AN APPRAISAL OF OFFENCES AND PENALTIES UNDER THE NIGERIA INCOME TAX LAWS

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MA/LAW/32975/2012–2013

BEING A RESEARCH PROJECT SUBMITTED TO THE SCHOOL OF POSGRADUATE STUDIES, AHMADU BELLO UNIVERSITY, ZARIA, IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF MASTER OF ARTS DEGREE IN LAW (M.A)

DEPERTMENT OF COMMERCIAL LAW
FACULTY OF LAW,
AHMADU BELLO UNIVERSITY, ZARIA.

JANUARY, 2015

DECLARATION

I declare that this project titled: **"**An Appraisal of Offences and Penalties under the Nigeria Income Tax Laws**"** has been carried out by me. The information derived from other literatures have been duly acknowledged. No part of this project has been previously presented for another Masters Degree at this or any other institution.

_____ **_____**

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CERTIFICATION

This Project Report entitled: "An Appraisal of Offences and Penalties under the Nigeria Income Tax Laws" by Susu'uti CHASKDA meet the regulatory governing the award of the Master of Arts Law Degree in Commercial Law of the Ahmadu Bello University, and is approved for its contribution to knowledge and literary presentation.

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DEDICATION

This work is dedicated to the Almighty God for his faithfulness, His grace and his mercy in my life and also to my late mother Mrs. Jummai J. Chaskda I love you mummy.

ACKNOWLEDGEMENT

My profound gratitude goes to the Almighty God for his sufficient grace and mercy. Blessed be the name of the Lord.

Secondly to my supervisor Dr. D.C. John, thank you for guidance throughout this project work, may God bless you in Jesus name (Amen).

My profound gratitude goes to my father Chief. G.M. Chaskda, thank you for your moral and financial support. I love you Daddy.

To my darling husband Ajinatswen A. Dawuda, thanks for your encouragement. I love you.

I especially want to acknowledge my siblings Mrs. Miyana Nalazai, Dr. Adams Chaskda, Maryam Chaskda, Mrs. Falnyi Binchilan, thank you all for your support and prayers, the good Lord will continually bless you all.

Finally to my friends and course mates Mrs. Mariam Karu and Hassan Balogun, thank you for your advice and encouragement, may God bless you and guide you in all your struggles in life.

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LIST OF ABBREVIATION

A.N.L.R	All Nigerian Law Reports
C.A.M.A	Companies and Allied Matters Act
C.I.R	Commission of Inland Revenue
C.L.R	Criminal Law Review
C.G.T.A	Capital Gains Tax Act
E.R	England Report
F.R.C	Federal Revenue Code
F.B.I.R	Federal Board of Inland Revenue
N.W.L.R	Nigerian Weekly Law Report
K.B	Kings Bench
N.C.L.R	Nigerian Commercial Law Report
P.P.T.A	Petroleum Profit Tax Act
P.I.T.A	Personal Income Tax Act
V.A.T	Value Added Tax
W.L.R	Weekly Law Report

ABSTRACT

It is a well known historical fact that all over the world people regard tax payment as something detestable and a form of punishment especially when it has t do with them parting with their hard earned money. From time immemorial tax masters who are seen having no concern for the welfare at the society forced people to pay taxes. It is because of this hostile regard of taxation that today, tax payers have devised more legitimate means to perpetrate tax offences as it relates to tax payment. The cardinal objective of this research work is to assess the tax offences and penalties in the Nigerian Income Tax Laws ad critically analyze the implementation of these penalties on the tax offences, the efficiency of tax administrative machinery in dealing with such offences and finally to make a survey into other possible ways which may most likely present appreciable improvement of the Nigerian Tax system. The short coming involved in the collection of tax in Nigeria include staffing, inadequate communication system, lack of coordination between government departments, problems of identification of tax payer place of residence, the way tax collected us being spent, lack of coordination from tax payer. The various observations were made. Having considered some of the main set back in our tax system there is need to advance certain recommendations which may bring about some improvement in the system.

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CHAPTER ONE

1.0 GENERAL INTRODUCTION

1.1 Introduction

It is a known fact that people all over the world detest the paying of tax, especially when the money has been hard earned. Due to this fact, there has been an ever hostile regard for taxation. Today, due to this ancient hatred for taxation tax payers have devised more legitimate ways and means to perpetrate tax offences as it relates to payment[1].

As MENZIE J put it in the High Court of Australia in the case of **Peate v. Commissioner of Taxation**[2].

> It is perhaps inevitable in an acquisitive society that taxation is regarded as a burden from which those who are subject to it will seek to escape by any lawful means that may be found.

Though taxpayers might see only its adverse effect (i.e. taxation), a closer look at it will also reveal its merit. Tax does not only provide the much needed revenue base for socio-economic development, but also reduces the inequalities of wealth distribution in the society. Thus tax is a burden which every citizen must bear to sustain his or her government since the government has certain function to fulfill for the general benefits of

[1] An excerpt from the Nigeria Law journal quoted by S.O Fashokun assessment of effort against tax avoidance and evasion in Nigeria Per Lord circle in Ayrshire full man motor services v. cir (1920) 14TCP 763
[2] (1963-64) 11 CIR 443, 445

those it governs. It is in this regard that the United State Supreme Court observed in the case of **Nichols v. Ame**[3].

> "…the one great power upon which the whole national fabric is based. It is necessary to the existence and prosperity of a natural man. It is not only to destroy; it is also to keep alive".

The courts have generally adopted a more sympathetic or traditional attitude towards the income taxpayer or the issue of tax offences and penalties. This emanates from the fact that every individual has rights to his property including the right of such individual to retain and enjoy much of his income during his life time, or preserve the capital for his estate for the benefit of his dependents after his death. However, the court can be said to have lapsed in their strict adherence to their traditional sympathetic attitude towards tax burden. This is well illustrated in the case of **Howard De Walden V.C. I.R[4].** where Lord Greene M.R. observed that:

> "For years a battle of man ever has been waged between the legislative and those who are minded to throw the burden of taxation off their own shoulders on those of their fellow subjects. In that battle, the legislature has been worsted by the skill, determination and resourcefulness of its opponent…it would not shock as in the least to find that the legislature is determined to put an end to the struggle by imposing the severest of the penalties. It scarcely lies in the amount of the taxpayers who play with fire to complain to burn fingers".

Taxes normally should be certain and orderly, and imposed by status. They are equally guided by certain rules of proportion, which is intended to ensure uniformity of liability and a just appointment of government burden.

[3] (1899) 173 v. 509 at 155
[4] (1942) 25 TC 121 at 134

1.2 Objective of the Research

The main objective of this research is to critically examine the various tax offences which are pertinent to the efficacy of a good taxation or otherwise the penal provision for such offences and finally to make a survey into other possible ways which may most likely present appreciable improvement in the tax system.

1.3 Scope of the Research

This study shall be geographically restricted with Nigeria; the research shall look into various tax offences and the various measures taken in combating this growing trend by the government (both legislatively and judicially). References will be made to the USA, U.K. and some English speaking countries.

1.4 Significance of the Study

The significance of this study cannot be over emphasized. For the fact that it is very important aspect of Nigeria law which plays an integral role in the effective administration of the country by the government makes the study a research of great importance. The examination of tax offences, and its penalties, with the recommendation and suggestion made, will enable both the government and court to better understand the workings of the Nigerian Tax System with regard to the offences pertinent and their penalties which will in turn spur on a better and effective tax administration and management.

The study will also be of great importance to the taxpayer, whom from this study will better realize and have a firm grasp of what and what constitutes tax offences, and their penalties, which hopefully will create a better and more resourceful symbiotic relationship between taxpayers and the government via tax administrators.

Academically, this research will serve as a basis for an upshot of objective and intellectual criticism and appraisal which will certainly help in the development and the better understanding of this aspect of the law of taxation in Nigeria.

1.5 Research Methodology

The method applied in writing this research is mainly doctrinal. The bulk of the research shall be conducted in the library. The source of material for this research are standard text by learned authors who are authorities in this field, statutory provisions and judicial decisions which are relevant to the write- write-up, shall be examined to ascertain both the legislative and judicial attitude to the question of tax in Nigeria.

The researcher will not hesitate to have personal discussion with individuals and lecturers whoa re endowed with available knowledge in this area of law.

1.6 Organizational Layout of the Research

This research work consists of five (5) chapters. In breakdown, Chapter one (1) deals with the general introduction of the work, the objectives, scope, significance, methodology of the research of the work and a review of the text and materials consulted in carrying out this research.

Chapter two (2) deals with the general outlook of the tax offences and penalties in the Nigerian Tax System. Chapter three (3) concerns itself greatly with the examination of tax offences i.e. both personal income tax offences and companies income tax offences under the Nigerian Tax Law. Chapter Four (4) centres on the examination of tax penalties i.e. monetary penalties distain of property and legal proceedings under the Nigerian Tax Law. While Chapter Five (5) conclusively deals with suggestions, recommendations and conclusion of the research work.

1.7 Literature Review

A lot of writer and scholars have written books and seminar papers which dealt with Offences and Penalties in the Nigerian Tax System. Some of the text which was written on the aforementioned topic, of which was consulted by the researcher in the course of the work are: Abdulrazzak M.T.: Nigeria Tax Offences and Penalties[5], where the author did a detained work on the Tax Offences and their penalties, and also the attitude of the judiciary towards tax offences.

Also, another work of the same author namely Judicial and Legislative Attitude to Tax Evasion and Avoidance[6] was also consulted. Here the author brought out perceivable tax offences, of which he concerned himself mostly with the judicial and legislative attitude towards these offences.

[5] (1993) Batay Law Publication Limited Ilorin Nigeria
[6] Unpublished Ph.D thesis 1991

S.A. Babiu's Nigeria Personal Taxation Law and Practice with selected cases[7] was also consulted in this text, the author had a cursory look at Nigeria Personal Income Tax Law, the laws guiding personal income tax in Nigeria and the offences inherent in it.

Measuring against Tax Evasion and Avoidance by M.T. Okorodudu[8], was also resorted to in the course of the research work. The writer in this text, considered what constitutes tax evasion and avoidance, and ways in which to check this menace.

Income Tax Laws for Corporate and Unincorporated Bodies in Nigeria by OLA C.A. is another text consulted by the researcher. This text deals with income tax laws for companies and unincorporated bodies, and their penalties for tax offences.

[7] 1986

[8] Paper presented at the 15th annual senior staff conferences of the federal Inland a revenue department on taxation as instrument of economic development. December, 1985.

CHAPTER TWO

2.0 GENERAL OUTLOOK OF TAX OFFENCES AND PENALTIES

2.1 Basis of Tax Offences and Penalties

Nigeria tax statutes provides no legislative definition of tax offences and penalties, meanwhile a working definition of tax offences is given as the action by the taxpayer to evade tax i.e. to get away illegally with his legal obligation to pay tax such incorrect returns by omitting or under estimation of one's income, no declaration of correct information, constitutes tax offences and is punishable by either fine of payment of double that amount which has been undercharged.[1]

Penalties on the other hand can be defined as a sanction or punishment imposed upon any taxpayer for failure to meet his legal obligation to pay tax.

Though Nigerian Tax Statute provides no legislative definition of tax offences and penalties, but from various offences and penalties, they give an insight to what may be regarded as tax offences. Thus tax offences may be perpetuated in some ways.

a. Failure to make returns for income tax/capital gain tax
b. Failure to make return from for corporation tax
c. Incorrect return of account[2]

[1] FIRS: Training lecture note for inspector of taxes (model 11 taxation in law and administration P. 56)
[2] ABDULRAZAQ M.T. Judicial Legislative attitude to tax evasion and avoidance, in unpublished PHD thesis 1991 P. 60-66.

The various act must be done with intent to commit fraud, willful default or neglect and knowingly, for them to constitute tax offences.

In addition to the offences and penalties for the late payment of tax already mentioned in the statutes, the Companies Income Tax Act and Personal Income Tax Act provide certain penal sanctions for offences relating to income tax. The principal offences include the following:

a. Failure to comply with the requirement of notice served on the taxpayer.
b. Supplying incorrect information in relation to any matter of thing affecting the liability to tax of the taxpayer or of any other person or of a partnership.
c. Failure to make a correct return when requested.
d. The making of any false account with a view to the evasion of the tax liability.
e. The failure or refusal to pay tax.[3]

2.2 Statutory Tax Offences and Penalties

A system of taxation had been in existence in Nigeria before the advent of colonial rulers, particularly in the North, where there was an efficient tax administration based on the Islamic System. Thus, the British were naturally attracted by the organized system in the North, so they immediately consolidated all the various traditional taxes there under the Land Revenue Proclamation Law of 1994. Such law only came into Southern Nigeria after the amalgamation of the Northern Province with the Protectorate of Nigeria in 1914,

[3] S.A. Rabiu NIGERIA PERSONAL TAXATION LAW AND PRACTICE WITH SELECTED TAX CASW (1986) P. 198.

when the native Revenue Ordinance of 1917 was enacted to cover the areas of the Western region of Nigeria.

The present statutory income taxes in Nigeria today are as follows. Personal Income tax Act (PITA) 1990, Company Income Tax Act (CITA) 1990, Capital Income Tax Act 1967, Petroleum Profit Tax Act (PPTA) 1995, Capital Transfer Tax Decree 1979 and the Tax Clearance Certificate of 1978. The statutes mentioned prescribed for the offences and penalties of sanctions for any tax defaulters who intentionally refused to remit his civil obligations to the State. For if penalties are not prescribed for the offences committed under the Act, the tax collection machinery may grind to a hit.

Payment and penalty under the Nigerian tax Statutes, pointed out that income tax charged by an assessment which is or has not been the subject of an appeal of objection shall be payable after the deduction of any amount to be set off for the purpose of collection or amount deposited against such tax, at the place stated in the notice of assessment generally within 30 days after service of such notice and in any case all assessed tax must be paid on or before the 21st of December of the year of assessment.

If any income tax charged by an assessment is not paid within the period specified in the notice or any extended time a statutory penalty of a sum of equal to 10% (Ondo, Oyo, Ogun, former Bendel and Lagos States) 20% (Eastern States) 100% (Northern States) per annum of such tax shall be imposed.[4]

[4] S.A. Rabiu NIGERIA PERSONAL TAXATION LAW AND PRACTICE WITH SELECTED TAX CASW (1986) P. 198.

Furthermore, the offences and penalties under the Nigerian tax Statutes may be broadly classified into the following categories.[5]

a. Fraudulent under declaration of income and the making of incorrect return. The Western States Law provided a fine of ₦200 and twice the amount of tax undercharged as a result of the incorrect return (see S.67), the Northern States has the same provision as in the Western States. Under the eastern States Law, an imprisonment for two (2) years and a fine of ₦400.
b. False statement, false representation and refusal to pay tax. Under the Western States Law provides a fine of ₦400 and two (2) years imprisonment, and triple the amount of tax which otherwise would have been reduced or repaid (S.36).
c. Obtaining bribe from income taxpayers or fraud generally by officials. The Western State Law provides a fine of N600 or
d. Three (3) years imprisonment, or both (S.69). The Northern State Law has the same provision with the Western States. Under the Eastern State, the law provided is two (2) years imprisonment and a fine of N400 (S.69).
e. Contravention of provision of the law or rule made under it for which no other penalty is specifically provided. The Western State Law provided a penalty of N200, and where such offence is the failure arising from failure to finish return, or keep records, a further N10. Under the Northern State law, it has the same provision as in the Western States except that N40 a day is to replace N10 a day

[5] C.S. INCOME TAXATION LAW FOR COOPERATE AND UNINCOPERATE BODIES IN NIGERIA HEIMAN NIGERIA P. 384.

(S.69). The Eastern State provides a fine of N400 and two (2) years imprisonment (S.35).

f. Failure by employer to pay tax collected by him into the government treasury. The Western State Law provided that each day during which such failure continues and in default of payment (S.69) prosecution must be at the instance of the Director of Public Prosecutions. The Northern State Law provides N600 or three (3) years imprisonment or both (S.63). The Eastern State Law provided a fine of N600 and three (3) years imprisonment.

g. Failure by a person to supply information on request to tax authorities or deliberately misleading the authorities. The Western, Northern and Eastern States have the same provision in as (4) above, i.e. S.70, 60 and 35 respectively.

h. Failure by companies and corporation to pay outstanding tax assessment made by the Federal Board of Inland Revenue. Under the income Tax Miscellaneous Provision 1969, the penalty is the confiscation of property.

In addition to the above statutory tax offences and penalties, the following will be considered[6].

i. Offences against the Law, by person i.e. tax official who demands an amount in excess of the assessment authorized of the tax; or holds in whole or in part any portion of the amount of tax collected or received by him, or defrauds any person, embezzles any money or otherwise uses his position to deal.

[6] S.A. Rabiu Nigeria Personal Taxation Law and Practice with Selected Tax Case (1986) p.198

j. Wrongly with the board, will be convicted to a fine of N600 or to imprisonment for three (3) years or both in the Western State, while the penalty is imprisonment for two (2) years and N400 in the Eastern State.

k. Offences listed above by an unauthorized person including an attempt to collect tax, or if being an employer required under the law to deduct tax from any emoluments payable to his employees or being an agent, fraudulently coverts to his own use any such tax deducted or amount retained, or knowingly makes any statement with respect to such tax deducted or amount retained. A conviction to a fine of N600 or imprisonment for four (4) years, or both in the Western and Eastern States.

Thus the tax statutes in Nigeria contemplate penalties for various offences committed by tax defaulters.

2.2 Relationship Between Tax Offences and Penalties

In Nigeria, there are some monetary penalties and criminal sanction in connection with tax evasion, including the revenue board power to sell off the defaulting taxpayers goods or other chattels, bonds or securities as well as his premises so that the amount owned can be recovered.

Apart from the above penalties that are rarely used, the Nigerian Income Tax Act provide other coercive measures to prevent tax offences and to compel delinquent tax

payers to fulfill their obligations to the State on the one hand and to encourage his discrimination for tax payment on the other hand.

The penalties provide may be imposed by two different agencies namely the revenue authorities and criminal courts. Sanctions may therefore be classified into two categories namely civil sanctions and criminal sanctions. Civil Sanctions are those applied by the revenue authorities, and criminal sanctions are those applied by the criminal courts.

The object of civil sanctions is to safeguard the revenue by rendering evasion of tax unprofitable and to reimburse the State for heavy losses caused by a taxpayers resorting to fraudulent means and devices.

The aims of criminal sanction are to discourage future tax offences, enforce public justice, and punish the offenders for deliberate infraction of law and to enforce payment of taxes and penalty.

Civil sanctions have assumed greater significance in the programme of enforcement of tax compliance in Nigeria and are being frequently resorted to by the income tax authorities.

The provision relating to the imposition of civil sanctions can be mainly found in Sections 30(3), 31, 45, 45(a), 46 and 47 of the Personal Income Tax (Lagos) Act 1961, for which there exist similar provision in the Personal Income Tax Law of the various

states of the federation and Section 46(2), 47, 60 and 61 of the Companies Income Tax Act 1979, which were inserted by decree No.4 of 1985.

Though there is a forceful argument that imposition of penalties are civil sanctions, the Nigerian Income Tax Act do not admit of such arguments because of the use of the word "penalty". The use of the word "penalty" does not feature in the sections dealings with civil sanctions but in section 54-62 of P.I.T.A (Lagos) and sections 66-73 of C.I.T.A under the heading "offences and penalties" and its usage no doubt imports a criminal element. Furthermore, the use of certain words as "guilty" "conviction" and "imprisonment" in the sections show that it is intended to be a criminal sanction.

Firstly, the use of common criminal law terminology like "guilty" "contravene", "conviction", "fine", "imprisonment" and "plead" in sections 54-62 under P.I.T.A (Lagos) and sections 66-73 C.I.T.A. confirms that penalties are criminal.

The Nigerian Court has not pronounced on this issues probably because the tax authorities have always brought tax actions including those with a criminal element as civil actions. Therefore the nature of penalties is to be seen from the statutory provisions themselves and judgment of the courts in other jurisdiction such as India. In this respect, the judgment of the Madya Pradesh High Court in **C.I.T.M v. Punjabhai Shah**[7]**,** that the penalty proceedings, being in their very nature penal, the degree and quantum of proof necessary for adjudging an assess guilty were the same as in criminal prosecution, is quite instructive.

[7] AIR (1968) MP 103 at 106

However, the Nigerian Tax Statutes has authoritatively laid down the distinction between the nature of civil and criminal penalties by limiting criminal penalties to sanctions headed “offences and penalties”. This hopefully should settle any possible controversy on the subject.

Criminal Sanctions unlike civil sanctions are specific penalties of the fine and imprisonment enforced by prosecution. These may also be classified into two categories namely: those within the tax Act and those outside of the Acts according to the general criminal law of the country as embodied in the penal and criminal codes.

The Nigerian Tax Statutes provision is similar to Income Tax Statutes of the United Kingdom, only that of the punishment or Sanction and scope differ.

The Income Tax Sanctions, both civil and criminal, have been enacted in response to felt needs of the moment. Neither of the groups of sanctions would seem at the moment to have dealt adequately with the problem of tax evasion.

CHAPTER THREE

3.0 EXAMINATION OF TAX OFFENCES

3.1 Tax Offences under Nigerian Tax Law

The term offence like most law terms has no general accepted definition. Many jurists have made varied efforts to give definition to the word "offence". The famous English Jurist, Glanville Williams; defines offence as:[1]

> "A legal wrong that can be followed by civil or criminal proceeding which may result in punishment".
>
> Allen Gledhill also asserts that;[2]
>
> An offence is a human conduct which the state decides to prevent by treat of punishment liability of which is determined by legal proceedings of a special kind'.

We now move to the question, what is tax offence? In determining what tax offences are, Lord Hobbous pointed out that in the case of SIMM v REGISTRAR OF PROBATE:[3]

> That it does not appear to their lordship that on examination of the decision in which the words tangible result, everyday agree that the word is capable of being used in two senses. One which suggest underhand dealing and the other which means nothing more than the intentional avoidance of something disagreeable.

[1] G. WILLIAMS Textbook of Criminal Law, 2nd ed (London Steven) T P. 27.
[2] A. GLEDHILL Penal Code of Northern Nigeria and Sudan 1963 (London).
[3] (1900) A.C. 334

The subject was also considered in the case of BULLETIN v WINCOSIN.[4] Here it was stated that the definition is dependent on the Act set out to constitute it in contrast to tax offences. The Supreme Court of Nigeria endorsed the view in the case of AKINSET SYNDDICATE v SENIOR INSPECTOR Of INCOME TAX[5] in which BAIRAMIAN JSC stated that:

> "A person may use lawful means to evade tax, what he may not do is to try to evade it. What he does should be genuine not merely avail to hide or dissemble the reality of things".

This decision shows that the basic ingredient in tax offences is on absence of any credible explanation, fraud, willful default or neglect. WILLIAMS J. correctly stated this in the case of BARIP v COMMISSIONER OF TAXATION.[6]

> It is sufficient for the purpose of the appeal to say that where a taxpayer makes a profit which he knows to be taxable income and willing fully omit this profit from his income tax return, he would be guilty of tax offence in the absence of some satisfactory explanatory for the omission.

Whilst it is not possible to provide an exhaustive list of the various methods adopted to evade tax, there are common forms of tax offence under the Nigerian Tax State. These include:

a. Failure to finish a return statement of information or to keep record required.

b. Making an incorrect return by omitting or understanding any income liable to tax.

[4] Ibid 240, US 625 AT 630-1
[5] FSC/164/67
[6] (194) 2 ATTR

c. Giving any incorrect information in relation to any other matter or thing affecting the liability to tax of any taxable person.[7]

3.1.1 Personal Income Tax Offences

The taxation of individuals as opposed to companies is governed by the income tax management act, the main purpose of which is to regulate the imposition of personal tax throughout the federation so that internal double taxation of income will bed approved.

It is unfortunate that when we examine the people perception of the seriousness of tax offences, we find that it is regards as less serious than theft, burglary or embezzlement of the same amount and there appears to be no moral taint either. This probably account for the low level or even total failure of the various tax authorities to make use of the powers at their disposal.

Although there are statutory provisions in the personal income Tax Act 1961 (as amended), the Companies Income Tax Act 1979, and the Income Management Act 1961, as amended to check the abuses and fraudulent practice, the reality is that they are not only half heatedly implemented but contained loop holes in themselves for at least three reasons[8].

i. It result in loss of tax revenue

[7] See S. 54 PITA (1961 now decree 104 1993 S. CITA (1979) S. 30 IIMA (1962) S. 55 PITA, S. 56 PITA, S. 68 CITA)
[8] Spicer M.W. New Approaches to the Problem of Tax Evasion (1975) B.I.R. 152

ii. Gives the opportunity to evade, tax differ among taxpayer and it impairs the chances of realizing the distributional or equity goal of taxation.

iii. If it becomes too widespread and out of control, honest taxpayers may lose faith in tax administration and be tempted to join the rank of tax evaders.

The following are the more common examples of personal income tax offences in Nigeria.

1. Manipulating the marginal tax rate, by creating a trust settlement for the benefit of his children or other relations who if subject to tax at all is at a low marginal tax rate. Thus by a well calculated arrangement of his total income in his hand at a high marginal rate, rather he is now subject to tax at the lowest possible tax rat.
2. Incorporating the taxpayers' sole proprietorship or partnership into a limited liability company, thereby substituting the lower marginal income tax of the company for the higher marginal income tax of the sole proprietor or partnership.
3. Manipulating the marginal tax rate by transferring income from a high marginal rate taxpayer to someone who has little or no tax liability, for example, by appointing the taxpayer's wife, child, relation or close associate, as a director in the company with nominal duties.
4. Manipulation of charitable organization whose affairs are controlled and dominated by the founders, thus taking advantage of income tax exemption.
5. Converting what would ordinarily accrue to the taxpayer (employee) as income into capital gain (i.e. compensation for loss of office), to the tax advantage of the

employer and the employees. The latter, because he already substitute the lower marginal tax rate applicable to capital gain for the higher marginal income tax rate that would otherwise apply to his taxable income, and the former, the compensation thus paid are allowable deduction for tax purposes.

6. Leasing property at a large premium with a much reduced monthly or annual rent, thereby substituting the lower marginal tax rate application to the lump sum premium payment (i.e. capital gain) for the higher marginal income tax rate that would otherwise apply to the income earning for the monthly or annual rent.

With the usage of these various methods of tax offences tax becomes an intellectual game of chess, between tax authority and taxpayers. Tax for from being an intensely practical subject, becomes an intellectual subject. Tax case called for an abstract, sophisticated analysis of the legal consequences of each separate step taken by the taxpayer, and an equally abstract, sophisticated analysis of language of the statute, wholly divorced from practical or commercial consideration[9].

3.1.2 Company Income Tax Offences

The structure of the limited liability companies can be used as a device to give a person or group of persons the control or enjoyment of income without its formal ownership. Thus those in middleclass or upper income groups can mitigate their liability to higher rates of tax or even escape tax in it entirely. To prevent this, section 17(1) of the Companies Income Tax Act 1990 has been passed to cover all companies that are in few

[9] Millej P. Artificial Tax Avoidance, The English and American Approach (1986) B.T.R P. 334

hands. However, the provisions is subject to the conditions that only such profits that could have been distributed without detriment to the company business as it existed at the end of that period that would be deemed distributed as aforesaid.

A limited liability company especially those under the control of shareholders who are directors by example, fixing a very high remuneration for the directors since this can rank as deductible expenses for tax purposes.

Another device used by the companies, is to capitalize their profit by issue of new shares to the existing shareholders so that capital paid on the new shares will be made out of profits hereby depleting the taxable income of the company. In fact, there also exists other device, not foreseen at the time the Companies Income Tax Act 1990 (as amended) was enacted all for the purpose of minimizing or reducing tax liability.

The multinational enterprise as we know involve in so many transactions between group members, such as sale of goods, provision of services, granting of loans and so on. To adapt transfer prices, which are not at arm length prices, in order to reduce tax. This can be done either by selling goods to a subsidiary in a tax haven at less than arms length prices or by the parent company over pricing its exports to foreign subsidiaries. Thus by exploiting the cost of import of final product or raw materials, as the case may be, the margins of profit is being increased which of course will be considered for tax purpose.

The obvious result of this is critical lower profit which means lower tax collection in the taxing country shifting profit from one company to the other in the groups, the tax liability of the relevant company is consequently distorted.

An attempt by the Nigerian Tax Legislation to curb this problem was in 1968 when expatriate companies doing business in Nigeria were forced to incorporate as separate and distinct entities in Nigeria from their parent companies, for an effective and adequate control in respect to their operation in Nigeria. Unfortunately, the act in effect created two separate and distinct persons in law. Both of which are under the centralized management of the multinational enterprise. This gave rise to important problem regarding the taxation of corporate profit, i.e. opened up a venue for tax offences[10].

Therefore no doubt that the expatriate companies were given the substance of income derived from Nigeria without tax liability under the Act. This device is more pronounced in such item like interest, royalties chooses in action, generally contract, the performance of which are in Nigeria and commission for hire charge for the use of tangible asset, e.g. machinery, rigs etc in Nigeria.

Thus it will be proper in the absence of such comprehensive legislation and international co-operation in preventing the payable tax offence scheme on the increase by the multinationals, it would seem appropriate to adopt a prescription which was given in 1953, and yet relevant to solve this kind of problem.

[10] Sec the National Income of Nigeria 1950-51 London Her Majest's Affairs 1995 of p.88

Thus in the word of A.R. Pest and I.G. Steward[11]

> Until more accurate method of assessment of enterprise in particular multinational can be employed, and this may very well imply a much more thorough application of the principle you are guilty of a high income unless you can provide reliable account to show you are innocent.

The court somehow partially aid company tax offences, in that there have been a noticeable judicial neutrality or indifference observed by some judges who have seen nothing inherently evil in tax avoidance schemes. Some judges maintain that tax avoidance is not a moral or a legal issue unless it has been expressly prohibited by a statute in unambiguous terms and are therefore in the absence of such a statute, prepared to hold its validity. Thus in the case of IRC v. Fisher's Executor[12] involving a limited company with large undistributed profits which has resolved to capitalize part of these profits and to distribute them to pro rate among its ordinary shareholders as a bonus in the form of 5% debenture stock, the whole aim being to prevent the shareholders from paying super tax on the bonus, it was held that the bonus paid in debenture stock was not income in the hands of the shareholders and was therefore not liable to super tax.

The view of Fishers executors' case was followed in the case of Ayreshire Pullman Motors Services and D.M. Ritchie v. IRC[13]. From this case, it appears that the judges did not appreciate the significance of taxation as an economic tool for stimulating the overall development of the country.

[11] (1926) A.C. 395
[12] 14 T.C. 754, Especially at p.763-764
[13] (1943) A.C. 377 p.381

Though judges on many occasions have pointed out that tax avoidance is not a commendable exercise i.e. an evil exercise which should be prevented.

Thus in the case of Latilla v. IRC[14] Viscount Simmon L.C. said

> My lord, of recent years much ingenuity has been expended in certain quarters in attempting to device method of disposition of income by which those who were prepared to adopt them might enjoy the benefits of residence in this country while receiving the equivalent of such income without sharing the appropriate burden of British taxation…there is of course no doubt that they are within their legal rights, but that is no reasons why their effect should be regarded as a commendable exercise of ingenuity or as a discharge of the duties of good citizenship. On the country, one result of such methods, if they succeed, is of course to increase protanto the load of tax on the shoulders of the great body of good citizens who do not desire, or do not know how to adopt these maneuvers.

Also Sir Wilfred Greens M.R. in Lord Howar De Walden v. IRC also said[15]

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

[14] (1942) 1 K.B. 389 p.397
[15] Supra

3.2 Other Tax Offences

The Tax Act contemplates prosecution for other forms of offences committed by taxpayers under the Act. The offences and penalties under the Nigerian Tax Statutes may broadly be classified as follows:

Failure to comply with requirement of notice served or without sufficient case failing to attend in answer to notice or summons served under the decree 104 of 1993.

a. Making incorrect returns or giving incorrect information relating to a matter or anything affecting the liability of any taxable person is an offence. Under section 87 of the Person Income Tax Decree 104, 1993.
b. Failure of employer to pay tax collected by him into government treasury is an offence under section 66 C.I.T.A 1990.
c. Demanding in excess the amount as tax from a person, withholding for his own use or otherwise a portion of the tax collected or rendering false return of the amount of tax collected or received by him, of where he defraud, embezzle any money or otherwise uses his position to deal wrongly with the relevant tax authority etc is an offence contrary to section 89 decree 103 of 1993.
d. Contravention of the provision of the tax law or the rule made under it for which no other personality is specially provided and where such offences is the failure to finish a return or keep record is an offence under section 60 or 54 of the C.I.T.A.

e. Failure by companies and corporation to pay outstanding tax and assessment made by the federal board of Inland Revenue may be guilty of an offence under Income Tax Miscellaneous Provision 1969.

f. Failure by a person to supply information on request to tax authorities contrary to section 70 C.I.T.A and other relevant act dealing with the offence under the various state laws.

Petroleum Profit Tax is the most important source of revenue for the government. It accounts for about 95% of the Federal Government Foreign Exchange earnings. Certain offences have been listed under the Petroleum Profit Tax act, the breach of which makes a company liable to penalties. These offences are as follows:

i. Failure to comply with the requirements of a notice served on a company under the Act or to prepare and deliver accounts-a penalty of N10,000 and a further N200 for each day during which such offences or failure continue. In default of payment the person responsible will be liable to six (6) months of imprisonment.

ii. Making of incorrect account schedule, statement or information without reasonable excuse renders a person liable to fine of N1000 and double the amount of tax which has been under charged as a result of the incorrect information provided the offence is discovered and action taken within six (6) years after the end of the accenting period in which the offences was committed.

iii. Making of false statement and return for the purpose of obtaining any deduction, rerate, reduction or repayment in respect of tax or aiding and abetting the same

attract a fine of N1000 plus treble the amount of tax of which the company is liable under the act or to imprisonment for six (6) month both.

iv. Corruption and dishonesty on the part of the staff of the Board of Inland Revenue making them liable to a fine of N600 or to imprisonment for three (3) years or both.

v. The penalty for non payment of tax within the stipulated time is a sum equal to 5% of the amount of the installment of the tax which is added to the tax[16].

Another form of tax offence is found in the Casino Taxation Acts. The Act provides that:

a. Any person who without proper regard there to, willfully or negligently certifies figure in the daily return of no gaining revenue of a casino.
b. Where any person demands from the licence an amount in excess of the authorized assessment tax.
c. Where a person withholds for his own use any portion of the amount of tax collected.
d. Where he renders a false return whether orally or in writing of the amount of tax collected or received by him.
e. Where he defrauds any person, embezzles any money, or otherwise uses his position so as to deal wrongfully with the board.

[16] See S.48(2) of Petroleum Profit Tax Act Cap 354 LFN 1990, S.48(2), S.51, S.50 and S.49

f. Where any person not authorized by this Act so collects or attempts to collect the tax shall be guilty of an offence against this Act[17].

The significant things to note in case of tax offence is that the tax due must in additions be paid regards of the imprisonment term or fine imposed.

[17] See Chapter 45 Casino Taxation Act Cap. 42 LFN 1990

CHAPTER FOUR

4.0 EXAMINATION OF PENALTIES

4.1 Penalties under Nigeria Tax Law

Penalties are officially imposed punishment aimed at enforcement of loyal obligations. They are aside to constitute the core it not the defining characteristic of the loyal order inadequate sanction are blamed for failure legal control in divergent areas like international law.

Officials who are responsible for the collection of taxes and taxpayers who fail to comply with the evil obligation to pay tax should be made effective way of clearly that complete honesty is demand of them. The most effective way of getting that honesty is by severe punishment of dishonesty[1].

The income tax legislation provide that every taxable person when required to do by notice in writing from a tax authority, skill make a return for each year of assessment showing the amount of income received from all sources during the year in question[2]. The taxpayers must also forbid from return particular necessary to establish his right to any personal allowance claimed this dif no return is made, the right to personal relief will be not lost.

[1] Sanely S.S. The Administration Under Developing Countries Bird and Oldman ed. Baltimore John Hopkins Press U.S.A. (1967) 497

[2] See S. 24 Personal Income Tax (Lagos) Act 1961 S. 36 (10 Income Tax Law) W.N. S. 15 (1) Finance Law Cap 55. (e.N). S. 19 Personal Tax Law, Cap 94 (N.N).

When a taxpayer fails to make return, an assessment will be made on the total income, which the taxing activity to the best of its judgment, consider was received by the taxpayer during the year. Such assessment tends to be arbitrary but that is the fault of the tax pages similar action is taken where return is note accepted as correct[3].

Further assessment may be made in respect of unassessed profile promised that the revenue act within six year of the year of assessment in question[4]. Where the failure to asses occurred as result of the fraud, willful default or neglect of the taxpayer on additional assessment may be at any time[5].

In addition to the penalty for the payment of tax already mentioned the CITA and PITA laws of the state provide other penal sanctions for offences relating to income tax[6]. They are:

a. Failure to carry with the requirement of notice served on the tax page
b. Supply incorrect information in relation to any matter or thing affecting the liability to tax of the taxpayer or of any other person or partnership.
c. Failure to make a correct return when requirement.
d. Making a false account with a view to the evasion of tax liability
e. Failure or refusal to pay tax.

[3] See SUNDU. V. Commissioner of Income Tax (1955) 14 W.A.C.A. 656
[4] See S. 31 (1) Personal Income Tax (Lagos) Act 1961
[5] See S. 8 Finance (Miscellaneous Taxation) Decree 1979
[6] See S. 67-73 CITA 1961 S. 54-62 PITA (Lagos), S. 35-41 Finance Law (EM), S. 66-71 Income Tax Law (WN) S. 60-67 Personal Tax Law (N.N.).

The punishment for those offences vary from one state to the other and are rather detained in the Eastern States for example, offence under (a) is punishable on conclusion with improvement for low years and fine. Of ₦400, an offence under (d) with improvement for low years and fine of ₦400, an offence under (e) with imprisonment for two years and a fine of ₦400 and also a penalty, irrespective of whether criminal processing are taken of a sum not exceeding one fifth of the tax.

On the whole, the intendment of the penalties provides is quite salutary and the possible violation of income tax laws have been reasoned catalogued.

4.1.1 Legal Proceeding

There are provisions in the income Tax Act for the prosecution of taxpayers who violate the tax lows. On conviction they are subject to various term of improvement from six month to five years for the various offences[7].

The courts will always have a vital role to play in interpreting the provision of the taxing statute. Many decisions from other jurisdictions have elaborated criteria used to determine an adequate sentence for tax offences. These include the amount of tax offence repetition of offence, plea of guilt by the accused.

Though in several cases, the tax authorities may opt to press criminal changes in the criminal court, a criminal prosecution penalties. The revenue prefers the penalty procedure to criminal prosecution because persecution is a drastic step which ought to be

[7] See S. 86-97 PITA 1993

reversed for really serious and because of practical matters such as the burden of preparing cases.

These are illustrated by a number of special rules[8].

Firstly, proceedings may be before the commissioner and as heard in private. Secondly negligence will be assumed if an error remains uncorrected Thirdly, the death of the taxpayers does not end the proceedings. Fourthly, the second have power to mitigate penalties even after the court have pronounced. Fifthly there is an important rule of evidence which applies to any criminal or evil proceedings as well as those for penalties under the revenue may tell the taxpayer that they have power to accept a penury settlement and that the Board has a practice of being influenced by a full confession.

Any statement made by the taxpayer is admissible under the inducement sometimes on exclusive back duty injury will lead to the exoneration of the taxpayer. In such circumstances the revenue may reimburse the taxpayer his cost but if there was a serious error on the part the department[9].

General speaking, the attitude of the judiciary in the evasion case in Nigeria suggest that if the role of our court in the battle against tax evasion is fully enlisted, we should be on the right path to substantially reducing the incidence of tax evasion in this country.

[8] See S. 97, S. 100, S. 102 S. 103 Taxes Management Act 1970

[9] See Federal Board of Internal Revenue v. Omotosho (1973), N. COMM LR 369 in contrast with Federal Board of Internal Revenue v. Sol Cake Suit No Frc/L/6/73

4.1.2 Monetary Penalties

The person income tax decree made taxpayer who engaged in fraudulent under declaration income and making of an incorrect return liable to a fine of ₦200 or time the amount of tax undercharged in respect of the incorrect return. There are fines for false statement, false representation and refusal to pay tax ranging to ₦1000.

Furthermore, there are monetary penalties for failure by an employment (or any person authorized to collect tax) to pay to the revenue authorities. The penalty is ₦100 fine in addition to the above fine the tax due must be paid[10].

Similarly, part XII of companies income Tax Act 1940, list the various penalties it began by stating that any person who contravene fails to comply within any of the provision companies income Tax Act or rules made under for which no other penalties is specifically provided shall be liable on conviction to which no mother penalties is specifically provided shall be liable on conviction to a fine of ₦200, such offences include failure to comply with the requirement of a noticed served on him under the Act or failure to attend in answer to a notice or summons served on him under this Act or having attended failure to answer any question lawfully put on him[11].

[10] See S. 87 (1) P.I.T.A. 1993 and also S. 88, S. 86
[11] See S. 7 (01) C.I.T.A. 1990

Where however the offence is the failure to furnish return statement or information or to keep records required in addition to the ₦200 fine a further sum of ₦40 fine for each and every during which such failure constitute[12].

Where a company fail to comply with the requirement of any notice given by the board under, the provision of 41 or 42 for the purpose of the tax to be changed the company for any year assessment the board may instead of instituting proceedings in a court of low fine ₦200 against the person responsible improve a penalty on the company of an amount equal to the change upon the proceeding year of assessment.

However, the board muse serve a written notice of the penalty on the company and any amount of such penalty remaining outstanding thing days after service of such notice may be sued for and recovered in a court of competent jurisdiction.

Every company and every other person who make and incorrect return, without reasonable excuse by omitting or understanding any profit liable to any matter or thing affecting the liability of any company to tax shall be guilty of an offence which carries with it a penalty of ₦200 fine and twice the amount of tax charged as result of the incorrect return (in addition of the payment of the tax due) provide that the offensive was counting in the year of assessment or within six years after the expiration of the period in which the offence was committed[13]. Any person other than a company who for the purpose of obtaining any deduction, set-off relief or repayment in respect of tax for any

[12] See S. 72 (1) C.I.T.A. 1990
[13] See S. 7 (1) (a) and (b) C.I.T.A. 1990

company or who in any return or accounts, knowingly make any false representation is liable to a fine of ₦1000 or to imprisonment for five years to both such fine and imprisonment[14].

Monetary penalties and criminal sanction should be drastically increased so as to make it unworthwhile for companies or their director or other taxable persons to attempt evading tax.

In the case of FBIR v AZIGBO Brothers Limited,[15] the defendant company failed to make a return of income and accordingly the board raised assessment of ₦2, 000 and ₦2, 000 respectively for the two years in default, as best of judgment assessment. The board also declined to grant capital allowance as these had to be first claimed and no such claim had been made. This decision was upheld in the high court of Northern Nigeria.

So also, in the case of FBI v The Nigerian General Insurance Co. Ltd, [16] where the defendant company was sent notice and form for declaration of their returns in accordance with S. 44 of CITA 1990 and the company failed to forward any such returns as demanded, it was held by the Supreme Court of Nigeria that the assessment on the defendant company had become final and conclusive.

Furthermore, in the case of FBI v The Blue Pelican Casino Co. Ltd,[17] where the defendant company failed to summit the returns form and as a result they were assessed

[14] See S. 73 (1) (a) C.I.T.A. 1990
[15] (1963) 2 ANLR 198
[16] (1969) ALL NKR 453
[17] See S. 30 PITA (Lagos), S. 46 (3) CITA

to tax for the sum of ₦4, 000 plus a penalty of ₦4, 000, the Federal revenue Court rejected the company's contention that their profit was over estimated and gave judgment in favour of the board for the sum of ₦4, 400.

With these decided case the underlying objective of the monetary penalties will be better appreciated.

4.1.3 Distrain of Property

There are provisions in the Income Tax decree, which authorize the tax authorities to distrain and sell the property of tax defaulters for the purposes of recovering areas of tax.[18]

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

a. Distrain the taxpayer by his goods or other chattel, bond or other securities.
b. Distrain upon any land, premises or place in respect of which the taxpayer is the owner and recover the amount of tax due by sale of anything so distrained.[19]

[18] See S. 30 PITA (Lagos), S. 46 (3) CITA
[19] See S. 45 (1), S. 60 PITA (Lagos)

4.2 Other Forms of Penalties

The Act seeks to impose sanction in the following cases:

1. Where a taxable person or a company has not delivered a return within the time allowed and the board is of the opinion that tax is chargeable upon such person, the board may according to the best of its judgment determine the amount of assessment. Total of chargeable income and should not affect any liability.
2. Making incorrect return or giving an incorrect information relating to a matter or thing affecting the liability of any taxable person is an offence under section 87 of the personal Income Tax Act 104, 1993, and is punishable with a fine of ₦200 and double the amount of tax undercharged in consequence of the incorrect return or information.
3. Failure to comply with requirement of notice served or without sufficient cause failing to attend in answer to notice or summon served under this decree, empowered the tax authority to lieu of instituting proceeding against the person as provided under sub section (2) of the section, impose penalty on him for the preceding year of assessment.
4. Demanding in excess the amount due as tax from a person, withholding for his own use or otherwise a portion of the amount of tax collected or revived by him, or where he defraud, embezzle any money or otherwise uses his position to deal wrongly with the relevant tax authority etc. is an offence contrary to section 89,

decree 104, 1993 and punishable under the same section with a fine of ₦100 or an imprisonment of three (3) years or both.

5. Failure by companies and corporation to pay the Federal Board of Inland Revenue may be guilty of an offence under (Income Tax) Miscellaneous Provision 1969 and its property may be liable to confiscation by the F.B.I.R.
6. Failure by a person to supply information on request to tax authority, or misleading the authority is an offence contrary to section 70 I.T.A. and other relevant dealing the offence under the various state laws and punishment with a fine of ₦400.00 or two (2) years imprisonment term.
7. Failure by employer to pay tax collected by him into government treasury is an offence under section 66 C.I.T.A. and liable to a fine of ₦600 for each day of such default or three (3) years imprisonment term or both.
8. Contravention of the provision of tax law or the rules made under it for which no other penalty is specifically provided and where such offences is the failure to furnish a return or keep record is an offence under section 60 or 54 of C.I.T.A. and punishable with two (2) years imprisonment or ₦400 fine under section 35 of C.I.T.A. part from that penalty, some state make such person(s) liable to addition or further due.

There is no pretending that these measures would eradicate the tax offences. But one thing is sure and that they will go some way in reducing the present uncontrollable trend to reasonable dimension.

From the foregoing discussion, we have seen that tax offences and penalties legislation alone will not solve the problems. These have to be buttressed by an efficient tax administration that is honesty and dedicated.

CHAPTER FIVE

5.0 Conclusion

Taxation is considered to be one of the most reliable resources of revenue available to the government.

It is still doubtful however, if our tax law after several years of amendment, experience can stand or have met the test of time. It is in some of these areas, and particularly offence and penalties under the tax law that this study tried to observe that our law on the subject required perhaps some overhaul. This as shown becomes significantly necessary as our dear nation cannot afford to continue the high loss of tax revenue due to fault, some of which can be attributable to the law itself.

The statutory provision for offences and penalties per se are insufficient. Thus, something more or on in addition has to be done by the law if a positive and reliable tax system is to be fostered.

5.1 Summary of Findings

The researcher in this work devoted a good deal of attention to the structural deficiencies of the Nigerian Tax System in the area of tax offences and penalties. We have also tried to ask in our treatment of judicial and legislative approach to tax offences and penalties.

The mess in to which the present Nigerian Tax System has drifted in encouraging the incidence of tax offences and penalties has been documented in this research work.

The shortcoming involved in the collection of tax in Nigeria include staffing, inadequate communication system, lack of coordination between government departments, problems of identification of taxpayer place of residence, bad forth tax collections, the collectors, the way the tax collected is spent and the lack of coordination from taxpayer. The various observations were made.

Many tax departments do not have full time instructors with the result that training arrangement for newly employed staff grossly inadequate and unsatisfactory. In many cases new employees are thrown on the job without any formal training and as tax practice is a specialized type of job, they cross which in many cases result in a loss of revenue to the government.

Also, inadequate communication system is one of the factors that hinder collection of taxes. In many of the offices, there are no communication gadgets which are very essential for effective collection of taxes in urban areas. The result is that many taxpayers are never reached before the close of the financial year.

In addition, many of the taxpayers change their address and residence without informing the tax department. Many of them have no fixed office or residential address at which they can be reached.

Unfortunately, a person may have more than one place of residence and this may give him the opportunity of doing tax liability by being unstable as he has more than one residence.

In Nigeria members of the upper socio-economic group are for more quality of major tax evasion and avoidance than average people are, because the upper class seeks to enjoy immunity from tax prosecutions.

Also, though the public perception of tax evasion and other tax offences should be taken into account, when forming social and legal policy, the Nigeria public does not seem to appreciate sufficiently the negative effect of tax evasion and other related tax offences.

Moreover the penalty provision which introduce a long time ago consisting of small lump sum fines, lack sufficient determined magnitude to increase taxpayer compliance or to discourage or prevent the taxpayers inclination toward evasion or avoidance which may seem more profitable these in a period of booming economy.

Also, the attitude of our tax officials has been mainly passive, more especially towards the enforcement of the penalty provisions.

As P.S.A. Leyode has revealed himself a senior tax official[1]

> We (tax officials) very rarely use the criminal penalties. No one is known to have convicted and imprisoned for giving incorrect information for aiding, abetting, assisting, counseling, inciting or inducing a taxpayer to deliver fable returns where such fraudulent intent is established.

Nevertheless, whether view one have of the economic; social and moral seriousness of a payment of tax, there remains the question as to what possible reasons

[1] Layode P.S.A. Tax Evasion in Fifth Annual Senior Officers Conference of Federal Board of Internal revenue at P. 31.

are there for evasion and other tax offences and what legal sanctions or different are provided? Furthermore, lies also the issue of what the law in this area should take and what investigation powers should be granted to revenue agencies.

5.2 Suggestion and Recommendations

Having considered some of the main set back in our tax system there is need to advance certain recommendation which may bring about some improvement in the system.

Human resources or manpower alone will not be enough without their effective training to force their enormous and sophisticated tasks taking consideration the rapid socio-economic changes.

Also, there is need to introduce computer technology to assist the workers in the computation, collection and alteration as the case may be of task scale exemption and relate.

The taxpayer should be finding the properly assessed and payment too should be made properly. This can be achieved not necessarily by imposing punishment but by introducing measures which will make it possible for the tax authority to assist the reasonably accurate taxable income be done within the assistance most if all cases. Thus it suggested can be done with the assistance of the taxpayer concerned.

The assessment and collection by tax administration have direct boring on prevention of tax evasion. It is the view of many people that the loss of revenue caused

by widespread tax administration. Inefficiently involve many issues, it could be the administration machinery itself, the personnel etc.

The tax authority should be granted more power in aid of assessment, for example the right to forcible entry when necessary into companies' offices and other taxable person to examine document. They should also be given the right to the rough bank of suspected evaders or on the alternative, all banks should be under duty to inform tax authority request any income standing in the account of any taxable person.

One other area of practical importance that requires review is the need for a reasonably fair remuneration or tax package for our tax administrators as the will minimize cases of unfair assessment of the taxpayer as a possible connivance in the name of bribe corrupt means.

Elimination of undesirable administrative deficiencies which many frustrate the objective underlying taxation necessary, the structure is to effectively play its role in the socio and economic development of the country as expected. The present trend in which tax legislation are not coherent enough as they are being influenced in some way by a selfish is not the best unfortunate as it may hamper the suggestion measure way or the other.

Fair assessment of the taxpayer as pointed earlier demand absence of arbitrariness but the present system in which the tax official raises assessment based on the best judgment is arbitral and requires readdress for a proper and fair assessment as suggested.

The demand that there be a measure or standard set or lay down and not to be left at the whim and caprices of the taxpayer of the officials.

Closely connected with the fair assessment of the taxpayer, the payer should be made by the government to feel the tax he pays is channeled to the provision of infrastructure facilities.

Accounting principle is required for correcting figures of trading profits for instance tax law does not tell us whether particular receipt or outgoing is to be allocated to income capital or if it is income whether by its very nature it is taxable or deducted it is at this point that accounting principle provide criteria by which to judge whether items should or not be taken into account in determining taxable profit thus, it becomes clear that without accounting principle, it would be indeed difficult to ascertain the taxable profit of a trade or business.

Yet, even where such principle is available that is not any easier. As john Tiley has rightly observed.

> One of the greatest problems in the ascertainment of the full amount of the profit or gain of the trade is the role of accounting practice.

For instance, there are usually divergent views between accounting on a given issue. Fortunately in the absence of statutory guidance for the measurement of taxable profit, the court were quick to react can be in the word of Lord Palmer in the case of WITSHIRE LTD v BURCE.

> The balance of the profit or gains of a trade is struck by setting against of a receipt all expenditure incidentals to the trade which is necessary to earn them and by applying in the commercial accounting.

The other aspect that demands by our tax law is the examination from tax taxable income due from off shore companies because of one sided double treaty. Thus the law in this area to be amended is to identify such company and make such profit liable to Nigeria tax.

The enormous power given by the tax law to the board in connection with tax offences and penalties particularly the power of staying of compounding proceeding or remitting to companies does not seem to favour our system. It opened up avenue of abuses and corruption in the form of bribery and under exploitation of influence in the corporate tax sector on the part of the officials.

Although the provision of section 74 of the companies income Tax Act seem to have taken care of this problem but it does seem that there is still much desire of the law in this point in other words the fine charged for the offence is too small when compared to the type of offence it is desired or designed deterred.

Tax officials therefore, should be made to understand clearly that complete honesty is demanded of them and the most effective of getting that honesty is severe punishment for dishonesty.

The tax officials should be thorough in examining the taxpayer account in order to eliminate the change of tax evasion and the like. They should not be creditors but this

does not mean that they should be unnecessarily fastidious the probing aspect of tax administration is by far the most exacting officials to be preserved and pain taking for it is always difficult to ascertain income. They live above board and should not show favour of abuse their office in any way.

There is also the need for our country to avoid strict adherence to the orthodox doctrine of our statute interpretation and seeks to be more dynamic, since to do so has been overdue. The earlier our judges share this view for our tax administration.

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