable problems in realizing the required revenue from taxation. These include identifying

[404] Sections 86 – 79 P.I.T.A 2004 SS 71-74 C.I.T.A 2004
[405] C.I.T.A 2004 S. 32
[406] Philips A.O (1996) 'Nigerian Companies Income Tax, N.T.E.S.S. Vol. 3 pg. 68
[407] S. 45 C.I.T.A 2004

the persons to be assessed, their addresses and places of residence so that notices can be served on them.

This is particularly difficult in Nigeria as most of our urban centres are not properly planned and laid out with either street names and numbers are not existing or difficult to find.

There is also the difficulty of ascertaining the income for tax purposes of many Nigerians who do a lot of business outside the country and the failure of taxpayers to notify tax authorities of changes in their postal or residential addresses. What is more, it is hard to track down businessmen who do business without any form of registration or failures to record their business transactions are not recorded.[408]

Monetary penalties and criminal sanctions should be drastically increased so as to make it disadvantageous for companies or their directors or other taxable persons to attempt evading tax. For this propose there should be public exposure in the case of detection of fraud. There should also be a thorough reappraisal of the status and the obligations of the auditors with a view to ensuring that accounts presented by companies for tax purposes are drawn in an appropriate manner so as to show the true taxable income. These methods of detecting of unreported income are used in many states.[409]

There is no pretending that these measures would eradicate the problem of tax evasion. But one thing is sure and that is they will go some way in reducing the present uncontrollable trend to reasonable dimensions. The preventive measures are designed to check a tax payer from getting away with a false or fraudulent return or his statutory obligation to pay tax.

Thus by virtue of S.54 of P.I.T.A 2004 where a taxable person has delivered a return, the board has a discretion to accept the return and make an assessment accordingly, or to refuse to

[408] Nicholas A.R(1980) "Indian Tax Reform" Bombay Press p. 34
[409] Ibid

accept the return and to the best of its judgement, determine the amount of the assessable, total or chargeable income of such person and make an assessment accordingly (corresponding provision in relation to companies is section 48 C.I.T.A 2004. In this way, if the board has any reason to believe that the return delivered by the tax payer does not reflect the true and correct fact upon which to assess the tax payer, by resorting to the 'best of judgement' rule, the board can assess the tax payer on what it considers that the true and correct facts should be. This statutory power of discretion given to the board in conjunction with the 'best of judgement' rule can serve to avert many of the well known examples of tax evasion.

Assuming that a taxable person who should indeed be charged to tax, has not delivered a return at all, in accordance with S. 87 P.I.T.A 2004, the board is again empowered by resorting to the 'best of judgement' rule to determine with respect to such taxable person, the amount of the assessable, total or chargeable income and make an assessment accordingly; and as, if to intensify the preventive measure, the section further provides that such assessment shall not affect any liability otherwise incurred by such person by reason of his failure or neglect to deliver a return (corresponding provision is 73 C.I.T.A 2004. This statutory provision is obviously designed to advert the most direct and obvious case of tax evasion – failure to pay tax.

The tax law is also very much out to ensure that the tax payer does not reap all ill gotten tax gains as a result of non – assessment or underassessment. By S. 53 P.I.T.A 2004, the law provides that if the board discovers or is of the opinion at any time that a taxable person liable to income tax has not been assessed or has been charged, the board may, within the year of assessment or within six years after the expiration thereby assess such taxable person at such amount or additional amount as should have been charged. Again, to intensify the preventive measure, the proviso to the section states that where any form of fraud, wilful default or neglect

has been committed by or on behalf of any taxable person or in connection with any tax imposed, the board may at any time or as often as may be necessary assess such taxable person at such amount or additional amount as may be necessary to make up for any loss of tax attributable to the fraud, wilful default or neglect.

The relevance of the punitive measures is two-fold. Firstly, the legislative intent is to deter offenders and secondly, (the legislative intent is) to penalize any offender, while also recompensing the state or national treasury for the loss caused to it by the act of the offender. Penalties are prescribed for;

(i) Failure to furnish a return statement or information or to keep records required.[410]

(ii) Failure to comply with the requirements of notice or summons served on the tax payer.[411]

(iii) False return or fraudulent understatement of any income liable to tax;[412]

(iv) False claims for the purpose of obtaining any deductions set-off relief, or repayment in respect of tax[413]

(v) Aiding, abetting, assisting, counselling inciting or inducing another person to make or deliver a false return or fraudulent statement in respect of income tax to keep or prepare any false accounts or particulars concerning taxable income, or unlawfully to refuse or neglect to pay tax. [414]

[410] S.A (1) P.I.T.A LFN 2004 72 C.I.T.A LFN 2004 a fine of N200 and additional N40 for everybody during which such failures continues.
[411] S. 54(20) and (3) P.I.T.A LFN 2004, 1 S. 66(2) & (3) C.I.T.A LFN 2004 a fine of N200 in respect of an offence under s. 54(3) P.I.T.A LFN 2004 and S. 66(3) C.I.T.A LFN 2004, the board may in the applicable instance impose a penalty on the tax offender, of an amount equal to the income tax charged upon him during the preceding year of assessment. This discretionary power of the board is with respect to income from any source other than employment
[412] S.55 P.I.T.A LFN 2004, S. 67 C.I.T.A LFN 2004 a fine of N200 and double the amount of tax which has been undercharged.
[413] S. 56(1) (a) P.I.T.A LFN 2004 S. 68(1) C.I.T.A LFN 2004 a fine of N1,000 or imprisonment for five years or both.
[414] S. 56(1)(b) P.I.T.A LFN 2004; S. 68(1) (b) C.I.T.A LFN 2004 a fine of N1,000 or imprisonment for five years or both.

There is no doubt that certain act or omission on the part of some tax officials contribute to the pervading incidence of tax evasion in this country. In this regard, there is statutory provision aimed at checking and penalizing such erring staff. Thus, it is an offence for a tax official to,

(i) demand from any person an amount in excess of the authorized assessment of tax, or

(ii) withhold for his own use or otherwise any portion of the amount of tax collected or

(iii) render a false return, whether orally or in writing of the amounts of tax collect or received by him or defraud any person, embezzle any money or otherwise use his position to deal wrongly with the board.[415]

It is noteworthy that it is an offence for an unauthorized person to collect or attempt to collect tax;[416] and for an employer covered by the P.A.Y.E scheme to fraudulently convert to his own use any part of the tax deducted from the earnings of employees, or to knowingly make a false return, account or statement with respect to such tax deduced.[417]

4.4 Sanctions for Tax Avoidance

The Nigerian Tax Legislation has made provision to plug loopholes through which taxable persons can minimize or escape tax liability. These include provisions to strike at settlement schemes and trusts aimed at avoiding tax[418] or the use of family income to escape tax[419] deeming provisions which treat certain sums as income for tax purposes which otherwise should not and provisions to strike at artificial transaction designed to escape tax. [420]

[415] S. 57(a) P.I.T.A LFN 2004 S. 69(a) C.I.T.A 2004 a fine of N600 or imprisonment for three years or both.
[416] S, S. 57(b) P.I.T.A LFN 2004 S. 69(b) C.I.T.A LFN 2004 a fine of N600 or imprisonment for three years or both.
[417] S. 57(c) P.I.T.A LFN 2004 S. 69(c) C.I.T.A LFN 2004 a fine of N600 or imprisonment for three years or both.
[418] S, 14A C.I.T.A Cap C2 LFN 2004
[419] S. 17 C.I.T.A Cap C2 LFN 2OO4
[420] S. 18 C.I.T.A Cap C2 LFN 2004

Despite these provisions tax fiddling is by no means a minor occupation in Nigeria. Some professionals such as accountants, lawyers, doctors, surveyors and traders in the shop employ all kinds of tax avoidance schemes to minimize or escape tax liability and makes an observer to wonder whether there are any tax officials working in that capacity.

The more serious cases of tax avoidance arise however, from limited liability companies. The problems of tax avoidance in relation to the taxation of Company's Income can reveal itself in numerous forms. Accordingly, the Companies Income Tax Act of 1990 has imposed curbs on the tax avoidance devices that it can identify.

First and foremost, the structure of the limited company can be used as a device to give a person or a group of persons the control of enjoyment of income without its formal ownership. In this way the person/persons especially those in the middle and upper income groups can mitigate their liability to higher rates of tax or could even escape tax completely. To prevent this section 17(1) of the Company Incomes Tax Act 2004 has been enacted to cover all companies that are in a few hands.

It provides that where it appears to the Board that a Nigerian company which is under the control of five persons or less and has failed to distribute to its shareholders as dividend profits made in any of its accounting periods with a view to reducing its aggregate of the tax chargeable in Nigeria on the profits of income of the company, the Board is empowered to direct that any such undistributed profits be treated as distributed to its shareholders. This is however subject to one important condition namely that only such profits that could have been distributed without detriment to the company's business as it existed at the end of that period that could be deemed distributed as aforesaid. Thus the test to be applied is whether the retention of profits in the business is required for the maintenance and development or extension of the company's trade or

business whether this is so, it will be a legitimate commercial reason for not distributing the profits to the shareholders which has nothing to do with personal tax saving using the company as a device to that end. This qualification is essential otherwise the section would have been counterproductive by preventing expanding firms from ploughing back their profits for expansion.

Be that as it may, any amount of profits treated as distributed should, for the purpose of Companies Income Tax Act and any other enactment in Nigeria imposing tax on the incomes of persons other than companies, be deemed to be profits of income from dividend accruing to those persons who are shareholders in the company in proportion to their shares in its ordinary share capital and the amount of such profits of income is now taxable as personal income in the hands of each shareholder.[421]

Finally a company in respect of which any such direction is made is given a right of appeal in like manner as though for the purpose of part XI of CITA such direction were an assessment. This is very useful provision as it affords the company the right to challenge the exercise of the Board's discretion under section 1 since its abuse could have disastrous consequences on the expansion of small companies.

Although section 17 of CITA 2004 is similar at least in its intendment to sections 28 – 30 of the English Income and Corporation Taxes Act 1970 it is too precise and dry. Under English law key words like 'control' 'participator' 'director' associate and distribution have been given very extensive statutory definitions whereas under our law there appears to be no such definition of the key words. One is therefore left to wonder, for example, whether a person's relations or nominee count as the same person himself, or whether the shareholders can still achieve the same objectives by granting loans to the directors and yet escape. Section 1 should be amended to

[421] S.17 C.I.T.A Cap C2 LFN 2004

make it more comprehensive so that it can achieve more effectively the objective for which it was enacted.

Secondly, liability of Companies Income Tax Act 2004 can be mitigated by companies especially those under the control of shareholders who are directors by, for example, fixing very high remuneration for the directors since this can rank as deductible expenses for tax purposes. This particular device which was not originally counteracted under the Companies Income Tax Act 1961 has been prevented by limiting director's remuneration/allowance for tax purposes. This can still be overcome by capitalizing profits through the issue of new shares to the existing shareholders so that the capital paid on the new shares will be made out of profits thereby depleting the taxable income of the company. Although dividends are defined to include all distributions of profits including the nominal value of bonus shares and debentures, it does seem that only dividends satisfied by the award of bonus shares are not taxable in the hands of recipients. While the reason for this exclusion might be to encourage further investment for the expansion of companies, it does however mean that as regards dividends satisfied by bonus shares the shareholders can derive a double tax advantage when they capitalize company's profits in that the capitalization minimizes the company's tax liability or alternatively postpones it. When the company finally winds up, the consequential accumulated profits will be taxed not as revenue income but as capital gains, thus attracting a lower tax rate of 20 percent. This should be prevented in those cases where capitalization of profits is not for a genuine commercial reason but for the main purpose of avoiding or reducing tax liability.

4.5 Other Penalties

a, Delay in Filing Returns

A delay in filing due to the erroneous recording of an extended date or due to ignorance of the due date as clearly stated in the statutes is not a reasonable cause excusing the delay. However reasonable cause has been held to exist where ignorance of the proper due date was caused by a more complex situation such as the introduction of a short tax year by the loss of an exempt status.[422]

The duty to file a return must be exercised by the individual tax payer or corporate officer personally and, for the purpose of showing reasonable cause may not be delegated to an employee, unless the tax payer is physically incapacitated.[423].A claim that the delay has been due to the illness of employees or insufficient clerical assistance, has been rejected as reasonable cause. And when tax payers have filed late returns with due aid of outside assistance called in after the due date of the return, it is reasoned that prudence required an earlier call upon that assistance. Although the unavailability of employees for the preparation of a return does not constitute reasonable cause, failure of officers to receive prepared forms mailed for signature is a sufficient cause where they were travelling around doing field work.

Obtaining an injunction against the collection of the tax prior to the due date constitutes reasonable cause for not filling, provided the return is filed prior to the expiration of the injunction. The issuance of the writ gives ample cause for belief that the requirement of filing is improper. It is however doubtful whether reasonable cause exists when the assets of the taxable entity are all tied up in litigation and are not held by the tax payer.

In the case of ***Dayton Bronze Bearing co. ltd. v Gilligan***[424] it was held that an honest mistake constitutes reasonable cause, and went on to state that, while seeking the advice of counsel would tend to show good faith, it was insufficient by itself to constitute reasonable

[422] *The Economy Savings and Loan Co v Commissioner* 158 F2d 386 (C.C.A 4th 1949)
[423] Irvine F. Bester, 10 T.C 1031 (1948) 174 F.F. 2d 387 (C.C.A 4th 1949).
[424] 281 709 (C.C.A 6th 1922)

cause. The case may be cited for the proposition that a tax payer, who has relied upon an erroneous opinion of counsel that a return need not be filed, has proved the existence of reasonable cause. A tax payer who fail to file return in the belief that his income was insufficient to require it,[425] or, that a statutory provision is inapplicable may not rest upon a mere belief, however strongly held, but must demonstrate a reasonable basis for that belief.

(b) Fraudulent returns

It may be argued that the precautions required by a prudent man have been satisfied when a tax payer consults a legal practitioner, accountant or tax consultant or a revenue officer authorized to advise on tax matters and proffers all the information he should reasonably know is relevant or which the expert requests. A tax payer is not expected to call for detailed opinions from counsel for he may not even be aware that the issues exist. For similar reasons he cannot be expected to tender all the relevant information, the expert who is aware of its significance should call for the relevant facts.

The case of ***Fides A.G. v Commissioner***[426] introduced a new concept. The court held that a prudent person would not rely upon a 'subjective opinion of counsel. It may be supposed that a subjective opinion is one arrived at by interpreting the bare language of the statute without checking the regulations and cases. The court goes on to say that it does not matter whether the opinion is well founded or not which may be taken to mean that the reasonableness of the opinion is immaterial reliance upon expert advice has been held not to constitute reasonable cause for delinquent filing where the law on the point at issue is very clear.[427] Since it is possible for an expert to err even on settled matters, the decisions do not appear correct in principle and may be justified only as an assurance against collusion.

[425] Credit Bureau of Greater New York v Commissioner 162 F 2nd 7 (C.C.A 2nd 1947)
[426] 137 F 2nd 731 (C.C.A 4th 1943)
[427] United States v Archer 174 F 2nd 353 (C.C.A 1st 1848

It must be strongly noted that the defence of reasonable cause includes the fact that there is no element of fraud, and the errors are likely to be accepted as reasonable excuse when they occur in the returns.[428] Frequently, deficiencies are caused by the tax payer's reliance upon inadequate or poorly kept systems of accounting from which income cannot be determined or which may not support the tax payer's return years later when he has forgotten the facts which he used to supplement his records. Errors may be caused by inexperienced book keepers or by misunderstandings which arise when the individual recording the transaction does not have all the facts and makes an erroneous assumption by an assumption attempt to straighten out a badly kept set of book or by accident. Errors in a return due to such causes negative fraud, however numerous or complicated the necessary adjustments, unless the errors are so large that the tax payer must have realized that his income was under – reported by the obvious comparison with his expenditures and change in the net income by the variance with known income, or unless the accounting system itself or the claimed carelessness appears to be an elaborate artifice to understate income.

One of the factors considered in determining that the tax payer has acted erroneously rather than with fraudulent intent, is the presence of errors in return in favour of the revenue.[429] Although this may not sometimes be accepted as an unequivocal disproof of fraud as there is possibility of planting such errors, or even that a tax payer, making false entry with fraudulent intent may accidentally err in favour of the revenue on an another entry.

Certain errors in returns are fraudulent by their very nature. Examples are the taking of false personal exemptions by individuals, the deduction of expenses neither incurred nor paid by a corporation concealing under a false table expenses deducted because their deductibility was

[428] Gordon E.L. (1950) op cit pp. 139, 140, 148, 149
[429] William E. Mitchell 118 F 2nd 308 (C.C.A 5th 1941)

doubtful, the payment of salary without the performance of services[430] and the deduction by a corporation of the losses incurred by and personal expenses of its office or stockholders. A failure to record a substantial number of entries of transactions yielding income in the tax payer's customary records tends to prove fraud when such income has not been reported on the tax return. On the other hand, the revelation of all the facts on the tax payer's books where they may be audited easily by a revenue agent tends to disprove fraud if the failure to report them may be explained by some errors such as accruing items during the wrong year. Withholding some back accounts from the person requested to make up the tax payer's tax return, keeping bank accounts in the name of others.[431] The making of sales under assumed names, also tend to prove a fraudulent intent. There remain for consideration the questions as to whether the failure to file income tax returns is or is not an offence in Nigeria?

c. Failure to file Returns

The issue therefore is whether by failing to file income tax returns a person wilfully evades or attempts to evade the payment of taxes. It must be remembered that the tax statutes creates an obligation to file income tax returns within specific conditions.[432] And that failure to comply constitutes an offence.[433] Thus, the argument is advanced that by failing to file an income tax return as and when required a person or corporate body might be committing an offence.[434]

The various decisions in the Nigerian courts, however only indicate that failure to file returns rather than be treated as an offence is taken as a justification for imposing a best of judgment assessment and a civil sanction of fine is sometimes imposed.

---

[430] *Coast Carton CO. v Commission* 149 F. 2nd 735 (C.C.A 9th 1945)
[431] Murray Humphreys 125 F 2nd 340 (C.C.A 7th 1942), 317 U.S 637 (1942)
[432] Sections 40(1) 41 C.I.T.A 2004 s. 24(1) 25 P.I.T.A (Lagos)1975
[433] Sections 40(4) C.I.T.A 2004 S. 30 I.T.M.A 1961
[434] Potvin J. (1977) op cit p. 21

In ***F.B.I.R. V Blue Pelican co. ltd***,[435] the defendant company failed to submit forms and a result, they were assessed to tax for the sum of N4,000 plus a fine of N400 This is so even where the court has observed that the defendants are engaged in a 'game' of hide and seek with no solid defence,.[436] That the defendant has not told the court the truth with regard to his professional earnings[437] that there is no scintilla of truth in the evidence of the Managing Director and that the management of the defendant company consists of persons who are indifferent to matters pertaining to income tax and who believe that by merely stating that they perceived no requests nor notices from the board, they would be allowed to shirk their civic responsibility and be exonerated from payment of tax.[438] And finally, where the defence presented was nothing short of finding an escape valve for their acts of irresponsibility and wanton disregard for constituted authority.[439]

A refusal to file income tax returns is not an offence where there is a reasonable excuse, unless there exist a wilful intention to evade or an attempt to evade taxes as shown in the cases above. The question was put as follows by Bronridge, J. in the Canadian case of the ***Queen v Paveley***[440] where he said:

> In my opinion "wilfully" should be interpreted as 'with an evil intention'. R .v Miller 1944 1 W.W.R 415 at page 417; so that the question in this case becomes not, was the wilful refusal to file income tax returns as required by the Act 'evasion', but rather. Did the respondent in wilfully refusing to file income tax returns as and when required do so with the intention of evading or attempting to evade the payment of taxes? If the answer to that question is either "no" or if the issue cannot be resolved beyond a reasonable doubt,

[435] Suit No. FRC/PH/2/76. See also *F.B.I.R v Wes African Pictures Company Ltd*, Suit No. FRC/L/8/73 *F.B.I.R v N.A.B Animashaun* Suit No. FRC/L/7/73; *F.B.I.R v Wilmer Publicity Ltd* Suit No. FRC/L/19/73; *F.B.I.R v F.M. Solanke* Suit No. FRC/L/6/73
[436] F.B.I.R v Blue Pelican
[437] F.B.I.R v Solanke
[438] F.B.I.R v Wilmer Publicity
[439] F.B.I.R v West African Pictures
[440] 76 D.T.C 6415, 417 (Court of Appeal of Saskatchewan) see also Regina v Baker 16 C.G.C 2nd 120 (Country court of Nova Scotia).

> then the respondent is entitled to an acquittal. But, if the question is answered in the affirmative there should be a conviction even if there is no intention to decide …

Any person who having been required to give information, wilfully obstructs a tax collector in the performance of his duties by neglecting or refusing to give such information or otherwise obstructs or wilfully misleads or attempts to mislead a tax collector in the performance of his duties shall be guilty of in offence. The tax collector in regard to the above action 'shall not be liable in any action or proceeding whether civil or criminal for anything done or said by him in the lawful exercise of the powers conferred upon him.

It should be noted that the liability of the tax collector is only excluded in situations where there has been a "lawful exercise of the powers conferred upon him". In this regard, the problem of search and seizure to obtain information is no different in the tax field than in other areas of criminal law.[441]

There is however a need to draw a line between reasonable and unreasonable search for information without at the same time throwing elaborate safeguards around a tax payer which might make it difficult to determine his criminal liability. Unless the courts impose some checks on the actions of revenue agents, tax payers will unwittingly and unwillingly build up cases against themselves in violation of legal principals designed to protect individuals against unreasonable search and compelled self – incrimination. Admittedly, secret detective work is necessary in apprehending criminals and tax evaders deserve no special favours. But when the tax authority engage in a criminal enquiry without warning the potential defendant of his

[441] The broad question of what constitutes an unreasonable search is certainly a wide one. The use that can be made of illegally obtained evidence and the question of the necessity of a search warrant under various conditions, the permissible in roads on an individuals privacy are questions that have been treated in many discussions on Nigerian Constitutional Law and Evidence.

constitutional right of silence, it would appear that the tenuous line between clever detection and the reasonable pursuit of evidence has been crossed.

4.6 Judicial Attitudes to Tax Evasion

The public attitude to tax evasion has changed and so as too has the attitude of the courts. It is no longer enough to admit a serious revenue offence and simply refund the exchequer. The prosecution of tax evasion will now almost certainly be met with the imposition of jail sentence. The change in judicial attitude to tax evasion first came to the public attention when a company director was sentenced in the Circuit Criminal Court of six years imprisonment for customs duty evasion. However, the previous week the Court of Criminal Appeal delivered a judgment which was really the turning point in sentencing policy for both tax evasion and welfare fraud cases.

It becomes necessary to examine the attitude of our courts to the issue of tax evasion. There is no doubt that taxation is the creation of statute. However, a great deal not only depends on the interpretation of the statute by the courts; we also require the courts to enforce some of the provisions of the tax laws, particularly those such as the ones considered under the preceding heading. The fault is not so much on the courts, but more with the tax Board that has not prosecuted tax offenders with much vigour.

The basic doctrine of the construction of tax statutes is also very fundamental to the role of the judiciary in the battle against tax evasion. The doctrine is that no tax can be imposed on the subject unless there are clear words in the statute showing an intention to impose a tax on the person[442]. The onus is on the state (i.e. taxing authority) to discharge. Once this is successfully done the next issue is how the court construes the facts of the case before it to determine if the defendant being prosecuted for tax evasion is liable as charged. Here again, the issue of strict

[442] Tenant v Smith (1892) A.C 150, Employers Mutual Insurance Association Ltd v Inland Revenue Commission 91944) 27 T.C. 344

interpretation of the tax statutes lurks behind the decision of the judge. It has been said that there is no equitable construction with regard to a tax statute. The court simply has to adhere to the clear words of the statute. There is no room for an intendment and no equity about a tax.[443] Judges are enjoined not to read anything into or imply anything into the tax statute but to simply consider fairly the language used.[444] Reference shall be made to some cases to appreciate the stance of our courts.

In ***Commissioner of Revenue v Attah***,[445] the plaintiff having 'discovered' from information obtained by his 'field workers' that the income declared by the defendant was less than he actually received, made additional assessment on the defendant for the relevant years according to the best of his judgment. The defendant denied liability and on the particular issue contended that:

(i) before an additional assessment could be validly made a return form must be seen to have been filled by the tax payer, and since there was no sufficient evidence that he had done so, the additional assessments were invalid; and

(ii) the additional assessment were arbitrary and not the best of the plaintiff's judgement since they were not based on evidence

On the first issue raised by counsel for the defendant, Hassan Ag. S.P.J said

> I do not agree that the content put forward on behalf of the defendant that a return must be served on the defendant before an additional assessment can be raised. I can find no such duty imposed upon the commissioner by the provisions of S. 25 of the Personal Income Tax Law on a fair and reasonable construction of S. 25(1) of the personal tax law, I am unable to spell out any obligation imposed upon the commissioner to first send a return to the tax payer before an additional assessment could be raised.

[443] Cape Brandy Syndicate v I.R.C (1921) 1 KB 63
[444] Potts' Executors v IRC (1951) A.C. 443
[445] (1970) Nigerian Commercial Law Report (N. Comm. 1. R) 121

If the facts of the case were to arise under the corresponding provisions of P.I.T.A 1961 S. 31(1) and C.I.T.A S. 45(1), the decision would not be much different going by strict interpretation of the tax statutes. It is true that S. 31(1) P.I.T.A 1961, S. 47(1) C.I.T.A 1979, also states that *"... the provisions of this Act as to notice of assessment appeal and other proceedings shall apply to such assessment or additional assessment and to the tax charged hereunder...". However, it is assessment and to the tax charged hereunder."* However, it is noteworthy that S. 35(1) P.I.T.A 1961 (S 51 C.I.T.A 1979) provides that:

> No assessment, warrant or other proceeding purporting to be made in accordance with the provisions of this Act or the principal Act shall be quashed, or deemed to be void or voidable, for want of form, or be effected by reason of mistake, defect or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of this Act or the principal Act or the meaning of this Act amending the same, and if the person assessed or intended to be assessed or affected thereby is designated therein according to common intent and understanding.

The decision of the court in the Attah's case shows clearly that our courts will look beyond mere form to the substance of the case to justify the intendment and spirit of the provision of the tax statutes, which in this case, is to dissuade the tax evader.

The court's verdict on the second issue raised by counsel for the defendant, boiled down to the meaning of the word 'discovers' under S.25(1) of Personal tax Law, 1962 (S. 31(1) P.I.T.A, 1961 S .47(1) C.I.T.A 1979). The court admitted that "the commissioner is not to act capriciously but … his action need to be founded on evidence in the strict sense of the word". The judge next referred to the judgement by Bray J. in the case of R v Kensington Income Commissioners,[446] where construing the word 'discovers' in S.52 of the Tax Management Act, 1980 (U.K), the learned judge said:

[446] (1913) 3 K.B 870

> … it seems to me clear that the word 'discovers' cannot mean ascertain by legal evidence. In my opinion it means comes to the conclusion from the examination he makes and from any information he may choose to receive. There is nothing to prevent him from getting such information as he can..[447]

Hassan, Ag. S.P.J accordingly held that the Commissioner of Revenue had bona fide discovered that additional assessment should be raised as on the defendant according to the best of his judgment, based on 'his back duty officers going to the Nigerian Tobacco Company at Kaduna and collecting relevant information concerning the commission received by the defendant", which revealed very clearly that the defendant had been under assessed. The principle that there is no equity in tax must be qualified to put the judicial perspectives straight. There is no room for equitable construction of the clear words of the tax statutes. However, our courts have very rightly drawn a distinction between the construction of the statute on the one hand, and the action of the tax authorities in purported compliance with the tax statute, on the other. In this sense our court have not hesitated to import the principles of equity and good conscience to resolve issues arising from the exercise of some discretionary powers vested on the tax authority by the tax statute.

Thus, in ***FBIR v Omotosho,***[448] the board instituted a claim at the Federal High Court against the defendant, for income tax arrears (based on best judgment assessments) and penalties for years 1965 – 1966, 1966-1967, and 1967 – 1968. The defendant did not put on appearance.

On the facts of the case before the court Belgore J (as he then was) said:

> It is most unfortunate that the defendant was not in court to contest the case, as the assessment may be anything except the best of judgment assessment it claimed to be. In 1964-1965 when the defendant sent in his return, he was assessed N6 on an annual income of N1,400, while in 1965-1966, 1966-1967 and 1967-1968, he was assessed N16, N52 and N200 tax respectively, based on

[447] Ibid at p. 889
[448] (1973) N. C. L. R. 369

> assumed annual income of N1,600, N2,000 and N2,400,while the graph of the defendant's assumed annual income of N1,600, N2,000 and N2400 cannot be said to be the same for the graph of N16, N52 and N200. For a man to pay a tax of N52 on an annual income of N2,000 and the same man to pay tax of N200 on the same income of N2,000 in the following year under the same conditions sounds not only capricious and vindictive but oppressive. A court should not be made to enforce such a manifestly unreasonable tax irrespective of whether the assessee disputes it or not.

Generally speaking, the attitude of the judiciary in tax evasion cases suggests that if the role of our courts in the battle against tax evasion is fully enlisted, we would be on the right path to substantially reducing the incidence of tax evasion in this country. Even in cases where the point was not directly before the court, a renowned legal practitioner seeking election was elected to have paid N4, N16 and N20 for the three years of assessment (apparently with the aim of obtaining the tax clearance certificate) Olatawura J. (as he then was) stated obiter:

> Although the tribunal was not called upon to determine the adequacy or otherwise of tax paid by (sic), it will however say that if the purity and integrity of public life were to be preserved those who aspire to position of honour should demonstrate that they discharge their civic responsibility without compulsion that the payment of N4 by (Sic as income tax for 1974/75, though satisfied the requirement of the decree, gave cause for great concern and was equally disturbing.[449]

The study in this chapter attempted to elicit the salient statutory measures against tax evasion and the attitude of the courts and while we note that no amount of legal reforms will make people pay tax voluntarily, it is also evident that all the foregoing tend to suggest that Nigeria's tax effort has not been as high as is desirable. Thus, from the threshold, the pertinent issue arising is what possible legal solutions can be proffered in the circumstances.

[449] See Okorodudu M.T (1985) op cit pp. 20, 21. See also *Ola v F.B.I.R* Suit No. FRC/L/IA/73; *F.B.I.R V v Blue Casino Company Limited* Suit No. FRC/PH/2/76; *F.B.I.R v West African Pictures Co. Ltd*, suit No. FRC/L/8/74; *F.B.I.R v Solanke* Suit No. FRC/L/6/37

In a discussion of the possible legal solutions to tax evasion certain considerations have to be borne in mind. Firstly, it should be appreciated that it is not possible to totally eliminate tax evasion, but that it can be reduced. Secondly, what is suggested here are only possible legal solutions which are not exhaustive, and while it is conceded that the effects of tax evasion have wide societal implications, our discussion of the possible solutions are concerned mainly with the legal aspects only and thirdly, the suggested possible legal solutions are primarily concerned with the possibility of their application in Nigeria whilst also considering the experience of the jurisdiction where some of these solutions have been tried.

As we have noted, the Nigerian tax statutes provide for both criminal and civil sanctions without a clear understanding on the part of the tax authorities where one stops and the other begins. This no doubt, has led to a situation where the tax authorities bring before the courts facts which although on a proper understanding are tax evasion cases are nevertheless treated as if they were demands for additional assessments.

There is also a further need for a clear definition of what exactly amounts to tax evasion, which on its own, could reduce the incidence of the above confusion. Whilst it is appreciated that a definite statement of what amounts to tax evasion could provide a clear leverage for evaders, it is still necessary to have broad guidelines on the matter instead of the situation where evasion is identified by way of the punishment provided for by the Act. The Income tax Act must be capable of identification independent of the punishment provided to tackle it, only then can we begin to move forward.

4.7 Case for Prosecution of Tax Offences

All taxation is the creature of statute and so far as income tax is concerned, most of the relevant statutes are comparatively modern. Yet, in the United Kingdom case of ***R V Hudson***[450] which was a criminal prosecution arising out of acts alleged to have been done by the defendant in relation to his income tax affairs, all the counts of the indictment were laid at common law under a precedent traceable to the fourteenth century.

In that case, Hudson had rendered to the Inspector of Taxes, through an accountant, accounts and balance sheets of his business considerably understanding as the jury found at the trial, the true profit resulting from his trading. When the revenue's suspicions were aroused an investigation took place and in the course of it Hudson was asked to certify that he has made full disclosure to the revenue of all bank accounts in his own or his wife's names during the period covered by the investigation, and of all facts bearing on his liability to tax over that period. He did so in writing, but certificate that he gave was also false. In these circumstances, the defendant was indicated, in respect of both these type of false document, the false accounts and the false certificates, on counts alleging what has come to be known as the revenue common law misdemeanour.

A common law misdemeanour of this kind is committed by anyone who, with intent to defraud makes or causes to be made a false statement tending to prejudice the crown and the revenue. A charge in similar form had been laid in upwards of one hundred previous prosecutions at the instance of the revenue, the first being in 1917. Its validity had been challenged unsuccessfully in about half a dozen cases of which the most notable was ***R v Bradbury and Edlin***[451] before Bray J at Winchester Assizes in 1920. Hudson, having been

[450] (1956, 2 WLR 914, (1956) ALLER 814
[451] (1921) 1KG 565

convicted on eight common law misdemeanour counts appealed to the court of Criminal Appeal on the ground that no such offence as that upon which the indictment against him was founded was known to the common law. The appeal failed. One objection which was urged on his behalf was that conceding, that the sending in of false accounts ought to be an offence, the revenue had had ample opportunity to have it made an offence by parliament, but had taken no steps to do so. But as Lord Goddard C.J. pointed out, though accounts and certificates are not expressly dealt with in the Income Tax Acts, there is no reason why if what is done is an offence at common law, it should not be prosecuted as such.

In order to understand His Lordship's decision, we have to consider that the common law appears equipped to punish evasion of a purely statutory tax and it is necessary to examine the origin of the common law offence in question. This is what Lord Goddard said while delivering the judgement of the court. He says that the common law offence which is closed is a fraud on the crown. Drawing first on the authority of Hawkins, he cites that writer's pleas of the crown as sayings.[452] All frauds affecting the crown and the public at large are indictable as cheats at common law." Aside from statute and apart from the special instance of conspiracy cheating as between subjects is not indictable. It was said in an early case[453] 'we are not to indict one man for making a fool of another". But to make a fool of the whole public is another matter. Lord Goddard brings this out by citing one of the two reasons given by Lord Mansfield in 1783 for affirming the conviction of Charles Bembridge, the accountant in the office of the payment to the Forges[454] where there is a breach of trust, a fraud or an imposition in a subject concerning the public, which as between subject and subject, would only be actionable by a civil action, yet as that concerns the king and the public is indictable.

[452] Vol. 2 C. 25 C.A
[453] *R v Jones* (19704) 1 Salk 379
[454] *R v Bembridge* (1783) 22 States Trials 156

Bembridge was a public officer, which the ordinary tax payer is not, and so the facts of Bembridge's case gave that much ground for the distinction that the appellant's counsel in Hudson sought to draw or as to exclude the authority of Lord Mansfield's words. But the case of a public officer is as Lord Goddard put it, only one instance of the principle. The other instance, which is enshrined in the passage from Lord Mansfield's judgement already quoted, involves the proposition that not only if public officers but if nay, subjects acts such a way as to defraud the company, that is an indictable misdemeanour..

The question that remained was: Had the law as so laid down by Lord Mansfield ever been altered and are they enforceable in Nigeria as of today? the court could find no case in which it had ever been altered. Having referred to the ruling of Bray J. in Bradbury and Edlin and to a case in Northern Ireland before Andrews L.J sitting at the Belfast City Commission[455] Lord Goddard said that in his opinion the law as stated by Hawkins by East[456] by Lord Mansfield by Bray J and by Andrews L.J. remained exactly as it had always been

> This is a common law offence and has always been a common law offence. It is not necessary for this court to make a new offence and we are not making a new offence. We are merely reaffirming what the common law has, in our judgment, always been on this matter.

It is submitted that though the law is not enforceable in Nigeria. This submission is based on our 1999 Constitution of the Federal Republic of Nigeria which provides in section 33(12) that:

> subject as otherwise provided by the constitution a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law; and in this subjection a written law refers to an Act of the National Assembly or a law of state, any subsidiary legislation of instrument under the provisions of a law.

[455] R. v "J" (1933) N. 173
[456] East's Pleas of the Crown 2 East P.C 821

It is arguable that since the common law was received into Nigeria by various laws which makes provisions for its applicability in Nigeria, the Common Law prosecution may be applicable in this country. We have disagreed and affirmed our stand that it is inapplicable to Nigeria. This is reinforced by the provisions of sections 3(2) of the Penal Code Law, 1959 which provides that: *After the commencement of this law no person shall be liable to punishment under any native law or custom*.

"Any" being interpreted to mean any native law or custom whatsoever. This position is further reinforced in the Nigerian case of ***Obaji V The State***[457] where the "Supreme Court of Nigeria held that, in interpreting the Criminal Code, the courts should not import elements from the law of England or any other country which are not envisaged in our legislations. It is further provided under S.35(ii) of the repealed Constitution of the Federal Republic of Nigeria 1989, which was brought into force by the Executive Powers (Constitutional Adaptation etc) Decree 28 of 1990 and S. 15, Constitution of the Federal Republic of Nigeria (Promulgation) Decree 1989.

It is nevertheless an invaluable weapon despite the statement of Beckley. J. in ***Edmeades v Thomas Board Mills Ltd***[458] that

> I do not think that this court can be held bound by that decision of the Court of Appeal of England, this country (Nigeria) now being an independent sovereign state, but judgment of an eminent judge like Lord Justice Denning, Master of the Rolls, would certainly be of the most persuasive authority and would be followed except the court feels otherwise strongly about the *ratio decidendi* of the decision. I feel so in this case.

He further stated that:

> … the common law of England is based on common sense, and it seems to me to be eminently in accord with common sense that when a person commit an offence of this kind, and makes a false

[457] 1965 NSCC P.210
[458] (1969) 2 WLR 668

> statement with a view to prejudicing His Majesty's revenue, it ought to be punishable.[459]

The various penalties in the U.K. Income Tax Acts do not conflict with, neither do they repeal the common law, rather, the statutes: "added an additional burden or obligation if you like, but it never did take away the right to proceed against an offender by indictment under the common law …"[460]

The essence of the common law misdemeanour in Revenue cases is that a false statement has been made by or at the instigation of the defendant with intent to defraud. Lord Goddard emphasizes that it is a material part of the offence that the documents sent to the Revenue in the case before him were, as the jury in fact found, false and fraudulent to the defendant's knowledge. The jury must have taken the view, namely, the documents were sent in for the purpose of evading the payment of tax, that is of defrauding the crown and defrauding the public.

Hudson's case established on its facts the validity of the revenue Common Law Misdemeanour where fraudulent false statement are made in business accounts or in disclosure certificates sent to the revenue. The principle expressed in the decision and in the authorities on which it was based is a broad one. In particular the form and nature of the document containing the false statement would not appear to be material. The gist of the crime is fraud upon the crown as it would be hard to imagine any false statement of the revenue made knowingly and wilfully which would not involve intent to defraud.

Apart from the above sanctions that are rarely used, the Nigerian Income Tax Acts provide other coercive measures to prevent tax crimes and to compel delinquent tax payers to fulfil their obligations to the state on the one hand and to encourage his disinclination for the payment of taxes on the other. The coercive measures include imposition of interest fine and

[459] R.V Bradbury and Edlin Supra
[460] Supra

imprisonment. The sanctions provided may be imposed by two different and independent agencies, namely the revenue authorities and the criminal courts.[461] Sanctions, may therefore be classified into two categories namely, civil sanctions ad criminal sanctions.[462] In other words, civil sanctions are those which are applied by the revenue authorities in case of defaults committed by a tax payer[463] and criminal sanctions are applied by the criminal courts for the offence of tax evasion. There exist similar provisions in the Personal Income Tax Laws of the various states of the federation, and sections 60-67 of the Companies Income Tax Act LFN 2004.

There is a controversy as regards the nature of these sanctions. The real difficulty arises in relation to the civil sanctions with penalty provisions which are administrative in nature. The question that has long puzzled those interested in the taxation law is the nature of sanctions imposable by the income tax authorities. There seems to be no consensus amongst the courts. Some of the courts have held that the nature of such sanctions is criminal, while others opined that it is civil in nature, that is, it is a mere imposition of an additional tax and still others categorized it as quasi criminal.[464]

In the Nigerian Tax Statutes, civil sanctions are imposed as a part of the machinery of assessment and the sanctions are merely an additional tax imposed in certain circumstances for the wrongs committed by the tax payer. The sanctions are listed under "collection, recovery and repayment of tax" or "returns" and "assessments" and are imposed by the Board of Inland or – Internal Revenue which may in certain circumstances require the assistance of the courts for its enforcement.

---

[461] S. 54(3) P.I.T.A (Lagos) 1961. Offences under this Act can be entertained by a magistrate

[462] The Sanctions provided for various defaults in relation to tax crimes in the United States, the United Kingdom, Australia, India and Canada are also classed into (i) civil and (ii) criminal. The former is enforceable by the revenue authorities and the latter by the criminal courts.

[463] S. 30(1) PITA 2004 provides for penalties to be levied by the revenue authorities.

[464] Gaur, K
.D (1979) op cit p.488

In relation to the revenue Board's powers to prosecute civil tax sanctions, the production of a certificate signed by any person duly authorized by Chairman of the Board giving the names and addresses of the tax payer of the income tax due, shall be sufficient evidence of the amount so due and sufficient authority for a court of competent jurisdiction such as the Federal High Court to give judgement of the said amount.[465] Where the above power is properly exercised by the Revenue, all that is needed is an endorsement by the court to secure its enforcement. The characteristics of civil sanctions under the Nigerian Tax statutes are that;

First, it is imposed by the Board of Inland or Internal Revenue.

Second, it may be secured by an endorsement of the court.

Third, the tax can be recovered from the estate of a deceased person,

Fourth, no action may be brought after six years for repayment of tax except there was under assessment due to fraud, wilful default or neglect.

Fifth, it may be sued for and recovered as a debt due to the government.

Sixth, the proceedings are civil in nature and so normal rules as to pleadings in civil cases would apply. Seventh, the onus of proof is on the tax payer to show that he has been excessively assessed.

These characteristics are however ignored by the Nigerian courts and in a series of judgments, particularly by the Federal High Court, the differences between civil and criminal sanctions did not seem as if they were appreciated. This attitude however would appear not to be the fault of the courts as the Board of Inland Revenue under –estimates its own process of prosecution and in situations where it ought to have brought criminal actions against the tax

[465] S. 46(3) P.I.T.A Lagos see also S. 5a ITMA See S> 230 of the 1979 Nigerian Constitution

payers for wilful infractions of the law it resorted instead to civil actions to levy additional assessments.[466] The following cases illustrate the above point.

In the case of ***Ola V FBIR***[467] an appeal by the defendant tax payer against the decision of Board of Appeal Commissioners' dismissal of his appeal against the refusal of the Board of Inland Revenue to consider the objection raised by the tax payer to additional assessment made against him in respect of the tax years 1962 – 1968 inclusive, after stating that there is clear and abundant evidence that the appellant was guilty of failure or wilful default in the supply of information or disclosure concerning his sources of income, an offence under the Income Tax Acts, the court went on to observe that the appellant was different from the ordinary run of culprits who are unwilling to pay rates and taxes and who hide or deny ownership of their own properties or sources of income and that it was the duty of the court, in the public interest, to ensure that officials of the revenue board are discouraged and in fact prevented from using their power of taxation as a punitive measure. The court then set aside the additional assessment and allowed the appeal.

In ***F.B.I.R V Blue Pelican Casino Co Ltd***[468] the court held that no statement of account was produced at the trial by the defendant and it is evident that none has been prepared. It seems therefore that the defendants were engaged in a game of hide and seek with no solid defence to the action the court then decided that since the defendant had not filed any statement of account the plaintiffs were entitled to make any assessment in the best of its judgment.

Also in ***F.B.I.R v West African Pictures Co Ltd***[469] an action under the Companies Income Tax Act 1961 for failure to pay income tax and penalty for the years of assessment

[466] F.B.I.R v Nasir (1964) 1 ALL NLR 408
[467] Suit No. FRC/1A/73
[468] Suit No. FRC/PH/2/76
[469] Suit No. FRC/L/8/73. See also SS. 16(3)(a); 17, 49(3); 63(3) C.I.T.A 1961

1960,61, 66/67, 67/68, 68/69 and 69/70. The court held that it could be seen from the evidence, the nonchalant attitude of the defendants in matters of taxation and the levity with which they had all along treated notices served on them under the law until they found that proceedings were imminent and that their defence was nothing short of finding an escape valve for their acts of irresponsibility and wanton disregard of constituted authority. The court then decided that since the amount was being claimed as a debt due to the Federal Government the defendants were liable for the amounts and penalties stated on the demand.

Finally, in ***F.B.I.R v Solanke***[470] the court observed that the defendant had not told the court the truth with regards to his professional earning. The court therefore held that the defendant having failed to file his statements of income after due notice was liable for the best of judgment assessment on his professional earnings for the period in question.

Despite the criminal element of evasion in these cases they all came to the court as civil actions. One reason which may have informed the Revenue Board in bringing civil actions for these infractions of the law is that by civil actions more revenue is likely to be recovered. These considerations would however not deter future evasions. The fault no doubt is with the revenue board which should have brought criminal prosecutions in the courts rather than try to enforce it themselves and the court was right in Ola's case to insist that the officials of the Board have no right or power under the law to inflict any assessment which tends to be of a punitive nature. The body with the right to enforce punitive measures are the courts.

The misunderstanding of the tax authorities arises from their powers to levy additional assessments, where any loss of a tax is suspected to be due to any form of fraud, wilful default or neglect. These are matters for the court to determine because only the court can conclusively

[470] Suit no. FRC/L/61/73. See also S/11(1) 330; 30(3) 41(2); 45(2) 46; 46(3) P.I.T.A (Lagos) 1961

state what amounts to fraud or wilful default. The power of the tax authorities is to institute-criminal prosecutions to prove fraud or wilful default.[471]

Under section 17 C.I.T.A LFN 2004, it can be observed that underlying policy the provision of the civil and criminal sanctions has adequate deal with objective is to gather more revenue than to punish the evader although, in law, a civil recovery of tax is not a bar to a criminal prosecution under the Nigerian tax system. It should be stated that the revenue powers to levy additional assessments in other cases are intact, and the criminal prosecutions do not operate as an estoppel against the revenue or preclude the imposition of the civil sanctions with respect to the amount of tax allegedly due and indeed a tax payer may be subjected to the imposition of both civil and criminal sanctions for the same under payment.[472]This goes in consonance with the decision in the Nigerian case of *Ola v F.B.I.R*[473] discussed above.[474]

4.8 Courts' Verdict

This is otherwise known as judgment, decision or sentencing. It is an art, the practice of which involves weighing various factors which are unlikely to be precisely duplicated in another situation.[475] In that sense, the courts will always have a vital role to play in interpreting the provisions of the taxing statutes, for, nowhere are judicial attitudes more evident that in the manner the courts impose sentences. Presently, it is difficult to assume that there are any specific attitudes or predict what considerations would operate on the mind of Nigerian judges, in the absence of a large number of cases on tax evasion coming before them.

---

[471] S. 17 C.I.T.A LFN 2004 S. 66 P.I.T.A LFN 2004

[472] Helving v Michel 303 U.S 391 (1938) S: 70 C.I.T.A; S. 59 P.I.T.A See also S. 59 P.I.T.A 1961 & S. 70 C.I.T.A 1979 which states that "the institution of proceedings for or the imposition of a penalty fine of form of imprisonment under this Act shall not relieve any person from liability or payment of any tax or which he is or may become liable.

[473] Supra.

[474] See s.75(1-2) PITA LFN 2004 and ss.65-67 CITA LFN 2004 respectively.

[475] Potvin J. (1977) op cit pp. 244, 245

It is interesting to note that the period 1956-1988, only about a dozen tax cases which were reported came before the apex court – the Supreme court of Nigeria namely: ***Board of Inland Revenue v Rezcallah*** (1962) N.S.C.C (vol. 2); ***Ihekwoba v Commissioner of Internal Revenue*** (1958) NSCC (Vol. 1); ***FBIR v Nasr*** (1964) NSCC (vol 30 A.G ***Ogun State v Aberuagba & Ors*** (1985) NSCC (vol. 16), ***FBIR v Nigeria General Insurance Co Ltd*** (1969) NSCC (vol. 6) ***FBIR v Adenubi*** (1963) NSCC (vol 3) ***Aburime v NPA*** (1978) NSCC (vol. 11) ***S.A Authroity v Regional Tax Board*** *(1970)* NSCC (vol. 6) ***Arbi Co Limited v FBIR*** (1968) NSCC (vol 5) ***Okupe v FBIR*** (1971) ***NSCC Mobil Oil (Nig) Ltd v FBIR*** (1977) NSCC (Vol. 11) M***arina Nominees v FBIR*** (1986) 2 NWLR 48 and out of all these cases, it was only in ***Akinsete Syndicate v Senior Inspector of Income Tax*** that tax evasion was specifically mentioned only, in making a distinction with tax avoidance.

But, judging from the remarks of the Federal High Courts in their decisions on tax cases already discussed, the attitude of the Nigerian Courts towards evasion would likely be one of indifference. Many decisions from other jurisdictions, have elaborated criteria used to determine an adequate sentence for tax evasion.[476] These include the amount of tax evaded, the repetition of offences, the plea of guilt by the accused, the deterrent factor for the accused and the community, the age, family situation and social ranking of the accused.

Despite the prevarication of the English Court in ***R. V Curtis***, where the accused was convicted of three counts of making false statements with intent to defraud the Inland Revenue and was sentenced to nine months' imprisonment by the trial court and on appeal, the Criminal Court of Appeal felt that, some mercy could be shown and subsequently fined him, the following

[476] Notably the *Canadian case of the Queen v Thestle* 74 D.T.O 6632 (Country Court of Ontario) *Balgent v the Queen* 74 D.T.C 6467 (Ontario) *Attorney General of Canada v Grequir* 72 D.T.C 6219 74 D.T.C 632; *The Queen v Horowitz* 71 D.T.C 5350; *Regine v Kitto* 70D.T.C 608; *Galloway v the Queen*, 69 D.T.C 5023; *the Queen v Bertrand* 67 D.T.cC 5245; *Regina v Machaoek* 60 D.T.C

considerations have operated on the minds of the judges in deciding whether a custodial or non custodial sentence was an appropriate one for tax evasion. They are good character, illiteracy or level of education religious obligations, health and family situation, age and likelihood of repetition, repayment of tax job loss, amount involved, delay in instituting proceedings, persistence in fraud, and public interest.

The appropriateness or otherwise of these considerations of these considerations can only be a matter for personal opinion even though the objects which judges have in mind when imposing sentence include not only the punishment and reformation of the offender but also, and perhaps predominantly, the protection of the public.[477] In this light, whatever sentencing policy the Nigerian courts eventually evolve on tax evasion, it is a matter for thought whether it is proper to use the criminal process to enforce revenue and regulatory laws which are the typical province of most non –police agencies. With the current pressure of criminal business and general congestion on the courts, this is surely a matter to which the government should be giving attention.[478] The income tax sanctions, both civil and criminal, have been enacted in response to felt needs of the moment. Neither of the groups of sanctions would seem at the moment to have dealt adequately with the problem of tax evasion.

Despite the supposedly more severe sanction applicable to criminal proceedings, the growing tendency of permitting tax evasion cases to go to court as civil actions permits the festering of evasion. The Nigeria tax authorities have shown a lack of understanding of the ingredients of tax evasion and so have always found it difficult to decide whether to bring a civil or criminal action. This state of affairs is regrettable and would seem to be also contributing to the prevalence of tax evasion. .

[477] (1961) Crim L. R 482
[478] Royal Commission on Criminal Procedure (1981) n 159 (UK)

In the light of the above, it is recommended that tax officials should be trained in criminal and civil procedure and indeed all prosecutions should always be referred to their legal department which in turn should be manned by lawyers and should be independent of the ministry of justice. A situation where lawyers are changed at the will of the ministry when before they get enough experience at the tax authority should be stopped otherwise it may appear more expedient to engage the services of tax lawyers in private practice if there is really any serious intention on the part of the government to curb tax evasion. Monetary penalties and criminal sanctions should also be drastically increased so as to make it disadvantageous to attempt tax evasion. For this purpose, there should be public exposure in the case of detection of fraud and convictions and this should be well publicized to serve as a deterrent.[479] Although these measures cannot totally eradicate the problem of tax evasion there is no doubt that they will go a long way in reducing the present trend to reasonable dimensions.

While attempts may be in respect of tax evasion to sift our judicial attitudes and reduce the incidence, it should be noted that there is a negative legislative attitude in Nigeria and other comparative jurisdictions to tax evasion in terms of the terms of the various punishments provided in the taxing statutes. Similar attempts to rake out concrete judicial attitudes in terms of the considerations operating on the mind of the court in imposing sentences would prove more elusive.

[479] See Ayua I.A (1982) The Problem of Tax Evasion and Avoidance in Nigeria. Paper presented at the First National Seminar on Commercial Laws, Ahmadu Bello University, Zaria 4-9 October pp.29, 30

CHAPTER FIVE

SUMMARY AND CONCLUSION

5.1 Summary

A tax in the general understanding of the term and as used in the constitution signifies an exertion for the support of the government it is simply a pecuniary burden load upon individuals or persons or property to support the government and is a payment exacted by legislative authority. This study was able to explain what happens to those persons who refuse to pay tax, whether they are properly arrested and punished according to the penal provisions or no, and by whom. The legal position of tax defaulters, what law says about the tax offences and penalties, the penal provisions such as the civil and criminal sanctions effective enough to deter future ability to commit tax offences was clearly discussed and on the other provide good information on the subject to the public, government and the tax authorities in general.

5.2 Findings

It is observed from the previous chapters that the basic problems associated with the civil and criminal sanctions in our tax legislation hinges upon the ineffectiveness of the penal provisions. This led to the inability of the various Revenue Boards to control tax evasion and tax avoidance effectively. Consequently, there is poor revenue collection by the government coffers. Consequently, the following findings are made:

1. It was found as a fact that the legislature waste much time in enacting some tax laws. An example is the new Federal Inland Revenue Service (Establishment) Act, 2007 which was introduced as a Bill in 2004 but, was passed into law three years later in 2007.
2. All forms of taxes in Nigeria are to some extent avoided or evaded largely because the administrative machinery to ensure effectiveness is weak. There are diverse problems

confronting the administration. Efforts are concentrated on the administration of income tax not only because of the bulk amount of revenue accruing to government, but because, most of the problems of tax administration are typical and can be analysed by:

(a) Identification of the person to be assessed,

(b) Identifying Income for tax purpose

3. Starting from the first aspect, the degree of voluntary compliance with tax laws in this country is as low as the degree of honesty in financial matters. Consequently, it can be observed that persons liable to tax are hiding from the tax authority, transacting business in fake names and addresses. Worse still, people will not give correct information about their income. Our postal system for instance, are not effective because, notices sent to tax payers by post do not reach their destination within reasonable time or are lost in transit. Also, the fact that most of our urban centres are not planned, and that street names and numbers are either not existing or difficult to find, give ready excuse to the unwilling postman to trace tax payers and deliver letters to them. All these compound the work of the tax man who is determined to trace his tax payers. Likewise, many businessmen and women do successful businesses without any registration or any fixed address.

4. Added to this is also the fact that a lot of business transactions involving money are not documented and where the business transactions are with reputable institutions, government offices or government agencies, names and addresses given may not be reliable for identifying income. Despite the fact that there are sanctions against these breaches in the penal provisions of income tax laws, it proves difficult to bring them to justice.

5. The most intriguing and difficult aspect of the tax man's work is finding income. Once the income of the tax payer is known the correct assessment is an easy task. The tax payer knows that the tax man is prepared to dig the largest possible "shovel" into his "purse" and so he tries to prevent this. He knows that the tax authority may not be able to ascertain correctly the general income and so he will not render accurate returns of income or any returns at all, whereas, the tax man has a duty to perform and is therefore, left with the problem of estimating the tax payer's income.

6. Another issue to observe is finding the legal base of taxation. Taxation is a baby of legislation. In this country personal income tax is governed by the Personal Income Tax Act, 1993. The Personal Income Tax Act deals with broad principles and administration of the tax system in order to affect uniformity all over the federation (i.e assessment and collection procedures).

7. Closely related to the above points are the defects in the tax laws. It fails to reflect the culture of Nigerians or their social habits. Nigerian societies relish and acclaim ostentatious consumption. This is why contributions or donations towards community projects, churches, mosques, and political party secretariats are more successful than appeals to people to pay their tax. These donations are announced amidst great applause.

8. Another formidable challenge to income tax law is the issue of Tax Clearance Certificate (TCC). To combat tax evasion, tax clearance certificate was introduced and universally accepted as a weapon for revenue collection in 1979. The use of tax clearance certificate created more problems than estimated when the device was introduced. Obviously, there is a good example of how a good device of improving tax collection has been abused.

5.3 Recommendations

In line with the above findings, it is observed that, the ineffectiveness of the penal sanctions in the tax laws, coupled with other administrative lapses significantly contributed to tax evasion and tax avoidance and must be addressed squarely. It is for these reasons that the following recommendations are made.

1. Need for effective tax legislation and tax administrative machinery

The existing tax laws in the country are in a confused state. In order to make for the taxpayer's understanding and reduce administration problems, the amount of tax payable, the circumstances and time of payment should be clearly defined and delineated. Thus, the various tax laws such as the Personal Income tax, Companies Income tax, Capital Gains tax, among others which are scattered in both federal and state enactments should be harmonized and codified. In the process of codifying the tax laws, both the states and the federal governments should be involved. Hence, it is proposed that a National Commission on State Taxation (NCST) should be constituted along the lines of the National Economic Council (NEC) first established under the 1979 constitution. The National Commission on State Taxation should be charged with the responsibility of formulating policies touching on those taxes that are imposed by the federal government for the benefit of the states, such as taxes on the incomes, profits and capital gains of persons other than companies.

2. Clear, simple and unambiguous tax Legislation.

It is often not appreciated that rule making plays an important role in the administration of any law. For most laws are often vague and lacking in material details. It is the place of rules to fill in the details. Tax law is no exception. While it is true that tax cannot be imposed through

rule making except by statute, it is also true that, bearing in mind the meaning of the word, no tax law can successfully be operated without rule-making.

3. Additional efforts towards controlling tax frauds and corrupt practices

Corruption by tax officials is made possible due to the absence or non-implementation of checks and balances in the system or the vesting of too much discretion in the official and the fact that most of the procedures and guidelines in use are shrouded in secrecy. No doubt that taxation is an involuntary payment by a citizen for the support of his government. Also, it is a fact that the citizen will not pay if the tax is not demanded from him. Even where there is a demand, he still may not pay if he knows that by so doing, he will lose nothing. These statements therefore, underscore the strategic importance of enforcement machinery in the tax system. The truth today is that, tax delinquency and even outright evasion are being unintentionally condoned by the government. The unintentional condonation of penalties prescribed in the tax laws for delinquency and evasion do not augur well for a tax regime. What has been happening is mere admonition or at best, condemnation of tax evaders.

4. Adequate enforcement of penal sanctions

Tax defaulters should always be prosecuted to serve as deterrence to potential evaders. The principle of *laissez-faire* being pursued by many of the revenue departments will not help. If people see their equally prosperous neighbours paying substantially less tax or enjoying tax free expense account living, the tax payer's morale will decline. The submission of honest tax returns ceases to be simple act of morality. Ethics concerning taxes are separate from ethics in other civic responsibilities. Prompt punishment against tax defaulters will go a long way to deter potential tax defaulters. Selective use of the criminal prosecution method of enforcement can have a most powerful announcement effect. Selection for prosecution should be made amongst

the high income business and professional classes of the most persistent, contumacious and recalcitrant defaulters, a goal sentence being strongly demanded. If the courts decide accordingly, substantial increase in voluntary compliance may be anticipated.

5. Stiff and effective penalties against tax defaulters.

An adequate equitable system of penalties that is used effectively is a necessary component of a good tax administration. Low penalties have been found to be ineffective, while, high ones are rarely applied by tax administration or the court. This creates ill-will on the tax payers. For example, the penalties provided for the tax offences under sections 71-74 of Companies Income Tax Act, LFN 2004 and sections 86-89 of Personal Income Tax Act, LFN 2004 as well as other tax laws in the country are not strong enough to deter tax evasion and avoidance. Hence, there is the need for the legislature to revisit the penal sanctions in the tax laws with a view to amending all those provisions that are considered to be ineffective in controlling tax frauds.

6. Effective remittance mechanism.

There are instances where employers refused to pay tax already deducted from employees for over two years or more despite statutory stipulations that such deductions should be accounted for to the revenue within a prescribed period of time. In other to compel delinquent employers to account for taxes already deducted, there should be introduced, a certificate of compliance. This certificate should be issued to any employer that accounts for the tax deducted by him. Since salaries and wages paid out are deductible expenses in the calculation of taxable income, the production of the certificate of compliance should be a pre-condition to such expenses being deductible. No doubt, for this measure to succeed there must be a high degree of co-operation between officials of both the states and federal authorities. Sections 79-81 of the

Personal Income Tax Act, LFN 2004 should be amended by the legislature to reflect the above suggestions.

7. Rewards to deserving tax payers and tax officials

Still on incentives as being complimentary to the success of the enforcement efforts, both the federal and state governments should consider very seriously, the possibility of pecuniary rewards to officials who are diligent in the performance of their duties. Arguments have often been advanced against the adoption of these recommendations. The most prominent being that, such measure will be discriminatory in application.[480] To avoid this criticism, it is proposed that all the arms of the revenue should benefit from the scheme.

8. Adequate publicity of Tax Legislation

As noted in chapter five, much of the administration of the tax system is shrouded in secrecy. Quite often, procedure rules (both interpretative and adjudicatory), instructions and guidelines are shut away from the taxpayer. Even where there are express statutory requirements of rule making, such are yet to be complied with. Consequently, adequate publicity of our tax laws through all the various mass media outlets in the country is strongly recommended because, the public must be made aware of any tax law enacted as it is a compulsory and mandatory obligation on the public to pay tax.

[480] Surrey F. "Tax Administration in Underdeveloped Countries" 12 Miami law Review p.158

BIBLIOGRAPHY

Abdulrazaq M.T (2005) "Revenue Law" Malthouse Press.

Abdulrazaq M.T, (1993)"Nigeria Tax Offences and Penalties' Batay Law Publication Ltd. Ilorin

Ajomo M.A and Akanle (1991).'Tax Law and Tax Administration in Nigeria" Published by Nigerian Institute of Advanced Legal Studies

Arogundade, J.A.,(2005) "Nigerian Income Tax Law and its International Dimension." Published by Spectrum Books Ltd. Ibadan

Ayua, I.A, (1996)"The Nigerian Tax Law" Spectrum Law Publishing Co Ltd. Ibadan, Owerri, Kaduna, Law

Barlow R. Brazer, H. E . T Morgan, J.N (1966) Economic Behaviour of the Affluent. Brookings Institute Washington D.C

Daniel D., (2004) "Society and Economy: Legal Considerations of Tax Evasion and Tax Avoidance", BUESPA, Department of Economic Law, Budapest, Hungary.

Dean P. Keenan T and Kenney F. (1980) Tax payers' Attitudes to Income Tax Evasion; an Empirical Study, B.T.R

Fajana .O.(1996) 'Three and half decade of Fiscal Federalism in Nigeria', quoted in I. Elaigwu & R. Akindele edition of " Foundation of Nigerian Federalism NCIR" Abuja.

Groves, H.M. (1958) Empirical Study of Income Tax Compliance, 11 National Tax Journal 291

Hoffmann – Bustamante D. (1973) The Nature of Female Criminality 8(12) Issues in Criminology

Layade, P.S.A (2000)' Tax Evasion' in Fifth Annual Senior Officers' Conference of the Federal Board of Inland Revenues,

Levi M. (1977) The Seriousness of White Collar Crime; An Empirical Overview and Reassessment (unpublished research report); Sparks R. Genn, H and Dodd D Surveying Victims

Levi M. (1982) The Powers of Revenue Agencies An Overview; B.T.R

Mason R.T Calvin L.D (1978)"Analysis of British Tax system" published by Oxford press ltd

Meshachi, N.U., (2008) Nolix Educational publications Nig. Ltd Enugu

Nicholas A.R(1980) "Indian Tax Reform" Bombay Press

Nicholas K. (1986) Indian Tax Reform Published by New Delhi Publishers 1987.

Nwabueze B.O.(1983) -Federalism in Nigeria under the Presidential Constitution. Sweet & Maxwell, London, p. 182 quoted in Ayua LA. op. cit.

Obi J. I (1983) Tax Evasion and Its Solution Paper presented at the Seminar on Taxation held by the West African Sub – regional Committee of the Association of African Tax Administrators 22nd – 24th February, 1983, Lagos Nigeria

Ola, C.O., (1999)"Income tax law and practice in Nigeria" published by PTF and Ibadan University Press (1st ed. 1993) (2nd Ed. (PTF).

Oladunjoye, O. (1984) Tax Administration; The Problems of Assessment and Collection Paper presented at the National Seminar on Tax Laws and Tax Administration. November Nigerian Institute of Advanced Legal Studies.

Olorunleke, D.A (1981) Business Times No. 2 1981 see Punch Dec. 1 1988 Vol. 13 where it was reported that the Minister of Finance and Economic Development has appealed to the public to help fight tax evasion by passing confidential information to the tax authorities through P.M.B 77 GP Marina Lagos

Omoroguiwa, P.A (1984) Administrative Problems of Tax Collection and Tax Evasion in Nigeria. Paper presented at the Seminar and Workshop on New Avenues in Tax Collection in Nigeria, University of Jos

Orewa (1976) Taxation in Western and Midwestern Nigeria, Nigerian Institute for Social and Economic Research (N.I.S.E.R0

Philips A.O (1996) 'Nigerian Companies Income Tax, N.T.E.S.S. Vol. 3

Philips O.A (1975) A note on the determinant of income tax evasion, Nigerian Journal of Public affairs, October,

Phillips, A.O. (1968)"Nigeria's Companies Income Tax" The Nigerian Journal of Economic and Social Studies Vol. 1 No.3 November

Potvin J. (1977) Tax Evasion in Canada, Canada tax journal Vol. XXB No 2 May – June 1977

Rabiu S.A (1984) Tax Evasion and Offences. A paper presented at the National Conference on State Taxation; Problems and Possibilities under the auspices of the Institute of Administration, A.B.U, 28 – 30 November

Robbins and Stobaugh, L, (1974) Money in the Multinational Enterprise: A study of Financial Policy (London) Longman Group Ltd

Schwar4ts, R.D and Orleans S. (1967) On Legal sanctions. The University of Chicago Law Review, Vol. 34

Sosanya S.O.A (1981)"Taxation Reform in Nigeria" Published by University Press Ibadan

Spicer, M.W (1975) New Approaches to the Problems of Tax Evasion, B.T. R

Spicier, M.W and Lundstedt, S.B (1976) Understanding Tax Evasion, Public Finance No. 2 Vol. 31

Stephen, D., (1965), History of Taxation and the Taxes in England 3rd Edn. Frank Cass & Co Ltd

Sturmpel, B. (1969) Contribution of Survey Research to Public Finance, Quantitative Analysis in Public Finance Edited by Alan Peacock, New York

Surrey S.S.(1975) 'Tax Administration in underdeveloped countries, John Hopkins, University Press, Baltimore & London .

Surve S. (1967) Tax Administration in Developing Countries

Sutherland, E.H and Cressey, D. R 8th Ed. (1970) *Criminology*, Philadelphia, Lippin Cott.

The Oxford Dictionary of Current English 1985 Ed.

Tiley (2000) Revenue Law (Hart Publishing)

Walker M. (1978) Measuring the Seriousness of Cries. 18 British Journal of Criminology (B.. Crim 348-364).

Wallschutzky I.G (1985) Understanding Tax Evasion{public finance} no.3, vol.40