

**AN EXAMINATION OF TAX ADMINISTRATION AND ENFORCEMENT
MECHANISMS UNDER THE FEDERAL INLAND REVENUE SERVICE
ACT, 2007**

BY

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**BEING AN LLM DISSERTATION SUBMITTED TO THE SCHOOL OF
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DECLARATION

I hereby declared that this Dissertation entitled An **Examination of Tax Administration and Enforcement Mechanisms under the Federal Inland Revenue Service Act 2007**. Has been performed by me under the supervision of Dr A. A Akume and Dr A. R Agom. The information derived from literatures has been dully acknowledged in the text and the references provided. No part of this thesis was previously presented for another degree or diploma in any university.

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CERTIFICATION

This Dissertation titled **An Examination of Tax Administration and Enforcement Mechanisms under the Federal Inland Revenue Service Act, 2007**. meet the regulation governing the award of master of laws degree [LLM] of Ahmadu Bello University Zaria and it is approved for its contribution to knowledge and literary presentation.

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DEDICATION

This Dissertation is dedicated to the ever-green memory of my late uncle YahayaLawan Kura who during his life time was an embodiment of honesty, humility and hard work. May his gentle soul continues to remain in peace

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All praise be to Allah the cherisher, sustainer, perfecter, regulator, and the law giver of the universe, may his blessings and peace be upon his messenger the seal of the prophet hood, his companions members of his extended family and those who follow his teaching to the end of the world.

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LIST OF ABBREVIATIONS

BAC: Board of Appeal Commission.

BIR: Board of Internal Revenue.,

CGTA: Capital Gains Tax Act

CITA: Companies Income Tax Act,

FBIR: Federal Board of Inland Revenue,

FCT: Federal Capital Territory.

FIRS: Federal Inland Revenue Service

FMF: Federal Ministry of Finance.

JTB: Joint Tax Board.

NCRA: National Customs And Revenue Agency.

NCS: National Customs Service.

NNPC: Nigerian National Petroleum Corporation.

NTP: National Tax Policy.

PPTA: Petroleum Profit Tax Act

PITA: Personal Income Tax Act

SBIR: State Board of Internal Revenue

SDA: Stamp Duty Act

SG: Study Group.

SIRS: State Internal Revenue Service.

TAT: Tax Appeal Tribunal

VAT: Value Added Tax

VATB: Value Added Tax Board

VATT: Value Added Tax Tribunal

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ABSTRACT

From the inception of modern taxation in Nigeria in the first decade of the 20th century the problem of poor tax administration has been the cankerworms that militate against an optimum revenue generation which affect negatively the government ability to render essential services to the citizenry. With the above problems in mind, various reforms were initiated aimed at improving the standard of tax administration in order to ensure an improved revenue generation by the government. The first of such reform were the Native Revenue Proclamation of 1906 which systematized all pre-colonial taxes that existed in Northern Nigeria which was re-issued in 1914 and extended to the West and East in 1918 and 1927 respectively. Other reforms followed in 1943, 1958 (Income Tax Ordinance of 1958), 1961 (Companies Income Tax Act No 22 of 1961) and 1993 (Finance Miscellaneous Taxation Provision Act of 1993). The above reforms all aimed at improving the standard of tax administration in Nigeria. Major reform in the history of tax administration however came in 2007 with the granting of administrative and financial autonomy to the Federal Inland Revenue Service and establishment of more effective disputes settlement mechanisms within the system by the Federal Inland Revenue Service (Establishment) Act, 2007 (FIRS Act). The passage of FIRS Act, was an actualization of a longtime reform started a century and a year ago precisely in 1906. For the first time in the history of tax administration in Nigeria the FIRS by the 2007 Act were empowered with various administrative and enforcement mechanisms that allow a taxpayer to assess himself for tax and empowered the FIRS to enforce payment internally through various mechanisms such as Distrain, Surcharge, Substitution, and Surtax etc. It was in the light of these reforms that this researcher carried out a study of the new reform through the FIRS Act, and analyses the various administrative and enforcement mechanisms provided by the new Act (FIRS Act) and considered their efficiency and effectiveness in improving the standard of tax administration in Nigeria. The study however found that the Act contained an unnecessary and controversial policy of centralization of tax administration, a possible reduction of powers of various States Board of Internal Revenue and other gaps in the provisions of the Act and recommended solutions by way of amendments of some provisions of the Act. which the researcher believed if implemented will go a long way in ensuring an efficient tax administration regime of our dream.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Study.

One instrument use as a key to unlocking the resources required for public investment and infrastructural growth is tax. The process of levying and collection of tax i.e. taxation is a very complex and highly dynamic system with constant changes in the economic environment where it operates, hence the need to review from time to time the instruments regulating the levying, collection, administration and enforcement of tax.¹

In Nigeria, what added to the complexity of the system is the Federal character of the country. Under a Federal system like Nigeria, powers are shared between the central and state governments which also include power to impose or levy tax within the jurisdiction of the government concern. In Nigeria the power of levying and collection of taxes are shared between Federal and State governments², and therefore, administration of tax is made at two tiers of governments i.e. by the Federal Inland Revenue Services at Federal level and various States Board of Internal Revenue at State level³. This division occasionally brings about disagreement between the two tiers of government as to which government should collect what tax?⁴This of course affected the smooth running of the system in the country.

¹The practice in most jurisdiction is that each budget in every fiscal year brings about changes in taxation policy

²This is constitutionally provided under part II Second Schedule to the 1999 Consitution

³This is without prejudice to the power of other tax collecting authorities like Nigerian Customs Service and Excise Board, Joint Tax Board etc but they are outside the scope of this research work

⁴This conflict manifested on the constitutionality of Value Added Tax and Sales Tax see AG Ogun State V Aberuogba (1985), NWLR (PT3) AG Fedaration vs Guardian News Papers Limited (1999), a NWLR (PT618) 187

Another glaring problem in Nigerian tax system is the neglect by the successive governments of various sources of government revenue. And with the discovery of oil in 1970s, the Nigerian revenue base became dominated by oil revenue. The system was equally characterized by unnecessarily complex, distorted and largely in-equitable tax laws that has no practical application in the informal sector that dominated the economy. The whole system in the Nigerian taxation system as represented by mechanisms for administration and enforcement of tax was to say the least, inefficient and outdated.

Since the amount accrued to the government for its support depends largely on how efficient the machineries for administration and enforcement of taxes are, it was deemed necessary that the legal framework under which tax is levied and collected (administered) needs to be re-visited and made effective so as to be able to achieve its purpose. It was in a quest for this reform that in 2007, the National Assembly enacted the Federal Inland Revenue Services Act⁵ as a new legal regime for administration and enforcement of tax laws in Nigeria. The Federal Inland Revenue Service Act (hereinafter referred to as FIRS Act or the Act) established the Federal Inland Revenue Services (FIRS) and its Management Board (the Board) as autonomous bodies with power to administer and enforce tax laws in Nigeria⁶, while the Tax Appeal Tribunal (TAT) established under the Act⁷, is to operate as an adjudicating body within the system.

This research is undertaken to examine whether the new law is capable of achieving its objective of improving tax administration and enhancing government revenue thereby improving the standard of living of Nigerians.

⁵The Federal Inland Revenue Service (establishment) Act. was passed in to law by the Senate on 20th Febreury 2007 and House of Representatives on 21st Febreury 2007 and recieved Presidential assent on 26th Febreury 2007

⁶Section 1(i) established the FIRS while Section 3(i) established the FIRS Board as a supervisory body .

⁷Section 59 FIRS Act.

1.2 Statement of Research Problem

The major problems envisaged by this researcher and which provoked the desire to embark into this research are;

(a) The FIRS Act as it is today contained so many inconsistent, conflicting and sometimes unenforceable provisions relating to appointment of staff, power of the officers, procedure of conducting appeal proceedings at TAT etc that make the entire law to be at variance with its philosophy which may unless attended to affect the working and efficiency of the Service there by render the goal of the reform unrealizable.

b) There is a fear that the Act if implemented as it is today will worsen the existing problem of poor tax administration by giving a room for politicization of appointment in to some sensitive offices in the Board and undermining professionalism by neglecting to impose any special qualification for persons to be appointed in to some sensitive offices in the service

c) Fear of possible scraping of States Board of Internal Revenue by an implied nationalization of tax administration in some provisions of the Act and reducing all the states powers in relation to tax laws within its jurisdiction which created a suspicion from the various states and make their cooperation to the service very minimal where it is required as under section 8(9) of the Act.

d) Relative ignorance of tax administration and enforcement officers on their roles duties and responsibilities under the new law which affected negatively their efficiency in discharging their duties.

e) Problem of gap between taxpayers and the legal provisions which denied taxpayers the understanding of their rights under the new law and which ultimately makes compliance difficult

f) Absence of a standard or a compiled handbook guiding taxpayers and tax administrators on administration and enforcement tools provided by the 2007 FIRS Act.

1.3 Aims and Objectives Of The Research

The aim of this research topic is to conduct a research on current FIRS system of administration and enforcement of tax laws in Nigeria with the following objectives :

- i. To identify some lacunas, gap and problems in the provision of the Act that needs a reform or amendment to bring the law in line with the philosophy and objectives of the reform that necessitated the enactment of the Act and further establish through re-statement, definition, examination, analysis, identification and research conclusion whether the provisions of the Act is capable of achieving its purpose and philosophy of enhancing administration of tax in the country and bring out some of the provisions of the law that need to be revisited in order to address the problem of poor tax administration .
- ii. To proffer solutions in order to avoid a possible conflict between the FIRS and various states revenue board and alienate the fear of their being scraped or encroachment on their powers
- iii. To help the tax officers in understanding their role under the new legal regime by using it as a handy manual for quick reference in place of the original law and .familiarize taxpayers of their rights and duties under the present legal order by explaining in a simple and ordinary

language the taxpayers rights and duties in place of the more technical language used by the drafters of the Act.

1.4 Justification Of The Research

Since the introduction of modern tax legislation by the British colonialist in 1904⁸, the Nigerian tax laws have undergone several reforms geared at enhancing tax collection and administration with minimal enforcement cost. Highest of such reforms were the enactment of FIRS Act which established independent and autonomous FIRS with its Management Board and the creation of Tax Appeal Tribunal⁹ as a separate adjudicating body within the tax system. The Act was described as a new development in the Nigerian tax system which brought about a new experience all together to the stakeholders in tax matters in the country hence the need to embark on a research with a view to assisting the stake holders in understanding the philosophy, innovation and working of the new law. The justification of this research is therefore derived from its endeavor;

- a. In discussing in concise note the philosophy, innovation and techniques of modern way of administration and enforcement of tax provided in the Act so as to assist tax administrators in knowing the scope and limitation of their power and role under the Act and equally help policy and law makers in understanding the area of the law that need reconsideration or amendment to make it more efficient and effective towards achieving its aim

⁸Native Revenue Proclamation No4 1904

⁹Section 59 established the Tax Appeal Tribunal as an adjudicating body within the sytem, Section 1 (i) established an independent FIRS while Section 3(1) established the Federal Inland Revenue Service Board.

- b. To acquaint taxpayers and other stakeholders like tax consultants and solicitors in understanding the working of the new law and the new innovations brought by it and provide a guide and source of information for other researchers in the field.
- c. The research is equally justified for highlighting gaps in the new law and making recommendations for improvement.

1.5 Scope and Limitation Of The Research

This Dissertation is limited to examining the administration of tax laws under the FIRS system as provided under the FIRS Act 2007 only. Though there are other bodies/agencies empowered by law to administer tax laws in Nigeria other than FIRS such as the various states board of internal revenue with power to administer and enforce tax legislations of various states, Joint Tax Board which administer and enforce those taxes within joint ownership of federal and states like stamp duties Act, and Custom and Excise Board and its Service which also administer various tax laws etc. They are outside the scope of this dissertation and therefore not part of our consideration as discussion in this dissertation is limited to provision of tax laws covered by FIRS Act.2007.

1.6 Methodology Of The Research

The method adopted in conducting this research is mainly doctrinal. Materials are sourced from documents constituting primary sources namely, Federal Inland Revenue Service (Establishment) Act and various tax laws, reported court decisions i.e case law and administrative regulations of FIRS were used in compiling the work

A secondary source of data collection has also been used such as law books, journals, newspapers interview and information obtained via FIRS website and other relevant sites on the internet was used.

1.7 Literature Review

In the course of sourcing for materials towards the accomplishment of the dissertation, various published and unpublished works relevant to the field of this research thesis were consulted. Arogundade¹⁰ wrote that “Section 25 (1) of the Act provides for FIRS to administer all the enactments listed in the First Schedule to the Act” and went on to say “this provision has generated a lot of controversy because of the implied extension of the powers of FIRS to cover the jurisdiction reserved for the states’ tax authorities under the 1999 constitution”.

The above statement that alleges encroachment in the jurisdiction of the State Board of Internal Revenue by FIRS is well founded and it would be shown in the course of this research that the FIRS Act has recognized the State Board of Internal Revenue in its relation with FIRS as provided under Section 8(q) relating to personal income of individuals which is to be collected by the State Board of Internal Revenue only for the purpose of issuing taxpayer Identification Number, it will be shown that the extension of power of FIRS is not even implied as stated by Orugundade it is a deliberate encroachment into the jurisdiction of SBIRs.

¹⁰Arugundade, J.A “*Nigerian Income Tax and its International Dimention*” spectrum Books limited ibadan ,2005 page 19

Ayua¹¹ in chapter six titled Tax Administration has concentrated his discussion on administration of company tax only He wrote in the opening paragraph thus; “Company taxation in Nigeria is administered by the Federal Board of Inland Revenue as established by section 1 of CITA 1990.”

Unlike in 1986 when Professor Ayua, wrote the above paragraph, the law has since developed, for instance, there is now a distinction between the FIRS and its Management Board with the power of administration of tax residing presently in the former, Secondly the FIRS under its administrative powers has other tax laws mentioned in the FIRS Act unlike what it used to be when the Federal Inland Revenue Board was a creature of section 1 of Company Income Tax Act.(CITA) as if CITA was the only tax law the Board was empowered to administer and which was reason why Ayua limited his discussion on tax administration to company taxation only. This research had therefore cover the post 1986 development of the law to date.

Chenge¹² discussed Tax Administration in Nigeria under three bodies i.e. the Joint Tax Board established under Section 33(1) of Income Tax Management Act; 1961 the Federal Board of Inland Revenue established under Section 1 of Company Income Tax Act 1990, and under various States Board of Internal Revenue with emphasis on Lagos State.

Ola¹³ concentrated his discussion of administration of tax only in relation to assessment as if assessment is the only administrative work perform by the tax authorities and further more with recent innovation of self assessment introduced by the 2007 FIRS

¹¹Ayua, I.A (1986) *“Nigerian Tax law”* Spectrum, Ibadan

¹²Chenge, N.R.(1986) *“Personal Income Tax in Nigeria”* an unpublished LLM thesis ABU Zaria p 32 to 47

¹³ Ola C.S Income Tax Law and Practice in Nigeria, Heinemann Educational Book Plc, Ibadan (2001)pp534-545

Act most of the discussion made by the author will be obsolete and this work will bridge that glaring gap in this work

Olisa M.M¹⁴ also treated a topic similar to the this research relating to ascertainment of chargeable profit, the assessable profit and the chargeable profit. Though the text is not a law of taxation book but as a text dedicated to discussing the principle and practice of petroleum law in so far as it touches on issues relating to assessment of companies for petroleum tax it would have been proper to dwell on principles that will guide those companies in matters relating to administration of the tax they are bound by law to pay. This work will therefore be like an extension of the Olisas work in the areas not covered

Adedokun¹⁵ in his work concentrate more on enforcement of tax laws and dwell substantially on substantive law of taxation though the learned author admitted that the work is not exhaustive but the over concentration of the discussion on substantive law of taxation without sufficient reference to administration of the law make the non-exhaustive remarks even an over statement since there could be no enforcement without administration. This work will therefore bridge the gap admittedly left by the learned author.

Abdulrazaq M.T¹⁶ have equally discussed a topic similar to this research work but with respect to learned professor of law the work does not examined in details the legal instrument and administrative mechanism for tax enforcement in Nigeria. Though the

¹⁴Olisa M,M Nigerian Petroleum Law and Practice, Fountain Books Limited, Ibadan.(1987) pp 167-176

¹⁵Adedokun K,A –Enforcement & Recovery of Income Tax in Nigeria, Corporate Transaction Limited, Lagos. 2010

¹⁶ Nigerian Revenue Law ,Malthouse Press Ltd ,Lagos 2005

other work of the author¹⁷ seek to bridge that gap but it ended up treating only the monetary penalty and criminal prosecution which is only an item in this work.

Kanyip B.B¹⁸ in his article examined some critical issues in relation to company income taxation in Nigeria such as classical method of taxing companies, judicial disposition in tax matters etc. The the consideration of all the issues discussed are insightful and thought provoking but not all embracing. The learned author admitted this when he wrote *:since taxation issues are generally infinite we propose to dwell on only a few...*

*Asada*¹⁹ concentrated his discussion on problem of administration of tax in Nigeria only in relation to Personal Income Tax alone. According to the learned author, the the assessment and collection of personal income tax had been very difficult *in* relation to self employed persons which he maintained constituted a huge deficit in revenue generation.

The author further stressed that the procedure provided under the Personal Income Tax Act gives a taxpayer opportunity to under assess his or her income due to lack of coordination between different governments. This work will show how contrary to the above assertion the role and innovation brought by FIRS Act to remedy some of the concern raised by the author.

Perhaps for the reason of constrain of scope the learned writer left out the issue of administration and enforcement. This dissertation will cover some of these lacunas.

¹⁷ Nigerian Tax Offences and Penalties, Betaway Law Publication, Ilorin 1993

¹⁸Kanyip B,B Taxation Issues in Foreign Investment(1988) M.P.J.F.I.L Vol,2 No 1 P.107-126;

¹⁹D Asada (2012) The Administration of Personal Income Tax in Nigeria extract from <http://displace.unijos.edu.ng/bit/10485> 106-119 visited on 16th june 2015

Ogbonna and Ebinobowes the learned authors concentrated their discussion more on effectiveness of different tax laws rather than a general discussion on administration of gamuts of tax laws in Nigeria as discussed in this work.

This Research will improve on the previous works based on the development of the law more especially with the enactment of FIRS Act 2007.

1.8 Organizational Layout

This thesis comprises of six chapters, Chapter one is the general introduction of the research work. It contains the background of the study; objectives, justification and methodology of the research are discussed under this chapter. It also contains a review of some existing literatures relevant to the research and ends with organizational layout of the thesis.

Chapter two contains discussions on conceptual clarification of some basic terms of the topic, objectives of taxation and characteristics of good tax system were examined based on Adams Smith and Meade Committee Perspectives. The chapter ends with general review of Federal Inland Revenue Service Act.

Chapter three dwells on tax administration in Nigeria. It traced the history of tax administration from pre-colonial period to 2007 and extensively discusses tax administration machineries under the FIRS system.

Chapter four analyzed the tax enforcement tools under the FIRS system, tools of enforcement such as substitution, surtax, distraint, surcharge, search and seizure, and recovery by civil action is examined.

Chapter five contains a discussion on Tax Appeal Tribunal (TAT) with reference to its establishment, proceedings and appeal from its decisions and ends with examination of constitutional validity of the tribunal.

The last chapter, summarizes the entire work, makes findings there from and suggests solutions to some highlighted problems by way of recommendations and ends with conclusion.

CHAPTER TWO

AN OVERVIEW OF TAX LAWS IN NIGERIA

2.1 Introduction

This chapter will highlight and define some basic terms relevant to this research, Tax, Revenue, and Taxation are defined, it also contained a discussion on Legislative Sources of Nigerian Tax Laws, Nigerian Tax Base and Tax Policy are incorporated in this chapter. Other matters treated in this chapter include Objective of Taxation, Characteristics of Good Tax System and the chapter ends with a General Review of the FIRS Act 2007.

2.2 Conceptual Clarification and Definition of Basic Terms

(a) Definition of Tax.

Tax is one of those concepts that lack precise definition due to the difficulty encountered in an attempt to define it. This is particularly so because none of the Nigerian tax legislation defined what is tax. The more scholars try to define it the more confusion they create in the minds of their readers. Perhaps, it was in appreciation of this difficulty that Sir Daves stated that: "The question, what is tax is surprisingly difficult to answer. Even the well known reply of the man who was asked to define Elephant does not work very well here the man said I cannot define Elephant but I know one when I see one"²⁰.

The learned author argued that the distinction between tax properly so called and other levies similar to it in form of levies imposed by legislation in fulfillment of certain legal obligations such as National Insurance Contribution, Utility Bill etc is very thin and often difficult to

²⁰Davies, F.R.(1988) " Introduction to Revenue Law" Bluestone Press Limited, London p.6

differentiate. He therefore avoided giving any definition but tried to distinguish tax from other levies by stating a characteristic of tax as follows, he said:

- A Tax has 3 characteristics:
- i. It is a compulsory levy
 - ii. Imposed by an organ of government
 - iii. For public purpose²¹

Tiley²² defined tax as “a compulsory levy/contribution to the support of government levied on persons, property, income, commodity and transaction at a fix rate mostly proportionate to the amount on which the contribution is levied”.

The above definition when critically analyzed will reveal that it tell us very little and contained so many short comings and only succeed in adding more confusion to its readers, for instance.

- i. It contained a limited view of purpose of tax i.e it provides only for “support of government”.
- ii. It contained unnecessary description of tax base i.e. persons, income, commodities, properties and transaction. and
- iii. It concentrates more on proportionate as opposed to progressive tax.

²¹Ibid at p. 7

²²John T (1978). “Revenue Law” Butterworths, London, p. 3

The above short-comings when considered revealed that the definition tell us very little and succeeded in adding to the confusion in our mind. Court also in the course of its judicial functions has attempted to bridge the gap created by legislation in giving a working definition of tax.

An Australian Court ²³ defined tax as a “compulsory exaction of money by a public authority for public purpose”. Also in the American case of **United State Vs Butler**,²⁴ **Robert J.** had this to say “A tax, in the general understanding of the terms and as used in the Constitution signifies an exaction for support of the government”.

It is seen from the preceding discussions that tax as a concept is devoid of any precise definition due to its similarities with other levies like, water levy and fine which also takes the form of revenue to the government. It is therefore submitted that the best approach to understanding whether a levy is a tax or not is to consider the wordings of the legislation concern with reference to the:

- i. Basis of its imposition,
- ii. Its purpose,
- iii. To whom it is imposed,
- iv. Who collect the levy,
- v. And what is the consequence of nonpayment?²⁵

²³Mathew Vs Chicory Marketing Board (v) (1989) 60 C.L.R. 263 at 276

²⁴Quoted in Re-Myhinger, D.C. Tax 31 Supp. 977, 978, 979.6

²⁵Where it revealed that the levy is imposed by a legislation meant to raise money for public purpose, payable by person earning within the jurisdiction and to be collected by an office meant for revenue collection and there is penalty in the event of nonpayment then that levy is said to a be a tax

(b)Revenue

Revenue refers to the general income accruing to the government through various sources of which tax is only one. Things like royalty from mining license, fine, and payment for services rendered by government to the public are all referred to as government revenue. While tax is a source of government revenue, revenue on the other hand encompasses all sources of government's income. The use of the two terms interchangeable is therefore erroneous²⁶.

(c)Taxation

Taxation refers to the process of collecting taxes within a particular location. It involves assessment and collection and in the event of failure to pay, taking the appropriate step to enforce payment is referred to as taxation.

(d) Tax Base,

To tax experts, tax base refers to as the basis on which tax is levied or imposed. In Nigeria income is the main tax base i.e. under Nigeria tax system a tax payer's income is used as the basis of their tax liability²⁷.

Capital is another base upon which tax can be levied but mostly in developed countries. However, some scholars had argued that the imposition of tax on capital gain²⁸ in Nigeria amount to adding capital as the country's tax base. This argument is however misleading as what is taxed in Capital Gains Tax Act is the gain accruing to the taxpayer as a profit upon disposal

²⁶Alhaji Kabir Muhammad Mashi. "Tax Administration in Nigeria" Thisday, News Paper page 43 19th August 2014

²⁷AYUA, I.A.(1996) "Nigeria Tax Law" Spectrum, Ibadan at page 13

²⁸Capital Gain Tax Act Cap 42 LFN 1990

and not on the capital itself. Levying tax on capital as against income is regarded as absurd and anti-social to most experts in developing countries²⁹.

It is important to point that, the development seen recently in Nigeria with an increase in spending on luxuries in most urban cities, expenditure has become another viable base of levying tax which the country can explore to boost its revenue base.

(e)National Tax Policy

The Nigerian Tax Policy is documented general frame work that provides guidelines for the operation of tax system. It came about as a result of the need to bridge the negative variance between the potential tax collection level and the actual revenue generation which were attributed to the non-existence of an articulated National Tax Policy. To reverse this trends, a presidential committee was inaugurated in July 2005 to drive the recommendations of the study and working groups on the development of the National Tax Policy (NTP) the committee appointed a technical subcommittee on the National Tax Policy headed by the executive chairman of the Federal Inland Revenue Service and charge it with the responsibility of developing the background policy document. In 2010, the final draft of the National Tax Policy was submitted to the Federal Executive Council. While the draft incorporated contributions from various stakeholders, the fundamentals of the draft were based on the harmonized report of the Study Group and Working Groups. The Federal Executive Council adopted the National Tax Policy on 20th January 2010. The key economic thrust of the National Tax Policy as a tool for national and economic development includes:

²⁹AYUA. I.A. (supra) page 14

- a) Stimulating the growth of Nigeria by using tax revenue to develop base infrastructure such as power, road transportation, etc.
- b) Direct stimulation of certain sectors of the economy which are identified to be important for the creation of employment opportunities for Nigeria.
- c) Regulation and strengthening financial and economic structures and correct market imbalances and economic distortion.
- d) Income redistribution such that tax earned from high income earners is used for the provision of infrastructures' for the lowest income earners.
- e) Stimulating domestic and foreign investment.

Talking about reforms of Nigerian tax system therefore is incomplete without mentioning the National Tax Policy this is because, even the creation of Federal Inland Revenue Service as an autonomous. Body was a product of the recommendation of a Study Group³⁰ inaugurated to review the Nigeria tax system which recommendation were partly codified and adopted as National Tax Policy (NTP). The National Tax Policy was drafted in 7 chapters; it was intended to be used by tax policy makers to revamp the country's level of tax generation through the following.

- a. Encouragement of voluntary compliance through improved service delivery and enforcement.
- b. Focus on policy implementation to make compliance and enforcement easy.

³⁰The Study Group (SG) on the Review of the Nigerian tax System was a committee setup by Federal Government in 1991 headed by Prof. Emmanuel Edozien to review the Nigerian tax system in Federal and State taxes and another one constituted in 2002 headed by Prof. Dotun Philips with 20 members and a term of reference wider than the 1991 group. It was the recommendations of these two groups and the report of the Working Group constituted in 2004 headed by MrSeyiBickersmith that form the basis of Nigerian Tax Policy

- c. Propose and ensure amendment of tax laws to remove an obsolete provision.
- d. Create and restrict tax incentive to industries where they will be most beneficial to the economy.
- e. Create an organizational structures and administrative machineries that is tax payers focused and that regards taxation as a business where the customer is a king.

2.3 Legislative Sources of Tax Law in Nigeria

Tax law is basically a statutory law i.e. law enacted by legislature. Before a citizen of any country can be made to pay tax law must be enacted to that effect by a recognized law making body. In Nigeria, there are various laws relating to tax enacted by legislators. For the purpose of this research however, our discussion is limited to those tax legislations within the jurisdiction of FIRS³¹. Some of these laws are discussed here under:

- i. Personal Income Tax Act.³². This is law that levy or imposed tax on income of every taxable person throughout the country; the law is the 1993 Decree and the two amendments in 2007 and 2011.
- ii. Company Income Tax Act.³³. This is the law that imposed tax on profit of all companies operating or carrying on business in Nigeria.
- iii. Petroleum Profits Tax Act.³⁴:- This is the law that imposed tax on profit of all companies operating in the country's oil sector.

³¹See First Schedule to the FIRS Act, 2007

³²Decree No. 104 1993 Amended in 2007, and 2011

³³Company Income Tax Act Cap. 60 LFN 1990 Amended in 2007

³⁴Petroleum Profit Tax Act Cap. 254 LFN 1990

- iv. Capital Gain Tax Act.³⁵ It is a tax levied on the income received from appreciation in the market value of a capital to those who do not hold it as an article of trade³⁶.

2.4 Objectives of Taxation

Traditionally, the basic objective of taxation is simply to raise sufficient revenue to satisfy the need of government i.e. to meet its recurrent expenditure. Today however, we have travelled a long way from that as taxation now has multifarious dimension. Today, taxation has an important role to play especially in many governments economic and social policies. The following objectives will be considered.

2.4.1 Raising of Revenue

The most classical function of taxation is to raise revenue to cater for government expenditures in this sense, tax is to government what income is to business and individual. Income from taxation is required by government to meet its expenditures. Usually government raises fund from tax for two reasons:-

- a. Provision of goods and services to public which free market cannot provide such as defense, law and order, security etc.
- b. Provision of goods and services which the government feels are better provided by itself such as health and education.

In the face of the present economic crisis in Nigeria as manifested by high level degree of unemployment and dearth of social amenities this objective is of tremendous importance in

³⁵Capital Gain Tax Act Cap 42 LFN 1990

³⁶AYUA I.A. page 4

overcoming these challenges. The government must focus its attention at raising sufficient amount of revenue through improved administrative machineries to full resources sufficient to create job and provide social amenities to the populace.

2.4.2 Redistribution of Income and Wealth

A progressive tax will adjust the size of payment to an individual tax payer's capacity to pay. What this means is that, a tax system should exact a greater proportion of tax from those who are well off. In modern time, great emphasis has come to be placed on the objective of redistribution of wealth. The reason for the emphasis is that, taxation should be based on the ability of individual to pay. Secondly, it reduces the inequality between rich and the poor by taxing the rich higher to support the poor. The aim of this is to provide an egalitarian society and raise the standard of living of the poor.

2.4.3 Economic and Price Stability.

One of the most fundamental reasons why government taxes its citizens is to provide reasonable price stability within the nation by checking the amount of liquidity in circulation. Excess amount of money in circulation increases the purchasing power of individuals and the more people purchase products or services the higher the price of that goods or services, hence inflation occurs. The basic function of taxation here is to reduce private expenditure by collecting part of individual income as tax thereby allows government to spend without causing inflation. It could therefore be safely stated that taxation is basically a deflationary measure³⁷.

³⁷A survey of Nigerian Markets shows that government needs to reconsider its tax policy as far as this principle is concern. It is because inflation is a daily phenomenon in Nigeria economy e.g from August 2012 – Oct 2012 the price of bag of sugar has increased with about 10% On the other hand, when aggregate demand is lower than the desired level, the government has two options. It could increase its spending without increasing tax or reduce tax while leaving government expenditure stable this will increase demand for goods and services since there will be increase in the quantity of money

2.4.4 Economic Growth and Development.

It is the aim of every government to ensure a satisfactory rate of economic growth within the economy. Government should always be determined to achieve an optimum utilization of all resources of the country through proper utilization. Economic growth and development are geared toward raising the standard of living of the masses of the country through improvement of their economic and social condition. Taxation should be tailored at ensuring reduction in consumption and encourage saving for private investment which will on the long-run brings about general growth and development. For example, if a tax payer who has saved his money wishes to invest the money saved in building house, he will certainly need an architect, mason and carpenter thereby creating employment and help in growing the economy.

2.5 Characteristic of Good Tax System

2.5.1 Adam Smith Cannon perspective

Some five hundred and fifty years ago, Adam Smith in his known publication “Wealth of Nation” set out certain cannon of taxation which though it has been elaborated but are still recognized and used as a criteria by economist and tax experts in judging the efficiency of tax system³⁸. These cannon are:

- i. **Equity** – Equity is traditionally divided into two. Horizontal and Vertical equity.

By horizontal equity, it means those with same income should pay an equal amount as a tax and vertical equity means that those with different income should

in the economy. As a direct result, a high demand will generate production in order to increase supply to the level of demand which will necessitate the employment of factors of production including, labor, proper implementation of this objective will alleviate the suffering of citizens of Nigeria where employment is both economic and political problem

³⁸John T.(1978) “Revenue Law” Butterworths, London p. 54

pay different amount of tax. The introduction of equity into the tax system helps to evoke cooperation from taxpayers.

It is important to state here that the provision in the Sixth Schedule to the Personal Income Tax Act, (PITA) was drafted to satisfy this principle. Under this Schedule, the percentage charged as a Personal Income Tax progresses according to the amount of the taxpayer's income.

- ii. **Neutrality** - A tax is said to be neutral if it avoids distortion of the market forces, in other words, tax shall not be selective on a particular product or discriminate between different activities in the economy as that will raise the price of the product concerned and encourage taxpayers to spend money on different product, in Nigerian context however, this principle is examined or viewed with caution. This is because, experience has shown that, selective as against neutral taxation policy has been successfully used in Nigeria to restore a lost glory by way of increasing tax on some selected imported products to discourage its consumption or to reduce or completely remove tax on some locally produced products to encourage its consumption and production thereby generating internal employment.
- iii. **Certainty** – This simply means a tax which every taxable person is bound to pay ought to be certain and not arbitrary. The scope of the tax should be clear and must also be certain the tax should be imposed with a clear picture of how much revenue will be raised. This served two important purposes; Firstly, it eliminates incidences of overcharge or undercharges which results in disputes and

encourages tax evasion and avoidance, and secondly it allows a taxpayer to make a proper plan knowing his level of tax liability.

- iv. **Administrative Efficiency.** Where tax administration cost exceeds the tax yield it is economically a waste to embark on it. Administrative efficiency presupposes that the cost of collecting taxes by trained tax personnel shall be far below the tax collected. The most perfect practical example of what this principle stands for is the England tax of 1975 – 76 where the cost of collecting Inland Tax was just about 1.95% of the entire tax collected³⁹.

2.5.2 Meade Committee Perspective

Adam Smith canon of taxation has recently been elaborated on by the Meade Committee on the structure and reform of direct taxation in the United Kingdom. The report set out what it considered to be the characteristics of good tax system as follows:

- a. **Incentive and Economic Efficient**

This means a good tax system should give incentive to the peoples and gives opportunities to populace to work, save and invest in capital development. This can be achieved through a tax policy that discourages expenditure and encourages savings.

- b. **Distributional Effect.**

This answer the question “who should bear the burden of what tax”? I.e. who will pay the revenue needed to finance public need? It involves a wise choice between two equities

³⁹- Re-Myhnger D.C. Tax 31 Sup 977, 978, 979

(Horizontal and Vertical equities⁴⁰) going by the dictate of which among them is more appropriate in the situation.

c. Simplicity.

A good tax system should be coherent, simple and straight forward. But a caveat has to be entered here because simplicity per se is not all that is needed for a good tax system, because a tax system or policy designed to deal with complicated issues must itself be complex but never ambiguous or incoherent. In a Federal System like Nigeria, the importance of having coherent and simple tax laws need to be stressed it is indeed desirable that the taxing powers of different tiers of government should be consistent with each other for easy administration⁴¹. This principle is in part what the FIRS Act seeks to achieve.

d. Flexibility and Stability

Every tax system and taxation policy should be flexible. This is more needed especially in a federal and democratic country like Nigeria where there are always changes of government and policy. A good tax system should therefore possess the following features:

- i. It must provide room for the operation of effective incentive for private enterprises to flourish.
- ii. It must give chance for effective modification of methods of distribution of income.

⁴⁰For Meaning of Vertical and Horizontal Equity, Sect page 24 above

⁴¹See AYAU, I.A Supra page 13

2.6 General Review of Federal Inland Revenue Service Act

The FIRS Act provides for the establishment of the Federal Inland Revenue Service charged with the power of assessment, collection and accounting for revenue dueable to the government of the Federation⁴². As seen elsewhere in this research, there was a similar body responsible for the work of the present FIRS i.e. the hitherto existing Federal Board of Inland Revenue which the present FIRS replaced. The rationale behind the promulgation of the present Act is however difficult to ascertain but it can safely be deduced from the Act as it sought to bring under the control of the Service virtually all taxation laws applicable in the country which was not the case under the defunct FBIR. In as much as the authors of the Act have not indicated the rationale or philosophy behind it, it could be said to be an attempt to unify tax administration in Nigeria and to centralize the tax system to ensure more compliance with the extant laws. Below is a review of the entire Act.

The Establishment of Federal Inland Revenue Service and its Management Board.

Part I of the Act established a Federal Inland Revenue Service⁴³ as a body corporate with perpetual succession and common seal⁴⁴ the Service has as its objective to control and administer the different tax laws specified in the First Schedule to the Act or other laws made or to be made from time to time by the National Assembly or other regulations made thereunder⁴⁵ equally established for the Service is a Management Board known as Federal Inland Revenue Service Board⁴⁶ which shall have overall supervision of the Service. The Board consist of executive chairman of the Service who shall be an experience person in taxation as the Chairman of the

⁴²See First Schedule to the Act

⁴³Section 1(1) *ibid*

⁴⁴Section 1(2) *ibid*

⁴⁵Section 2 *ibid*

⁴⁶Section 3(1) *ibid*

Board⁴⁷, six members with relevant experience and expertise to represent the six Geopolitical Zones of the country⁴⁸, representative of the Attorney General of the Federation⁴⁹, Governor of Central Bank or his representative⁵⁰, representative of Minister of Finance not below the rank of director⁵¹, the Chairman of Revenue Mobilization, Allocation and Fiscal Commission or his representative⁵² the Group Managing Director of Nigeria National Petroleum Corporation or his representative⁵³, Comptroller General of Nigeria Custom or his representative⁵⁴, Registrar General of Corporate Affairs Commission or his representative⁵⁵ and Chief Executive Officer of the National Planning Commission or his representative⁵⁶.

Powers and Functions of the Board and the Service

Part II of the Act listed six functions of the Board⁵⁷ and about twenty functions of the Service⁵⁸ and established a Technical Committee of the Board⁵⁹ with power to consider matters that require professional expertise for appropriate recommendation to the Board⁶⁰

Management and Staff of the Service.

Part III established the office of the Executive Chairman of the Service⁶¹ who is to be the chief accounting officer of the Service⁶² and also established the office of the Secretary of the Board and his duties⁶³.

⁴⁷Section 3(2)(a) *ibid*

⁴⁸Section 2 (2) (b) *ibid*

⁴⁹Section 3 (2) (c) *ibid*

⁵⁰Section 3 (2) (d) *ibid*

⁵¹Section 3 (2) (e) *ibid*

⁵²Section 3 (2) (f) *ibid*

⁵³Section 3 (2) (g) *ibid*

⁵⁴Section 3 (2) (h) *ibid*

⁵⁵Section 3 (2) (i) *ibid*

⁵⁶Section 3 (2) (j) *ibid*

⁵⁷Section 7 (1) a-e *ibid*

⁵⁸Section 8 (1) a-t *ibid*

⁵⁹Section 9 *ibid*

⁶⁰Section 10 *ibid*

⁶¹Section 11 *ibid*

⁶²Section 11 (b) *ibid*

Financial Provision.

Matters relating to the financial affairs of the Service as it concern the fund of the Service, expenses, emolument of the management staff are provided under part four of the Act. These include funds of the Service⁶⁴, expenditure of the service⁶⁵, estimate⁶⁶, account and audit⁶⁷, annual report⁶⁸, power to receive gift⁶⁹, power to borrow⁷⁰, accountability⁷¹, refund to tax payer⁷² and power of Accountant General of the Federation to deduct from the Service⁷³.

Tax Administration and Enforcement

The powers of the Service as it concern administration of tax laws are contained in part five of the Act. It consist of matters relating to power of the Service to administer all enactments listed in the First Schedule to the Act⁷⁴, call for return and information⁷⁵ power to require information from bankers⁷⁶ power to access lands, buildings, books and documents and to remove books and documents⁷⁷ power of substitution⁷⁸, addition for nonpayment⁷⁹, distrain⁸⁰ recovery by civil action⁸¹ tax investigation⁸² power to co-opt the assistance of other law

⁶³Section 12 ibid

⁶⁴Section 15 ibid

⁶⁵Section 16 ibid

⁶⁶Section 17 ibid

⁶⁷Section 18 ibid

⁶⁸Section 19 ibid

⁶⁹Section 20 ibid

⁷⁰Section 21 ibid

⁷¹Section 22 ibid

⁷²Section 23 ibid

⁷³Section 24 ibid

⁷⁴Section 25 ibid

⁷⁵Section 26 and 27 ibid

⁷⁶Section 28 ibid

⁷⁷Section 29 & S.30 ibid

⁷⁸Section 31 ibid

⁷⁹Section 32 ibid

⁸⁰Section 34 ibid

⁸¹Section 35 ibid

⁸²Section 36 ibid

enforcement agencies⁸³ power to pay reward⁸⁴ immunity from action⁸⁵ and confidentiality of information⁸⁶.

Offences and Penalty.

The Act under part vi created 7 different offences that can be committed under the Act⁶⁸ These includes offence of failure to deduct or remit tax punished with penalty of 10% of the sum withhold plus interest at Central bank rate per annum⁸⁷, offence of obstructing an official of the Service from carrying out his duty punishable with fine not exceeding N200,000.00 or imprisonment not exceeding three year or both⁸⁸, offence of false declaration punishable with fine not exceeding N200,000.00 or imprisonment of three year or both⁸⁹, offence of counterfeiting or falsification of document punishable with a fine not exceeding N200,000.00 or imprisonment not exceeding 3 years or both⁹⁰ offence of conversion by authorized officer is punishable with fine of 20% of the amount or an imprisonment not exceeding 3 years or both⁹¹, offence committed while armed is punishable with imprisonment not exceeding 10 years⁹², offence of impersonating an officer of the Service is punishable with fine not exceeding N200,000.00 or imprisonment not exceeding 3 years⁹³. Where a person commit any offence in relation to the Act for which punishment is not prescribed above is upon conviction liable to a fine not exceeding N450,000.00 or imprisonment not exceeding 6 months or both⁹⁴.

⁸³Section 37 ibid

⁸⁴Section 38 ibid

⁸⁵Section 39 ibid

⁸⁶Section 40- 46 ibid

⁸⁷Section 40 ibid

⁸⁸Section 41 ibid

⁸⁹Section 42 ibid

⁹⁰ Section 43 ibid

⁹¹Section 44 ibid

⁹²Section 45 ibid

⁹³Section 46 ibid

⁹⁴Section 49 ibid

Lastly, it makes provisions that empower the FIRS to employ its legal practitioners for the purpose of prosecuting offenders under the Act⁹⁵ and equally has power to compound any of the offences under the Act⁹⁶.

General Provision

This part seven, consist of (10) Sections in relation to official secrecy⁹⁷, provision subjecting the Board to the directives of the Minister⁹⁸, deligation of the powers of the Board⁹⁹, signature authorizing the action of the Service¹⁰⁰, imposition of surcharge¹⁰¹, limitation of suit against the Service¹⁰², service of documents¹⁰³, restriction on execution against the property of the Service¹⁰⁴, provision relating to indemnity¹⁰⁵, and establishment of Tax Appeal Tribunal¹⁰⁶.

Miscellaneous Provision.

This is contain in part eight consisting of 11 sections and provides for directives of the minister¹⁰⁷,power of the Board to make regulation¹⁰⁸,repeal of part one of Companies Income Tax Act¹⁰⁹, saving and transitional provision relating to the staff of the dissolved Board¹¹⁰,saving and transition relating to the asset and liability of the dissolved Board- ⁹³,continuation of the

⁹⁵section 47 ibid

⁹⁶section 48 ibid

⁹⁷section 50 ibid

⁹⁸section 51 ibid

⁹⁹section 52 ibid

¹⁰⁰section 53 ibid

¹⁰¹section 54 ibid

¹⁰²section 55 ibid

¹⁰³section 56 ibid

¹⁰⁴section 57 ibid

¹⁰⁵ section 58 ibid

¹⁰⁶section 59 ibid

¹⁰⁷section 60 ibid

¹⁰⁸section 61 ibid

¹⁰⁹section 62 ibid

¹¹⁰section 63 ibid

chairman of the dissolved Board¹¹¹, continuation and completion of disciplinary proceedings started against a staff¹¹², transfer of right and obligation of the dissolved Board to the Service¹¹³, relevancy of other laws in interpreting the Act¹¹⁴, interpretation¹¹⁵ and end with short title¹¹⁶.

Schedules

The Act also contains five Schedules which are:

FIRST SCHEDULE Legislation Administered by the Service

SECOND SCHEDULE Supplementary Provision Relating to the Board

THIRD SCHEDULE Form of Authorization to Access Lands, Building, Books and Documents

FOURTH SCHEDULE, format of warrant of distrain.

FIFTH SCHEDULE- Tax Appeal Tribunal in general

¹¹¹section 64 ibid

¹¹²section 65 ibid

¹¹³section 66 ibid

¹¹⁴section 67 ibid

¹¹⁵section 68 ibid

¹¹⁶section 69 ibid

CHAPTER THREE

Tax Administration in Nigeria

3.1 Introduction

Chapter three starts by giving a definition of tax administration as a concept and traces the history of tax administration in Nigeria the chapter also traced the genesis of reform that gave birth to the new FIRS Act 2007 which saw the establishment of Federal Inland Revenue Service as an autonomous body and equally discusses the establishment powers and functions of the Federal Inland Revenue Service and Federal Inland Revenue Service Board it ends by giving a brief account of tax collection procedures under the FIRS system.

3.2 Definition and History of Tax Administration

Oxford English Dictionary¹¹⁷ defined "administration as the management of public affairs" (Taxation is a Public Affair) and the same Oxford Dictionary¹¹⁸, defines "management" as a "an act of running or controlling an organization", from the cumulative effect of the two definition above we can therefore deduce the definition of tax administration to mean an act of controlling the process of assessing, collecting, remitting and enforcement of taxes.

The term tax administration, in relation to the FIRS power under the Act, has a wider meaning of assessing the taxes to be collected, collecting taxes assessed, accounting for tax collected, reconciling or remitting the tax collected to the government account and taking all actions necessary to recover a due tax in case of default or non-payment.

¹¹⁷Oxford University Press(2006) 7th Edition

¹¹⁸Ibid

3.2.1 History of Tax Administration in Nigeria

The history of administration of tax in Nigeria cannot be treated in isolation, but as a branch of history of tax imposition. This is because, there must be a law imposing tax in the first instance before a provision is made for a body that will administer the tax introduced. Hence in tracing the history of administration of tax in Nigeria what will be considered is the history of the laws imposing tax in Nigeria with emphasis on its administration. This part of the thesis will make an excursion into the history of the evolution of modern Nigerian tax system from the colonial period up to present date with emphasis on its administration.

It started after the conquering of Sokoto Caliphate in about 1900 by British Soldiers, the first task of Lord Lugard (the British High Commissioner in Northern Nigeria), was how to secure a benefit for Britain in the already existing forms of taxation in the area¹¹⁹. The form of taxation here was levied on the first harvest of the year and some special animals from hunting such as Lions and Tigers. All these taxes were paid to Emirs and Lamidos directly as the administrative bodies¹²⁰.

The first tax legislation introduced in Nigeria by Lord Lugard was the Native Revenue Proclamation¹²¹. This legislation introduced community tax payable in the then Northern Region of Nigeria. The tax was to be assessed on the whole community. The Emir then apportioned the block assessment among his individual taxpayers according to their ability to pay which was levied on dairy farm products. The Emirs as administrative body could recover more than the tax

¹¹⁹Amaddu, M. K (1992). "Tax Administration in Nigeria and Cameroun" LLM Thesis (Unpublished) Faculty of Law, A.B.U. Zaria. page 14

¹²⁰Ibid, page 15

¹²¹No. 4 of 1904

assessed and appropriated the rest to themselves. The tax assessed and collected by Emirs was to be shared between the Emirs and Colonial Government in the ratio of 3:1¹²².

After the suspension of the 1904 proclamation by the Native Revenue Proclamation of 1906, a new law was introduced in 1917 to cover the whole country¹²³. With the 1914 amalgamation, the Native Revenue Ordinance introduced in 1927 operating in Northern Nigeria was later extended to western Nigeria. In 1929, tax was introduced in to a classless society of Eastern Nigeria which resistance led to the famous Aba Women Riot¹²⁴ in 1929.

Many other direct taxation ordinances were passed such as Non-Native (Protectorate) Ordinance, 1931, which provided for taxation of non native and was later repeated in 1939 by Non Native (protectorate) Ordinance of 1939. However, it was also in 1939 that an income tax was specifically introduced for the first time on Company profit under the Company Income Tax Ordinance of 1939

In 1940 there were two major tax legislations i.e. The Direct Taxation Ordinance No. 4 of 1940 and the Income Tax Ordinance No. 3 1940 which repealed all the ordinances from 1904 to 1939. From 1904 to 1940, the administration of taxes were done by the traditional rulers, i.e. the Obas, Emirs etc. through the co-ordination of Inland Revenue Department (IRD) which was a Department in the British colonial administrative system that supervised and ensured the collection of taxes and other revenue in the whole Anglo-phone West Africa including (Nigeria, Ghana, Gambia and Serial Leone).

¹²²Ola C.S Income Tax Law and Practice in Nigeria, Heinemann Educational Book Plc, Ibadan (2001) pp 534-545

¹²³Renueue Ordinance NO.3 1917

¹²⁴See Ayau T.A.

A triumph however came in 1943 when a more progressive Income Tax Ordinance No. 29 of 1943 was enacted. It increased Company Tax and created a Nigerian Inland Revenue Service carved out from the Department of Inland Revenue in the Anglo-Phone West Africa. This was followed by the establishment of Board of Inland Revenue (BIR) by the Income Tax Ordinance¹²⁵ of 1958 as an administrative body with power of administration of all tax laws enacted by the colonial masters.

With the independence of Nigeria in 1960, a Company Income Tax Act (CITA)¹²⁶ was enacted. Under section 4 of the CITA, Federal Board of Inland Revenue (FBIR) was established to replace the Board of Inland Revenue (BIR) which operated then as a Department in the Federal Ministry of Finance. A further transformation of the Federal Board of Inland Revenue took place in 1993 when the Finance (Miscellaneous Taxation Provision) Act¹²⁷ established the Federal Board of Inland Revenue and Federal Inland Revenue Service and also created the office of the Executive Chairman of the Board.

Despite of all these transformations, the Board of Inland Revenue then still remained within the Civil Service system and government budget. This led to an agitation for administrative and financial autonomy to Federal Inland Revenue Service by stakeholders. This campaign for the re-structuring and the grant of administrative and financial autonomy to the Federal Inland Revenue Service gained more ground and popularity. From 1993, it became a long drawn battle. Every change in the administrative head of Federal Ministry of Finance has always invariable implied a suspension or

¹²⁵No. 3 of 1958

¹²⁶No.22 of 1961

¹²⁷No.3 of 1993

resumption of the campaign in one way or the other¹²⁸. One of the reasons advanced by the proponent of autonomous Federal Inland Revenue Service was captured by the Study Group on the reform of Nigeria tax system in the 2003 report thus.

Neither FBIR nor FIRS has separate laws establishing them, rather, their establishment appeared as an incidental matters in the tax law (Companies Income Tax Act) CITA. This gives the impression that, the organization was created specifically for the administration of Companies Income Tax. This impression might have been correct in 1961, but it is no longer so by 2003, FBIR and FIRS have been charged by other laws with the administration of several other taxes. Time is now ripe to consolidate, restructure, and re-empower FIRS, under its own separate law thereby repositioning it to meet the challenges of a rapidly changing modern economy and polity¹²⁹.

As to what will be the structure of the proposed outfit (Autonomous FIRS) both the Study Group and the Working Group¹³⁰ made different recommendations. The Study Group (SG) recommended the retention of the Federal Board of Inland Revenue (FBIR) but with a change in its composition. According to the recommendation of the SG, there shall be a Federal Inland Revenue Service and Federal Board of Inland Revenue as its supervisory body. The designation

¹²⁸Arogundade J.A. "Nigerian Income Tax and its International Dimension' Spectrum Book Ltd Ibadan (2010)p 3

¹²⁹Ibid, p. 157

¹³⁰On Study Group (S.G.) and Working Group (WG) See Note 11 Chapter 2

of the head of FIRS was recommended for change from Chairman to Comptroller - General (CG-FIRS), and he should be the Chairman of the FBIR with other members made up of the following:

- a. Six persons who are experienced in tax matters to represent the six geo-political zones in the country.
- b. The Chief Executive of the other three autonomous tax organizations that is Nigerian Customs Service (NCS), Value Added Tax Board (VATB) and the Joint Tax Board (JTB).
- c. Four ex-officio members representing the Nigerian National Petroleum Corporation (NNPC) the Central Bank of Nigeria (CBN) the Federal Ministry of Finance (FMF) and the Corporate Affairs Commission (CAC).

The Working Group (WG) on the other hand recommended the adoption of the Canadian model which was also in practice in the South Africa and Ghana. This will involve the merger of Federal Inland Revenue Service, Nigerian Custom Service, Joint Tax Board and the States Internal Revenue Service (SIRS) under one organization to be known as National Customs and Revenue Agency (NCRA). The management of the (NCRA) is to be headed by Comptroller General (to be appointed within the service) and the NCRA Management Board would be made up of 23 members as follows:

- a. The Minister of Finance as Chairman
- b. The Comptroller General of NCRA as member
- c. Six (6) appointees of the President to represent the six (6) geopolitical zones

- d. The Directors of Head of the ten (10) Departments of the agency.
- e. Four (4) ex-officio members representing the Revenue Mobilization, Allocation and Fiscal Commission, Nigerian National Petroleum Corporation, Corporate Affairs Commission and Central Bank of Nigeria.
- f. The legal adviser to the NCRA

With the public and stakeholders agitation coupled with the recommendation of Study Group and Working Group highlighted above, the triumph came with the enactment of the Federal Inland Revenue Service (establishment) Act on 16th April 2007.

The FIRS Act¹³¹ established the Federal Inland Revenue Service as an autonomous body both administratively and financially with the power to administer tax laws in Nigeria.¹³² The FIRS Act is now the enabling law while the Federal Inland Revenue Service is the body having power of administration of tax law in Nigeria. How the law sought to achieve its objectives is what we will discuss below going by the provisions of the Act.

3.3 The Federal Inland Revenue Service (FIRS)

The discussion made in this heading covers the administration of tax at FIRS level with concentration on establishment, powers and function of FIRS and its management board.

3.3.1 Establishment and Objective of FIRS

The Federal Inland Revenue Service (herein after referred to as FIRS) was established as an autonomous body within the Nigerian tax system¹³³.as a corporate body with perpetual

¹³¹No. 13, 2007

¹³²See Section 1,3,25 and First Schedule to FIRS the Act 2007

¹³³Section 1 FIRS Act 2007

succession and common seal¹³⁴ and power to acquire and dispose property.¹³⁵The Service exercises such powers and duties as conferred to it by the FIRS Act or any other enactments or laws on such matters on which the National Assembly has power to make law.¹³⁶

Section 11¹³⁷ established the office of the Executive Chairman as the Head of the Service. The chairman is to be appointed by the President subject to the confirmation of Senate¹³⁸. The Chairman is the Chief Executive and Accounting Officer of the Service and he is responsible for the execution of policy and day to day administration of the affairs of FIRS¹³⁹. The qualification for person to occupy the office of the Executive Chairman of FIRS is provided in section 11 (d) of the FIRS Act, the person must have a cognate experience and skills in any of the following discipline i.e. Accountancy, Economics, Taxation, Law and related matters.

It is submitted that Section 11 mentioned above is vague too vague, because it failed to specify a particular specialization in any field or experience on a particular field for any determinate period. It has left a room for appointment of a less qualified person into this sensitive office. It is our opinion that, this particular provision need some amendment to require a specialty and cognate experience from a person that will occupy the highly tasking position of the Chairman of the Service. Preferably, the Chairman should be a Chartered Accountant with a minimum of 15 years experience on tax related matters or a qualified Legal Practitioner with minimum of at least 15 years practice and experience in tax law and practice. This will go along way in ensuring efficiency in tax administration in Nigeria.

¹³⁴Section 1 (2) (a) Ibid

¹³⁵Section 1 (3) (a) Ibid

¹³⁶Section 11 (a) Ibid

¹³⁷ FIRS Act. 2007

¹³⁸Section 11 (b) Ibid

¹³⁹Section 11 (c) Ibid

3.2 Powers and Functions of the FIRS

The functions of FIRS under the FIRS Act, is not fundamentally different from what was obtained in the old regime¹⁴⁰ the functions of the Service provided under the FIRS Act is partly a re-enactment of the powers hitherto exercised by the old FBIR in the CITA 1990. These include assessment, collection, accounting, recovery and enforcement functions. The FIRS Act, also provided for other functions of the Service in addition to the conventional ones listed above.

Other functions though existed under the defunct FBIR, but were given a legal backing for the first time in the Act. These functions include the review of tax regime, examination and investigation functions, issuance of tax-payers identification number, exchange of information and public enlightenment campaign, and function on areas of intended new focus of the Service, which includes, determination of losses arising from tax fraud and waiver, recovery of tax fraud and evasion, staff exchange program, tracking of persons involve in international financial crimes, maintenance of data bank and conducting research on taxable persons and tax practice, collection and implementation of tax policies and provision of oversight function over government taxes and levies.

Section 8 specifically provided for the function of the Service as follows;

- (a) Assess persons including companies, enterprises chargeable with tax;
- (b) Assess, collect, account and enforce payment of taxes as may be due to the government or any of its agencies:

¹⁴⁰Under the 1993 Act

- (c) Collect, recover and pay to the designated account any tax under any provision of this Act or any other enactment or law;
- (d) In collaboration with the relevant Ministries and Agencies, review the tax regimes and promote the application of tax incentives to stimulate economic activities and development;
- (e) In collaboration with the relevant law enforcement agencies, carry out examination and investigation with a view to enforcing compliance with the provisions of the Act;
- (f) Make, from time-to-time, a determination of the extent of financial loss and such other losses by government arising from tax fraud or evasion and such other losses (or revenue forgone) arising from tax waivers and other related matters;
- (g) Adopt measures to identify, trace, freeze, confiscate or seize proceeds derived from tax fraud or evasion;
- (h) Adopt measures which include compliance- and regulatory actions.
Introduction and maintenance of investigative and control techniques on the detection and prevention of non-compliance;
- (i) Collaborate and facilitate rapid exchange of information with relevant national or international agencies or bodies on tax matters;
- (j) Undertake exchange of personnel or other experts with complementary, agencies for purposes of comparative experience and capacity building;
- (k) Establish and maintain a system for monitoring international dynamics of taxation in order to identify suspicious transactions and the perpetrators and other persons involved;

- (I) Provide and maintain access to up to date and adequate data and information on all taxable persons, individuals, corporate bodies or agencies of government involved in the collection of revenue for the purpose of efficient, effective and correct tax administration and to prevent tax evasion or fraud;
- (m) Maintain database, statistics, records and reports on persons, organizations, proceeds, properties, documents or other items or assets relating to tax administration including matters relating to waivers, fraud or evasion;
- (n) Undertake and support research on similar measures with a view to stimulating economic development and determine the manifestation, extent, magnitude and effect of tax fraud, evasion and other matters that affects effective tax administration and make recommendations to the government on appropriate intervention and preventive measures;
- (o) Collate and continually review all policies of the Federal Government relating to taxation and revenue generation and undertake a systematic and progressive implementation of such policies;
- (p) Liaise with the office of the Attorney-General of the Federation, government security and law enforcement agencies and such other financial supervisory institutions in the enforcement and eradication of tax related offences;
- (q) Issue taxpayer's identification number to every taxable person in Nigeria in collaboration with States Board of Internal Revenue and Local Government Councils;
- (r) Carryout and sustain rigorous public awareness and enlightenment campaign on the benefits of tax compliance within and outside Nigeria;

- (s) Carryout oversight functions over all taxes and levies accruable to the Government of the Federation and as it may be required, query subpoena, sanction and reward any activities pertaining to the assessment, collection of and accounting for revenues accruable to the Federation: and
- (t) Carryout such other activities as are necessary or expedient for the full discharge of all or any of the functions under this Act.

It is important here to state that the functions to be performed and power to be exercised by the Service within the Act is only in respect of laws mentioned under Section 25 and listed in the First Schedule to the Act Section 25 provides:-

- (1) The Service shall have power to administer all the enactments listed in the First Schedule to this Act and any other enactment or law on taxation in respect of which the National Assembly may confer power on the Service.
- (2) The Service may, with the approval of the Minister by Instrument published in the Federal Gazette, appoint any government agency to collect revenue pursuant to the power of the Service under subsection (1) of this section.

The First Schedule to the Act listed the laws as follows:

1. Company Income Tax Act¹⁴¹
2. Petroleum Profits Tax Act¹⁴²
3. Personal Income Tax Act¹⁴³
4. Capital Gain Tax Act¹⁴⁴

¹⁴¹Cap C29 LFN 2004

¹⁴²Cap P13 LFN 2004

¹⁴³Cap P8 LFN 2004

5. Value Added Tax Act¹⁴⁵
6. Stamp Duty Act¹⁴⁶
7. Taxes and Levies (Approved List for Collection) Act¹⁴⁷
8. All regulations, proclamations government notices or rules issued in terms of these legislations.
9. Any other law for the assessment, collection and accounting of revenue accruable to the Government of the Federation as may be made by the National Assembly from time to time or Regulations incidental to those laws, conferring any power, duty and obligations on the Service.
10. Enactments or Laws imposing Taxes and Levies within the Federal Capital Territory.
11. Enactments or Laws imposing collection of taxes, fees and levies collected by other government agencies and companies including Signature Bonus, Pipeline Fees, Penalty for Gas Flared, Depot Levies and Licenses, fees for Oil Exploration License (OEL), Oil Mining License (OML), Oil Production License (OPL), royalties, rents (productive and non-productive), fees for licenses to operate drilling rigs, fees for Oil Pipeline Licenses, (OPL) Haulage Fees and all such fees prevalent in the oil industry but not limited to the above listed.

Some of the specific powers of the Service mentioned under the Act include.

- a. Power to establish and maintain fund through percentage of non oil revenue collected by Service, sum from grant, aid or gift¹⁴⁸.

¹⁴⁴CAP C1 LFN 2004

¹⁴⁵ Cap V8 LFN 2004

¹⁴⁶Cap S13 LFN 2004

¹⁴⁷NO. 2 1998 now Cap T12 LFN 2004

- b. Power to pay from the Service Fund allowances, emoluments of its Chairman, members of the Board, staff, pension of staff, cost of acquisition and maintenance of premises, day to day expenses¹⁴⁹.
- c. Power to borrow, by way of loan or overdraft¹⁵⁰.
- d. Power to refund overpaid tax¹⁵¹.
- e. Power to require return and compel appearance of tax payers.¹⁵²
- f. Power to employ Special Purpose Tax Officers (SPTO) to assist in investigation of tax offences.¹⁵³
- g. Power to co-opt the assistance of other law enforcement agencies in discharging its duties/functions.¹⁵⁴
- h. Power to employ its own Legal Officers.¹⁵⁵
- i. Power to compound offences under the Act.¹⁵⁶

3.4 The FIRS Management Board

Established for the Service (FIRS) is the Board known as Federal Inland Revenue Service Board (FIRSB) with a power of overall supervision of the Service. The composition membership of the new FIRSB under the Act differs in some ways from the old arrangement under Company Income Tax Act (CITA). The membership of the Board is increased from 14 under the old structure to 15 in the new regime, the six departmental heads and the office of the legal adviser

¹⁴⁸Section 15 FIRS Act 2007

¹⁴⁹Section 16 ibid

¹⁵⁰Section 21 ibid

¹⁵¹Section 23 ibid

¹⁵²Section 26 and 27 ibid

¹⁵³Section 35 and

¹⁵⁴Section 36 ibid

¹⁵⁵Section 47 ibid

¹⁵⁶Section 48 ibid

ceased from being members. The offices of the Minister of Justice and Attorney General of the Federation and the Governor of the Central Bank of Nigeria are now represented in the Board. There are also six political appointees to represent the six geo-political zone of the country. The new Board under the Act is made up of the following.¹⁵⁷

- i. The Executive Chairman of FIRS as the Board Chairman.¹⁵⁸
- ii. Six appointees of President to represent the six geo-political zones of the country.¹⁵⁹
- iii. Eight other members in their official capacity to represent:
 - a. The office of the Attorney General of the Federation¹⁶⁰
 - b. The office of the Governor of Central Bank of Nigeria¹⁶¹
 - c. The Minister of Finance¹⁶²
 - d. The office of the Chairman of the Revenue Mobilization, Allocation and Fiscal Commission (RMFC)¹⁶³
 - e. The office of the Group Managing Director of the Nigerian National Petroleum Corporation (NNPC)¹⁶⁴
 - f. The office of the Comptroller General of Nigerian Customs Service (NCS)¹⁶⁵
 - g. The Office of the Registrar General of Corporate Affairs Commission (CAC)¹⁶⁶

¹⁵⁷See Section 3(2) a-J Ibid

¹⁵⁸Section 3 (2) (a) Ibid

¹⁵⁹Section 3 (2) (b) Ibid

¹⁶⁰Section 3 (2) (c) Ibid

¹⁶¹Section 3 (2) (d) Ibid

¹⁶²Section 3 (2) (e) Ibid

¹⁶³Section 3 (2) (f) Ibid

¹⁶⁴Section 3(2) (g) ibid

¹⁶⁵Section 3(2) (h) ibid

h. The Office of the Chief Executive Officer of the National Planning Commission (NPC)¹⁶⁷

i. Powers and Functions of the Board

The function of the Board (FIRSB) under the Act is a complete departure from the old provision. Under the 1993 CITA, the Federal Board of Inland Revenue was charged mainly with the administration of tax laws. The repealed section 3 of Company Income Tax Act provided as follows:

"The due administration of this act and the tax shall be under the care and management of the Board who may do all such things as may be deemed necessary and expedient for the assessment and collection of tax and shall account for all amounts so collected in a manner prescribe by the Minister".

The above function presently resides on the Service (FIRS) not the Board, under the present law, with its new role as a management body, the FIRS Board is now charged with a new and broader functions as provided under section 7 of the Act that is to:

- a. Provide the general policy guidelines relating to the functions of the Service¹⁶⁸
- b. Manage and superintend the policies of the Service on matters relating to the administration of the revenue, assessment, collection and accounting system under the Act or any other enactment or law.¹⁶⁹
- c. Review and approve the strategic plan of the Service¹⁷⁰

¹⁶⁶Section 3(2) (i) ibid

¹⁶⁷Section 3(2) (j) ibid

¹⁶⁸- Section 7(1) (a)

¹⁶⁹- Section 7(1) (b)

¹⁷⁰- Section 7(1) (c)

- d. Employ and determine the terms and conditions of service including disciplinary measures of the employees of the Service.¹⁷¹
- e. Stipulate remuneration, allowances, benefits and pensions of the staff and employees in consultation with the National Salaries, Income and Wages Commission.¹⁷²
- f. Do such other things which in its (Board) opinion are necessary to ensure the efficient performance of the functions of the Service under the Act.¹⁷³

In addition to the above functions, the Board also has additional powers specifically given to it by the Act which includes:

- i. Power to make rules relating to the general condition of service of the staff as it affect; Appointment Promotion, Dismissal of employees, Appeal by the Service or employee of the Service against dismissal or other disciplinary matters.¹⁷⁴
- ii. Power to appoint secretary of the Board.¹⁷⁵
- iii. Power to distrain tax-payer by his goods to enforce payment.¹⁷⁶
- iv. Power to delegate any of its powers under the Act.¹⁷⁷
- v. Power to make Rules and Regulations (subject to approval of Minister) as in its opinions are necessary or expedient for giving full effect to the provision of the Act and for the due administration of Act. and in particular, the Board may make a regulation prescribing the:
 - a. Forms for return and other information required under the Act or any other enactment or law and

¹⁷¹- Section 7(1) (d)

¹⁷²- Section 7(1) (e)

¹⁷³- Section 7(1) (f)

¹⁷⁴Section 14 ibid

¹⁷⁵Section 12 ibid

¹⁷⁶See section 33 ibid

¹⁷⁷Section 52 ibid

- b. Procedure for obtaining any information required under the Act or any other enactment or law.¹⁷⁸
- vi. Power to approve payment of reward by the FIRS to an informant who provides information that may be of assistance to the Service in the performance of its duties under the Act.¹⁷⁹

ii. Quorum of the Board Meetings

Quorum simply refers to as the minimum number of peoples that must be present in an official meeting before a valid decision can be taken. For the power conferred on the FIRS Board under the Act to be exercised the Act, has made provision for a minimum number of the members of the Board that must be present at the meeting for any action or decision taken to be valid.¹⁸⁰

Paragraph 3 of the 2nd (Schedule to the FIRS Act) provided for the quorum in the Board's meeting as follows:

"The quorum of any meeting of the Board shall consist of the Chairman (or in an appropriate cases, the person presiding at the meeting pursuant to paragraph 2 of this Schedule) and four other members except that any quorum must include at least two members outside the Service".

At a glance the provision of paragraph 3 quoted above is difficult to understand but a Joint reading of the above paragraph and paragraph 2 will give a clear picture of what the paragraph is about. Paragraph 2 of the 2nd Schedule provides that, when Chairman of the Service

¹⁷⁸Section 61 ibid

¹⁷⁹Section 37 (1) ibid

¹⁸⁰- By section 3(2) of FIRS Act, the Board consist of 15 members

who is to preside the Board meeting is not present the members present shall elect one of them to preside over the meeting.

Briefly, the Act provided for a quorum of five members out of 15, the Chairman and any four members. In the event the Chairman is absent, the law allowed the five members present to elect one among themselves to preside over the meetings. Where the Chairman being the only member of the Board from the Service is absent, there should be no other member of the Board from FIRS. The provision therefore requiring at least two members outside the Service to form quorum is superfluous. Perhaps, there was an original intention to allow some members from within the Service into the Board but later the idea was dropped without corresponding amendment to reflect the new thinking.

Be it as it may, by joint reading of paragraph 2 and 3 of the 2nd Schedule to the Act, the quorum of the Board meeting is five members i.e. the Chairman and any four members, where the chairman is absent any five members can form a quorum by selecting one of them to preside over the meeting as the Chairman.

Worthy of mention here is that, subject to the provision in Section 51(1), the FIRS Board, in the exercise of its power and function under the Act, shall be subject to the general direction of the Minister.¹⁸¹ And any written direction, order or instruction given by him after consultation with the Executive Chairman of the Service shall be Carryout by the Board.¹⁸²

¹⁸¹Section 69 defined the Minister to mean, Minister charged with the responsibility for matters relating to Finance

¹⁸²See section 51(1) *ibid*

iii. Technical Committee of FIRS Board and its Functions

The Technical Committee (T/C) of the Board was first introduced following the recommendation of the 1997 report of the Study Group on the Nigerian tax system and administration.¹⁸³ The white paper on the report approved the composition of T/C to include:

- a. The Executive Chairman of the Service as the Chairman
- b. All Directors of the Service (FIRS)
- c. The Legal Adviser
- d. The Secretary of the Board

Concerning the function of the committee, the white paper approved that:

"The technical committee is to consider all matters that require professional and technical expertise before recommendations are passed to the Board. The committee's duties will normally include those responsibilities of the Board which are specifically listed in paragraph (31) above and also in the first schedule to the Companies Income, Tax Act 1979".

The 2007, Act retained almost the same provision of the white paper to the report and codified under Section 9 and 10 of the Act. Section 9 established the technical committee of the Board which consists of the following:

- a. Executive Chairman of the Service as the Chairman
- b. All the Directors and Head of Departments of the Service
- c. The Legal Adviser of the Service

¹⁸³This is a committee setup by Federal Government in 1992 headed by professor Emmanuel Edolien to study the Nigerian Tax System and make recommendation on its improvement sec. page 123 of the report for the recommendation

The committee also reserved the power to co-opt from the Service such staff as it may deem necessary for the effective performance of its function under the Act. The functions of the committee are listed under Section 10 of the Act which consists of the following functions to:

- a. Consider all tax matters that require Professional and Technical expertise and make recommendation to the Board.
- b. Advise the Board on any aspect of the Functions and Power of the Service under this Act and
- c. Attend to such other matters as may from time to time be referred to it by the Board.

It can be argued that the above provision presupposes that all the Departmental Heads or Directors in the Service are experts in their respective Department and in Tax Matters in general to possess the competence of advising the Board. It is therefore suggested that all recruitment into the high cadre in the Service shall be based on merit based on individuals professional competence, The practice of politicizing promotion in the Civil Service if used in the FIRS, will lead to a “blind leading a blind” may because the Technical Committee will be populated with incompetents hands the field who cannot be relied upon by the Board for any advice.

3.5 Hierarchy of Administrative Power under the FIRS system

Under the Act, the chain of administrative command is not stated in comprehensive ascending or descending order, but after reviewing the provisions of the whole Act, it can be understood that the hierarchy of command flows from the supervising Ministry to officials of the Service in the following order.

- a. The Ministry of Finance acting through the Minister of Finance.

Section 69 of the FIRS Act, defined any reference to Minister in the Act to mean Minister of Finance and Ministry to be construed accordingly. Prior to the 2007 Act, the Federal Inland Revenue Service operated as a parastatal of the Federal Ministry of Finance¹⁸⁴. Even with the administrative and financial autonomy of the Service in 2007 the FIRS Board still remains under the Supervision of Minister of Finance as a supervising Minister¹⁸⁵ hence he represents the first authority power in the administrative hierarchy

b. The Federal Inland Revenue Service Board (FIRS Board) and its Chairman.

The second body in the administrative hierarchy is the FIRS Board and its Chairman established under Section 3 of the Act. This is the management and policy making body of the system. It makes rules and guidelines for the Service and supervises the activities of the Service¹⁸⁶.

c. The Federal Inland Revenue Service and its Chairman

This is the third in the hierarchy, it works to translate into action the policy made by the Board, it is directly answerable to the Board in carrying out its duties¹⁸⁷

d. Departmental Heads and State Tax Controllers:

For administrative convenience, the FIRS is divided into six departments headed by a Head of Department/Director and Comptroller of Tax in each state of the Federation, Each Head of Department/Director coordinates and control the activities within his department and each State Controller supervises, and coordinate tax administration within his jurisdiction (State) and various stamp duty commissioners.

e. Tax Officials/ Staff of the Service

¹⁸⁴See section 4 of CITA

¹⁸⁵See section 51 *ibid*

¹⁸⁶See section 7 *Ibid*

¹⁸⁷Section 8 *ibid*

The Service has various staff both at the Headquarters and various tax offices Nationwide with various designation to ensure successful implementation of tax administration¹⁸⁸

3.6 Procedure of Tax Collection under the FIRS System

The collection procedure differs according to the particular or type of tax in issue. Normally, the procedure is laid down by the particular tax law in question i.e. Personal Income Tax Act, Company Income Tax Act, Petroleum Profits Tax Act, Capital Gains Tax Act etc.

But as a guide, the following explanation will be made based on the headings of self assessment and government assessment with reference to the provision of FIRS Act 2007; basically, there are two types of assessment for the purpose of tax collection i.e. Self Assessment and Government Assessment.

By self Assessment, the tax-payer is expected to prepared a return of his financial statement and send to the Service for payment at the due date of payment.¹⁸⁹

Government Assessment on the other hand will arise where the revenue authority FIRS assess the amount to be paid by the taxpayer based on its judgment where the taxpayer neglected or failed to file return of his self assessment¹⁹⁰

¹⁸⁸There are also various stamp duty offices throughout the federation headed by Commissioner s for stamp duty

¹⁸⁹See section 55 CITA

¹⁹⁰See Section 65(2) 54(7) 66(1) CITA or S. 35(2) 55(3) of PITA

CHAPTER FOUR

Tax Enforcement Mechanisms under the FIRS Act

4.1 Introduction

Chapter four started by giving a working definition of Tax Enforcement It discussed tax enforcement mechanism under the Act, which includes: substitutions, additional tax, distraint, surcharge and recovery by civil action. The chapter also discussed the court having jurisdiction to entertain matters brought under the Act. And lastly it dwells on the power of the Service to prosecute offences established under the Act.

4.2 Definition and Enforcement Tools /Mechanism

The word enforcement is derived from the original word "enforce." Oxford English Dictionary¹⁹¹ defined the word 'enforce' to mean, to do something to make sure that people obey a particular law or rule.

From the above definition Tax Enforcement can be define as a measures put in place to compel compliance with the provision of tax law. In other words it refers to as the process through which compliance is secured from citizens to particular law or directives either voluntarily or for fear of sanction.

The FIRS Act has provided for some mechanism to ensure compliance with various tax laws to be administered under the Act. These are discussed below. It should however be noted that FIRS can only resort to any of these power or mechanism were tax is due and after proper notice to the taxpayer and the taxpayer failed, neglected or refused to settle the tax liability.

¹⁹¹7th Edition (supra)

4:2.1 Substitution (Power) /Agency Mechanisms

The FIRS under the Act¹⁹² reserved the power to appoint a person as an agent of a taxpayer and to require the agent to pay the tax payable by the tax payer from "any money which may be held by the agent of the taxable person". The agency role here is different from the arrangement under the source deduction rules of CITA where the agent appointed by the Minister is an agent of FIRS for deduction and remittance. In that case, the agent is to make the deduction which the government should have made itself. Under Section 31 of the Act, the agent appointed by FIRS is an agent of the tax payer. Before FIRS can resort to exercising this power however, the law stipulated certain conditions. These conditions are:

- a. The Service must have knowledge that the Agent sought to be appointed is holding some money belonging to the taxpayer..
- b. The Service will count on the willingness of the person sought to be appointed to volunteer information, money, fund or other assets which may be held by him for or of any money due from him to any person.

Where the agent appointed by the Service for the purpose of collection of tax defaulted to so act the tax shall be recovered directly from the Agent.¹⁹³ This is however subject to the right of any person so appointed to contest the Notice of the Appointment before the Tax Appeal Tribunal or court, as the case may be.¹⁹⁴

4.2.2 Additional Tax/Surtax

Failure on the part of the taxpayer to pay the relevant assessment on the due date of payment would attract addition to the tax debt. This addition is in two parts.

¹⁹²Section 31 FIRS Act, 2007

¹⁹³Section 31(3) FIRS Act

¹⁹⁴131(5) *ibid*

i. Ten Percent Penalty and

ii. Interest Penalty

The above provision is provided under Section 32 of the Act, with a similar provision under Section 85 (1) (c) CITA but with some little difference. Under Section 85(1)(c) CITA, the 10% penalty is imposed per annum in that case, the penalty is charged on pro-rata basis for the period the tax remain unpaid. However, this has been voided by the provision of Section 32(1)(a) of the Act, which make the penalty once and for all affairs. The provision in FIRS Act does not contain the word "per annum" which is contained in CITA provision. This implies that the imposition of the penalty on the tax debt is once and for all no matter the period for which it has remained unpaid.

4.2.3 Distrain

Black's Law Dictionary¹⁹⁵ defined the term Distrain to mean "taking a goods or chattel out of possession of a wrongdoer into a custody of a person wronged to procure a satisfaction of a wrong committed".

The FIRS Act provides:

Where an assessment has become final and conclusive and a Demand Notice has in accordance with the provision of the relevant tax laws ... been served upon the taxable person ... then if payment of tax is not made within the time limited by the Demand Notice the Board may in the prescribed form; for the purpose enforcing payment of the tax due.

¹⁹⁵Black 's Law Dictionary (1990) West Publishing Company Minnosota 6th edition p 1867

- (a) Distrain the tax-payer by his goods or other chattel, bonds or other securities.
- (b) Distrain upon any land, premises or place in respect of which the taxpayer is the owner.¹⁹⁶

From the provision of the law quoted above, the following conditions must coexist before a power of distrain can be exercise by the Board. These conditions are.

- i. **Finality of an Assessment.** For the power to be exercise the assessment must be final and conclusive. An assessment is said to be final where no valid objection is made to the assessment or where the taxpayer fails to appeal against the Notice of Refusal to Amend (NORA), or where the taxpayer fails to appeal against the decision of Tax Appeal Tribunal (TAT) to the Federal High Court. In any of such cases the assessment became final and taxpayer has to pay the amount as assessed by the assessing officer as agreed to with FIRS or as determined on appeal on the due date of payment as explained above, and where he fail to so pay, distrain can be levied against him.
- ii. **Demand Notice:** the second condition precedent to the levy of distrain is the service of Demand Notice. The traditional name of the form is "Demand Note" Be that as it may, FIRS is required by law to send a Notice to the taxpayer and where the taxpayer fail to settle the assessment that has become final and conclusive on the due date of payment. The Notice shall gives a detail of the Name and Address of the taxpayer concern. The Assessment Notice should carry number, date, the amount of tax assessed, the Penalty imposed, and accruing interest. Failure to settle the gross amount within a month from the date of service of the notice may instigate levy of distrain.

¹⁹⁶Section 33(1) (a) (b)

iii. **Validity of Assessment:** This condition is not provided directly under the Act but came to be recognized from decisions of court and practice. By this condition, it means that the assessment in addition to being final and conclusive must also be valid in the eyes of the law.

Experience from decided cases has shown that courts hold the opinion that, it is not every assessment that is final and conclusive is valid and can be rely upon in law for enforcement. In a case of **Fleming vs London Produce Co. Ltd**¹⁹⁷ The Court held that, an assessment can be invalid on the ground that a mistake on the assessment is capable of misleading or deceiving the taxpayer. Therefore an assessment can be invalid if it misled or deceived taxpayer and where this happened no valid distraint can therefore be made based on that assessment. Also in a case of **Berry vs Farrow**¹⁹⁸ the court held that an assessment without evidence of service of notice was invalid. distraint based on such assessment will therefore be invalid.

Suffice it here to say that, if a ground is established which invalidate assessment in such cases a levy of distraint will as per the court decision in *Berry v. Farrow* (supra) be void.

iv. Exercise of Power of Distraint

Section 33(2)¹⁹⁹ has retained the controversial powers of the Chairman of FIRS to sign warrant authorizing the distraint of taxpayer's property to defray tax debt. The warrant to authorize an officer of FIRS to break into the defaulter's premises to confiscate his goods is to be issued and sign by the Chairman of FIRS. The provision of this Section appeared to be inconsistent with the requirement under Section 36(3) of the Act which provided for the warrant

¹⁹⁷(1968) 44 TC. 582, (1968)1 WLR1013;

¹⁹⁸(1968)2ALL ER975 KB632

¹⁹⁹See also Arogundade, J. A(Supra) page 419

to be issued by judicial officer for similar operation of Search and Seizure. It is submitted that amendment to the above section to allow the warrant to be signed by a judicial officer like the case under section 36 will be more appropriate and fair in a democratic settings like ours.

Subsection 4 of section 33 provided for keeping of the distrained goods for 14 days. This provision appears not to take into consideration perishable items for which facilities might not be available to keep them in good condition. In an English case **of Morley v. Pincomb**²⁰⁰ it was held that perishable items are exempted from distraint. It is therefore advised that the subsection be amended to exempt perishable goods from distraint²⁰¹

4.2.4 Search and Seizure

The Service may with the assistance of any law enforcement agent by a warrant to be issued by judicial officer cause its staff or officer to enter into any premises covered by such warrant, search for, seize and take possession of any books documents, inspect and make copy of same in furtherance of the Service's power to enforce compliance with the provision of the Act or any tax law it administers.²⁰²

4.2.5 Surcharge.

This mechanism unlike the others discussed above is not meant to recover tax from defaulting tax payer, but specifically enacted to prevent incidences of insider practices, negligent or fraudulent dealings by the staff of the Service.

Surcharge simply means additional charge. It refers to an increase in the amount to be paid by a wrong doer in addition to the actual amount suffered by his victim. Section 54 of the Act

²⁰⁰(1848)2EXD 101

²⁰¹This is to avoid west considering the nature of the goods

²⁰²See section 36[1](2)(3) FIRS Act 2007

provided that the Chairman of the Service with the approval of the Board²⁰³ shall upon satisfying that any person in the employment of the FIRS is or was responsible for:

- a. Any improper payment of money from the fund of the Service or such money is not fully documented
- b. Any deficiency, destruction of any money, security, store or other property of the Service.
- c. Failure to keep proper account or record
- d. Failure to make any payment or delay the payment of any money etc and satisfactory explanation is not made to the Board within the time given by the Board, surcharged the said person such sum in addition to the actual amount as it deem fit.²⁰⁴

The above provision is aimed at securing the assets or any money collected for the Service from unethical practices.

4.3 Recovery by Civil Action

Among all the mechanisms devised by the Act to ensure tax compliance recovery by civil action is the oldest, more acceptable and in accord with the spirit of rule of law which is the passion of the 21st century. This power has been in existence before the enactment of the Act²⁰⁵. The Service under section 34 of the Act can institute a civil action to recover a tax due but not paid as if such tax is a debt due to the Service.²⁰⁶ It is important however to stress here that all conditions precedent to a valid action must be fulfilled before the action can be instituted. Requirements as to due date, finality of assessment, demand notice, and validity of assessment as it applied to the Service power of distraint apply, mutatis-mutandis to this mode of recovery.

²⁰³See Section 54(2) FIRS Act

²⁰⁴See section 54(1)(a)(b)(c) and (d)

²⁰⁵A.G Lagos v. Eko Hotel (2008) ALL FWLR (Pt398) 23 5 (A, ELF OIL vs O.S BIR (2003) FWLR(pt 138)1

²⁰⁶See sub section (1) of section 34 FIRS Act

The power to commence civil action can equally be exercised to recover a tax as a debt from a taxpayer who was erroneously under assessed or repaid.²⁰⁷ The above power is exercisable by the FIRS without prejudice to any provision contained in any tax law which by First Schedule to the Act, the FIRS is empowered to administer.

4.4 Criminal Prosecution

The law in enforcing obedience has set a standard of conduct which subjects must comply with and prescribed punishment for violation. To a layman, the mere mention of the word "Law" gives him an impression of criminal law. This is not unconnected with the fact that the oldest method of enforcing obedience to law is by way of punishment through criminal prosecution.

The FIRS, has a power under the Act²⁰⁸ to employ its own Legal Officers who shall have power to prosecute offenders for violating or committing any of the offences under the Act.

Where an individual in his personnel capacity is guilty of an offence under the Act he shall, upon conviction be liable to a punishment prescribed by the Act for any offence committed.²⁰⁹ A problem may however arise where a corporate body committed an offence under the Act which is more likely to happen. The law here provided that, every director, manager secretary or other similar officer, every partner or officer of the firm, every person concerned in the management of the affairs of the association and every person who was purporting to act in any capacity for the corporation, association or firm, shall be liable to punishment as if he had

²⁰⁷Sub section (2) *ibid*

²⁰⁸Section 47 FIR5 Act 2007

²⁰⁹The wording in section 49(1) seems to suggest a situation where individual human being is guilty of an offence under the Act

himself (in his personnel capacity) committed the offence.²¹⁰ the only exception to the above rule is where such person prove that the act or omission constituting the offence took place without his knowledge, consent or connivance.²¹¹

4.5 Offences under the Act

The Act has created various offences that could committed either by tax payers both corporate and juristic on one hand and tax officials on the other hand for which various punishment were prescribe. Some of these offences includes;

(a) Failure to Deduct or Remit Tax

Where a person is obliged under the provision of any of the law administer by the FIRS²¹² to deduct and remit to the Service any tax but fails to deduct or after deduction fails to pay to the FIRS the tax deducted within 30 days of deduction is guilty of an offence and liable upon conviction to a 10% penalty per annum in addition to the tax and interest at CBN rediscount rate and an imprisonment for a period of not more than three years²¹³.

(b) Obstruction of an Authorized Officer

Any person who obstructs, hinders, molest or assault any person or authorized officers of the Service in the performance of any function under the Act or does anything which impedes or intended to impede the carrying out of any search, seizure removal or distrain rescues/, damage or destroys anything liable to such seizure or distrain or does anything intended to prevent the procuring or giving evidence as to whether or not anything is liable to seizure, removal or distrain or prevent the arrest of any person or rescued any person so arrested commit an offence

²¹⁰See section 49(2) (a)(b) and (d)

²¹¹Ibid paragraph (d]

²¹²See First schedule to the FIRS Act 2007

²¹³Section 40 Ibid

and liable upon conviction to a fine not exceeding N200.000 or imprisonment for a term not exceeding three years or both²¹⁴.

(c) False Declaration

If any person who makes or signs or cause to be made or signed or cause to be deliver to the FIRS or any of its officers, any declaration, notice, certificate or other document or, makes any statement in answer to any question or inquiry put to him by an officer of the Service which he is required to answer by or under the Act or any other enactment or law, being a document or statement produced or made for any purpose of tax which is untrue in any material particular, commit an offence and is liable upon conviction to a fine not exceeding N200,000 in addition to payment of any tax unpaid or under paid or to an imprisonment not exceeding three years or both²¹⁵.

Where by reason of any such document so falsified under Sub Section (1) of this section the full amount of any tax is not paid or overpayment is made by the Service in respect of repayment, the amount not paid or over paid shall be recoverable by the FIRS as a debt by way of civil action²¹⁶.

(d) Counterfeiting of Document

Any person who counterfeit or falsifies any document which is required by or for the transaction of any business under the Act or, knowingly, alters any such document after it was officially issued, counterfeit any seal, signature, initials or other mark used by any officer for any verification relating to tax or being an employee of the Service connive to commit any or these

²¹⁴Section 41 ibid

²¹⁵Section 42(1)(a)(b) and sub(3) ibid

²¹⁶Sub section (2) ibid

offences is liable upon conviction to a fine not exceeding N200,000 or to an imprisonment for a term not exceeding three years or both²¹⁷.

(e) Demanding Gratification and Making False Return

Where any employee of the Service who is responsible for assessing and collection of tax, demand from any taxpayer an amount in excess of the authorized assessment, withhold for his own use or otherwise any portion of the amount of tax collected, renders a false return whether orally or in writing of the amount of tax collected or received by him, defraud any person, embezzles any money or used his position to deal wrongfully with the Service, steal or misused the document of the Service or compromises on the assessment or collection of any tax, commit an offence and is liable upon conviction to a 200% of the sum in question or imprisonment to a term not exceeding three years or both.²¹⁸

(f) Commission of Offence while Armed

Where a person commit any of the above offences while armed with any offensive weapon he shall upon conviction be liable to imprisonment not exceeding five years.²¹⁹

Where however, an injury is caused to an authorized officer of the Service the offender shall upon conviction be liable to an imprisonment not exceeding ten years²²⁰.

(g) Offence of Impersonation

Where for the purpose of obtaining admission into any building or other place or procuring to be done any act which he would not be entitled to do or procure to be done on his own

²¹⁷- Section 43 ibid

²¹⁸- Section 44 ibid

²¹⁹- Section 45(1) ibid

²²⁰Section 45(2) ibid

authority or for any other lawful purpose any person not being an authorized officer, assumes the name, designation, or impersonate the character of an authorized officer, committed an offence and shall be liable on conviction to a fine not exceeding N200, 000 or to imprisonment of term not exceeding three years.²²¹

(h) Power to Compound Offence under the Act

The Service reserved the power to compound any offence under the Act by accepting such sum of money not exceeding the maximum fine specified for the offence.²²² Where such payment is made by the offender the FIRS shall issue an official receipt for any money received.²²³

4.6 Court Having Jurisdiction under the Act.

Jurisdiction literally means a dignity which a man has by a power to do justice in a cause of complaint made before him. In its narrow sense, it means the limits imposed upon the power of a legally constituted Court or Tribunal to hear and determine issues between persons seeking to avail themselves with its processes by reference to:

- i. The subject matter of the issue or
- ii. The person between whom that issue are joined or
- iii. The kind of relief sought.²²⁴

The word jurisdiction here is used in the narrow sense of the Court which has power to enquire into any question in relation to or arising from the provision of the FIRS Act or any law

²²¹Section 46 ibid

²²²Section 48(1) ibid

²²³ Section 48(2) ibid

²²⁴Palade S. A(1990)" lawyers Companion on Civil Procedure" les Chyraden (Nig) Ltd , Ibadan.p 4-5

which by virtue of First Schedule to the Act the FIRS has power to administer, either in form of civil action or criminal prosecution for committing any of the offences under the Act.²²⁵

Where any cause of action arises either against or by taxpayer or the FIRS, the court which has power to determine such matter whether civil or criminal in respect of the Act is Federal High Court having jurisdiction at the place where the cause of action arose. This is constitutionally provided under Section 251(1) (a) and (b) of the 1999 Constitution of the Federal Republic of Nigeria (as amended.)

Section 251 provides:

(1) Notwithstanding anything to the contrary contained in this Constitution, and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil cause and matters.

(a) Relating to the revenue of government of the federation in which the said government or any organ or a person suing or being sued on behalf of the said government is party.

(b) Connected with or pertaining to the taxation of Companies and other Bodies established or carrying on business in Nigeria and all other person subject to Federal Taxation.

Though the above Section in paragraph (a) and (b) conferred jurisdiction on Federal High Court in the above matters only in civil action by using the words "in civil cases and matters" in sub section (a), the same court will exercise jurisdiction in criminal matters arising

²²⁵ Forthe offences see section 40-49 FIRS Act, 2007

from those items mention in the Section.²²⁶ This position found its basis on the Court of Appeal decision in a case of AG Lagos State v. Eko Hotels Limited.²²⁷

It Is however important to state here that the jurisdiction of Federal High Court is without prejudice to the power conferred by the Act to the Tax Appeal Tribunal to settle dispute also arising from the Act.²²⁸

²²⁶See Section 25 (3) 1999 Constitution of Federal Republic of Nigeria as altered

²²⁷Supra page 252 paras G-H

²²⁸For a details on Tax Appeal Tribunal See Chapter Five Infra

CHAPTER FIVE

TAX APPEAL TRIBUNAL

5.1 Introduction

Chapter five contains a discussion on the new disputes settlement mechanism operating within the tax system. It discussed the Tax Appeal Tribunal as an adjudicating body its establishment and composition, power and jurisdiction and the process of appeal in the tribunal. The chapter also contained discussion on the parties who can maintain action in the tribunal, the proceedings and the remedies available to the parties at the tribunal, an examination of appeal process from the decision of the tribunal has been discussed in the chapter and ends with examination of the constitutional validity of the tribunal.

5.2 History of Adjudication Body within the Tax System

Prior to the promulgation of the Act, Companies taxable under the Company Income Tax Act, (CITA), the Petroleum Profits Tax Act (PPTA) and the Capital Gains Tax Act (CGTA) as well as individuals under the federal jurisdiction file appeal to the Body of Appeal Commissioners²²⁹, (BAC) while an Appeal arising from the Value Added Tax Act²³⁰ lies to VAT Tribunal. With the enactment of the Act, the TAT replaced the BAC and VAT Tribunal with jurisdiction covering virtually all tax laws in Nigeria and the power to adjudicate, according to paragraph 11 Fifth Schedule to the Act on "disputes and controversies". The above phrase in our view is wider in scope than the words "review and revise assessment" used in its predecessor i.e. BAC. With the new law, the TAT has superior power over its predecessor the BAC and VAT Tribunal. The TAT is not only to determine the quantum of an assessment but it is also to adjudicate on "disputes and controversies". The word "dispute", was used in PITA

²²⁹BAC was established under S. 71 Company Income Tax Act. 1990

²³⁰The Value Added Tax Tribunal VAT Tribunal was established under Section 20 of Value Added Tax Act, 1996

and CITA to refer to disagreement on assessment. However, the word "controversy" is new in the tax law and the inference is that it refers to disagreement on interpretation and application of the law and processes. If that is the case, the TAT will not be restricted to the determination of the quantum of an assessment but will have an additional power to look into the validity of an assessment²³¹.

The TAT unlike its predecessors the BAC and VAT Tribunal, is not to be tied to the financial and administrative apron of FIRS but it is to operate as an independent body. The Tax Appeal Commissioners are to earn salaries and allowances. Paragraphs 9 and 10 of the Fifth Schedule to the Act provided for the staffing of the Tribunal. In the previous BAC, the Secretary to the BAC and his staff used to be employees of FIRS and the Secretariat used to reside in FIRS office but the law now provided for an appointment of the Secretary of each zone by the Minister of Finance from outside the Public Service.²³² The tribunal is now to operate from its own office and employment in the Tribunal is pensionable and remunerations are to be determined by the National Salaries and Wages Commission. The tribunal therefore operates as a parastatal of the Federal Ministry of Finance.

The new provision on appeal procedure signaled a positive development for tax system in Nigeria especially for many taxpayers who feel reluctant to challenge any arbitrary decisions of tax authorities because of the high-cost of litigation resulting from long delay in concluding appeal cases. Prior to TAT, tax appeal cases used to last for a very long time sometimes for as long as five or more years²³³ and by which time the ruling has little or no value to the appellant as circumstances might have changed. The zonal composition would change the concentration of

²³¹Arogundade J.A (supra) page 362

²³²Paragraph 9 of 5th Schedule FIRS Act 2007

²³³See the Case of Elf Oil (NIG) LTD vs O.S.B.I.R(2003) FWLR (PT 138)1352 C.A, where the disputes a was determined finally after about 6 years

cases on one body and thereby expedite appeal process. The headship of each zone of the Tribunal by an experience lawyer takes care of the new responsibility of the Tribunal whereby issues which were originally within the jurisdiction of the court are now transferred to the Tribunal, these includes "action or decision of the Service which affect taxpayer and "non compliance by person." It is hoped that the body will be able to resolve the nagging issues associated with jurisdiction in international taxation in Nigeria and other issue requiring attention e.g. the demarcation of jurisdiction of non-resident income and issues of taxation of Foreign Nationals employed to work in Nigeria etc.

5.3 Establishment, Composition, Power and Jurisdiction of Tax Appeal Tribunal (TAT)

a. Establishment

The TAT was established by Section 59 and 5th Schedule to the Act as a civil tribunal to hear and determine matters arising from the operation of the Act and other tax laws the Service has empowered to administer

b. Constitution and Composition of the Tribunal

The tribunal is constituted into 8 zones²³⁴ pursuant to an order made by the then Minister of Finance Dr. Mansur Mukthar Adnan, in exercised of power vested on him by Section 59 and Fifth Schedule to the Act.

The zonal constitution of the tribunal are as follows,

- i. North-East Zone sitting in Bauchi State to cover, Bauchi, Adamawa, Gombe, Borno, Yobe and Taraba States,
- ii. North-West Zone sitting in Kaduna to cover, Kaduna, Kano, Katsina, Kebbi, Jigawa, Sokoto and Zamfara States,

²³⁴The Constitution of the Tribunal into 8 zones was done by Tax Appeal Tribunal Establishment Order of 25th November, 2009

- iii. North-Central Zone sitting in Jos to cover, Plateau, Benue, Nasarawa, Niger, Kogi and Kwara States.
- iv. South-West Zone sitting in Ibadan to cover, Oyo, Ekiti, Ogun, Osun and Ondo States
- v. South-East Zone sitting in Enugu to cover Enugu, Anambra, Ebonyi, Abia and Imo States.
- vi. South-South Zone sitting in Benin to cover Edo, Akwalbom, Rivers Bayelsa, Cross River and Delta states
- vii. Abuja sitting in Abuja F.C.T to cover only Federal Capital Territory
- viii. Lagos Zone sitting in Lagos to cover only Lagos.

The composition of TAT consists of five Tax Appeal Commissioners (TACs) in each zone to be appointed by the Minister²³⁵. Each zone is to be presided over by Chairman who shall preside at every sitting of the tribunal save where he is absent. The chairman must be a legal practitioner who has been so qualified to practice for a period of not less than 15years with cognate experience in tax legislations and matters.²³⁶The Commissioners shall hold office for a term of three years renewable for another three years term and no more from the date of appointment up to the time he/she will reach 70 years.²³⁷ The Tribunal will constitute a quorum for the purpose of exercising its jurisdiction when it consists of three Commissioners.²³⁸

c. Power/Jurisdiction of TAT

The jurisdiction of Tax Appeal Tribunal covers virtually all tax laws in the country Paragraph II of the Fifth Schedule to the Act has vested in the Tribunal power to adjudicate on "dispute and controversies" arising from Company Income Tax Act, Petroleum Profits Tax Act, Capital Gains Tax Act, Value Added Tax Act and particularly the whole of Personal Income

²³⁵Paragraph 2 Fifth Schedule FIRS Act

²³⁶Sub paras 2 ibid

²³⁷Paragraph 4 ibid

²³⁸Sub paras 4 ibid

Tax Act. Subparagraph (I) (VI) also provided for the inclusion of any other law contained in the First Schedule to the Act or other laws made from time to time by the National Assembly. In other words, it has additional jurisdiction in respect of matters listed under paragraph 6 to 11 of the First Schedule to the Act: these includes:

- (a) Stamp Duty Act, cap 411 LFN 1990
- (b) Tax and Levies (approved list for collection) Act 1998
- (c) All regulations, proclamations government notices or rules issues in terms of those legislations.
- (d) Any other law for the assessment, collection and accounting of revenue accruable to the Government of the Federation as may be made by the National Assembly from time to time or regulations incidental to these laws conferring any duties, power and obligation on the Service.
- (e) Enactment or law imposing taxes and levies within the Federal Capital Territory.
- (f) Enactment or law imposing collection of taxes, fees and levies collected by other government agencies and companies including Signature Bonuses,(SB) Pipeline Fees,(P.F) Penalty for Gas Flaring, Depot Levies (D.O) and License, fees for Oil Exploration. License (OEL), Oil Mining License (OML), Oil Production License (OPL), royalties, rents (productive and non productive) fees for license to operate drilling rigs, fees for oil pipeline, haulage fees and all such fees prevalent in the oil industry but not limited to the above listed.

The above is in addition to the power conferred on the Tribunal to refer tax fraud or any crime to Attorney General of the Federation or of State or the relevant law enforcement agencies for proper prosecutors.²³⁹

It is important to note here that, the inclusion of Personal Income Tax Act among the tax laws to be administered by the TAT is shredded in controversy. The provision has remained

²³⁹Paragraph 12 fifth schedule

controversial since the promulgation of the law and there is no official clarification or court pronouncement to that effect to date. It is not clear if the intention is to centralize the tax appeal process in the country since the 5th Schedule to the FIRS Act does not restrict the scope of the TAT power to persons within the Federal power under PITA. The impression is that the scope of TAT is wide enough to cover all taxes listed under the First Schedule to the Act. Furthermore, in paragraph 12, of 5th Schedule, the Tribunal is empowered to refer Criminal cases to Attorney General of the States. This tends to suggest that the tribunal is expected to be national in operation.²⁴⁰

d. Appeal Procedure under the TAT

The Appeal procedure under TAT is a marked departure from the old regime. Under the old regime the appeal goes before BAC mainly in respect of assessment by an aggrieved taxpayer, however, paragraph 13(1) and 14 of the 5th Schedule to the Act provided for a person aggrieved by an assessment or Demand Notice made upon him by the Service or aggrieved by any action or decision of the Service under the provision of the tax laws to appeal against such decision or assessment or Demand Notice to the Tribunal. The FIRS if aggrieved by the non compliance by a person in respect of any provision of the tax law, may appeal to the tribunal where the person is resident.

From the fore going provisions, the following novelties can be deduced from a joint reading of the two paragraphs above;

- i. TAT is now to go beyond the determination of the amount of the total profit to consider collection issues, validity of an assessment, interpretation and application of tax treaties, review of tax audit or investigation rulings.(by using the phrase “action or decision” in paragraph 13)

²⁴⁰Arogundade, J .A (supra) 363-364

ii. FIRS can now take a taxpayer (by using the phrase “Action or decision” in paragraph 13) before TAT (by using the phrase “service aggrieved” in paragraph 14) unlike what applied under the defunct BACs system where provision was made only for the aggrieved taxpayer to appeal to BAC and FIRS can only appeal against the decision of BAC to the Court on point of law. The provisions however, have created some confusion into the appeal process with the repeal of Section 53 of CITA.²⁴¹ The confusion is in relation to the following.

a. Paragraph 15(6) of the 5th Schedule to FIRS Act, provided that the "onus of proving that the assessment complained of is excessive shall be on the Appellant" this is lifted from subsection (7) of the repealed section 55 of CITA 1990. The main focus of the repealed section was an assessment which is not the case in the new regime where there could be other grounds of appeal other than the assessment. The reference to Appellant" then appears to be a mix up. The taxpayer is no longer the only appellant since FIRS can as well go on appeal under the provision of paragraph 14 of the 5th Schedule.

b. Paragraph 15(8) also provided for the Tribunal to "confirm, reduced or annul the assessment" this is lifted from subsection (9) of the repealed Section 55 CITA. These remedies are inadequate in view of the wider scope of coverage of the appeal under the provision of paragraph 13 of the 5th Schedule.

c. Paragraph 16 (10) of the 5th Schedule provides for the Notice of the amount of the tax chargeable under the assessment as determined by the tribunal to be served on the taxpayer by FIRS. This is also lifted from subsection (1) of the repealed section 56 of 1990 CITA.

From the provision of paragraph 13 of the 5th Schedule, decisions of TAT are no longer

²⁴¹ Cap 60 LFN 1990 the repealed Section is replaced by 5th Schedule to the FIRS Act. Which prescribed the procedure of conducting appeal in the tribunal

mainly on assessment. This provision is silent on other basis than assessment on which the tribunal could make a determination. For instance, it could determine the amount payable on the basis of Demand Notice" or could determine the interpretation and mode of application of a provision forming the basis of an appeal.

d. The Schedule is however silent on how the tribunal will treat an appeal brought before it by the Service. Paragraph 14 provided for the Service to appeal to the TAT if it is aggrieved by the non compliance with the law by a taxpayer. Though paragraph 17(3) make provision for the FIRS to appeal to the Federal High Court if it feels dissatisfied with the ruling of TAT but this could be in respect of the appeal of taxpayer. For instance, a TAT may reduce or annul assessment, and this may trigger the appeal of the Service. There is need to spell out the process for determining an appeal by FIRS where it feels "aggrieved by the non compliance by a person in respect of any provision of the tax law. It is remarkable that appeal are now to be held in public this is another area of departure from the old regime whereby appeal were only to be held in camera.

e.. Parties at the Tribunal

As seen in the preceding discussion, by virtue of the provision of paragraphs 13 and 14 of the 5th Schedule to FIRS Act. There are two parties that can maintain action i.e. sue or be sued at the Tribunal these are;

- a. All taxpayers whether individual, corporate body or partnership
- b. The Federal Inland Revenue Service (FIRS)

5.4 Proceedings at the Tax Appeal Tribunal

The conduct of proceedings at the Tribunal from inception of an appeal to its final determination is done under the provision of Tax Appeal Tribunal (Procedure) Rules 2010 made by the Minister of Finance Mr. Olusegun O. Aganga in exercise of powers conferred on him by paragraph 21 of the Fifth Schedule to the Act. Below is a brief guide of the proceedings at the tribunal

a. Place of Instituting Appeal

Order IV of the TAT (Procedure) Rules 2010 provided that an appeal shall be filed in the zone where it emanates in conformity with paragraph 1 of the TAT Establishment Order. Where an appeal is filed in a wrong zone the appeal shall not be heard but transferred to the appropriate zone upon the direction of the chairman of the zone where the appeal is first lodged.

b. Form of Commencement and Hearing of Appeal

Where a person is aggrieved by an Assessment, Demand Notice or any action or decision of the Service under the provision of any law under the Act, or where the FIRS is aggrieved in relation to any person in respect of any provision of the tax law, he may within 30 days from the date in which the action, decision, assessment or demand notice arose file an appeal as in form TAT I contained in the First Schedule to the rule.²⁴² An appellant who desire to rely on evidence at the hearing of the appeal shall file along with form the following:

- a. List of witnesses to be called at the hearing of the Appeal.
- b. Written Statement on Oath of the witness and
- c. Copies of every document to be relied on at the trial.²⁴³

²⁴²Order III TAT (Procedure) rules 2010

²⁴³Rule 5 Ibid

A respondent shall within 30 days after service of a notice of appeal on him enter appearance by delivering to the Secretary of the tribunal a respondents reply as inform TAT 3 to the Fifth Schedule to the rules²⁴⁴ If the respondent contest the appeal he shall states his groundand where he desire to rely on evidence he shall file along with reply the following documents

- a. List of witnesses to be called at the hearing
- b. Written statement on oath of the witnesses.
- c. Copies of every document to be relied on at hearing²⁴⁵

Thereafter a hearing notice shall be issued by the Secretary of the tribunal upon the direction of the Chairman.²⁴⁶

The hearing of the tribunal is commenced by the appellant presenting documents and statements which he intends to rely upon as well as any witness he desires to call. The respondent may in like manner present any document or statement he intends to reply upon as well as witnesses he desire to call.²⁴⁷ At the hearing the tribunal shall admit all relevant evidence oral or documentary adduced by 'the Appellant and Respondent. All oral examination by witness during evidence in chief shall be limited to his written deposition and the other party may cross examine the witness who may then be re-examine.²⁴⁸ At the close of evidence, written address shall be filed by the parties and adopt same before decision²⁴⁹ and the tribunal may gives to each party 15 minutes to make oral argument to emphasize and clarify his written address.²⁵⁰

²⁴⁴Order VII Rule 1 Ibid

²⁴⁵Rule 2 and 3 Ibid

²⁴⁶Order IXV ibid

²⁴⁷Order XV Ibid

²⁴⁸Rule 2 Ibid

²⁴⁹- Order XVIII ibid

²⁵⁰Ibid

The decision of the Tribunal shall be given after close of evidence and adoption of written addresses²⁵¹ and any judgment given by the tribunal shall be enforced in accordance with the Act as if it's a Federal High Court decision.²⁵²

d. Right to Legal Representation

The FIRS Act allow parties to appear in the TAT themselves or be represented by a Legal Practitioner, Chartered Accountants, Adviser or in case of a Corporate Body can be represented by any of its officers. Paragraph 18 of the 5th Schedule to the Act provides;

18 (1) a Complainant or Appellant as the case may be may either appear in person or authorized one or more Legal Practitioners or any of its officers to represent him in any case before the tribunal.

(2) every individual or company in a case before the tribunal shall be entitle to be represented at the hearing of an appeal by a Solicitor, or Chartered Accountant or Adviser provided that, if the person appointed by the taxpayer to be his representative in any matter before the tribunal is unable for good cause to attend hearing thereof, the tribunal may adjourn the hearing for such reasonable time as it deems fit or admit the appeal to be made by some other person or by way of a written address.

It is our opinion here that, the last paragraph in subparagraph (2) above is confusing the phrase "or admit the appeal to be made by some other person or by way of a written address" is capable of interpretation to mean, the tribunal can assign a different person to represent the

²⁵¹Order XIX ibid

²⁵²Order II and paragraph 16(2) 5th Schedule

party absent. It is submitted that the phrase adds nothing to what is before it and will be more appropriate to be deleted.

d. Remedies Available to the Parties

The remedies available to the parties in an appeal in the tribunal is provided under paragraph 15(8) 5th Schedules to the Act. It provides that the tribunal may:

- i. Confirm,
- ii. Reduce,
- iii. Increase or
- iv. Annul the assessment

It is further submitted that the above four remedies listed in paragraph 15 is inadequate in view of the wider scope of coverage of appeal under the provision of paragraph 13 of the same Fifth Schedule which include appeal against not only assessment but also:

- a) Demand Notice
- b) Action or Decision of the Service under any tax laws.

The paragraph therefore need amendment to confer on the Tribunal power to grant other remedies like Declaration, Refund etc to bring it at match with the wider scope of the jurisdiction of the Tribunal

5.5. Appeal from the Decision of the Tribunal

Both Order XXIV of the TAT (Procedure) Rules 2010 and paragraph 17 of the 5th Schedule to the Act, made provisions for an appeal against the decision of the tribunal to the Federal High Court.

Paragraph 17 of the 5th schedule which is more comprehensive provides:-

1. Any person dissatisfied with a decision of the tribunal constituted under this schedule may appeal against such decision on a point of law to the Federal High Court upon giving notice in writing to the secretary to the tribunal within 30 days from the date on which such decision was given.
2. A Notice of Appeal filed pursuant to subparagraph (1) of this paragraph shall set out all grounds of law on which the appellants case is base.
3. If the Service is dissatisfied with the decision of the Tribunal it may appeal against such decision to the Federal High Court on points of law by giving notice in writing as specified in subparagraph (1) of this paragraph to the Secretary within 30days after the date on which such decision was given.
4. Upon receipt of a Notice of Appeal under subparagraph (1) or (2) of this paragraph, the Secretary of the tribunal shall cause the notice to be given to the chief registrar of the Federal High Court along with all exhibits tendered at the hearing before the tribunal.

5. The Chief Judge of the Federal High Court may make rule providing for the procedure in respect of appeal made under this Act and until such rules are made the Federal High Court Rules relating to appeal shall be followed;

From the fore going provision it can be discern that:

- i. Both the Taxpayer and the Service can appeal to the Federal High Court against the decision of the Tribunal.
- ii. All appeal must be filed within 30 days from the date of the decision sought to appeal upon.
- iii. The appeal must be on grounds of law alone not factor fact and law.
- iv. The Notice of Appeal shall specified all the grounds of Appeal relied upon by the Appellant
- v. The Secretary of the Tribunal shall upon receiving of the Notice of Appeal transmit the record of the tribunal to the registrar of the Federal High Court for appropriate action.

5.6 The Constitutional Validity of the TAT

Tax practitioners were initially apprehensive as to whether the Tax Appeal Tribunals (TAT) would suffer similar a fate as the extinct Value Added Tax (VAT) Tribunal. By way of an excursion into a history, the VAT Tribunal was set up under Section 20 of the VAT Act and paragraph 24(1), 2nd Schedule to the VAT Act of 1993. The tribunal however suffered premature extinction post the Constitution of Nigeria (1999). First, in *Stabilini Visioni vs FBIR*²⁵³, the Court of

²⁵³(2009) 12 NWLR (pt. 1157) 200

Appeal held that the VAT Tribunal was not an administrative Tribunal since appeals from it did not lie to the Federal High Court (FHC), and further that Section 20 of the VAT Act that set up the VAT tribunal was inconsistent with Section 251 of the Constitution of the Federal Republic of Nigeria that had solely conferred jurisdiction of the federal revenue exclusively on the Federal High Court.

Similarly, in *Cadbury (Nig.) Plc vs FBIR*,²⁵⁴ the FBIR had directed Cadbury to render VAT returns based on Cadbury's payments to its parent company in Britain. Upon Cadbury's refusal, FBIR instituted tax recovery proceedings before the VAT Tribunal. With FBIR's success, at the VAT Tribunal, Cadbury appealed to the Court of Appeal. The Court of Appeal sustained Cadbury's objection, and held that the VAT Tribunal had no jurisdiction to entertain VAT issues since such tax issues touched on the exclusive jurisdiction on federal revenue conferred solely upon the Federal High Court.

Back to our issue at hand, in the later part of 2013, two separate and conflicting decisions of the Federal High Court were issued that put the jurisdiction and Constitutional validity of the TAT in the eye of the storm. First, on October 30, 2013, Justice Adeniyi Ademola of the Abuja Federal High Court in *TSKJ II Construces vs FIRS*²⁵⁵, declared unconstitutional the composition of the TAT, on the ground that the FIRS Act and the Tax Appeal Tribunal (Establishment) Order of November 25th, 2009 (TAT Order) under which the TAT was established conflicted with the exclusive jurisdiction of the Federal High Court conferred by Section 251 of the Constitution.

²⁵⁴(2010) 2 NWLR (pt. 1179) 561

²⁵⁵- SCT No.FHC/ABJ/TA/11/12

Next was the December 3rd, 2013 decision of Justice I.N Buba, in *Nigerian National Petroleum Corporation vs Tax Appeal Tribunals*,²⁵⁶upholding the creation and establishment of the TAT.

FACTS OF THE TWO CASES

In *TSKJ vs FIRS*²⁵⁷, TSKJ, a non-resident tax payer had obtained a contract for the construction of the Nigerian Liquidified Natural Gas, NLNG and used its subsidiary TSKJ Nigeria, to render logistic support services. TSKJ later filed self-assessment forms on deemed profits and made deductions of charges being the cost paid to its local subsidiary. The FIRS disallowed the said deductions as they were not allowed under the turnover basis assessment, and issued additional assessments. TSKJ objected and filed an appeal with TAT, asking that the additional assessment be set aside. The TAT dismissed TSKJ's claims, following which an appeal was filed at the Federal High Court. Justice Ademola, upheld TSKJ's argument i.e. that the TAT lacked the jurisdiction to entertain the suit on the grounds that the Act under which the TAT was established conflicted with the exclusive jurisdiction of the Federal High Court conferred by section 251 (1) (a) & (b) of the Constitution, and so ordered the disbanding of the TAT.

In *NNP vs TAT*²⁵⁸ the issue related to the NNPC being the agent of the Federal Government in collecting Petroleum Profits Tax assessed against the contractors in Oil Mining License OML 133, as well as the exact Education Tax liability for OML for the 2010 year. Justice Buba, held that the FIRS Act that established the TAT was fundamentally different from the VAT Act that purportedly set up the defunct VAT

²⁵⁶- Suit No. FHC/L/CS/630/2013

²⁵⁷ *ibid*

²⁵⁸ *ibid*

Tribunals. In defining the jurisdiction of the TAT and whether the FIRS Act violated the exclusive jurisdiction of the Federal High Court under Section 251 of the Constitution, Justice Buba started by examining Section 251, which provides thus:

“251(1) notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters...”

He then held that the tenor of the first portion of Section 251 is to the effect that the National Assembly may make laws from time to time, so as to confer additional powers and jurisdiction on the Federal High Court, and that the intent of this provision is to enable Legislature to expand the jurisdiction of the Federal High Court, ***and in no way can this provision be construed as empowering the National Assembly to ‘remove’, or ‘restrict’ the original jurisdiction of the Federal High Court.***

Justice Buba then compared the 2 statutes that set up the VAT Tribunal and TAT with each other and held, Paras. 24(1) of the 2nd Schedule to of FIRS Act provided for an appeal from the administrative framework by which taxpayers could resolve their tax disputes with the FBIR before resorting to the Federal High Court by invoking the Federal High Court’s appellate jurisdiction. Justice Buba, therefore held that the administrative framework did not derogate from the Federal High Court’s original jurisdiction but rather ***“serves as a condition precedent to bringing an action before the Federal High Court.”***

Relying on previous decisions relating to the Body of Appeal Commissioners (predecessors to TAT), which allowed appeals from them to the Federal High Court, Buba, held that decisions such as *Eguamwense vs. Amaghiszemwen*²⁵⁹ and *Ocean & Oil Ltd. vs. FBIR*²⁶⁰ confirmed that TAT was validly created and that its jurisdiction does not conflict with the provision of Section 251 of the Constitution. Further relying on Sections 41 and 42 of the Petroleum Profits Tax Act and Paras 13(1) & 17 (1) of the 5th Schedule to the FIRS Act (2007), Buba noted neither of these statutes provided for a direct appeal to the Court of Appeal, unlike the VAT Tribunal Act. While it was clear that the VAT Tribunal proposes to supplant, usurp, and sidestep section 251 exclusive Federal High Court jurisdiction, TAT was a precursor to initiating a lawsuit in Federal High Court.

Finally, Justice Buba held that, legislature was right to have added an appellate jurisdiction to the Federal High Court in accordance with Section 28 of the Federal High Court Act which provides thus:

28. The court shall have appellate jurisdiction to hear and determine appeals from (a) the decisions of Appeal Commissioners established under the Companies Income Tax Act and the Personal Income Tax Act in so far as applicable as Federal law...

In sum, since the TAT did not attempt to usurp the original jurisdiction of the Federal High Court, its constitutionality was affirmed. It is our view that, Justice Buba's opinion in *NNPC vs TAT*²⁶¹ is good law, because in these days and age that specialized courts such as Investment and Security Tribunal and Arbitral Panels pervade the

²⁵⁹, (1993) 9 NWLR (Pt315) 1

²⁶⁰, (2011) 4 TRLN 135,

²⁶¹ *ibid*

economic terrain, it will not be opposite to argue that a tax tribunal manned by tax experts should not be empowered to ensure judicious and timely decisions on tax matters in Nigeria.

CHAPTER SIX

SUMMARY AND CONCLUSION

6.1 Summary

From the beginning, the opening chapter gave a general introduction of the research it contained justifications why the research is embarked upon. Tax, Revenue and Taxation are defined with emphasis on distinction between each other as against the popular misunderstanding of using them interchangeable. The research equally examined Objectives of taxation and Characteristics of good tax system based on Adams Smith Canon and Meade Committee Perspectives. Other important concept discussed include Nigerian Tax Base, Nigeria Tax Policy, Legislative Sources of Tax law in Nigeria and ended by giving a general review of the FIRS Act in order to give an idea of the subject matter of the research.

The substantive body of the research is contained in Chapter three, four and five. This part discussed tax administration in Nigeria under the present legal regime by making intensive exposition of the concept of tax administration through definition and history of the terms and proceeded to discuss administration of tax with reference to establishment, objectives powers and functions of FIRS. The research equally contained discussion on establishment, composition, quorum, powers and functions of FIRS Board. A discussion is also made on the technical committee of FIRS Board, the hierarchy of administrative power under the FIRS system and tax collection system.

Still on the main part, tax enforcement as a concept and mechanism for tax enforcement under the Act were extensively discussed. Substitution, Surtax, Distrain, Search and Seizure, Surcharge, Recovery by Civil Action, Criminal Prosecution and offences under the FIRS Act

were duly discussed as a mechanism provided for tax enforcement under the Act. Other items under discussed, include power to compound an offence under the Act and discussion on the court having jurisdiction to entertain matters whether civil or criminal arising from the provision of the Act.

The main part ended with a details discussion on the adjudicating body within the FIRS system i.e. Tax Appeal Tribunal in chapter five, with reference to establishment, composition power and jurisdiction, appeal process, parties, proceedings, place of instituting appeal, right to legal representation, remedies available to the parties under the Tax Appeal Tribunal, appeal from the decision of the tribunal and it ended with a discussion on constitutional validity of the tribunal.

The last chapter contains a summary of the entire work and some findings there from and it makes recommendations which aimed at bridging some of the shortcomings highlighted in the findings and the thesis ends with concluding paragraph in chapter six.

6.2 Findings

In the cause of this research various findings have been made in line with our statement of research problems especially problems numbered a,b and e which all centered on inconsistency, contradiction or problems in the provision of the Act. Some of these findings are,

- 1) Attempt to Centralized tax administration in Nigeria, the FIRS Act created the FIRS and empower it to administer various taxes and by virtue of provisions of Section 2, 25 and 68 of the Act, the FIRS has henceforth taken over the control and administration of taxes

and laws specified in the seven legislations listed in the First Schedule to the Act²⁶² among others. A careful study of the above sections leaves no one in doubt as to the intention of the Act which is nothing but unification of tax administration in Nigeria albeit through the back door.

- 2) Attempt to make idle States Board of Internal Revenue (SBIR) and reduce the power of states commissioners of finance. The Act has completely wiped out the division of tax administration responsibility that hitherto existed between FIRS and the SBIR.²⁶³ Unlike the previous tax legislations that clearly specified responsibilities of FIRS or the SBIR as the case may be, the new Act, does not even recognize the existence of SBIR as a revenue collection agency not to talk of identifying where they belong in tax administration. Under the new dispensation the, Act only recognize the States Board of Internal Revenue (SBIR) in section 8(9) as if they were clerical outfits only created to assists the FIRS in issuing taxpayers identification number to every taxable person in Nigeria. In fact, Section 8 of the Act listed among its functions all the functions of the SBIR as provided in the PITA as if SBIR are already extinct. Given the fact that the SBIRs were created by the PITA, the enactment of FIRS Act seriously calls into question the continuous relevance of the SBIR if not their legitimacy.²⁶⁴

A quick glance at the Act will effortlessly reveal that its main objective is to pave way for the FIRS to take over the functions of the SBIR. It sought to do this by centralizing tax administration and containing many provisions that are meant to take over the basic functions of

²⁶²These are: Company Income Tax Act, Petroleum Profit Tax Act, Personnel Income Tax Act, Capital Gains Tax Act value Added Tax Act Stamp Duty Act, 1990 and Taxes and Levies (approved list for collection) Act 1998

²⁶³The Personnel Income Tax Act by Section 85 established the SBIR with responsibilities of administering the taxes and levies mentioned in item 7 of part II of the 2nd Scheduled to 1999 Constitution as altered

²⁶⁴- See Ibrahim A, and Jegede R. O "Federal Inland Revenue Service (establishment) Act 2007: Centralization of Tax Administration in Nigeria through the Back Door (2010)
<http://www.incmaservices.com/ICmaservices/articles>

SBIR and make them redundant. For example, Sections 26, 27 and 28 of the FIRS Act practically plagiarized Sections 46, 47 and 48 of the PITA by empowering the FIRS to call for returns, books, documents and information from taxable individual preparatory to assessing them to income tax.

Secondly by Section 59 of the Act and Fifth Schedule make the tribunal under the supervision and power of Minister of Finance. The Act, specifically extends the tribunals jurisdiction under paragraph 11(1) of the Fifth Schedule to cover disputes and controversies arising from PITA and other tax laws. This is an effective way of transferring the powers of various State Commissioners of Finance under Section 59 PITA to the Federal Minister of Finance thereby diminishing the power of State Commissioner of Finance.

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- (3) Creating room for possible politicization of appointment to the FIRS Board. Under Section 3(2) (b) the President has power to appoint six (6) members of the Board, they are expected to have "relevant qualifications and expertise" but not necessarily on taxation. An appointee could be an Accountant, a Lawyer or an Economist without cognate tax experience. However they are expected to bring the experience from their various fields of expertise to the management of the Board.

The first implication is that such appointment may be politicized and this may have a spillover effect on the operations of the Board.

Secondly, the main pre-occupation of the members may be the award of contract as well as matters connected with staff recruitment, promotion and discipline. This may affect the operations of the Board and may breed indiscipline within the Service.

- (4) Non-inclusion of Legal Adviser in the Board. The repealed Section 1 (2) of CITA provided for Legal Adviser of the Service as a member of the Board, the need for the presence of Legal Adviser on the Board becomes greater now that the scope of responsibility of the Board has been expanded to include more taxes and more functions administrative and financial matters as per section 7 and 14 of the Act. From the composition of the Board, the only likely member with legal background and experience is the representative of the Attorney General. In this case, he may not be having experience in tax law and matters. The Board may therefore likely commit legal errors since tax law is a specialized branch of law.
- (5) Fusion of Chairmanship of the Service and the Board in one Person. By virtues of Section 3(2)(a) and Section 11 of the FIRS Act, any person appointed as Chairman of the Service will doubled automatically as the Chairman of the Board. This is a clear departure from the recommendation of the Working Group which recommended that the Chairmanship of the Board shall resides on Minister of Finance. This in our opinion is more in accord with principle of a accountability. Fusing the enormous power in one person is capable of compromising the autonomy of the Board as a regulating body of the Service and will encourage corruption as absolute power corrupt absolutely.
- (6) Wrongful placement of power of signing warrant of distraint on the chairman of the Service. The Act under Section 33(2) has retained the controversial power of the Chairman of FIRS to sign warrants authorizing the distraint of a taxpayer's property to defray tax debt. This is too much enormous power. It affect the sacred property right of taxpayer it therefore requires an unbiased third party to determine its appropriateness just

like it is provided under Section 36(3) which requires similar warrant to be issued by a judicial officer, section 33(2) shall also follow suit.

6.3 Recommendations

The focal point of this part of the research is to proffer solutions to some of the findings made associated with the Act having identified some of them in the findings. Accordingly, the following recommendations are set forth:

1. The provision of Sections 2, 25 and 68 should be amended to include a proviso excluding the administration of PITA from the ambit of the FIRS power to avoid nationalization of tax administration which is against the spirit of 1999 Constitution of Nigeria.
2. The functions of the Service under Section 8 should be amended and be made subject to the power of State Board of Internal Revenue (SBIR) or in the alternative the provision relating to PITA and all powers related thereto as in sections 26, 27, 28 and 59 of the Act shall be limited only to corporate bodies or person whom by law are to pay Personal Income Tax to Federal Government.

Also provision similar to section 59 of the PITA should be added to reflect the powers of the tribunal in respect of PITA to be limited to residents of FCT and members of Arm Forces whom are by law to pay Personal Income Tax (PIT) to Federal Government and recognizes the power of States Commissioners of finance to set up a tax appeal committee in their respective states

3. To avoid politicization of appointment to the Board, section 3 shall be amended to provide for appointment to be made by the President on the recommendation of National Economic Council subject to confirmation by the Senate

4. Provision should be made for the inclusion of Legal Adviser of the Board who shall be a Legal Practitioner with cognate experience in tax law and practice for at least 10 years standing. This will go a long way in assisting the Board to avoid running fowl of law in discharging its duties.

5. The office of the Chairman of the Board and that of the Service should be separated to be manned by different persons. Preferably, the recommendation of the Working Group (W.G) shall be accepted to make the Minister of Finance the Chairman of the Board.

6. The power to sign warrant of distraint shall be removed from the Chairman of the Service and be conferred on a Federal High Court Judge upon application of the Service, just as it is in Section 36(3) in respect of similar power in relation to search and seizure.

6.4 Conclusion

In conclusion, we wish to re-emphasize our belief on the need to carry out a further comprehensive tax reform. There is no doubt that most of our tax laws are outdated and retrogressive. However, the review should take cognizance of our constitution and other existing tax laws, the enactment of the FIRS Act would have been a right direction towards the tax reform of our dream if not for the unwarranted centralization or nationalization of tax administration implied by its content. What the Act has done is to grant more powers to the FIRS at the expense of our Federal System. The Act has effectively taken away from the States the power willingly conferred on them by the National Assembly out of the concurrent list. The conferment was made through the enactment of various tax laws which are still operational in line with Section 4 of 1999 Constitution as altered.

The Act on the other hand has concentrated tax administration in the hands of FIRS with little or nothing left for States Boards of Internal Revenue (SBIR). The Act if implemented in whole will create confusion and chaos and unnecessary litigation between Federal and States Revenue Board. We therefore call on the National Assembly to review the Act in the light of our recommendations above

Whatever shortcomings observed in the law however, the new appeal procedure (TAT system) brought by the Act has gotten some innovations to its credit. Some of the new innovations include among others:

- a. Taxpayers do not need to wait for an Assessment Notice before filling an appeal as they can at any stage of assessment, determination or negotiation, always appeal to the TAT on "any action or decision" of FIRS.
- b. Notices can be challenged before the TAT if the taxpayer feels they are invalid or unreasonable.
- c. The conduct of audit or investigation can be challenge before the TAT if they appear to the taxpayer to be at variance with the procedure "specified in any guidelines by the Service".
- d. The imposition of penalties and interest can now be reviewed by the TAT if the taxpayer feels they should not apply to his circumstance.
- e. Arbitrariness is eliminated especially where open market price have to be determined to replace transfer price.
- f. The consciousness of the possibility of a challenge from the taxpayer may make the system more open.

g. Perhaps most importantly, FIRS can now comply with the law instead of acting arbitrarily in the imposition of fines where the law prescribed imposition of fine on conviction such instance will include where an agent fails to deduct or remit tax deducted from qualified payments or failure to comply with a notice to complete and deliver return.

Suffice to say that the enactment of the Act is generally a welcome development despite its shortcomings.

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