TITLE PAGE

TAX EVASION AND AVOIDANCE IN NIGERIA AND CAMEROON: A COMPARATIVE STUDY

BY

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DECLARATION

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

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



TANYI GEORGE NKECHA

CERTIFICATION

This thesis entitled "**TAX EVASION AND AVOIDANCE IN NIGERIA AND CAMEROON; A COMPARATIVE STUDY**" by **TANYI GEORGE NKECHA**, meets the regulations governing the Award of the Degree of Masters of Law (LL.M) of Ahmadu Bello University Zaria and is approved for its contribution to knowledge and literary presentation.

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DEDICATION

This thesis is dedicated to my father **MR JOHN TANYI NCHIVU** and my mother **MRS SUSAN TANYI** Nee **NSTWAH** for their constant love and care at all times.

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ABSTRACT

Tax evasion and avoidance remains one of the greatest problems plaguing tax administration in Nigeria and Cameroon. These problems have tended to defeat some of the fiscal policies of both countries such as the ability to transfer part of the excess resources from private hands to government hands with a view to spending same for the welfare of the generality of the citizens. Outside the rank and file of the salaried employees, most citizens in Nigeria and Cameroon pay inadequate taxes or no taxes at all and behaviours like these have led to a substantial loss of government revenue. The reasons for such unwanton behaviours could be attributed to several factors, the insufficiencies and complexities of tax legislation coupled with expert advice to tax payers to take advantage of loopholes in the tax law, high rates of taxation and lack of civic responsibilities amongst the tax payers. Moreover tax administration in Nigeria and Cameroon are weak and plagued with unsurmountable problems. Although, there exists both prison terms and monetary penalties under the Cameroonian and Nigerian tax legislation, these penalties in our opinion seem grossly inadequate.

The study recommended that monetary penalties and criminal sanctions should be drastically increased so as to make it unworthwhile for taxable persons to attempt evading taxes in Nigeria and Cameroon. For this purpose there should be public exposure in the case of detection of fraud.

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LIST OF ABBREVIATIONS

A.C	Appeal Cases
A.E.R	All England Reports
A.I.T.R	Australian Income Tax Reports
B.C.	Before Christ
C.I.R.	Commissioner of Inland Revenue
C.I.T.A.	Companies Income Tax Act
C.F.A.	Communitaire Financiere Africains
C.I.R	Commisionner of Inland Revenue
C.L.R.	Common Law Report
CO.	Company
F.B.IR.	Federal Board of Inland Revenue
F.R.C.	Selected judgements, Federal Supreme Court of Nigeria
I.M.F.	International Monetary Fund
I.T.M.A.	Income Tax Management Act
I.R.C.	Inland Revenue Commissioner
K.B.	Law Reports King's Bench Division
L.F.N.	Laws of Federation of Nigeria
LL.R.	Lagos Law Report

N.W.L.R. Nigerian Monthly Law Reports

P.I.T.A. Personal Income Tax Act

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CHAPTER ONE

1.0 GENERAL INTRODUCTION

1.1 INTRODUCTION

"Taxes" said a famous American jurist[1], are "the prices we pay for civilization". The policies and practices which various countries have adopted to pay this price represents a significant part of the economic and political history[2]. Not only are taxes the price that must be paid for civilization they are the price that must be paid for the production and provision of goods and services. The inability of most nations to meet the myriad needs of its citizens created in this age of rising consumer expectation[3] which requires enormous expenditure has often encouraged Governments to expand the scope of taxation. These needs can only be met by sacrifice on the part of the people and central to this sacrifice is taxation.

Insensitivity on the part of governments as to what the people can and will give up to the government in form of taxes has often led to unrest, instability and resistance from the citizenry. From the Bible, during the Reign of Jesus Christ the politics of the day was "whether to pay taxes to Caesar or not"[4]. An important factor in the cause of French Revolution (1789) was the issue of taxation. The American War of Independent (1776) started with the slogan "No taxation without representation". In Nigeria, there was the famous Aba Women Riot of 1929,

and in Cameroon there was also the famous Civil Disobedience Campaigns otherwise known as "The Ghost Town Operation" in 1990.

Taxation was seen more in the early times as an organised form of robbery by the oppressed rulers. The anger of the people was poured on the tax officials who were seen as willing tools in the hands of these oppressed rulers as inscribed in an old cuneiform clay tablet in China some 5.000 years ago that, "You can have a Lord, you can have a King, but the man to fear most is the tax collector"[5].

In modern times, the right of government to levy and collect taxes has been accepted. Yet, taxation is not always recognised and when recognised it is not always appreciated. "Nothing is as certain as death and taxes"[6] is a well known statement that potrays the indispensability of taxation in modern soceity. It reveals the truth that for most citizens, the single most important contact with the government concerns the visit of the tax collector, the completion of tax returns, or simply that the pay envelope is not as fat as it should be because taxes have been withheld from wages[7].

In Nigeria, like in Cameroon and the world over, few taxpayers enjoy paying taxes although many regard it as a public duty to pay their fair share of the money required by the government, much of which comes back to them in the form of social services[8]. Some citizens admit this duty but do not share the view with government as to what their fair share should be. Others have the simple philosophy that the tax collector is a public enemy number one to be outwitted by

fair means or foul[9].

A sharp distinction must be made between these two means. An illegal method of reducing one's tax liability, such as incorrect return, omitting or underestimating ones income or non declaration of income and incorrect information is known as tax evasion. While a deliberate legal act of the tax payer to pay less than he ought to pay is known as tax avoidance[10].

The above twin concepts are amongst the greatest problems plaguing tax administration in Nigeria and Cameroon. Commenting of the magnitude of these ills in Nigeria Professor Igweike remarked; "Nigeria is a nation of tax evaders and tax avoiders"[11]. With the world becoming a smaller place as a result of technological advances, it is increasingly easier to conceal assets, income sources, activities records, tax havens creation, manipulation through transfer pricing etc often at times facilitated by clever accountants, lawyers and seasoned tax experts taking advantages of the insufficiencies and complexities of the tax legislation.

This thesis captioned "Tax Evasion and Avoidance in Nigeria and Cameroon: A Comparative Study" is a research work intended to discuss on a comparative basis, the problem of tax evasion and tax avoidance in Nigeria and Cameroon from pre- colonial period to date. The objectives and the scope of the thesis are examined in this chapter as well as the research methodology adopted for the purpose of this work. The organisational layout of the thesis has also been mentioned in this chapter.

The chapter also examines all preliminary matters as a build up towards a proper understanding of the entire write up. Thus, in this chapter taxation is defined. The justification and objectives of taxation as well as the principles of a good tax system are also discussed. Finally included in this chapter is the historical evolution of taxation in Nigeria and Cameroon from pre-colonial era to date. The essence of this is because it was during the colonial period that taxation came to exist in its modern form as we have it today. Therefore a knowledge of the historical background would invariably enable us to understand better the trend of tax development and the genesis of the present tax systems operating in both countries.

1.2 THE OBJECTIVES OF THE THESIS

As aforesaid, this work intends to undergo a thorough research on the major problems militating against tax administration in Nigeria and Cameroon on a comparative basis. This thesis seeks to examine and highlight by way of definitions, restatements and administration of legal rules, the incidence of tax evasion and tax avoidance in the Nigerian and the Cameroonian tax systems. A critical examination of the legal consequences of these ills will be examined in an effort to proffer some lasting solutions.

Although, there exists some literature on tax evasion and tax avoidance in Nigeria, little work has been done on them in Cameroon. One of the objectives

of this thesis will therefore be to bring together in a documented form something which did not exist on Cameroon before the coming into light of this work.

1.3 THE SCOPE OF THE THESIS

The scope of this thesis shall geographically cover Nigeria and Cameroon. It is worth mentioning that these two countries present a unique circumstance for realization of a comparative study envisaged by this study because the former West Cameroon was for over four decades governed as part of Nigeria under the British Colonial administration. In this regard attention shall be focused more on anglophone provinces of Cameroon because of their common colonial heritage with Nigeria.

The problems likely to be encountered by this writer shall be numerous. In Cameroon, there is no literature on the subject matter as this area of study remains largely unexplored. Unreported and decided cases are non-existent partly because of acute problems of lack of law reporting and partly because the courts in Cameroon have had no opportunity to adjudicate on the subject in question. Also, useful information by way of statistics and other relevant documents at the Revenue offices are not likely to be reached for reasons considered to be confidential to the government and for the Revenue. Finally there is also the problem of translating some of the subsidiary tax legislation in the country from French to the English language.

In Nigeria, there is paucity of Nigerian cases on the subject matter. However, as a result of these paucity of cases, reference will be made to cases in other tax systems particularly that of the United Kingdom. These cases will be cited where appropriate to illustrate important provisions or principles of the law where necessary.

1.4 RESEARCH METHODOLOGY

The thesis will largely source from books in the libraries and unpublished thesis on taxation. Reference will also be made to newspapers, journals, tax statutes, laws and decrees as a source of information. Fieldwork will also be conducted by way of interviews of some senior tax administrators and some educated tax payers conversant with tax laws and tax administration in both countries.

The method of approach to be adopted by this work as the title suggests will be comparative. Where the principles, facts or laws are the same, the discussion will be in general terms but where differences exist, the differences will be clearly raised and stated in detail and where necessary to ensure coherency and easy understanding. Originality shall lie in identifying defects not yet identified by earlier works. Some useful suggestions for reforms will be made with the hope that if well implemented, they will go a long way to reducing these problems to the bearest minimum.

1.5 ORGANISATIONAL LAYOUT OF THE THESIS

This thesis is divided into five chapters written in a clear, simple and lucid style. Chapter one is an introductory chapter and seeks to discuss the general concepts of taxation. The chapter also delves to discuss the historical development of taxation in Nigeria and Cameroon from pre-colonial era to date. The objective and the scope of the thesis as well as the research methodology adopted for the purpose of this work constitute part of the chapter.

Chapter two examines the various statutory bodies charged with the implementation and management of the tax laws in Nigeria and Cameroon. Their effectiveness as well as their failures will be appraised. Also discussed in this chapter are some common problems militating against tax administration in Nigeria and Cameroon. Some meaningful suggestions to combat these problems are also highlighted in the chapter.

Chapter three discusses the problems of tax evasion in Nigeria and Cameroon. The various definitions proffered to the terms tax evasion and tax avoidance as well as their distinguishing features are also examined. The chapter also examines the various causes and devices employed to evade taxes in Nigeria and Cameroon. The various legal provisions and sanctions against acts of tax evasion in Nigeria and cameroon. and the attitude of the

courts in both countries towards this ill are highlighted in this chapter. Other non statutory measures against acts of tax evasion in Nigeria and Cameroon conclude the chapter.

In chapter four, the problem of tax avoidance in Nigeria and Cameroon is the focus of discussion. The attitudes of the courts in Nigeria and Cameroon towards tax avoidance as well as in some other jurisdictions are also discussed. In this chapter also, the various causes of tax avoidance and the modes of tax avoidance in Nigeria and Cameroon are also mentioned. Finally, the various statutory measures against acts of tax avoidance in Nigeria and Cameroon end the chapter.

The thesis will be summarized and concluded by way of suggestions for reforms in chapter five.

1.6 THE DEFINITION OF A TAX

Both the Nigerian and the Cameroonian tax legislation does not define taxation. Although, its impact is widely acknowledged, the precise import of taxation is subject to ambiguity. It has been stated that, taxation remains one of those English words which though everyone knows what it means but

it does not readily lend itself to definition and lack of definition does not pose any serious problems to the operation of the tax system[12].

However, in a general sense, a tax has been defined by the Oxford English dictionary as; "A compulsory contribution to the support of government levied on persons, property, income, commodities, transactions etc, now at a fixed rate mostly proportionate to the amount on which the contribution is levied"[13]. This definition is defective in that, it limits the purpose of taxation to the support of government, the description of the tax base, that is, it is levied on persons, property, income, commodities and transactions; stresses more on the scope than the meaning of taxation[14], and also, it deals with proportional taxes. It could be stated that a flat rate on all income groups could exist in a tax system, it would obviously be inequitable but nevertheless it is still a tax.

Chief Justice Lathan of the Australian Supreme Court in **MATHEWS V CHICORY MARKETING BOARD VICTORIA** defined a tax as "a compulsory execution of money by a public authority for public purpose of government by means of contribution from individual persons"[16]. This definition is obviously wider and more embracing than the former although

unnecessary emphasis is laid on using money from taxation for public purposes.

Justice Roberts of the American Supreme Court in U. S. V. **BUTLER** had this to say about a tax; "A tax in the general understanding of the term and as used in the constitution signifies an exaction for the support of the government. The word has never been thought to connote the expropriation of money from one group for the benefit of the other[11]. A tax can therefore be distinguished from a charge for government services as follows: In a tax, the person concerned has to pay whether or not the government rendered services to him personally, while in a charge for government services, the services must have been rendered to the person paying the charge. A tax can also be distinguished from fines for criminal offenses. The different lie in the fact that payment of tax is a social responsibility of the citizen to the state whereas, a fine is a punishment imposed as a result of criminal activity.

Therefore, in one view a tax is not a voluntary donation but a compulsory pecuniary burden imposed on persons, property, services for the support of government deriving its basis from a statutory enactment[12].

1.7 GENERAL PRINCIPLES FOR THE IMPOSITION OF TAXATION

Tax payers commonly view all taxes as bad in the sense that they do not enjoy paying them though most people realize that taxation is necessary in order to provide useful goods and services produced by the government. A starting point for analysing and evaluating the "goodness" or "badness" of a tax is the earliest expositions by Adam Smith in his book The Wealth of Nations[18] in which he identified four principles or canons as he called them. He, however suggested that taxation should be equitable, economical convenient and certain. A brief discussion on each of these canons will sharpen the reader's mind on the general prescription which the Nigerian and the Cameroonian tax systems like any other tax system must always strive to imbibe.

a. Equity:

Equity in the realm of taxation is traditionally divided into horizontal equity and vertical equity. By horizontal equity, it means those in equal circumstances should pay equal amount of tax while vertical equity is to the effect that those in unequal circumstances should pay different amount of tax. This principle then calls upon the tax authority to adopt a positive policy of pursuing tax defaulters so that justice may be done to those honest citizens who voluntarily pay their tax dues.

It should be noted that this very important principle has been interpreted and re defined to include the equitable principle of "Ability to Pay"[19] summarized by the cliche that "the greatest burdens should be borne by the broadest backs". What

this principle pre-supposes is that the burden of taxation should be spread as fairly as possible in accordance with tax payers ability to pay. In other words, the tax should be calculated under a series of rates which increases along with increasing ability to pay as measured by the increases in income.

b. **Certainty**

This second important principle demands that the amount of tax the subject is expected to pay should be exact and certain; so also is the time and manner of payment. It must be noted also that, the requirement that the tax should be certain and clear is not only with respect to the tax payer but it should be clear to the Revenue. This is because arbitrariness and uncertainties in the tax system have undesirable consequences. They also tend to encourage insolence and favour corruption thereby putting the taxpayer at the mercy of officials who could exploit the situation to extort some presents as a pre requisite at the pain of an aggravation of the tax[20].

It is therefore submitted that, uncertain taxes are unjust and do encourage tax evasion and tax avoidance thereby resulting in an increased cost of tax administration and loss of revenue to the government

c. **Convenience**

This principle particularly affects the interest of the taxpayer and provide that every tax ought to be levied at the time or in the manner in which it is most likely for the contributor to pay.

Adam Smith, suggested for example that, a tax upon rents of property is best payable when the rents are usually paid, and in the case of consumer goods, at the time of purchase since he (consumer) is at liberty to buy or not to buy.

d. **Administrative Efficiency**

This fourth principle of Adam Smith stated, some two hundred years ago is to the effect that the cost of administering the tax, that is, (collection and assessment) should as far as possible be very minimal. This is to ensure that by and large, as little as possible what is taken out of the pockets of the taxpayers is over and above the cost of administering the tax. In other words, a tax can be considered economical if the cost of collecting it is not excessive. On the other hand, if the cost of collecting takes a large part of the tax collected, then the tax is not economical. For example, if the yield from it, is N10 million and the cost of collecting it is N9 million then the tax is obviously uneconomical.

It is pertinent to note that there are other instances where the cost of administering a tax may take a great deal more than what actually enters the government treasury. For example, the keeping and retention of officials whose salaries and benefits may gulp a great proportion of what is collected. Or, the introduction of too stringent provisions and regulations with the objectives of plugging tax evasion and tax avoidance may have the consequence on not being troublesome or expensive but may impose insuperable obstacles of making improvement in the process.

However the above highlighted principles provided the framework for analysing the merits and demerits of every tax system as stated earlier in the work. Nevertheless, it must be noted that the above stated principles are not immutable and quite often a tax may offend one or more of these principles, this may not necessarily lead us to labelling the tax system as bad. However, it is submitted that in promulgating tax laws, policy makers and tax administrators should always bear in mind that the above stated maxims are as relevant today as they were in the days of Adam Smith.

1.8 THE JUSTIFICATION AND FUNCTIONS OF TAXATION

a. Raising of Revenue for Government.

The classical function of every government in the world is to offer protection to its citizens. This function is carried out by maintaining law and order within its territory and defending that territory and those within it against any external aggression. By this, individuals are able to quietly enjoy their lives and property; and also to go about their pursuits unmolested. This has always been said to be the foremost justification of taxation in any organised society[21].

In modern times especially in developing countries including Nigeria and Cameroon, the function of taxation far transcends that of offering protection by governments. In addition to offering protection the government also provide social amenities and creates conditions for the economic well being of the society.

The Nigerian 1979 Constitution contains elaborate provisions on the duties and responsibilities of government. The Constitution after declaring the primary purpose of government[22], goes further to state that it shall be the duty of the state to provide adequate facilities, goods and services, and encourage free mobility of its citizens throughout the federation[23]. The Constitution also provides that it is the responsibility of the government to control the national economy in such a manner as to secure the welfare,

freedom and happiness of every citizen on the basis of social justice, equality of status and opportunity[24]. Finally it is the duty of the government to ensure that suitable and adequate shelter, adequate food, reasonable national minimum living wages, sick benefits, pension etc are provided for all citizens[25]. Although it has been argued that these duties and responsibilities imposed on governments are not justifiable at the instance of aggrieved persons, they may however serve a useful purpose in that they afford a defence for the government for any of its programmes that may be attacked by these aggrieved persons. For instance, an action of the government in compliance with any of the above mentioned provisions can hardly be declared as not being justifiable[26]. One can safely assert that the discharge of these duties and responsibilities requires funding and the principal method of obtaining the funds required is through taxation.

b. **Redistribution of Wealth.**

While raising of revenue still remains the major objective of the tax system, there are other equally important objectives. The government can resort to use the tax system to redistribute wealth in the society where there is concentration of such wealth or means of production and exchange in the hands of few individuals. This can take the form of imposing progressive

rates of taxes on income and also the imposition of taxes on luxurious items such as perfumeries, jewellries bequests and other gifts.

c. **Management of the Economy:**

The tax system can also be used to direct the course of the economy. It is often employed as a means of fiscal and economic policy to mop up excess liquidity in the economy. As a fiscal weapon, it can be used to reduce conspicuous consumption and certain activities not desirable by the society such as gambling and prostitution. This can be achieved by taxing and increasing the incidence of taxation on these activities.

Also, as a fiscal weapon, through the use of selective grants of tax incentives or fiscal concessions, the tax system can be used either consciously or otherwise to encourage selected sectors of the economy and also aid in the location of economic activities in areas where investors would otherwise not be inclined to locate thereby promoting regional development and creation of employment opportunities.

The tax system can also be used to reduce the ultimate cost of production and consequently therefore the selling price, thus encouraging large scale production. For example under the Custom (Draw back) Regulations Scheme[27], the Federal Government of Nigeria between the

period 1986 to 1990 granted refunds to some companies the sum of N649.018.68 representing tax credits[28]. Under this scheme, custom and excise duties paid on raw materials and components used at various stages of production was refunded so as not to only reduce the cost of production as mentioned earlier, but also to ensure that Nigerian manufactured products become more competitive at the international markets. In this light, United Nigeria Textile Mill Ltd got the largest refund of N356.349.00 for the various exports it made between the months of April and August, 1989; while Peugeot Automobile of Nigeria (PAN) got a refund of N114,731.54 for exporting twenty one Peugeot "504" cars of various model between the same period[29].

In Cameroon, the aftermath of the Civil Disobedience Campaigns necessitated the government to grant some fiscal concessions to most companies in an effort to revamp the ailing economy and boast domestic and attract foreign investments in the country[30].

1.9 HISTORICAL BACKGROUND

By and large, in every tax system in the world, the basic type and nature of tax levied in the course of history has been profoundly affected in

character and scope by the nature of the political, economic and social changes which every society experiences[31]. In other words, the tax systems operating in both Nigeria and Cameroon are products of the cumulative effects of the political and economic history that both countries have undergone.

At this juncture, a cursory look on the historical background of this work cannot be over emphasised because various economic and geo-political factors have been known to have considerable impact on the historical evolution of taxation in Nigeria and Cameroon. A knowledge of this would invariably enable us to understand better the trend of development and the origin of the present tax system, for as one source puts it:

> "The history of tax legislation is essentially pre occupied with the problems of controlling tax avoidance and tax evasion. The intention to be gathered from all tax legislation is invariably either to introduce and declare a new formula for taxation or to check the abuses of the existing tax laws"[32].

For the sake of clarity, this topic will be subsumed under two heads.

1.9.1 HISTORICAL DEVELOPMENT OF TAXATION IN NIGERIA.

Nigeria, the most populous country on the African continent only came into being in its present form when the former two protectorates of the

then Northern and Southern Nigeria were amalgamated in 1914 by the British Colonial Governor led by Lord Lugard[33]. Sixteen years earlier, lady Lugard first suggested in an article for "The Times Magazine" that the several British protectorates on the Niger should be collectively known as Nigeria[34], the name officially applly today. Although Nigeria was a creation of European ambition and rivalries in West Africa, it would be an error to assume that its people had little history before its final boundaries were negotiated by the British, the French and the German at the turn of the twentieth century. This newly created country contained not just multiplicities of tribes but also great number of kingdoms and empires that had evolved complexed systems of government, independent of contact with Europe. These included the Great Kingdom of Kanem Borno with a known history of more than a thousand years; the Sokoto Caliphate which for nearly a hundred years before its conquest by Britain had ruled the Savannah of Northern Nigeria; the kingdoms of Ife and Benin; the Yoruba empire of Oyo; the city states of Niger Delta, as well as the culturally homogenous Ibo people of the south east and the small tribes of the Plateau[35].

According to Crowder[36], any country in sense is an artificial creation but in the case of Nigeria, the union was so sudden and included such

widely different groups of people that not only the British who created it, but the inhabitants themselves have often doubted whether it could survive as a political entity. Despite these many difficulties focussing mainly on the differences amongst its various component groups, Nigeria became a sovereign federation on lst of October, 1960. Today, its importance in Africa gives it an automatic recognition as a country with the greatest political and economic potentials in the third world[37]. It covers an area of 356.669 square miles with a population of approximately above 88.5 million inhabitants[38]. It is delimited west-ward by the Republic of Benin; east-ward by the Republic of Cameroon; north-ward by the Republics of Niger and Chad; and to the South by the Atlantic Ocean.

The evolution of taxation in its modern form in Nigeria is directly connected with the British colonial administration particularly in the Northern part of the country[39]. However, prior to the colonial era in Nigeria there had existed some indigenous fiscal system known as the "TRIBUTE TAXES" paid to the traditional rulers in the country[40]. These tribute taxes were mainly in the form of yearly tribute of crops, harvest, animals etc. In addition to these, the Oba(s), Emirs, Lamidos and other

traditional rulers were privileged to have inhabitants of their domain working compulsorily on their farms for a certain period every year[41].

In the Northern part of Nigeria, traditional systems of taxation were fully developed in the Sokoto Caliphate and Kano, the emporium of the caliphate by the thirteenth century.[42] For example, these taxes were the "KUDIN KUSA" (Land tax), the "JANGALI" (Livestock tax); the "GANDU" (Capitation tax), the "JAZYAH" (slave tax), the "KHARAJ" (used as a general tax on the farming community). These taxes were collected for the Emirs by the District and village heads who were given a share out of what they collected. In addition to the "ZAKKA" which constitutes one of the five pillars of Islam which all muslims have a religious duty to pay, the Emirs also imposed a number of separate levies including taxes on agricultural incomes, income from various occupations such as blacksmiths, honey gatherers, snuff makers, weavers: dyers and also rents from market stalls[43]. Commenting on fiscal indigenous system in Nigeria, Lord Hailey wrote in "An African Survey" that Nigeria and more particularly Northern Nigeria has a special place in the history of the evolution of systems of taxation in Africa.[44]

In the Southern part of Nigeria the highly fluent system of taxation that was applicable in the Northern part of Nigeria was non existent as there was little or no organised system of taxation in these areas[45]. Nevertheless tribute taxes were still very familiar and there existed a machinery for its collection.[46] In Benin Empire, for example, tribute taxes were collected from all the villages partly in currency (cowrie shell, brass rod, manilla) and partly in crops. The village head used to collect their own tribute usually in the form of gifts of the first fruits and not in cash. In feudal fiefs, taxes were collected by the overlords who kept the major portion of the proceed and sent the rest to the Oba[47].

The major defects of the pre-colonial systems of taxation in Nigeria worth mentioning, laid in the multiplicities of separate levies, irregularity of imposition, arbitrary assessment, complete absence of uniformity in the practices amongst the various Emirates and Empires[48]. With the advent of colonialism, one of the earliest problem dealt with by Lord Lugard (the architect of colonial taxation) and the British Colonial Governor of Northern Nigeria was to curb these defects. Commenting on the indigenous fiscal system in Northern Nigeria in 1902, he said:

> "Greed was one of the chief characteristics for a new dynasty, and tax after tax was enforced upon the people, so that at present day there

> is no conceivable trade and no profession which has not its own special tax. Every form of handicrafts, the dyers, the weavers, blacksmiths etc were taxed. Even the collectors of honey in the wood paid their dole to the chief"[49].

On the introduction of a new form of taxation in 1904[50]. by Lord Lugard, many separate levies were consolidated in a single general tax known as the "HARAJI" and a specific tax on livestock also known as "the JANGALI"[51]. The new system established the village or group of villages as a tax unit and undertook a systematic survey of the economic resources of the village community in order to determine their taxable capacity as a whole. A lumpsum assessment at a tax rate not exceeding ten percent was raised and divided up for payment by individual members of the community in proportion to their financial capacities. This general tax was termed the "COMMUNITY TAX". The Emirs under this new tax system were to surrender to the Protectorate Administration one quarter of the total amount of revenue collected and this is said to have marked the beginning of the Native Authority Tax System in Nigeria[52]

In the Southern Protectorate of Nigeria, there was not reliable procedure for direct taxation in force. Indeed, it was very difficult to introduce a similar tax system to that already enforced in the Northern Protectorate. The fear was however expressed by the administration of the

Southern protectorate that the introduction of the tax might result in possible riots and demonstration. Meanwhile, the Oba(s) held on to their arbitrary and irregular indigenous fiscal systems.

However, with the loss of revenue during and immediately after the First World War, the British colonial administration was forced to gradually introduce a permanent modern form of income tax system. It was not until 1916 that the Oba(s) were persuaded to surrender their quasi independent status and the Native Authority Tax System prevailing in the Northern part of Nigeria was formally extended to the Yoruba land by virtue of the Native Revenue Ordinance No 1 of 1917. By the second half of 1918, the need to institutionalize direct taxation was generally felt by the colonial administration. In 1920 direct taxation was introduced amongst the Egba community and in some parts of the Western province with the exception of Asaba province, Ilesha and Warri divisions. The reasons for the non introduction of this native system of taxation in these areas by the colonial administration was to preserve the peace and good governance that reigned in these areas and the colonial regime was therefore not prepared to do anything that might appear revolutionary to the local community especially

since it was the period that colonization started gaining acceptance in these areas.

The non-introduction of direct taxation in these areas were short lived. After a long debate and great hesitation bordering on the fear of insurrection as afore said, direct taxation was finally introduced in Asaba province, Ilesha and Warri divisions, and throughout the South Eastern Nigerian in 1927. The anticipated insurrection sparked off and there was widespread disturbances and physical resistance throughout the jurisdiction covered by the new tax legislation. These resistance culminated into the well known Aba Women Riot of 1929 which resulted in loss of lives and property. This was partly based on the wrong notion that women were to pay taxes and partly on the indiscriminate manner in which women, children and livestock were assessed.

It must be pointed out that, the South Eastern part of Nigeria had not known any system of taxation before the British came. This is because the Ibo segmentary system of government did not allow for any organised system of taxation whatsoever. What existed in each village or small group of villages was some form of contribution voluntarily made to secure some objectives. There was no enforceability so as there were also no chiefs or

a centralized government[53]. Probably, it may be stated that their justification for the resistance of the direct taxation could have laid in the fact that, they could not understand how the British who minted the money they used, could not simply mint more money if the government were in need of funds. Sommerfeld, in his book dismissed the above notion as ludicrous.[54] Nevertheless, the imposition of direct taxation in South Eastern part of Nigeria was seen as a sign of enslavement to the British by the natives and an acknowledgement of British suzerainty. That is why today long after colonization some tax payers continue to conceive the whole idea of taxation as alien.[55]

By 1930, direct taxation had been introduced throughout the country with a number of modifications made to the existing ordinances in order to broaden the base of the tax system. The government for the first time enacted a law directed against tax evasion. The Income Tax Colony (Amendment No 1) Ordinance [56] made it an offence for a person to neglect or refuse to pay tax and this was extended to cover the whole Protectorate by Non Native Income Tax (Protectorate Amendment) Ordinance.[57]

The process of introducing a modern income tax system reached its final stage during the Second World War. With the drastic reduction in the

flow of Nigerian trade and the loss of revenue by the expected hazards of the war, a stable and permanent form of taxation had to be introduced to supplement revenue from other sources. In 1940, two important ordinances, the Income Tax Ordinance No. 3 and Direct Taxation Ordinance No. 4 of 1940 were enacted and they introduced into Nigeria a modern form of progressive income tax. In 1943, a more comprehensive Income Tax Ordinance[58] was enacted replacing the earlier ones. By this new Ordinance all Europeans in the territory together with African resident in Lagos were to have their income assessed. This Ordinance remained in force until 1945 by which direct taxation had fully emerged in Nigeria.

In 1954, Nigeria became a Federation and the powers of the regional legislatures to impose and collect internal revenue was recognised. Consequently the following regional tax laws were enacted. These included the Eastern Region Finance law of 1956 and the Western Region Income Tax Law of 1957. The Raisman's Commission of 1958, recommended the introduction of a basic principle of taxing income throughout Nigeria. This recommendation embodied in section 70(1) of the 1960 Constitution Order in Council conferred exclusive powers upon the parliament to make laws

for Nigeria or any part thereof with respect to taxes on income and profits of companies. Subsections two and three of section 70 of the same Constitution conferred concurrent powers upon the parliament to make laws for Nigeria or any part thereof with respect to certain uniform principles in respect of personal income tax. In exercise of these powers, the Federal Government enacted the Income Tax Management Act (simply referred to as ITMA) and the Companies Income Tax Act in 1961 respectively.[59] Hence the relevant provisions of the Income Tax Management Act of 1961, acted as a sign for those regions mentioned earlier to synchronize their tax laws in conformity with this principal enactment. Consequently, we had the following tax laws applicable in the regions which were read in conjunction with the Income Tax Management Act 1961: The Eastern Region Finance law of 1962 repealing the earlier Finance law of 1956: The Western Region Principal Tax law of 1962; The Northern Region Personal Tax law of 1962 and the Personal Income Tax (Lagos) 1962.

In Nigeria today, some of the governing tax laws are the following:

The Companies Income Tax Act (CITA) cap 60 LFN 1990;

The Capital Transfer Tax Act (CTTA) cap 42 LFN 1990;

The Petroleum Profit Tax Act (PPTA) cap 354 LFN 1990;

The Personal Income Tax Act (PITA) Decree No. 104 of 1993 repealing the Income Tax Management Act of 1961 and the Personal Income Tax (Lagos) Act 1962. The Value Added Tax (MVAT) Decree No. 102 of 1993 repealing the Sale Tax Decree of 1986 is also the latest in the country's table of tax laws. It could well be described in the words of the Federal Inland Revenue Service (FIRS) as the most important tax law in Nigeria since the Companies Income Tax Act of 1961 and the Income Tax Management Act of 1961 were enacted shortly after independence.[60] This importance is viewed from the fact that, it is one of the major source of revenue to the Federal Government after the petroleum profit tax. For instance out of the estimated N6 billion for VAT collection for 1994, N5.5 billion was realized by the Federal Inland Revenue Service[61]

1.9.2 HISTORICAL DEVELOPMENT OF TAXATION IN CAMEROON.

The Republic of Cameroon is a bijural and bilingual country made up of ten provinces. Two out of these provinces are English speaking while the rest are French speaking. Cameroon occupies an area of 476.726 square kilometers with an approximated population of over twelve million.[62] It is

bounded in the East by the Central African Republic: in the West by the Federal Republic of Nigeria; in the North by Lake Chad; and in the South by the Republics of Gabon and Congo.

Cameroon is said to have been first visited by Hanno the Carthaginian as early as the 5th century B.C.[63] He caught sight of Cameroon mountain, the highest in West Africa and named it "The Chariot of gods". For several centuries thereafter, no other foreigner visited the area. It was not until the emergence of the lucrative trans atlantic slave trade of the 15th century that European interest in West Africa was kindled. From that time onwards, Europeans began to visit the Cameroonian coast to trade in slaves. The first to come were the Portuguese in 1480. After having sailed through the estuaries of the Wouri river (in the present Littoral province) which was rich in shrimps, they named it RIO Dos CAMERONES.[64] meaning a river full of shrimps. It is from that name that Cameroon as a nation derived its name.

It is worth mentioning that Cameroon had undergone different phases in its colonial history under the German, the British and the French. After a period of Anglo German rivalry for the Spheres of Influence along the coast of Cameroon, the German outwitted the British and annexed [65] the

territory that became known as "Kamerun" as it was called by the Germans. But thirty years later, the British were back in Cameroon and this time with the French. This was as a result of the conquest of the Germans by a combined Franco British forces during the First World War. Cameroon was partitioned into two between the conquerors, that is the British and the French.[66] Although the two Powers held the two Cameroons(s) under International Tutelage Agreements,[67] each Power pursued its own colonial policy in the sector it occupied. In any case, those agreements gave the Powers, legal licenses to import their laws into Cameroon. It is against this background that the English and French legal traditions co- exist and mutually interact. These two legal traditions remain by and large the manifest bases of Cameroon's present legal system with the French legal influence more extensive and predominant in the country than English legal influence.

Following the partition of Cameroon on 4th March 1916, Britain proceeded to administer her own part of the territory as part of the Protectorate of Nigeria.[68] British Cameroon became a quasi Federated state within the Federation of Nigeria. Accordingly, laws in force in Nigeria were formally extended to the British Cameroon. This accounted for the

reason why most of the laws that applied in the Federation of Nigeria were still applicable in the former West Cameroon long after it got independence in 1960. In that same year it got independence, they re united with former French East Cameroon to form a Federal Republic of Cameroon. In 1972, it was re- christened as the United Republic of Cameroon. In January 1984, the United Republic was swept away and strangely the Republic of Cameroon was resuscitated.

The Cameroon colonial past had a profound influence in the evolution of taxation in its modern form as we have today in the country. Long before the white men set their feet on the Cameroonian soil, some traditional systems of taxation were already in existence. Anyangwe in his book wrote; "the payment of taxes were not new before the Germans came. Cameroonians were wont to paying to their chief a form of taxation known as tributes."[69] It must be mentioned that the system of tribute taxes that existed in the pre-colonial Cameroonian society were not different from that which we had in Nigeria. For example, in the Bali Fondom of the North West province of Cameroon, tribute taxes paid to the paramount Fon of Bali mainly in the form of yearly crops, games and harvests were also reported.[70]

In Northern part of Cameroon, with the embracement of Islam stretching all across from Northern Nigeria, the elaborate traditional tax system which came under the rubrics of "ZAKKA"[71] and dues developing from annual tribute of grains and other local products were already in existence before the arrival of the white men.

With the advent of colonial rule in Cameroon, the first tax laws were introduced in the territory by the German colonial administration. In 1902, direct taxation was introduced in the coastal areas of Cameroon and later extended into the interior by 1908.[72] In 1909, a system of taxation known as the " HUT TAX" otherwise known as the Head Tax was introduced in Cameroon.[73] This tax in fulfude [74] known as "DSAKKA SARE" was said to conform to the existing customs and historical views of the mohammedian population. By this system of taxation, each head of a house or a hut was to pay an amount covering the number of occupants of his hut, (that is, adult and those capable of earning their own income). In other words, every mature male capable of working was compelled to pay this tax at a rate of five German marks. Slaves were equally liable to pay this tax.[75].

The rationale for this method of taxation laid down in this scheme by the German colonial administration was to prevent the hitherto customary

arbitrary levying of tribute taxes, crude estimation and unfair distribution pepertrated by the traditional rulers. The Elders and Residents were charged with the collection of the HUT TAX on a sharing formula as follows:[76]

The German Colonial Government 50%

Provident Funds 25%

The Chief 20%

The Elders 5%.

In 1913, the German colonial administration enacted the Native Taxation Ordinance [77] for the "Kamerun". By this Ordinance, every male adult capable of earning money in the kamerun territory was bound to pay a yearly money tax at the rate of ten German marks per head. The local government officials were charged with the collection of the tax in their respective districts with a reserve of ten percent after the due consent of the Governor must have been obtained. The Ordinance inflicted severe sanctions on tax defaulters to the sum of one thousand German marks or imprisonment for three months with hard labour or both.[78] Where defaulters could not pay the tax in cash, they could pay in labour including sundays

and other holidays. Colonial soldiers, custom guards, scholars and apprentices of government were however exempted from the tax.[79]

When the Germans were finally bundled out of Cameroon by the combined forces of the British and the French, the German Native Taxation Ordinance of 1913 continued to operate as the applicable tax legislation in the territory until the Native Authority Tax System that was already in Nigeria was introduced. F. C Duff, the British Colonial Resident of Buea in a Provincial Circular wrote:

> "Every effort will be made to start taxation as soon as possible. The 1914 German rates will be those adopted. Ossindinge 10 marks, Chang 6 marks, Mbo 10 marks, and Bamenda 6 marks. It is possible that some difficulties will be found in paying this tax, though I understand from the case which court fees are paid, that the alleged difficulties is not altogether real"[80]

A more comprehensive tax legislation enacted by the British colonial administration for former English West Cameroon was the Income Tax Ordinance.[81] This Ordinance applied to all expatriates, companies as well as individuals in the territory. Tax defaulters were liable to pay a fine of one thousand pounds and five pounds for each day for failure to comply with notice served on them or for filing an incorrect return.[82].

On the other hand, a quick mention must be made of the system of taxation that prevailed in the former French speaking East Cameroon. By virtue of Article 9 of the Mandate Agreement of 1922 and Article 72 of the French Constitution of 27th October, 1946, full powers were given to the French parliament to legislate for overseas territories. In pursuance of the above powers conferred by these laws the whole body of French tax laws were formally introduced in the former French East Cameroon in conjunction with other tax legislation that were enacted by the former East Cameroon House of Assembly.

It is distressing to note that despite the prevalence of the tax legislation that existed in the former East Cameroon, there were other obnoxious forms of taxation. These included the "**PRESTATION**" otherwise known as the compulsory labour tax which was imposed by the French colonial administration on both men and women. There was also the "INDIGENEAT" and the "CORVEE" which were greatly resented by many natives who despite attempts by the French colonial authorities to hem the mass exodus of the natives,[83] continued to fly to the neighbouring British Cameroon.

In 1972 when the two Cameroons re-united to form the United Republic of Cameroon, the need to harmonize some of the laws formerly applicable in the former English West Cameroon and former French East Cameroon was felt. Consequently, the General Tax Code, an amalgam of the French and English systems of taxation came into force in 1973 and largely remains the law governing taxation in the Republic of Cameroon today. The General Tax Code of 1973 from all intent and purposes was not a complete Code as over the years the code has undergone rigorous amendments to suit the fiscal exigencies of the times.

It is equally worth mentioning that in 1990, Cameroon witnessed one of the worst dramatic twist in the evolution of taxation in the country. There was the intermittent calls from the radical opposition parties in the country for a Civil Disobedience otherwise known as "Villes Mortes" in French. During these times, the campaigns were characterized by the call for boycott of French made products and business ventures with French interests such as **TOTAL CAMEROUN, BRASSERIES DU CAMEROUN,MONOPRIX SUPER MARCHE,** e.t.c. Generally business enterprises in most part of the country were permanently closed except on week- ends and tax payment were shun with impunity by most

Cameroonian. Although there are no ready statistics to indicate the amount of economic damage, nevertheless, the Government of Cameroon suffered enormous financial loss by way of tax evasion[84]. In 1994, the Government of Cameroon promulgated another form of tax law in addition to the existing General tax code known as **TURNOVER TAX (TT)** at the rate of 17 percent.

The latest fiscal reforms in the country witnessed the promulgation of a new form of taxation which directly concerns the municipal councils in replacement of the Poll Tax in 1995.[85] The original appellation of this form of taxation in French is known as IMPOTS LIBERATOIRE. There is no English translation for it in the law but professionals in the field and others, called it GLOBAL TAX.[86] This tax is described as tax paid by people engaged in commercial or industrial activities spelt out by the law. The Global Tax is divided into four categories, that is category A, B. C and D. Each category covers a range of activities considered to fall there under as stated here below :

1.9.2.1 Category A up to 12.000FCFA (An approximate of N1.200) Quarterly

Itinerant hairdresser

Hawker of food;

Restaurant owner without shed;

Hawkers of fizzy drinks and drinking water

on tricycles truck or moped;

Tailors or dressmaker with less than five machines; apprentices or employees or working alone;

Grinding machine operators;

Used clothes hawkers;

Public fountain operators per fountain;

Itinerant engravers;

Hairdressers with one to three employees;

Persons selling poles, bamboo and planks;

Manual artisans and manufacturer;

Engraver with a workshop;

Soya hawkers;

Passengers transporter using mopeds;

Goods transporters using mopeds;

Book hawkers;

School canteen operators;

Recorded audio cassette and video cassette hawkers;

Radio cassette, watch and clock hawkers;

Itinerant clock and watch repairer;

Raphia palm wine hawkers;

Sculptors;

Blacksmiths;

Basket makers;

Flower hawkers;

Itinerant typists;

Repairer of television and other musical

appliances who don't Sell spare parts;

Battery chargers and tyre operators;

Hide and skin collectors;

Firewood retailers.

1.9.2.2. **Category B. 20,000 FCFA to 24,000 FCFA (An approximate of N2,000 to N2,400.) Quarterly**

Healers;

Business with a turnover less than 5.000.000 FCFA;

Restaurant with shed;

Bicycle rental services with less than l0 bicycles;

Video club operators;

Resident photocopying machine operators;

Food stuff retailer with a vehicle;

Hairdressing salons with 3 to 5 employees;

Passenger transport at the outskirts of Urban centres;

Studio photographers;

Operator of cloth printing workshop;

Sport, physical education and gymnastics operators;

Tarpaulins, chairs or table ware, kitchen ware rentals with a Turnover not more than 5.000.000 FCFA.

1.9.2.3. **Category C 40.000 FCFA 50.000 FCFA:**

(An approximate N4.000 to N5.000) Quarterly

Home midwife;

Nurses, masseurs;

Mixed transportation of goods and persons in the periphery of the towns;

Business with turnover of 5 to 10 million CFA;

Bicycle rental services with 10 to 20 bicycles:

Unclassified restaurants;

Handymen with a turnover less than 5 million CFA;

Itinerant merchant with motor vehicles;

Collector of primary products;

Operator of not more than two taxis and per taxi:

Small livestock and poultry seller with turnover

of 5 to 10 million CFA.

1.9.2.4. **Category D 75.000 FCFA to 100.000 FCFA (An approximate of N7.500 to N10,000) Quarterly**[87].

Business with turnover of 10 to 15 million CFA;

Butchers with no refrigerating facilities who sell

less than 100 animals a year;

Periodic bank offices open atleast twice a week;

Cattle and poultry sellers with a turnover of 10 to 15

million CFA.

Duplicating workshop operators;

Bicycle rental services with more than 20 bicycles;

Moped rental services with more than l0 mopeds;

Manicurist and chiropodists providing beauty care;

Tailors or dressmakers with more than l0 machines.

Attention must be drawn to the fact that despite the proliferation of the public telephone booth as a form of business venture commonly referred to as "tele boutique" in all the nooks and crannies of the urban centres of the country, the law seems to have omitted the rating and categorization of this important form of business activity. It is submitted that in subsequent amendment of the law this should be taken care of.

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CHAPTER TWO

TAX ADMINISTRATION AND TAX EVASION/ TAX AVOIDANCE IN NIGERIA AND CAMEROON

2.1 INTRODUCTION

Tax administration is defined to mean the whole organisational set up for the management of the tax system.[1] Tax administration, generally encompasses; the ascertainment of tax liability, collection of the tax, settlement of tax disputes, and the imposition of penalties for violation of tax laws. It further extends to everything done towards the realization of higher revenue yield for the system, such as staff training, staff promotion, education, development and even a better working environment.

The importance of tax administration in any given polity cannot be over emphasised. John F. Due in his book Government Finance stressed the importance of tax administration by saying that:

> "No tax can conform with expected standard of equity if it cannot be administered with a high degree of effectiveness. If persons are able to escape, by legal or illegal means, the tax to which they should logically be subject under, the general scope of the tax, the theoretical equity of the tax is to a large measure lost."[2]

In the light of the above assertion, it could be said that the tax administration of a country plays an important role in the extent to which tax evasion and tax avoidance prevails.

In this chapter which is divided into two parts, the first part seeks to examine the various statutory bodies charged with the responsibilities of enforcing and managing the tax laws in Nigeria and Cameroon respectively. While the second part shall discuss some common problems militating against efficient tax administration in both countries. Charts illustrating the organisational set up of the tax administrative machineries in Nigeria and Cameroon shall also be integrated in the body of this chapter as shown in figures 2.1 and 2.2 respectively.

2.2 THE STRUCTURE OF TAX ADMINISTRATION IN NIGERIA:

The organs of tax administration in Nigeria conforms to the system of political administration made up of the three tiers of government, that is, the Local Government, State Government and the Federal Government. Consequently, tax administration at each of these three levels will be discussed here below.

2.2.1 FEDERAL TAX ADMINISTRATIVE ORGANS.

2.2.1.1 THE FEDERAL BOARD OF INLAND REVENUE (FBIR)

Section 1(1) of the Companies Income Tax Act[3] established the Federal Board of Inland Revenue (FBIR) simply referred to as the "Board".

The Board is made up of the following members:[4] an Executive Chairman who shall be a person within the service experienced in taxation and to be appointed by the president; the Directors and heads of Departments of the service; the Director of Planning Research and Statistical Matters in the Ministry of Finance; a member of the Board of the National Revenue Mobilization Allocation and Fiscal Commission; a member from the Nigerian National Petroleum Corporation (NNPC) not lower in rank than an Executive Director; a Director from Nigerian Custom Service; the Registrar General of Corporate Affairs Commission; and the Legal Adviser to the service.

Any seven members of the Board, of whom one shall be the Chairman or a Director within the service shall constitute a quorum.[5]

An officer of the Federal Inland Revenue Department acts as a secretary to the Board. The secretary summons Board meetings whenever the business requiring its attention so warrants, or upon any request by a member. A majority decision of the members on any matter obtained by

him in written correspondence shall be treated in all respects as though it were a decision of the board in actual meeting unless any member has requested the submission of that matter to such meeting.[6]

The due administration of all federal taxes, that is, Companies Income Tax, Value Added Tax (VAT), Petroleum Profit Tax, Stamp Duties, Capital Gains Tax, and taxation of specified individuals under the Personal Income Tax Decree are under the care and management of the Board. The law empowers the Board to do all such things as may be deemed necessary and expedient for the assessment and collection of all the taxes due under the law and account for all the amount so collected to the Federal Government in a manner prescribed by the Minister of Finance[7]

In the discharge and efficient performance of these functions, the Board is also authorised whenever necessary, with respect to any tax or penalty due, to distrain, hold and dispose of any property taken as security for or in satisfaction of any such tax or penalty and shall account for any such property and the proceeds of sale thereof in a manner to be prescribed by the Minister of Finance.[8] It should be noted that, the Federal Board of Inland Revenue is directly under the supervision of the Minister of Finance[9]

and has the power to sue for recovery of any tax revenue belonging to the Federal Government[10].

The Board discharges its functions through an operational arm called and known as the Federal Inland Revenue Service (herein after referred to as the "Service".[11] This service comprises of six departments further divided into divisions and sub divisions, each headed by a director and sub director respectively.

These departments are:

a. **THE DEPARTMENT OF HUMAN RESOURCES MANAGEMENT,**

PLANNING RESEARCH AND STATISTICS.

This department consists of two main divisions. One is the Human Resources Management Division whose primary function is the execution of personnel policies. The division has the responsibilities for staff promotion, staff recruitment, staff discipline, staff welfare and staff training. The second division is the Planning Research and Statistics (PRS). There is also an Inspection Branch.

b. **THE DEPARTMENT OF FINANCE AND RELATED OPERATIONAL MATTERS.**

This department is in charge of finance and supplies, audit, queries, Public Accounts Committee (PAC) matters, budget preparations, stores and disbursement of funds.

c. **THE DEPARTMENT OF ASSESSMENT, INTELLIGENCE, TAX AUDIT AND SPECIAL INVESTIGATION.**

The department is responsible for tax assessment, tax intelligence matters, tax audit and special investigation. There are two divisions within the department namely: Assessment and Intelligence Division, Tax Audit Division. The assessment activities of the department are based on the work manual called the assessment programme.

d. **THE DEPARTMENT OF TAX COLLECTION, COMPUTERIZATION AND INTERNATIONAL TAX**

The department performs the following functions:

i. Collection of all taxes under the jurisdiction of the Federal Government in accordance with the Tax Acts and practice of taxation in Nigeria.

ii Account for the taxes collected in the form prescribed by the financial regulations in Nigeria.

iii Assessment of all companies and individuals who are not resident in Nigeria but are deriving profits or income from Nigeria.

iv Computerization of tax processing and tax transactions in Nigeria.

e. **THE DEPARTMENT OF PETROLEUM PROFIT TAX AND RELATED OPERATIONS.**

The Petroleum and Pioneer department which is commonly referred to as "P and P" is the most important revenue collecting area of the Federal Inland Revenue Service (FIRS) in terms of foreign earnings for the Federal Government. The department is in charge of the taxation of all companies operating in the oil industry. These include crude oil producing companies known as "Upstream Operators" and marketers of refined petroleum products also known as "Down Stream Operators" as well as oil servicing companies. Additionally, the department also handles tax matters of all pioneer companies until their maturity.

f. **THE DEPARTMENT OF VALUE ADDED TAX**

This department is in charge of the administration of the recent Value Added Tax (VAT) throughout the country.

It should be noted here that, most of the functions of the Federal Inland Revenue Service are delegated to Inspectors of Taxes who normally carry out the assessments and collections of the taxes on behalf of the service.

The Federal Board of Inland Revenue also comprise of a Committee known as "the Technical Committee of the Board".[12] This Committee is made up of the following members.[13] The Executive chairman of the Board; all the Directors and head of Departments of the service; the legal Adviser in the service; and the secretary to the Board. In addition to the above members, the Technical Committee is empowered by the law to co-opt into the service such staff as it may require for the discharge of its function. These functions are;[14] to consider all tax matters that require professional and technical expertise and make recommendations to the Board. The committee is also charged with the responsibilities of advising the Board on all powers and duties listed in section 2 of the Companies Income Tax Act[15]. For instance the Technical Committee of the Board is charged with the responsibility of advising the Federal Board of Inland Revenue on the taxation of companies engaged in shipping or air transport operations in Nigeria.[16] And secondly to advise the Federal Board of Inland Revenue on the exemptions from tax of the profits of any companies registered with the

aim of promoting sporting activities, where such profits are wholly expendable for such purpose.[17] Finally, the Technical Committee of the Board is also required to attend to such other matters as may from time to time be referred to by the Federal Board of Inland Revenue.

It should also be noted that, the Federal Board of Inland Revenue also reserves some powers which cannot be delegated except to the Joint Tax Board and with the consent of the Minister of Finance. The powers so restricted are known as "The Reserved Powers of the Board".[18] For instance the law states that, it is the powers and duties of the Board who may from time to time, specify the form of returns, claims, statements and notices under this Act. [19]

2.2.1.2 THE JOINT TAX BOARD

The Joint Tax Board (JTB) was initially established under section 33 of the Income Tax Management Act, 1961 which has been repealed and is now contained in section 85 (1) of Personal Income Tax Decree of 1993.

The composition of the Joint Tax Board as provided under section 85 (2) of the above Decree is as follows: The chairman of the Federal Board of Inland Revenue who himself is also chairman of the Joint Tax Board; one

member from each state, being a person experienced in income tax matters nominated either by name or office from time to time by the Commissioner for Finance of the state in question. The Federal Government is also represented by a qualified civil servant appointed by the Federal Minister of Finance.

The Board has a Secretary, who is a civil servant appointed by the Federal Civil Service Commission.[20] He must be a person experienced in income tax matters. Although he is not a member himself, he is responsible for maintaining records of the Board's proceedings and signifying all decisions of the Board as well as summoning and servicing Joint Tax Board meetings.[21]

The Joint Tax Board exercises the powers conferred upon it by the Decree and the duties of the Board are.[22] to perform the function such as may be referred to by the Minister of Finance in connection with the function conferred on the FBIR in relation to companies income tax. Secondly the Joint Tax Board under section 85 (9) c shall advise the Government in respect of double taxation arrangements with any country and in respect of rates of capital allowances and other matters having effect throughout Nigeria and in respect of any proposed amendment to the

Personal Income Tax Decree of 1993. Finally, the Board is empowered to promote uniformity both in the application of personal Income Tax Decree, 1993, and in the incidence of tax on individuals throughout Nigeria.

From the above discussion it can be said that the Joint Tax Board is a powerful organ in so far as tax administration is concerned in Nigeria. One of the most interesting feature about the Board is the provision of representation from all the states in the Federation. This, of course, provides an avenue for the various individual states to exchange views on tax matters by the joint session of the Board.

Commenting on the importance of the Joint Tax Board and the unique position it has in the Federal administrative taxation network in Nigeria, Ola, remarked:

> "No one who is familiar with the working of the Board since it held its first meeting in 1963 will fail to be impressed by some of its accomplishments. It has served as a clearing house for tax disputes, as an approving authority for pensions and provident fund schemes, and as a forum for Heads of Inland Revenue Divisions of the Ministry of Finance for exchange of views."[23]

The above assertion no doubt, puts the Board in its proper place as the highest national coordinating body of all states in the Federation in respect to tax matters. It is advocated that frequent rotational meetings of the Board

will go a long way to promote uniformity and ameliorate the working efficiency of the entire tax system.

2.2.1.3 THE BODY OF APPEAL COMMISSIONERS.

The Body of Appeal Commissioners was established under section 52 (l of the Companies Income Tax Act[24] as a body to entertain appeals from the tax payers as well as the Revenue Authorities.

It should be stated here that, even though the Body of Appeal Commissioners performs the function of adjudication its powers are mainly administrative because it merely states what it finds out to be the decision but does not have the powers to impose fines or penalties.

The Body of Appeal Commissioners consists of twelve members to be appointed by the Minister of Finance, one of whom shall be designated as Chairman[25]

Section 52 (3) of Companies Income Tax Act, further provides the method of appointments, tenure of office, condition of service, and also remuneration of each commissioner. Under it, each commissioner shall be appointed by the Minister of Finance by notice in an official gazette, persons appearing to him to have had experience and shown capabilities in the management of substantial trade, business or the exercise of the profession

of law or accounting in Nigeria. Such persons appointed shall hold office for period of three years from the date of his appointment and may at any time resign as an Appeal Commissioner by a notice in writing addressed to the Minister of Finance. Even when he resigns, he may continue to act as an Appeal Commissioner at further hearings in cases which were not determined before his resignation.

Section 52 (4) of the Companies Income Tax Act goes further to list circumstances where the Minister of Finance may determine that the office of an Appeal Commissioner be vacant. These include situations where an Appeal Commissioner has been absent from two consecutive meetings of the Body without due permission of the Chairman, or where a commissioner is incapacitated by physical or mental illness. Note must also be taken that, a Commissioner's office will also be deemed vacant when he fails to give declaration and notice of his resignation, or when he has been convicted of a felony or any offence under any enactments in Nigeria.

In respect to appeals by an aggrieved party, the law requires that objections must be made in writing within a specified time limit of 30 days to the assessing tax authority and to the Body of Appeal Commissioners[26] All appeals before the Body are held in camera[27] and presided over by the

Chairman with the aggrieved party duly represented at the hearing. After hearing the grounds of appeal, the Body may confirm, reduce, increase or annul the assessment made on the aggrieved party as the case may be. Whatever decision is taken, it shall be recorded in writing by the Chairman and a certified copy of the decision shall be supplied to the appellant and the Board by the secretary upon request made by him within three months.[28]

After the decision of the Appeal Commissioners on a matter before them, notices of the amount of tax chargeable under the assessment as determined, shall be served by the Board upon the aggrieved tax payer. When the tax payer is not satisfied with the decision of the Body, such a tax payer is not precluded from making further appeal to the Federal High Court. It should be noted that even when an aggrieved party decides to further appeal to the Federal High Court, he still has to comply with the decision of the Appeal Commissioners. This decision is enforced by registering it with the Chief Registrar of that court by the party seeking to enforce the judgement.[29]

It should also be noted that for an aggrieved party to appeal to the Federal High Court, the amount involve in the tax must be four hundred naira and above.[30] In view of the present low value of the naira, it will be

cost inefficient to engage in litigation that requires a cost higher than four hundred naira just to safeguard four hundred naira or slightly more than that. It is submitted that this provision of the law should be amended in a way that an appeal can only be entertained by the Federal High Court if the tax involve is above five thousands naira.

2.2.2 THE STATE ADMINISTRATIVE TAX ORGANS

The administrative organs of the state tax administration are basically the same throughout the federation. This is made up of the State Board of Internal Revenue and the State Body of Appeal Commissioners. The compositions and the functions of each of these organs will be discuss accordingly.

2.2.1 THE STATE BOARD OF INTERNAL REVENUE

Section 33A(1) of Finance (Miscellaneous Taxation Provisions) (Amendment) Decree, [31] provides that, there shall be a Board to be known as the State Board of Internal Revenue (here in after referred to as the "State Board") whose operational arm shall be known and called State Inland Revenue Service (hereinafter referred to as the "State Service").

The State Board of Internal Revenue shall be composed as follows:[32] The Executive head of the State Service as Chairman, being a person experienced in taxation and to be appointed by the Governor from within the State Service; three other persons nominated by the Commissioner for Finance in the state on their personal merits; the Directors and heads of Departments within the State Service; a Director from the State Ministry of Finance; and the Legal Adviser to the State Board.

Any five members of the State Board, of whom one shall be the Chairman or a Director, shall constitute a quorum. The Board also has a Secretary appointed from within the state service. Although the Secretary is not a member of the state Board, he is charged with the responsibilities of summoning Board meetings whenever the business requiring its attention so warrant, or upon any request of a member.

The State Board under section 33B (l) of the Decree is charged with the following functions: ensuring the effectiveness and optimum collection of all taxes and penalties due to the Government under the relevant Laws. It should be noted that the due administration of the provisions of the Personal Income Tax Decree of 1993 is the responsibility of all the state Boards in the Federation.

The State Board is also charged with the responsibilities of making recommendations whenever appropriate to the Joint Tax Board on tax policy, tax reform, tax legislation, tax treaties and exemption as may be required from time to time,[33] The Decree under sub section 1 (d) (e) of section 33b further provides that the general control of the management of the service on matters of policy and the general appointment, promotion, transfers and discipline of the employees of the state service shall be the duty of the State Board.

As an adjunct to the Board, the Law has established a Committee known as the Technical Committee of the state Board.[34] This Technical Committee of the State Board (hereinafter referred to as the "Technical Committee") comprises of the following members.[35] The chairman of the State Board as Chairman; the legal Adviser to the Board; and the Secretary to the Board. In addition, the Technical Committee shall have powers to co-opt additional staff from within the service in the discharge of it duties. The Technical Committee by virtue of section 33B (2) of the Decree shall be responsible for considering all matters that require professional and technical expertise and make recommendations to the State Board. The Technical Committee shall also advise the State Board on all its powers and duties

specifically mentioned in section 33B of this Act as stated above. Finally, the Technical Committee shall attend to such other matters as may from time to time be referred to by the Board.

The administration of personal income taxation and other taxes such as Road tax, Entertainment tax etc at the state level are carried out by tax inspectors. These tax inspectors include Senior Inspectors of Taxes, Principal Inspectors of Taxes, Chief Inspectors of Taxes, Inspectors of Taxes and Tax Collectors. Although these tax inspectors serve diverse functions in the State Service, their main role is to carry out tax assessments, tax collections, track down tax evaders and tax avoider or again give advise to the tax payers.

2.2.2.2 THE STATE BODY OF APPEAL COMMISSIONERS

The Body of Appeal Commissioners for the state is established under section 59 (l) of the Personal Income Tax Decree, 1993.

This Body is created by Law to take care of aggrieved taxpayers through the appeal process and procedures as provided for in the Decree.

This Body is composed of twelve members appointed by the State Commissioner for Finance from among persons appearing to him to have

had experience and shown capacity in the management of a substantial trade or business or the exercise of the profession of law, accountancy or taxation in Nigeria.[36] An Appeal Commissioner shall hold office for a period of three years from the date of his appointment and may at any time resign as an Appeal commissioner by notice in writing addressed to State Commissioner for Finance. Not withstanding the resignation of an Appeal Commissioner, he may continue to act as an Appeal Commissioner, after the date of his resignation and sit at any further hearing in a case in which he has already sat before that date to hear an appeal, until a final decision has been given with respect to that appeal. The State Commissioner shall designate a public officer to be the secretary to the Body of Appeal Commissioner.

Section 60 of the Personal Income Tax Decree, 1993 provides that any taxable person who is aggrieved by the assessment of his taxes may within thirty days appeal to the Body of Appeal Commissioners.

All appeals before the Appeal Commissioners are heard in camera[37] and any tax payer who appeals against the assessment is entitled to be represented at the hearing of the appeal. The onus of proving that the assessment complained of is excessive shall be on the appellant. After

hearing, the Appeal commissioners may confirm, reduce, increase or annul assessment or make such order thereon as they may see fit.[38] If the tax payer is still not satisfied with the decision of the Body of Appeal Commissioners, he may still appeal to State High Court if the tax liability of the appellant in question is more than two hundred naira.[39]

In the light of the forgoing it's also seen that the body of Appeal Commissioner plays a very important role as far as tax administration at the state level is concerned in Nigeria. It should be recalled here that, the role of the state Body of Appeal Commissioners is not different from the Body of Appeal Commissioners established at the Federal level. The only difference comes from the establishing body and not in functions, members and procedure. For example while the Federal Minister of Finance appoints members of the body of Appeal Commissioners at the Federal level, the State Commissioner for Finance appoints for the State Body of Appeal Commissioners.

2.2.3. LOCAL GOVERNMENT TAX ADMINISTRATIVE ORGAN.

In Nigeria, the responsibilities of the local Government at the time of independence included the maintenance of law and order and the provision of local services.

Following the Ibrahim Dasuki's White Paper Reports on the new Local Government System as a third tier of government in 1976, the functions of the local Government were extended to include education, basic health services, social welfare, agricultural craft and extension, cooperatives, crafts and small scale industries. In order to carry out these functions, the Local Government raised revenue in various ways. Although it must be acknowledged here that the local system of finance differed considerably from state to state, the main sources of revenue which accrues to the local governments in Nigeria are mainly from lorry park fees, community tax rates, tenement taxes, hackney carriages, registration, birth and death registration fees, market fees etc.

In Nigeria today, at the level of each local government in the federation, there is a committee known as the " Local Government Revenue Committee".[40] The governing body of the Revenue Committee comprises of[41] the Supervisor for Finance as chairman; three Local Government Councilors as members and two other members experienced in revenue

matters to be nominated by the chairman of the local government on their personal merits.

The Law provides that,[42] the Revenue committee shall be responsible for the assessment and collection of all taxes, fines and rates under its jurisdiction and shall account for all amounts so collected in a manner to be prescribed by the chairman of the local government. It is further provided by the law that, the Revenue Committee shall be autonomous of the local government treasury and shall be responsible for the day to day administration of the Department which forms its operational arm.[43]

2.3 THE STRUCTURE OF TAX ADMINISTRATION IN CAMEROON

In Cameroon, tax administration is carried out at two levels, that is, the central and the provincial levels. The central level consists of the Minister of Finance and the Economy and the Directorate of Taxation, while at the provincial level (the external services of the Directorate of Taxation) these comprises the provincial tax centres, divisional tax centres, district tax centres, and the specialized tax centres, each of which has a clearly defined functions to perform. A discussion of each of the above tax structures will

give an insight into the tax administrative machinery in Cameroon and the level of their adequacy appraised. We shall start our discussion from the hierarchial set up of the tax administrative units in the country.

2.3.1 THE MINISTRY OF FINANCE AND THE ECONOMY:

In Cameroon, tax administration falls under the general jurisdiction of the Ministry of Finance and The Economy. Amongst the many directorates that makes up the Ministry, the Directorate of Taxation stands as an apex authority under the Ministry in respect of tax matters.[44]

In the country, the Minister of Finance and Economy has a very important role to play as far as settlement of tax disputes are concerned. The Minister is vested with the powers to serve as an appellate authority with respect to tax claims presented before him by an aggrieved tax payer.

Generally, the Law provides that when a taxpayer feels completely dissatisfied with the decision of the lower appellate authorities he can appeal and submit his claims to the Minister of Finance.[45] The claims, in order not to be rejected must fulfill the following conditions:[46] Bear the signature of the claimant; bear a fiscal stamp at the current rate, and must be submitted within a period of forty five days from the date of notification of the

decision of the Director of Taxation or within ninety days from the date of issuance of the roll for collection or the assessment to which the notice applies. In the absence of the notice, the taxpayer is expected to state the type of tax, the financial year for which it was due, the number of the item on the roll and place of assessment containing a brief account of the party's grounds, pleadings and evidence of payment of the portion of the tax not in dispute. The law also states that separate claims shall be filed for each type of taxes and for each place of assessment.[47]

In practice when such claims are forwarded to the Minister of Finance, the Minister usually refer the claims to the Director of Taxation for his opinion on the matter. The Director of Taxation also refers the matter to the Inspector of Taxes in the area in which the tax payer was assessed, for his opinion. This procedure is unlikely to be fair as the Director or the Inspector of Taxes may not say anything different from what they had earlier decided to be the taxable amount of the appellant.[48]

After due consultation with an advisory tax body,[49] the Minister shall give his decision on the matter within three months of the date which the claims was lodged.[50] When the arguments of the tax payer are deemed

foreseen, the Minister in charge of Finance has powers to grant a relief of 5,000.000 FCFA and above (an approximate of N500.000) [51]

On the other hand, if the aggrieved tax payer feels dissatisfied with the decision reached by the Minister of Finance he will at this juncture have two options:[52] He has the right to further appeal within three months after his claims have been rejected to the supreme court; the aggrieved taxpayer is required to submit his claims by way of Application addressed to the Registry of Administrative Bench of the Supreme Court where the said claims will be registered with an acknowledgement receipt given when so requested. Alternatively, the aggrieved taxpayer can apply by way of voluntary jurisdiction to the head of the Provincial Taxation Centre of the area of his residence for the granting of a remission or reduction or a compromise. The application shall contain information needed to identify the disputed assessment and, if necessary, be accompanied by the notice of assessment or an extract of the roll and a statement of account issued by the accountant of the treasury in charge of the collection.

After the application has been studied a reply shall be made in writing. The remission, reduction or compromise shall be granted as follows.[53]

a] Up to 1,000.000 FCFA (an approximate of N100,000) for taxes and levies by the head of the Provincial Taxation Centre after consultation with Provicial Taxation Commission, (an advisory tax body to the head of the Provincial Tax Centre) and the sum up to 1,000,000 FCA for penalties and additional charges;

b] Up to the sum of 5,000.000 FCFA (an approximate of N500,000) of taxes and levies by the Director of Taxation after consultation with the Minister in charge of Finance and up to 5,000,000 FCFA for penalties and additional charges; and

c] As aforesaid, from 5,000,000 FCFA and above (an approximate of N500.000) for taxes and levies by the Minister in charge of finance after due consultation with the Central Taxation Commission.

2.3.2. THE DIRECTORATE OF TAXATION

The Directorate of Taxation is a very important unit of tax administration in Cameroon. The Directorate of Taxation is headed by a Director assisted by a Deputy Director.[54]

The Directorate of Taxation is specifically charged by the law with the following functions;[55] Elaboration of tax laws and the rigorous

implementation of all tax legislative Acts and other related tax matters in the country to suit the fiscal exigencies of the time. The Directorate of Taxation is also responsible for the combat of all forms of tax frauds, identification, and immatriculation of all tax payers in the country. It also formulates tax policy and conduct fiscal convention on behalf of the nation. The Directorate of Taxation also acts as an appellate body in respect of tax disputes in Cameroon. This is because majority of disputes coming from the Provincial Taxation Centres usually end at this level.

Article 321 (new) of the 1995 Finance law provides that when the decision of the Head of the provincial Taxation centre is not entirely satisfactory, the applicant may submit his claim to the Director of Taxation within sixty days after the date the roll was issued for collection. The Director of Taxation shall have sixty days to reply. After the examination of the case by the Director of Taxation, if it is considered that his arguments are not valid, an answer will be communicated to the taxpayer. If his claims is founded, relief may be granted by the Director of Taxation as already discussed in the preceding section. Note also that when the decision of the Director of Taxation is not entirely satisfactory, further appeal lies with the Minister of Finance as stated.

The Directorate of Taxation in Cameroon is comprised of both the central and the external services.[56]

2.3.2.1. THE CENTRAL SERVICES OF DIRECTORATE OF TAXATION

The Central service of the Directorate of Taxation is made up six main divisions and some other affiliated divisions which are themselves further divided into subdivisions headed by Senior Inspector of Taxes, Principal Inspectors of Taxes and Inspector of Taxes with the ranks of sub director and chief of service in the central administration. These divisions are.[57]

a] THE DIVISION OF TAX LEGISLATION, LITIGATION AND INTERNATIONAL TAX.

This division comprises of three sub divisions, these are the sub division of tax legislation, sub division of tax litigation and sub division of International tax. This division is responsible for the elaboration of all tax legislation, the regulation of direct and indirect taxes, as well as, stamp

duties in the country. The division also conduct fiscal conventions with other nations.

b] THE DIVISION OF STAMP DUTY AND TRUSTEESHIP

The division is charged with the general administration of stamp duties registration in the country. The division is also responsible for the control and management of all sequestrated properties and trust properties. It comprises of the sub division of stamp duty and the sub division of trusteeship.

c] THE DIVISION OF TAX CONTROL AND TAX AUDIT

This division is made of ten tax controllers and twenty tax auditors. They are charged with the general control and verification of all tax matters in the Directorate of Taxation.

d] THE DIVISION OF PLANNING RESEARCH, STATISTICS AND COMPUTERIZATION

This division is in charge of tax planning, research and statistical matters on taxation. The division works in collaboration with the National Computer Centre in computerizing taxation matters in the country. This division comprises the sub division of planning Research, sub division of statistics and sub division of computer services.

e] **THE DIVISION OF TAX INVESTIGATION AND INTELLIGENCE**

This division is responsible for all tax investigations and intelligence matters in the country.

f] **THE DIVISION OF THE REPRESSION OF FISCAL FRAUD**

This division is composed of five Senior Tax Inspectors. They are responsible for the combat against all forms of fiscal fraud in the tax system.

g] **THE SUB DIVISION OF HUMAN RESOURCES AND GENERAL AFFAIRS**

Although this is not a full division, it stands distinct from the other sub divisions. This sub division is further divided into four services, that

is, the service of Human Resources Management, the Personnel Service, the service of General Administration, and the Library. This sub division is responsible for staff training, staff welfare and discipline. They are also in charge of the stores and supplies.

f] OTHER AFFILIATED DIVISIONS

The other affiliated divisions of the Directorate of Taxation include: The Inspectorate Service, which is comprised of ten Senior Tax Inspectors. They perform a supervisory role over all the divisions and sub divisions of the Directorate of Taxation. It should be noted that they are directly under the control of the Director of Taxes.

There is also the Information Tax Service, charged with the general dissemination of taxation information. Finally, there is also the Mail and Liaison office.

2.3.2.2. THE EXTERNAL SERVICES OF THE DIRECTORATE OF TAXATION.

The external services of the Directorate of Taxation in Cameroon comprises of the provincial taxation centres, the divisional taxation centres, the district taxation centres and the specialized taxation centres.[58]

2.3.2.2.1 THE PROVINCIAL TAXATION CENTRES

Provincial Taxation Centres in Cameroon constitute the main external arms of the Directorate of Taxation. Prior to 1995, it was formerly known as the Provincial Inspectorate of Taxation. In the country today, there are ten Provincial Taxation Centres, two of which are found in the English speaking provinces, that is the North West and the South west provinces respectively. These Provincial Taxation Centres are headed by a Senior Inspector of Taxes with the rank of a sub director in the Central Administration.

The provincial taxation centres are charged with the administration and implementation of all the diverse tax laws relating to direct and indirect taxes including stamp duties and trusteeship in the province.

The head of the Provincial Taxation Centre is vested by laws with the powers of entertaining claims submitted before him, by an aggrieved taxpayer in the province and this can only be done with due consultation of

the provincial taxation commission. (a tax advisory body at the provincial level)[59] Further appeals from the centre lies with the Director of Taxation.

2.3.2.2.2 THE DIVISIONAL TAXATION CENTRES.

The Divisional Taxation Centres known in the original French appellation as "Centres Departmentaux Des Impots"[60] are found at the level of each divisional head quarters in Cameroon, there are thirteen of such centres in the North west and South west provinces.

The Divisional Taxation Centre are headed by a Divisional Inspectors of Taxes. These centres are for the general administration and implementation of the tax laws within its locality. They are also responsible for the sending of monthly statistical reports and other reports on the conditions and developments of taxation in their localities to the Provincial Taxation Centres which in turn, forward it to the Directorate of Taxation in Yaounde.

2.3.2.2.3. THE DISTRICT TAXATION CENTRES

Unlike the Divisional Taxation Centres, the District Taxation Centres in their original French appellation are known as the "Centres Divisonnaire Des Impots"[61]

These District Taxation Centres are found mostly in the big cities like Douala and Yaounde. For example in Douala, the Littoral province there are sixteen district taxation centres whereas in Yaounde the Centre province, there are fifteen of such centres. In the English speaking provinces, there are only two of such centres found in Muyuka and Buea all in the South West province.

The rationale behind the creation of this new tax administrative structure in Cameroon arose as a result of the following reasons: The increasing number of tax payers in these cities, the scattered nature of the urban population, the problem of inadequate staff and the general problem of inaccessibility to all nooks and crannies of the city by the tax administrators. As a result of all these, quarters in these cities have been geographically carved out to form District Taxation Centres for the purpose of easy administration. These centres are headed by Inspectors of Taxes who are directly answerable to the head of the Provincial Taxation Centres.

2.3.2.2.4. THE SPECIALIZED TAXATION CENTRES.

The specialized taxation centres are the smallest in the country's structure of tax administration. These centres are found only in Douala and

Yaounde, the economic and political capitals of Cameroon. They are specifically charged with the administration of the Turnover Tax in these capitals. These centres are placed directly under the supervision of the head of the Provincial Taxation Centres of these two provinces.

2.4 AN APPRAISAL OF THE STRUCTURE OF TAX ADMINISTRATION IN NIGERIA AND CAMEROON

In view of the growing awareness of the vital roles which taxation plays in developing nations like ours, substantial and major reforms in tax administration have been and are still being undertaken by both the Nigerian and Cameroonian governments. Thus in Nigeria and Cameroon, the frame work of the tax administrative machineries extend to the smallest political units, that is the federal, States and Local government for Nigeria, and the Central, provincial and divisional levels for Cameroon. Each of these administrative units in both countries have a clearly defined functions to perform.

It is pertinent to note that a good tax system requires an efficient administration and if the overall fiscal goals of the tax system have to be attained, tax administration must enhance and promote a just and equitable

enforcement and management of tax laws in any tax systems which allows considerable tax evasion and tax avoidance loses much of its usefulness. Injustice may also be occasioned from the fact that some tax payers can go scot free either because he is a friend or relation to the tax administrator or either because they share the same political ideology while others are made to bear the tax burden fully. Any effective administration of the income tax, corporation tax and any other forms of taxation in any tax system requires a carefully designed tax structures, thought of legal codes and a corps of capable honest administrators.[62] The question that readily comes into the mind is whether these requirements are met by these two countries, that is Nigeria and Cameroon?

The first noticeable deficiency is the lack of a carefully designed tax structures for an efficient tax administration in Nigeria and Cameroon. To take Cameroon for example, the Directorate of Taxation is only a department under the bigger Ministry of Finance and Economy. The Secretary General of that Ministry, a civil servant himself is responsible to the Minister of Finance, who is obviously not a technocrat but a politician. Consequently the Director of Taxation and the heads of the provincial taxation centres are subordinate to the Secretary General and through him

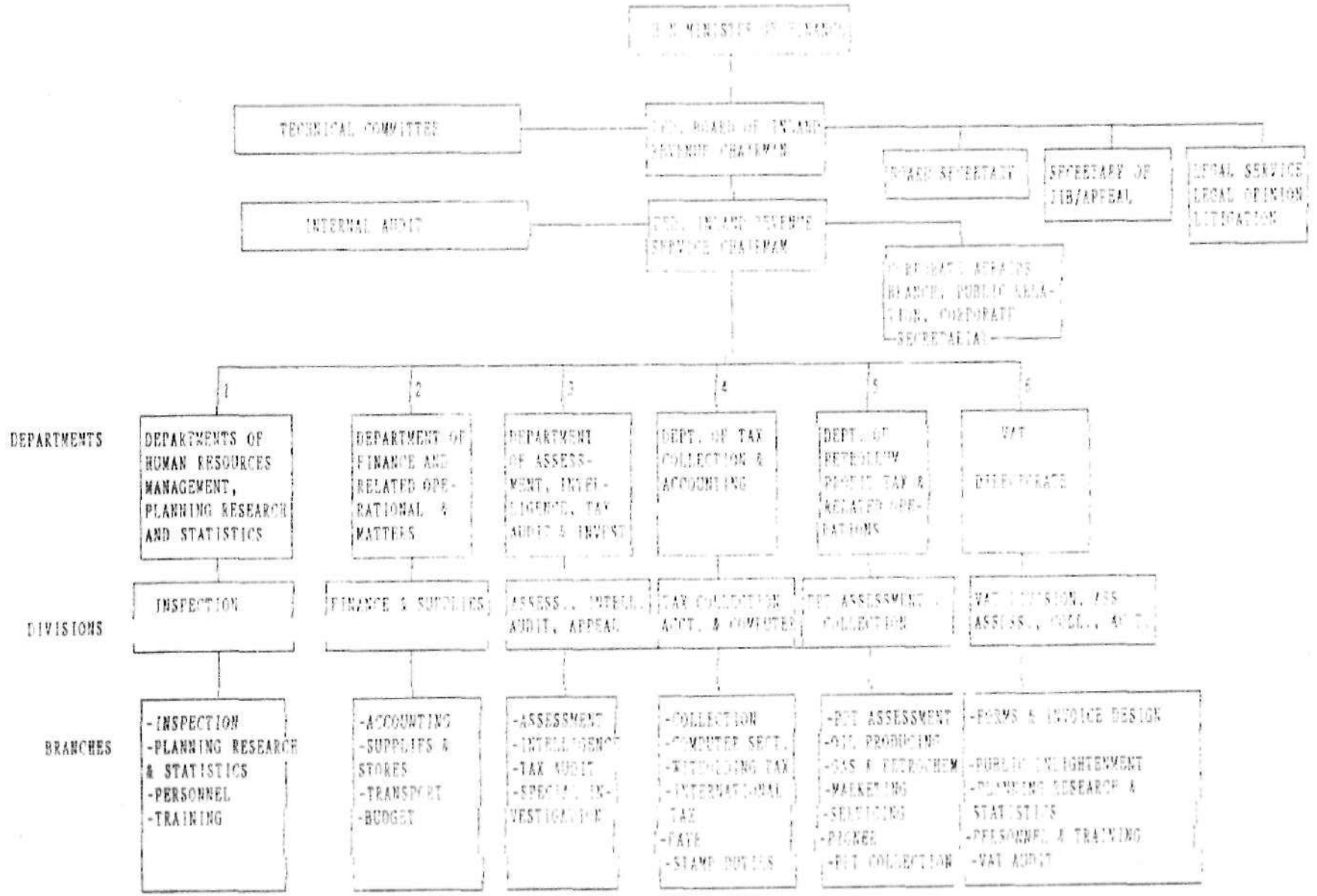
ultimately to the Minister of Finance. You will notice that the whole chain of command is suffocating and inefficient not only because decisions have to be approved by the Secretary General who is an amateur as far as tax administration is concerned but also because politicians are apt to some times compell their subordinate to take certain measures that in all the circumstances are politically corrupt.

In Nigeria, it is the Civil Service Commission, the body responsible for the recruitment for civil service jobs, that recruits personnel for the Federal Board of Inland Revenue. This is thought by many to be appropriate since tax is a specialized field and therefore it is argued that in order not to appoint the wrong personnel, it would be better if the Federal Board of Inland Revenue made its own appointments. Also in Nigeria, the Minister of Finance also maintains a supervisory role over the activities of the Federal Board of Internal Revenue[63]. The Board is bound to be influenced to take orders from the Minister.

It is submitted that the only sustainable way to attain an overall one hundred percent fiscal goals is the creation of an autonomous tax boards in Nigeria and Cameroon characterised by men and women experienced in taxation or a specialized course of taxation. It is also submitted that, the

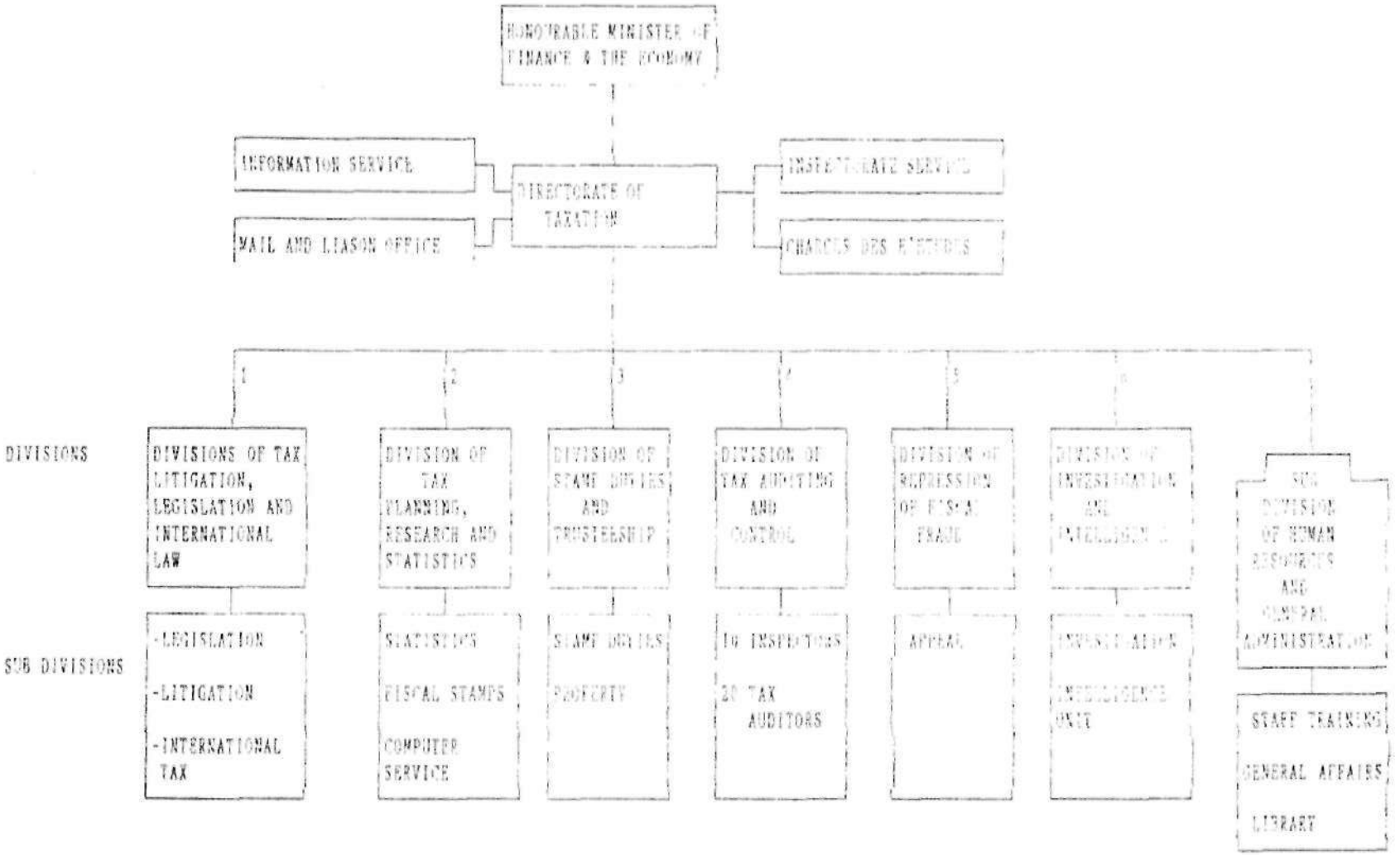
tax appellate bodies should be made up of full time members who are seasoned tax experts in both administration and practice. They should operate independent of the Government. In short, the structure should be like the Industrial Arbitration Tribunal[64] with powers of sanctions against any erring party. This is because as Ijewere observed of few decided cases of note by the Body of Appeal Commissioners in Nigeria today, 99.9% of the decided cases are in favour of the Federal Board of Inland Revenue.[65]

FIGURE 2.1: ORGANIZATION CHART OF FEDERAL BOARD OF INLAND REVENUE AND FEDERAL INLAND REVENUE SERVICE, NIGERIA



SOURCE: SUB DIRECTORATE OF PLANNING RESEARCH AND STATISTICS, (FIRS) CENTRE-MEDIA, LAGOS.

Figure 2.2: NEW ORGANOGRAM OF THE CENTRAL SERVICE OF DIRECTORATE OF TAXATION IN CAMEROON



SOURCE: COMPILED FROM THE OFFICIAL TEXT ORGANISING THE MINISTRY OF FINANCE AND THE ECONOMY, CAMEROON

2.5. SOME COMMON PROBLEMS MILITATING AGAINST TAX ADMINISTRATION IN NIGERIA AND CAMEROON

It may be pertinent to observe that while the issues and goals of fiscal policy may differ from one country to another, the problems of tax administration are quite likely to be very similar especially in the developing countries including Nigeria and Cameroon. This is because of the acute shortage of skillful personnel, lack of good infrastructures, poor remuneration and lack of motivation, lack of some basic equipments such as a good means of transportation, calculators, stationeries and so on. The problems of tax administration in the developing countries is further accentuated when Surrey Stanley in his work said:

> "He (the tax administrator) finds himself saddle with a staff which is insufficient, inexperience and poorly paid. He faces a public in large part unfamiliar with the tax knowledge and record keeping requirements which a developed state must inevitably demand of its citizens... He often must demand the taxes from business and individual with a deep suspicion ranging to contempt of the tax collector from a public whose antagonism to tax payment, arisen from a lack of confidence in the government is almost the very anti-thesis of the cornerstone of every successful democratic system that taxes are the price necessarily paid for a civilised society."[66]

It is in this light that we would examine some common difficulties associated with all stages of tax administration in Nigeria and Cameroon, and some recommendations will be made with the hope of prescribing panacea to them.

2.5.1 THE PROBLEM OF TAX PAYERS IDENTIFICATION.

One of the main problems militating against tax administration in Nigeria and Cameroon is the problem of identification of taxpayers for income tax purposes. In these countries it is very common finding persons liable to tax hiding from the tax authorities or transacting businesses without any formal registration or fixed address. For instance, in Cameroon it is very common finding chicken and beer parlours located in private homes competing with big hotels but, yet they do not pay tax for the nature of their lucrative business. On the other hand some tax defaulters in the rural areas would run away and hide in the bush or forest until tax raids are over. In fact, the tax administrator experiences tough times in locating prospective tax payers and tax defaulters. These difficulties are mainly due to the nature of the societies and their inhabitants.[67]

In Nigeria and Cameroon, the societies are generally rural, thus making tax payers identification almost impossible. However, the problem is accentuated in Nigeria because the citizens are mostly illiterate and do not know how their money is used and so suspiciously regard any tax officer as an instrument of oppression, well remembering their colonial experience.[68]

Also in Nigeria and Cameroon, even in fast growing urban and semi-urban centres, the towns are not properly planned, making street-naming and house-

numbering in-accurate unlike in Europe and the United State of America where town are well planned, streets named, houses numbered, and identification numbers issued to the tax payers.[69] The problem of identification of tax payers is more acute in Nigeria than in Cameroon where any citizen of taxable age, is required by law to possess a national identity card. In Nigeria the programme of national identity card scheme is yet to materialize. All these difficulties mentioned above compound the work of a tax man who is very determined to trace his tax payers.[70] It is proposed that, in order to enable easy identification of tax payers by the tax authorities the urban and the semi-urban centres of Nigeria and Cameroon should be properly planned that is, naming of streets and numbering of houses. This will make it easier for the tax man to easily identify or trace the tax payer through concrete addresses. Also, where the tax payer knows that he will easily be identified by the tax man and the consequences of such identification, he will not in the first place, indulge in tax dodging activities.

2.5.2 THE PROBLEM OF PERSONNEL AND LACK OF MOTIVATION.

Apart from the problem of identifying taxpayers for income tax purposes in Nigeria and Cameroon, there is the problem of lack of skillful personnel, low pay scales and general lack of motivation by both governments.

Nigeria, most of the personnel who carry out the assessment are below the rank of an Inspector of Taxes. Most of them have barely smattering of taxation.[71] In fact, they are not properly skilled to make correct assessment and apply the complicated rules in the tax laws and this could lead to either a serious loss of revenue through wrong assessments or to over taxing of tax payers. Furthermore because of the shortage of skilled personnel in the country, it is difficult to reach tax payers many of whom live in rural areas. This result as apathy on the part of tax payers in submitting their completed returns since returns of income forms and other correspondence are delayed by the Revenue Department.

In Cameroon, the lack of well trained and experienced tax personnel is a major cause for concern. In an effort to revamp the receding economy by the implementation of the Structural Adjustment Programme (SAP) the government have carried out series of massive retrenchments in recent times. The government cannot afford to train and employ more qualified persons to fill in vacant positions in the taxation department. Consequently the taxation centres have not got enough staff to work with.

It is also submitted that in order to encourage efficiency in the administration of tax laws which have become more complex and highly technical, intensive retraining courses and seminars should be conducted by the governments of

Nigeria and Cameroon to the available staff. Also, deserving staff should be sent abroad to observe modern trends and procedures in tax administration for it is often said a tax administration so composed will be capable of detecting the resulting acute problems of tax evasion and avoidance in these countries.[71]

There is no gainsaying here that tax administrators in Nigeria and Cameroon are not adequately remunerated. This problem of low salary scales appears more serious in Nigeria than in Cameroon. It is said that however efficient the tax administrator may be if they are poorly remunerated, they may be tempted to indulge in acts of embezzlements, misappropriation of funds arising from tax collections or breed general acts of dishonesty in the tax system[72]. In Nigeria, even when the qualified personnel with the requisite training are found, they are often lost to private firms where they earn a higher salary than the ones in the Revenue Department. This is because salary in the Department is tacked to the general civil service salary structure, and they cannot expect to receive higher salaries than their contemporaries in other branches of the civil service, who, of course, may not necessarily be working as hard or assuming duties as onerous.[73]

In Cameroon, commenting on the inadequate nature of the pay package, one tax inspector remarked[74] that it takes close to twenty years of formal education and training to become an Inspector of Taxes only to be remunerated less than 100.000

FCFA (an approximate less than N10.000) a month while their counterparts in the neighboring Gabon Republic earns about 1,000,000 FCFA (an approximate of N100.000) a month for the same job. Nevertheless, it is submitted that the government of Nigeria and Cameroon should adequately remunerate tax personnel so as to attract and maintain more staff.

In Nigeria the government over the years have not got any recognition for a good tax man. This feeling had strongly been expressed in Nigeria by one time chairman of the Federal Board of Inland Revenue when he said:

> " I cannot remember any single tax gatherer that has been recognised since I was honoured (sic) in 1964. I submit that this omission cannot be encouraging to tax administrator especially when they see permanent secretaries, judges upon judges being honoured from year to year. Those responsible for making recommendations to the head of state should please bear this in mind as a means of giving tax officials something to compete for by giving of their very best honestly"[75]

In light of this, one would propose that a good tax man should be given a pride of place in the awards of national honours based on their degree of honesty and diligence to duty. In addition, the Governments of Nigeria and Cameroon should consider very seriously the possibilities of granting pecuniary rewards to tax officials who diligently perform their duties with all arms of the department benefitting from the scheme. For example the Assessment Department could be rewarded, say one percent of any amount raise over and above what the tax payer

had declared in his returns. The Investigation or Audit Departments could also on their part be rewarded on percentage of any amount recovered due to uncover hidden tax facts and figures.

2.5.3. ADMINISTRATIVE AND OTHER LOGISTIC PROBLEMS

Another common problem militating against tax administration in Nigeria and Cameroon is the problem of lack of some basic facilities for the tax personnel to be able to discharge their functions efficiently. Lack of such basic facilities include poor office accommodation, lack of good means of transportation, lack of some basic office equipments such as stationeries, photo copier machines, calculators.

The first aspect of this problem as mentioned above is that of poor office accommodation. The Revenue offices or centres in Nigeria and Cameroon can hardly be said to be comfortable for a delicate job like taxation. The offices lack good furniture and furnishings, no air conditioning except for few high cadre personnel, the filing system is a jumble and infact the general environment of the offices are unattractive as compared with those of other financial institutions such as banks and insurance offices.[76]

The second aspect of the problem of lack of basic facilities for effective tax

administration in Nigeria and Cameroon is that of lack of vehicles to facilitate movements. Tax payers in the most are reluctant to pay taxes voluntarily. Tax collectors therefore do not have to remain in their offices and wait for tax payers to come and pay their taxes. They have to go out for the tax payers. This cannot be efficiently done without a good and fast means of transport.

Similar to the problem of lack of transport is the problem of lack of variety of equipments for tax offices. These include calculators and computers for maintaining accurate records, stationeries, office shelves etc. It is submitted that the provision of these facilities and basic office equipments, that is good office accommodation well ventilated as well as good vehicles, photo copier machines, computers, good furnitures etc will make a tax man more efficient and mobile in the discharge of his functions.

From the above discussion, it can be concluded that there are some structural problems facing tax administration in Nigeria and Cameroon and there is dire need of revitalization. Some of the ways in which this can be achieved have been discussed in the body of this chapter. However, for purposes of emphasis, they would be summarised in the last chapter of this thesis.

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69. Amadou, K. M. (1994) " The Problems of Tax Administration in Nigeria and Cameroon" A. Journal of the Law Society, A.B.U, Zaria P. 69.

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71. Ibid. P.69.

72. Samba, J. N. (1992) Op cit. P2.

73. Adinkrah, K. O. (1985) Op cit P 31

74. Interview with an Inspector of Taxes in Douala, Cameroon.

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CHAPTER THREE

3.0 TAX EVASION IN NIGERIA AND CAMEROON.

3.1 INTRODUCTION

Tax evasion is a universal phenomenon. It takes place in all societies,all social classes, all profession, all industries, and all economic systems[1]. It dates back as far as human being memory. It is however not surprising that we are told Plato[2], some 2.500 years ago wrote about it and the ageing Ducal Palace of Venice had a stone with a hole in it, through which people once informed the Republic about tax evaders[3].

In Nigeria like Cameroon, one of the greatest problems in the country is the problem of tax evasion which is very prevalent. All forms of taxes are to some extent evaded and there has been persistent loud public outcry against acts of tax evasion by both government with anecdotal evidence of rising fiscal deficits[4].

In this chapter, for the purpose of clarity in presentation, the definition of tax evasion and tax avoidance as well as the distinction between them will be examined as a pre requisite in understanding their legal consequences. The chapter shall also discuss the various causes, devices and methods of measurement of tax evasion including the various penal provisions and sanctions and their adequacy appraised. The attitudes of the courts and some other non-statutory measures for

curbing the menace of tax evasion in Nigeria and Cameroon shall conclude the chapter.

3.2 DEFINITIONS

3.2.1 DEFINITION OF TAX EVASION

Both the Nigerian and the Cameroonian tax Legislation does not provide any statutory definition of the term "tax evasion". What the Laws have simply done is providing measures and penalties for acts of tax evasion thus giving an insight into what may be regarded as tax evasion. In the absence of any statutory definition of the term, it is necessary to review some available definitions advanced by scholars in the field of taxation, as well as definitions advanced by tax authorities and the Courts in some other jurisdictions.

Abdulrazaq defined the term 'tax evasion' as "a contravention of the tax Laws, whereby a taxable individual or company neglects to pay the tax due, or reduces the tax liability by making fraudulent or untrue claims on the income form"[5].

Richard Toby defined the term to mean "a deliberate violation of the Law in order to escape the payment of tax which is unquestionably imposed by the tax Law of the taxing jurisdiction"[6]. In addition to the above definition of the term,

he went further to state that, evasion is used not only to include cheating and frauds of various kinds but it also include the failure to comply with the Law resulting from ignorance, error or negligence.

In the words of Samba, J.N. he defined tax evasion to mean:

> "The unlawful refusal to pay tax on what has accrued as income within the meaning of taxing statutes. It is an illegal way of avoiding of tax liability and includes such violations of the law as failure to file returns (declaration) on time, failure to pay on time and failure to report income and deductions fully and accurately"[7].

Inherent in this definition proffer above, one can easily deduce another form of tax evasion commonly practice in both Nigeria and Cameroon known as "Tax Delinquency". This simply mean the late remittance by the tax payer to the tax authorities, taxes as and when due with the view of obtaining a tax advantage, thus giving credence to the adage that tax delayed is money gained[8].

A more immense and comprehensive definition of the term 'tax evasion' is that advanced by Canadian Department of National Revenue that;

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

deliberate misrepresentation, concealment or with holding matters facts"[9]

3.2.1.1 JUDICIAL DEFINITION OF TAX EVASION

The courts too, have not been left out in the search of a suitable definition of the term 'tax evasion'.In determining what tax evasion is, Lord Hobhouse in the English case of SIMMNS V. REGISTRAR OF PROBATES [10] stated that;

> "It does appear to their Lordships that an examination of the decision in which the word 'evade' has been the subject of comment leads to any tangible results. Everybody agrees that the word is capable of being used in two senses, one which suggests underhand dealing, and another which means nothing more than the intentional avoidance of something disagreeable".

Also, in the American case of BULLEN V. WISCONIN, the issue of tax evasion was also considered and Justice Wendell Holmes had this to say:

> "We do not speak of evasion because, when the law draws a line, the case is on one side of it, or the other, and if on the safe side, it is more the worse legally when an act is condemned as an evasion, what is meant is that, it is on the wrong side of the line indicated by the policy if not by the mere letter of the law."[11]

In summation, tax evasion may be described as an illegal concept relating to fraudulent acts of the tax payer culminating in violation of the criminal and

civil provisions of the tax laws. Suffice to state here that, it only assumes a criminal proportion when the means or acts adopted to conceal one's income and mislead the tax administration are intentional, wilful and obstinate as seen in the various definitions and judicial expositions expressed above. Thus, to come within the ambits of tax evasion, mens rea is the basic ingredient in the absence of any credible explanation for fraud, wilful default or neglect as correctly stated by William M. J. in the Australian case of BARRIPP V. COMMISSIONER OF TAXATION[12] in the following terms:

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

3.2.2 DEFINITION OF TAX AVOIDANCE

The term 'tax avoidance' unlike tax evasion is not precisely used or found in any of the definition sections of both the Nigerian and the Cameroonian tax legislation. However, in the absence of any statutory definitions to the term, attempt at definitions will be made to some academic writers and commission as well.

Abdulrazaq, in an attempt to define the term 'tax avoidance' said:

"The phrase tax avoidance may be taken to mean exploitation of provisions, or lack of provision in a taxing statute by means which, though they legally reduce a person's tax liability which would otherwise, accrue have the appearance of being artificial and being entered into solely or predominantly for the purpose of reducing tax for the purpose of reducing tax liability. The means adopted are not those by which one would expect normal or family dealings to be carried out"[13].

The term tax avoidance may also be described as Professor Wheatcroft puts it as; "the art of dodging without actually breaking the Law"[14]. Flesch, M.C described the term to mean "a lawful carrying out of a transaction which was either entered into, or which took a particular form, for the purpose of minimising taxation"[15].

A more readily acceptable definition to the term tax avoidance is that advanced by the **BRITISH ROYAL COMMISSION** in the following terms as:

"Some act by which a person so arranges his affairs that he is liable to pay less than he would have paid but for the arrangement. Thus, the situation which he brings about is one in which he is legally in the right, except as far as some special rule may be introduced that puts him in the wrong"[16].

From the above definitions proffered to the term "tax avoidance" a closer examination of all these definitions reveals that, tax avoidance revolves around one theme, that is tax avoidance is lawful or legal. It can thus be stated in conclusion that tax avoidance conveniently involves techniques by which either a lawyer or

an accountant can so arrange his client's affairs so as to achieve a reduction in the amount of tax he would otherwise have paid.

3.2.3 THE DISTINCTION BETWEEN TAX EVASION AND TAXAVOIDANCE

There is an important distinction between tax evasion and tax avoidance. In tax jargon, tax evasion is an illegal concept sterning from acts of concealment, deception, dishonesty or outright escape of payment of tax on the part of the tax payer; While tax avoidance is perfectly lawful. The most celebrated statement often quoted in favour of tax avoidance comes from Lord Tomlin in the English case of I.R.C. V. DUKE OF WESTMINSTER when he said:

> "Everyman is entitled; if he can to order his affairs so that the tax attaching under the appropriate Acts is less than it otherwise would be. If he succeeds in ordering them so as to secure this result, then however unappreciative the Commissioner of Inland Revenue or his fellow tax payers may be of his ingenuity, he cannot be compelled to pay an increased tax"[17].

The above view seems to have been adopted in the Nigerian case of AKINSETE SYNDICATE V. INSPECTOR OF INCOME TAX[18], where Bairamain J.S.C. said: "a person may use lawful means to avoid income tax. What he may not do is to try to evade it. What he does should be genuine - not merely a veil to hide or dissemble the reality of things". The above assertion

could as well stand for the Cameroonian position.

While we do acknowledge that tax evasion is an illegal concept, tax avoidance is legal and the tax payer is at liberty to arrange his transactions to fall outside the scope of taxing acts. The question that runs into the mind is, can tax avoidance be said today to be absolutely lawful? This is the subject of discussion in the next chapter.

Another main distinguishing feature between tax evasion and tax avoidance can be further viewed from the fact that, in the former, that is, (tax evasion) liability to tax must have arisen and the tax payer through fraud, concealment or deception pays only part or fails to pay all the taxes as and when due; Whereas in the latter, (tax avoidance) liability to tax is yet to arise as the taxpayer arranges his affairs using the loopholes in the Law to minimize his tax liability.

A further distinction between tax evasion and tax avoidance is neatly illustrated by an example given by Tiley J. in his book that "if a person marries in order to reduce his tax burden, he is practicing tax avoidance; if he tells the Inland Revenue that he is married when he is not, he is quilty of tax evasion and may be prosecuted"[19].

In seeking to distinguish tax evasion from tax avoidance, it must be noted that motive is the essential element in every tax avoidance transaction[20]. It is but

true that nobody would undertake tax avoidance transaction if the tax saving element is not present. However, it has been argued that the intention to save tax does not in itself makes a transaction into a tax avoidance transaction. This is because not infrequently the legislative provisions may provide tax incentives to encourage particular transactions.

In certain cases, however, the distinction between tax evasion and tax avoidance is not easy to make as most people and even the House of Lords, highest court in England appears to get confused between these two terms as sometimes they say evasion when avoidance is intended[21].

3.3 CAUSES OF TAX EVASION IN NIGERIA AND CAMEROON

Having examined the various definitions advanced to the terms tax evasion and tax avoidance as well as the distinction between them, this section of the chapter forges ahead to discuss the various reasons why tax payers in Nigeria and Cameroon pay inadequate taxes or no taxes at all. Although the reasons for this are many, varied and inter dependent, the most general and the common most applicable factors in these two countries will be examined here below.

(a) HIGH RATES OF TAXATION

In Nigeria and Cameroon, high rates of taxation have been held responsible for the high incidence of tax evasion prevalent in both countries. However, it has been stated that, a tax payer will be less willing to comply with the tax Laws if the general level of taxation appears very high, same as a foreign investor will tend to invest in a country with low rates of taxes.

Nevertheless, it has also been argued that high rates of taxation do not in themselves explain all acts of tax evasion given the opportunity that even with low rates tax payers will certainly still evade it since generally nobody likes paying taxes[22]. The above statement holds particularly true with Nigeria as some academic writers and tax administrators in the country have opined that, Nigeria cannot by any means be called a high tax country[23], but, rather the rates are moderate. Kanyip[24] re-inforces the above assertion when he stated that, there have been a noticeable trend of reduction in the rates of company taxation in Nigeria from 50 percent to 45 percent in 1979, 40 percent in 1987, 35 percent in 1991. Added to the above reasoning, the 1996 Budget Speech further reduced the rate of company taxation from 35 percent to 30 percent and the rate of Capital Gains Tax from 20 percent to 10 percent. Also Naiyeju, J.K. a senior tax administrator with the Federal Board of Inland Revenue argues further by stating that, "the rate of 5

percent of Value Added Tax (V.A.T) we cha[illegible] is the second lowest in the World"[25]. From the strength of the above arguments it can be said that Nigeria is not a high tax country but yet tax evasion is on the increase.

On the other hand, one main feature worth mentioning about the Cameroonian tax system in comparison to that of Nigeria is the heavy burden of taxes borne by individuals and corporate bodies in the country. While we do acknowledge and recognise taxes as the main source of government revenue the world over, the present rates of taxation in Cameroon are too excessive and heavy. To take for example, the Road Degradation Tax otherwise known as the Axle Tax[26] imposed on transporters and owners of lorries formerly paid in 1994 at the rate of 150:000FCFA per annum (approximately N15:000) was in 1996 multiplied by ten, thus amounting to 1.500:000FCFA (an approximate of N150:000) per annum. Poll Tax in the Country formerly paid at the rate of 3:300FCFA (an approximate of N310) Was repealed in 1996 and replaced by the Global Tax [27]. This new tax imposes heavy burden of taxes virtually covering everything the Cameroonian people do to earn a living against the background of the economic crises plaguing the nation. In Cameroon what has been the practice is that, when the government runs short of funds they either tend to increase the price of fuel in the country (presently at the rate of 390FCFA per litre, (an

approximate of N65) when compared with N11 per litre as obtains in Nigeria), or, the government would levy more exotic and heavy burden of taxes on the citizens rather than improved on administrative machinery of collection of those already in existence.

Also in the country, it is distressing to note that, apart from the salaried employees some business tycoons and some economic groupings do not pay taxes for the nature of their business[28]. They tend to cloak behind the ruling party in order to evade payment of their income taxes. The government on its own part has failed to secure compliance from these individuals and economic groupings for fear that the collection or the payment of the amount due as taxes might erode the political support the government claims to have from these persons or groups.

(b) **LACK OF CIVIC RESPONSIBILITY**

In Nigeria and Cameroon like in most Third World Countries, it is rather unfortunate that taxation is still being regarded by a vast majority of the people as an instrument of oppression by the government. The reasons or roots could be traced as far back as the time of colonization where the colonialists applied all sorts of coercive measures to extort taxes out of the colonial subjects who knew little or nothing as to the purpose of the revenue so derived[29]. In this way, the

colonial subjects detested the colonial tax collectors as enemy aliens. On achieving independence, these two countries maintained the inherited colonial tax systems. In Nigeria and Cameroon, it is not surprising that some tax payers still see the tax collectors in the same colonial light today as a vast majority still consider taxation as synonymous with exploitation of the masses by both Governments.

In Nigeria, during the oil boom days most citizens were made to believe that payment of taxes were not part of their civic responsibilities. In fact, since the early seventies when the country found a new money spinner in oil industry tax collection which had hitherto been the main revenue earner has been relegated, most often without government bothering about it administration. The results have been that taxes are either evaded completely by affluent Nigerians[30], or at best under value for some others who care to pay at all. In this wise, Nigeria completely neglected the revenue potentials inherent in the country.

The Bible tells us "to give unto Caesar what is Caesar". Until Nigerians and likewise Cameroonians are made to understand that payment of taxes is their civic responsibility and a symbol of loyalty and discipline towards the nation, tax evasion will continue to be on the increase.

(c) **INEQUITABLE DISTRIBUTION OF NATIONAL RESOURCES**

The refusal of government to use resources for the equitable distribution could also lead to tax evasion in any country. Those areas of the country which benefit less, are likely to become adamant to the payment of further taxes. It is submitted that this factor operates only in the minds of the educated persons who know that revenue from taxation is to be applied for their benefits. However these educated persons and prominent citizens will only contribute to finance projects or services they feel identified with or projects with benefits that are easily visible rather than pay taxes for a cause they do not believe in.

In Cameroon for example, a man from Akwaya in the South West Province who has parked his car hundreds of kilometers away from his village because there is no motorable road or some one in Ako Sub division, North West Province who has to change his shock absorbers virtually after every two weeks as there exist no good motorable road can hardly see any good reason for paying taxes,hence there is the zeal to escape such payment. Surely, the same would apply to a man in Awase, Benue State Nigeria, who treks about twenty kilometers to Jato-Aka to receive medical treatments as there exist no such health facilities in his community. Again with these attitudes and many more, nobody will see any justification paying taxes without attempting to evade it.

(d) **EXCESSIVE CORRUPTION AND MISMANAGEMENT OF FUNDS IN THE COUNTRY.**

An important factor which can adversely affect the disposition of the people's attitude in any Country towards the payment of taxes is the incidence of loss of funds collected by the tax administrator. The honest tax payer may grudgingly put up with a reasonable incidence of tax evasion by his fellow citizens as a normal feature of tax administration. He may also accommodate some inefficiency in the administration of social services provided with tax money as a necessary evil in developing countries, but he would resent very bitterly the idea that a substantial portion of his tax money is being creamed off in a corrupt manner by public officers or politicians for their private use as noticed in Nigeria and Cameroon.

In Nigeria for example, commenting on the level of deep rooted corruption in the country, the former head of Interim National Government (ING) Chief Ernest Shonekan in his maiden broadcast to the nation said:

> "The total disregard for uprightness in our society which has enthroned wealth by all means is quite worrisome to me. Thus, not only are those who defraud our public treasuries honoured, even robbers and drug barons are able to bag respectability. Rampant corruption and get-rich-quick-mania, therefore, have become cankerworms in all spheres of our national life"[31].

Thus, it can safely be stated that, the glaring stealing or embezzlement of public funds and mismanagement of tax payer's money creates and generates resentment amongst the honest tax payers at the thought that other people are getting "away with it".

(e) UNEMPLOYMENT, POVERTY AND ILLITERACY

Unemployment, poverty and illiteracy are amongst the major evils that have plagued most developing countries including Nigeria and Cameroon for quite a long time now.

In Nigeria, describing the pathetic picture of life in the rural communities, Late Chief Awolowo remarked:

> "...Though there is no statistics on the point, anyone who has been to all parts of our country will readily agree that, more than seventy million of our estimated eighty million live in abjectly poor conditions and no less than sixty million of them are actually starving. They have houses, shelters unsuitable for modern piggery and poultry. The vast majority of our people live in rural areas which are almost forgotten"[32].

In light of the above ills that have bedeviled most of the Nigerian rural communities, the tendency has always been for the youth and able men to drift away from these rural communities to big cities partly due to the wrong attitudes towards farming as a profession and partly because of the absence of many large

scale industries to absorb these young and able men[33]. Without any form of employment, they prefer to hang on and live on their relatives in these cities for months and years. They have no money with which to pay their taxes and expect their benevolent relatives to pay it for them probably expecting too much. The inabilities for these young men to be self employ makes it difficult for them to pay taxes and consequently they tend to evade it.

(f) NIGERIA'S MEMBERSHIP TO REGIONAL GROUPING SUCH AS ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)

The need for the formation of a closer economic relationships arose more than some two decades ago, out of Governments [34] desires to find a formula in accelerating economic growth with, raising the standard of living of its citizens and free mobility of its peoples within the sub region. To this effect, Article 27 of the **ECOWAS** treaty[35] confers on citizens of member states the right to be regarded as a "Community Citizen". The member states are also expected to undertake and abolish all obstacles to their Citizens freedom of movement and residence within the community. Thus, by virtue of this treaty, Community Citizen will not only be exempted from holding a visitor's visa but also do have the right to work and

go about his commercial activities unmolested within the territories of the member state.

The probable consequences of the above treaty is that it generally will gives rise to crime rates, destitution vagrancy, the spread of diseases, rapid development of slums, ghettos and unpleasant employment conditions[36]. These ugly situations, will equally affect the amount collected as taxes. Some foreign nationals and even some Nigerians will camouflage under the thin umbrella of Community Citizen in their criminal attempt to evade tax. Worst is the problem of locating Community Citizen not to talk of his assessable incomes. Community citizens are constantly moving from one place to another and this makes it difficult to bring them into the taxable population and also difficult to identify them for the purpose of income tax. The combined effect of these problems are large scale tax evasion in Nigeria.

3.4 DEVICES EMPLOYED TO EVADE TAXES IN NIGERIA AND CAMEROON

While it is not possible to provide an exhaustive list of the various devices or modes adopted to evade taxes in Nigeria and Cameroon especially as new methods are devised every now and then, there are some common modes of tax evasion which have been identified as prevalent in both countries. These include;

the refusal to keep proper records, false declarations, wilful omission to declare income for tax purposes and to these we may add smuggling, the oldest form of tax evasion since time immemorial. Before we go ahead to examine each of the above modes of tax evasion as stated, it should be bear in mine that, most of these devices generally stems from acts of dishonesty on the part of the taxpayers to pay his tax liabilities.

a. REFUSAL TO KEEP PROPER RECORDS

In Nigeria and Cameroon, it has been discovered that some wealthy self employed and some corporate bodies evade taxes through their criminal refusal to keep proper books of accounts and even when they do keep such books of accounts they fraudulently conceal income through false entries in the books. What has been noticed is that, the educated taxpayers in both countries prepare two sets of accounts, one true and fair to themselves and the other cook up for the tax authorities. In Nigeria, quite a large number of companies declare losses year-in year- out, yet it is surprising that such companies do not voluntarily wind up, neither are they compulsorily liquidated. Rather they still continue in business unabated with director's remunerations increasing every year as well as increases in luxurious or conspicuous and prestigious investments such as landed properties

and expensive cars. There can be no clearer evidence of tax evasion than this[37].

b. **FALSE DECLARATION OF RETURNS**

In Nigeria and Cameroon, the tax system is declarative. Outside the rank and file of the salaried employees in both countries some businessmen, contractors and professional practitioners blatantly refuse to pay tax by reporting losses every year. Many of these self employed professionals and owner of business live a life style inconsistent with reported income which is usually unrealistically low for the nature of their businesses[38].

Commenting on the problems associated with the assessment of personal income tax particularly that of the self employed by their deliberate omission to state income and refusal to render true returns in Nigeria, Ijeiwere observed that

> "It is common that it is generally not regarded as a crime to evade tax. Very few people will look down on a man who owns block of flats in Victoria Island, fleet of cars, five children schooling abroad, etc., if he presents tax clearance certificate which shows that in 1992 tax year he paid five hundred naira where as in other countries he could have been in prison"[39].

Although, as we have earlier stated that the civil servants and other salaried workers are the only class of people that actually pay tax in Nigeria and Cameroon, even among them some have turned the statutory personal allowances and relief particularly the provisions of children and married allowances into a

fertile ground for evasion. This practice is so common in Nigeria that today an average Nigerian tax payer is married with four children and a number of dependent relatives[40]. The above observations is re-inforced when Igweike remarked:

> "One can count the number of tax payers who are not entitled to maximum claims under each head of allowance or relief. Even our businessmen and professionals in private practice would prefer not to keep satisfactory records of their business in order to be entitled to pay the assumed minimum tax on the standard income for each year of assessment"[41].

c. **CROSS BORDERS SMUGGLING**

Another form of tax evasion identified to be very common in Nigeria and Cameroon is cross borders smuggling. It should be noted that Nigeria and Cameroon have a very long borders from the sub-sahara North to the Atlantic Ocean in the South. These borders are very vulnerable and porous and thus rendering complete patrols by the custom and immigration officials are almost impossible. As a result of this, goods are smuggled across these unguarded borders despite the numerous official points of entry in both Countries. The only ideal situation could have been one if there were only few points of entry in both Countries, but rather Nigeria and Cameroon are very unfortunate. Nevertheless, if custom duties are low, the gains from smuggling will be very limited and low,

and of course this will help to check smuggling as a tax evasion mechanism.

3.5 THE METHODS OF ESTIMATION OF TAX EVASION

In Nigeria and Cameroon like in most developing countries, the measurement or estimation of the degree of tax evasion is often fraught with many difficulties. Many of these difficulties have to do with unreliable and limited statistics or information. Talking about these difficulties one cannot but agree with Professor Milton Taylor when he stated that:

> "It is only to be expected that evidence of income tax evasion since it is an illegal activity is difficult to obtain in any country; it is not very different from trying to determine the consumption of Indian hemp or the degree of illegal gambling. Minister of Finance, which of course have more evidence of evasion than any government office, are frequently restricted from divulging information by acts of official secrecy or they loathe to be frank about the degree of evasion for fear that the information would encourage even more evasion"[42].

In as much as the above difficulties are inherent in the measurement of the degree of tax evasion in the tax system just as it may exist in trying to measure any illegal activities, it is submitted that, these difficulties should not operate as a bar in our attempts to measure the degree of tax evasion in Nigeria and Cameroon. At this juncture, some common methods advanced and used in the developed nations aimed at measuring the degree of tax evasion for the tax system might be relevant for our purpose.

3.5.1 THE NATIONAL ACCOUNT METHOD:

This method is one of the commonest and most often used in assessing the degree of tax evasion particularly in most developed nations. This method entails, the comparison of the size of a particular tax base made by the National Account Department with the base reported after many appropriate adjustments[43]. The difference between the base reported as estimated by the National Account Department gives an indication of unreported income which directly provides an estimation of the unpaid taxes. This method could as well operate in our tax systems as illustrated on the table below:

TABLE 3.1

TAX YEAR	ESTIMATED INCOME FROM SELF EMPLOYED. F.CFA	ACTUAL INCOME REALIZED. F.CFA	UNREPORTED INCOME. F.CFA
1990/91	444.236.946	334.858.138	-109.378.806
1991/92	144.931.488	108.479.999	-36.316.644
1992/93	387.339.408	305.888.089	-81.456.884
1993/94	287.247.275	234.888.089	-52.359.194
1994/95	346.508.660	276.659.564	-69.849.104

Source: Provincial Tax Centre, Bamenda, North, West, Province Cameroon.

The statistics shown on the table above indicate clearly the estimated revenue and actual revenue income realized among the self employed in the North West Province from the period 1990/91 to 1994/95 tax years. In the tax year of 1990/91, the estimated revenue from the self employed in the Province stood at the sum of 444.236.946FCFA and the actual revenue realized by the Tax Centre was 334.858.138 F.CFA in that same year. In order to measure the degree of tax evasion among the self-employed in the Province for that same year, the actual income realized, 334.858.138FCFA is subtracted against the estimated revenue 444.236 946 F.CFA. The unreported income of 109.378.806 F.CFA therefore provides an estimate of the unpaid taxes by the self employed in the province. From the above statistics for 1990/91 tax year when compared with subsequent tax years, clearly indicates that enormous revenue was loss by way of tax evasion among the self employed in the province. The reason for this enormous revenue lost in the province could be attributed to the intermittent call by some major opposition parties in the country for a civil disobedience campaigns earlier discussed in chapter one in that same year.

3.5.2 THE SAMPLING METHOD

This method is also known as the "Tax Compliance Measurement Method".

This method involves a random sampling of tax payers selected from data available to the Revenue Service. The sample is clearly examined for possible tax evasion by the tax payers chosen. The average of the tax evasion from the sample is then used to obtain the results or the whole population. The results called the "tax gap" represents the unpaid income taxes on legally earned income of individuals and corporate bodies.

In 1987 for example, the tax gap reported in the United States stood at $85.billion out of which $63.5 billion was the amount of tax evasion by individuals and $23.1 billion by corporations[44]. In Nigeria, a recent survey of a sample of returns of income tax forms in Lagos State showed that, over 95 percent of tax payers claims that they have four children so as to benefit from the statutory personal allowances particularly the children and married allowances[45].

3.5.3 THE DIRECT TAX PAYER'S SURVEY METHOD

This method is also known as the "Opinion Survey Method". By this method, a random sample of tax payers are chosen and they are asked among other questions to described their tax reporting behaviours.

In some Nordic Countries, that is, Norway and Sweden where this method was conducted, the general findings of tax payers interviewed showed that about

30 percent admitted having engaged in tax fraud at some time in the past[46].

3.5.4 THE HOUSEHOLD BUDGET SURVEY METHOD.

This method shows the relationship between the spending of families and their declared incomes. In this case, a family that earns declared income and spent much more than that income reported or declared can be suspected of tax evasion unless other factors such as accumulated wealth inheritance or borrowing against future income actually account for these differences.

3.5.5 THE INDIRECT METHOD

This method essentially relates to the quantification of the so called "Underground Economy"[47]. Underground economy refers to taxes not paid and often taken as a proxy for tax evasion especially among the self employed professionals and owners of businesses.

"The Expenditure and Income Discrepancy Method"[48] is the commonest indirect method often used to measure the size of the underground economy' This method assumes that hidden income will show up as expenditure thus providing a good indirect measure of the volume of tax evasion practiced mostly by professionals. Once the size of the underground economy is measured, revenue

loss by government can easily be ass

3.6 PENAL PROVISIONS (SANCTIONS) AGAINST ACTS OF TAX EVASION IN NIGERIA AND CAMEROON.

Generally, penal sanctions are statutory enactments embodied in the taxing Acts or provided under other laws, decrees or edicts usually meant to ensure that tax payers pay their full taxes failure of which is either visited by prison terms or monetary penalties and sometimes both. The Nigerian and Cameroonian taxing legislation are not without these sanctions against acts of tax evasion.

The Cameroon Finance Law [49] in Article 159 and 160 provides that, any taxpayers who shall be found guilty of the following offences:

a. Evading or attempting to evade complete or partial assessments or transfer of the taxes;

b. Refusing to submit his income return within the prescribed time limit;

c. Concealing a portion of the taxable sums;

d. Contriving to be insolvent or obstructing tax recovery;

e. Omitting to include accounts or including inaccurate or fictitious accounts in the account and inventory book;

f. Drawing up or help to draw up false balance sheets;

g. Using false documents or documents found to be inaccurate in order to obtain a reduction or a refund in matters relating to direct taxes and related charges shall be liable to a fine as from 500.000FCFA (approximately N50.000) to 5.000.000FCFA (an approximate of N500.000) and imprisonment for a period of one to five years.

The Law extends to provide further punishments by stating that, a tax payers may temporary be prohibited for a period not exceeding five years, the right to carry out either directly or through a third party on his own account or on someone else account any industrial, commercial or liberal profession[50]. The Law also states in clear terms that, the above mentioned penalties shall be doubled in cases of previous conviction[51].

The Nigeria Personal Income Tax Decree 104 of 1993 provides that; any person who contravenes the Decree shall be liable on conviction to a fine of N1000 or imprisonment of five years or both for failure to furnish a return, statement, of information or to keep records required[52]. The Decree also provides in section 86 further sum of forty naira for every day during which the failure continues and, in default payment, imprisonment for six months.

Sections 62 of Nigerian Companies Income Tax Act [53] imposes a fine of one hundred naria or five years imprisonment or both on anyone who unlawfully

refuses to pay tax. Similarly, aiders and abettors are liable for inducing or inciting any other person to deliver any false return or the preparation of any false account or statement[54].

In addition to the above penal sanctions, the tax Acts of Nigeria and Cameroon also confer the powers of Arbitrary Assessment otherwise known as the Best of it Judgement (B.O.J) Assessment as stipulated in Article 19 of the Cameroon General Tax Code, 1973. The above article provides that, all tax payers shall be liable to arbitrary assessment, when he fails to make a return within the stipulated time, or refuse to submit to fiscal inspection, or fails to supply clarification of supporting evidence requested by the Inspector of Taxes, or unable to produce the supporting books or documents thus, making it difficult to determine the result of the financial year.

Similarly, the Nigerian tax laws provide that, where a taxable person or 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, accordingly to the best of its judgement, determine the amount of assessable, total chargeable income and make an assessment accordingly [55].

It should be noted also that the Nigerian and the Cameroonian tax Acts contained provisions which empower the tax administrator to acquire, hold and

dispose of any property or properties taken as [illegible] e.t.c for the purpose of recovering tax dues[56]. In Cameroon, while the tax administrators are conferred with the powers of seizure and the power to seal off business enterprises without any prejudice including the powers to freeze the accounts of any delinquent tax payer, no such powers have been provided for under the Nigerian Tax Acts. It is submitted that, as an alternative to the rigorous implementation of the tax laws, the Revenue officials in Nigeria should be given such powers in the Law.

3.7 AN APPRAISAL OF PENAL PROVISION (SANCTIONS) AGAINST ACTS OF TAX EVASION IN NIGERIA AND CAMEROON

Having seen the various penal sanctions against acts of tax evasion under the Nigerian and the Cameroonian tax legislation the question this section at this juncture seeks to examine is whether the above discussed sanctions are adequate to curb the menace and deter future tax evasion in both countries?

However, despite the many monetary penalties embarked on in Nigeria and Cameroon as well as criminal penalties plus tax administrator's powers of arbitrary assessment,seizure e.t.c, it is distressing to note that these penal sanctions are inadequate and the situation is further worsened by the inertia of the tax

administration in both countries. In spite of the lofty aims of the sanctions under the Nigerian and Cameroonian tax Laws, one is dismayed at the rate at which tax is constantly being evaded especially in Nigeria.

Nowadays, monetary penalties are no longer a major consideration to deter tax evasion and the penalties carries no stigma of fear especially in Nigeria against the background of incessant devaluation of the naira in the last few years.

In Nigeria, like Cameroon, you hardly will find where someone has been sent to jail for acts of tax evasion, though the tax Laws contains provisions to that effect but which are never implemented. In fact, there is an enormous gap between what should and could be done and what is carried out in practice. In other words, the criminal aspect of tax evasion is generally over-looked in these two countries. To take Cameroon for example, the tax Law imposes a maximum fine of five million francs CFA and a maximum of five years imprisonment but one cannot actually recollect even one instance where these provisions of the tax law have been implemented or where someone have been sent to prison in defiance of such provisions. In Cameroon, the tax administration are not interested in long range goals and will go to any length even by the use of force to get the money paid and, sometimes prefer to reach a compromise at the administrative level with the taxpayers in a bit to secure payment.

In Nigeria and Cameroon, the use of selective criminal prosecution as a deterrent device against acts of tax evasion as practiced in some Commonwealth jurisdiction could be the

undoubted way to overcome the inertia of our tax authorities and to serve as a reminder that the Law is in force. To obtain the deterrent effect from this criminal prosecution,the government need take only a small number of the exceptional cases in terms of amount owed and the seriousness of the offence to court, while all other evasion cases can be settled at the administrative level. The advantage of this procedure is that it does not condone the immoral practice of feeding in prison tax dodgers from the proceeds of taxes paid by other citizens.

I feel and agree with Professor Whitham that the use of selective criminal prosecution in Court with a great deal of publicity will be an infinite more effective method of dealing with the problems of tax evasion in Nigeria and Cameroon when the learned professor said:

> "Selective use of enforcement can have a most powerful announcement effect. Selection for prosecution should be made among the high income business and professional class of the most persistent contumacious and recalcitrant defaulters; a goal sentence being strongly demanded. If Court decide accordingly, a substantial increase in voluntary compliance may be anticipated"[57].

The Belgian experience is worth imitating in our tax systems. This is a case

where a former Belgian Prime Minister, Paul Boeyants was committed for trial in Court on charges of tax evasion by using elaborate network of front companies in Luxembourg and Liechtenstein and, an anonymous bank accounts in Switzerland. The Ex-Prime Minister in early 1990 in an attempt to settle the case out of Court, the Committal Judge decided that he must stand trial[58].

3.8 THE ATTITUDE OF THE COURTS TOWARDS TAX EVASION IN NIGERIA AND CAMEROON.

The courts in Nigeria and Cameroon regrettably had made no far reaching impact as far as tax evasion is concerned. You will notice that in over thirty two years since Nigeria got her independence nobody had ever gone to prison for any tax offences through due process of Law[59].

The reasons for this can be attributed to the fact that; the Courts in Nigeria have had little or no opportunity to adjudicate on tax evasion[60]. This is because as tax evasion is generally treated as a criminal offence with its proof beyond reasonable doubt, the standard of proof becomes high and no doubt pose a problem. The effect is that, the Revenue is discouraged from commencing criminal proceeding against defaulting tax payers[61]. This explains why there are no reported criminal cases on tax evasion in Nigeria.

Secondly, in Nigeria legal proceedings on tax disputes are usually very long and cumbersome. This has often led to the urge to settle tax cases extra-legally. The tendency has always been that a considerable number of the disputes relating to tax offences are settled by the Body of Appeal Commissioners whose decisions are never published and even if the decisions were to be published, they will hardly be regarded as an authoritative construction of the relevant disputed provisions[62]. Suffice to state here that, the Body of Appeal Commissioners are sole judges of facts and are not concerned with questions of legal interpretation. This in itself is not a healthy situation because it stifles not only the growth of tax law and practice but also compelled researchers and practitioners to rely on foreign cases and decisions to develop the tax Laws and practice in the country.

Similarly, the Cameroon courts have not had the opportunity of adjudicating on tax evasion. This is because the tax authorities have always dealt decisively with any issue of tax evasion and the general tendency of the tax payers not to take tax matters to courts[63].

3.9 OTHER NON-STATUTORY MEASURES AGAINST ACTS OF TAX EVASION IN NIGERIA AND CAMEROON.

In addition to the various statutory measures discussed so far in an effort to

reduce the menace of tax evasion to its bearest minimum in Nigeria and Cameroon, the following non-statutory measures should also be adopted by both governments.

3.9.1 REDUCTION IN THE RATES OF TAXATION.

It goes without saying that the only convenient measure of combatting tax evasion arising from high rates of taxation is a reduction of the rates.

In Cameroon, the government should carefully study the present tax system with the view to reducing considerably, the heavy burden of taxes imposed on individuals and corporate bodies in the country. These reductions would not only enable companies to meet up their tax obligations but would also encourage corporate cash flow and facilitate re-investments of the realised profits for business expansion and man power development. The rates of the Global Tax and Axle Tax should also be reduced to reflect the significant devaluation of the francs CFA and also to ease the increasing problems of unemployment and hardships suffered by most Cameroonian as a result of the haphazard implementation of the Structural Adjustment Programme.

In Nigeria,the rates of personal income tax should also be further reduced in order to give incentives to individuals to improve on their productivity and

attitude to work. It is also recommended that personal allowances for children, married and dependent relatives should also be increased in order to meet up with the inflationary situation in the country.

3.9.2. PUBLICATION OF LIST OF DELINQUENT TAX PAYERS.

A more psychological mechanism commonly used in some Latin American countries in an effort to curb the menace of tax evasion is that of publication of the list of delinquent tax payers in the official media.

This projected reform suggested for both Nigeria and Cameroon, authorizes the tax administration in collaboration with the governments to publish lists of those delinquent tax payers who have defrauded the government by way of taxes, giving their names, addresses, occupations as well as the fines and convictions meted out against such defaulters. For this evasion preventing mechanism to actually achieve its goals it must be published periodically and they must be given wide publicity by the media.

3.9.3. THE USE AND EXTENSION OF TAX CLEARANCE CERTIFICATE

The question of the three years Tax Clearance Certificate (TCC) as used in some Latin American Countries was introduced in Nigeria based on the

recommendation of Akintola William's Revenue Collection Panel.[64] By this recommendation it authorizes the relevant Tax Authorities to issue to any person who have fully paid his taxes, a Tax Clearance Certificate. Section 84 (2) of the Personal Income Tax Decree No 104, 1993 provides that any Ministry, department or agency of Government or any company with whom any person has a dealing with respect to any of the transactions mentioned in sub section 4 shall demand from such person a tax clearance certificate of three years immediately proceeding the current year of assessment. Section 84 (3) provides that, a tax clearance certificate shall disclose in respect of the last three years of assessment: chargeable income; tax payable; tax paid; and tax outstanding or alternatively a statement to th effect that no tax is due.

Section 84 (4) provides that, the provisions of subsection 2 of this section shall apply in relation to the following, that is application for government loan for industry or business; registration of motor vehicles; application for firearms license; application for certificate of occupancy, application for award of contracts by the government, its agencies and registered companies; application for approval of building plans; application for trade license, application for a buying agent license; application for pools or gaming license; application for distributorship application for foreign exchange or exchange control permission to remit funds

outside Nigeria; confirmation of appointment by government as chairman or member of public board, institution, commission, company or to any similar position made by the government; stamping of guarantors' form for Nigerian passport; application for registration of limited liability company or of a business name; application for allocation of market stalls; and the appointment or election into public office.

For example, if you want to take an accused person on bail, the court may demand of you to produce your three years tax clearance certificate. If the proposed surety is a tax evader, he would not be looked upon as a responsible citizen whom the court would consider as being suitable to take the accused person out on bail pending the hearing and determination of the case against the accused person. Or if you want to obtain a liquor license from the State Government you will be required to produce a three year tax clearance certificate, from which it would be evident that the applicant has paid his tax for three years running consecutively, otherwise, if he had evaded to pay his tax and he is unable to produce the certificate, he is disqualified to obtain any patronage from the Government.

In Nigeria today, the tax clearance certificate has been described as one of the most coercive means ever devised in the Nigerian tax history and it is said to

be responsible for the over 60 percent of taxes collected in the country. [65] It is suggested that the three years period required to be covered by Tax Clearance Certificate (TCC) should be increased drastically and should be made a public document for viewing before any appointment or election is made in the country.

In Cameroon, the tax clearance certificate system as applicable in Nigeria does not exist. It is therefore recommended that in order for the Cameroon tax system to

realise maximum revenue and to increase the level of voluntary compliance, the beautiful provision of section 84 of PITA No 104 of 1994 on tax clearance certificate should be inserted into its tax code.

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4.0 TAX AVOIDANCE IN NIGERIA AND CAMEROON

4.1 INTRODUCTION

"Tax Avoidance" like tax evasion is a world wide phenomenon prevalent in all nations including Nigeria and Cameroon. It is not a modern device merely resulting from the present day impositions, nor necessarily brought about by the strong and popular resentment to taxation.[1] The origin of tax avoidance can be traced to the thirteenth and fifteenth centuries England, where the "Use" and the " Trust" were employed to avoid the incidence of manorial tenure.[2]

During the thirteenth century in England land was held under feudal system whereby persons held land from lords of manors. The lords were entitled to profitable feudal dues in certain circumstances. For example, when a tenant died and left an under-aged heir, the lord was entitled to the benefits of the land until the heir reached full age. If land was held by a corporation, such as a monastery, the lord of the manor lost these rights since the land was held by a tenant who was not under-age and who never died. For this reason, statute, principally the Statute of Mortmain prevented the conveyance of land to religious bodies without license from the king.[3] This rule was evaded for some time by conveyancing land to

feoffees, the early equivalent of trustees to the use of a religious body. But just as parliament today often passes legislation to close similar loopholes in the law, this particular method of avoidance was later prohibited by a Statute of 1391.

The "Use" was again seen in its avoidance role during the fourteenth and fifteenth centuries.[4] In the fourteenth century, there was a rule that land could not be passed by will. The reason for the prohibition was that it was presumed that the heir should inherit and that land should not be otherwise disposed of. The prohibition could be avoided by the creation of a use during the life time to ensure that the beneficial interest passed on death to the intended donee. A further device used during the same period was the avoidance of feudal dues normally paid on inheriting land by vesting the land into two feoffees so that if one died the other remained the owner by survivorship, but not by inheritance[5]

Although the "Use" was popular amongst those persons who had to pay feudal dues, it was correspondingly disliked by the persons to whom dues should be paid. For this reason, the fifteenth century saw a strong attack on the Use. The attack was initiated by the king on the introduction of the Statute of Uses in 1535, known to be the earliest examples of anti tax avoidance in Britain.[6] The Statute of Uses was forced upon an extremely unwilling parliament by an extremely strong willed king as McLoughlin and Rendell wrote, "the king... was the one person

who had all to gain and nothing to lose by the abolition of uses. It was he alone who was always Lord and never tenant".[7] In fact, the statute was very unpopular in England and it is said to be the main cause for the Great Catholic Rebellion known as Pilgrimage of Grace.[8] However, the Statute of Uses in many cases was successful and in some cases, it was not successful. Nevertheless success was achieved in the abolition of the power of devising use and all "Uses" were turned into legal estates which will be subjected to all the usual feudal incidents. For instance, if freehold land was conveyed to A and his heirs to the use of B and his heirs, A was divested of the title and B became full legal owner. In the United Kingdom today, with the advent of new forms of wealth in stocks and shares, trust like its forerunner the "Use" continuous to be used for avoidance of fiscal liability such as income capital gain tax and inheritance tax.[9]

Similarly in developing countries tax avoidance today has come to be one of the greatest problems militating against tax administration including Nigeria and Cameroon. i It has been described as a "cankerworm"[10]. a " cankerworm" that has fast eaten into the fabrics of our societies with expertly advised taxpayers devising and developing large numbers of ingenious schemes to pay less than otherwise they would have paid. In this chapter some common causes held responsible for tax avoidance in Nigeria and Cameroon shall be discussed. Also examined in the

chapter are the various devices commonly employed by these unpatriotic citizens to avoid the payment of their full taxes in both countries. Finally, the statutory measures provided against acts of tax avoidance as well as the attitudes of the courts towards tax avoidance in Nigeria, Cameroon and that of some other Commonwealth jurisdictions constitute part of this chapter.

4.2 THE LEGAL POSITION IN RESPECT OF TAX AVOIDANCE

This section seeks to discuss how the courts in Nigeria, Cameroon and some common law countries have grappled with the issue of tax avoidance over the years. In order to understand the attitudes of the courts in Nigeria and Cameroon, the approach of the courts in the United Kingdom will be useful for our analysis. It should be bear in mind that Nigeria and part of Cameroon had been under the British sphere of influence for over four decades and in many cases the Nigerian statutes are either based on United Kingdom statutes of similar name, or similar enactments in other Common Wealth countries.[11] However, since the sources of these enactments have a common law background, the construction of their provisions in other Commonwealth jurisdictions command great respect and will also serve as persuasive authorities in Nigeria and Cameroon.

4.2.1. CONSTRUCTION AND INTERPRETATION OF THE TAXING STATUTES.

Before going into the discussion of the legal position in respect to tax avoidance in Nigeria, Cameroon and the United Kingdom as afore said, it is important to make preliminary observations on certain fundamental concepts of taxation on rules for interpretation. This is to enable us have a clear understanding of construction of tax legislation.

In Nigeria and Cameroon, tax legislation are entirely statutory.[12] Like any other legislation, tax legislation is an enactment of the legislature and the legal history of tax legislation in both countries show that tax laws have always been in forms of ordinances,decrees, laws, acts and edicts as the case might be. These tax legislations otherwise known as tax statutes are so important and indispensable in taxation as they are the only laws that impose tax. In other words, other subjects of law may be governed by statutes , common law and equity, but taxation is governed solely by statutes and consequently, the rules for the interpretation of statutes shall apply.

The obvious and declared intention of tax legislation is to impose the taxes approved by the legislature on the subject affected. Like all statutes imposing pecuniary burdens on the subject, tax statutes are to be construed strictly.[13]

Consequently, it is important in constructing a tax statute to adhere strictly to the words used, and to the full and fair application of particular statutory language to particular facts found. This general rule however, encourages leaning in favour of a strict construction of the provisions in respect of those whom the burden is sought to be imposed.

A very strong dictum in support of the above fundamental principle of taxation that, in constructing tax statutes, the rules shall apply stricto sensu is the dictum of Masterly Revenue Judge Rowlatt J. in the CAPE BRANDY SYNDICATE V. I.R.C[14] where it was said,

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

Lord Cairns, in the case of PARTINGTON V. ATTORNEY GENERAL[15] stated very definitely that:

> " If the person sought to be taxed comes within the letter of the law, he must be taxed, however, great the hardship may appear to the judicial mind to be. On the other hand, if the crown seeking to recover the tax cannot bring the subject within the letter of the law, the subject is free however, apparently within the spirit of the law the case might otherwise appear to the judicial mind to be."

The above views were also followed by Ikpeazu J. in the

Nigerian case of ADERAWOS TIMBER TRADING CO LTD V. FBIR[16] where he said,

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

The above cases emphasizes that the words used in the statute must be taken to mean what the legislature intent to convey and no more. The language used is not to be stretched either in favour of the state, or narrowed down in favour of the taxpayer but the words must be construed as they are, as stated by Danckwerts, L. J. in the case of MAPP V. ORAM [17] that,

> "In my view, it is not admissible by speculatively attributing to parliament an intention on the ground that it might be fair and reasonable to bring into a statute provisions which are not found in the statute. The provisions of the statute must be taken as they are and the court is not at liberty to improve them because a situation which might be anticipated is not provided for".

Thus, from the strength of the above authorities , the strict adherence to the letters of the law would therefore mean, if a tax avoider is clever enough to get himself out of the wording of the taxing statutes, he lawfully escapes the tax.

Having discussed the general rules of interpretation and construction of taxing statutes, attention will now be focused on the attitudes of the courts in Nigeria and Cameroon and some other Commonwealth jurisdiction starting first with the attitudes of the courts in the United Kingdom.

In the United Kingdom, the judicial trend of the courts towards tax avoidance prior to the 1936 to 1945 war era was to construe and determine tax liability according to the strict legal sense as highlighted already in the foregoing paragraphs. This attitude of the court could be noted as early as 1889 in the case of COMMISSIONER OF INLAND REVENUE V. ANGUS AND CO LTD[18] where Esther M. R. in the following statement said, " The Crown... must take out its right to the duty, and if there be a means of evading the duty, so much the better for those who can evade it. It is no fraud upon the Crown, it is a thing which they are perfectly entitled to do."

The attitude towards tax avoidance of the courts in the United kingdom is best illustrated by the often quoted words of Lord Tomlin in the case of IRC.V. DUKE OF WESTMINSTER[19] where his Lordship said,

> "Everyman is entitled, if he can to order his affairs so that the tax attaching under the appropriate acts is less than it otherwise would be. If he succeeds in ordering them so as to secure this result, then, however unappreciative the Commissioner of Inland Revenue or his fellow tax payer may of his ingenuity, he cannot be compelled to pay an increase tax. This so called doctrine of substance seems to me to be nothing more than an attempt to make a man pay notwithstanding that he has so ordered his affairs that the amount of tax sought from him is not legally claimable".

Lord Tomlin in the above case was in effect re echoing the

words of Lord Simon in the case of IRC.V FISHER'S EXECUTOR[20]

where the learned Judge said;

> " My Lord, the highest authorities have always recognised that the subject is entitle so as to arrange his affairs as not to attract taxes imposed by Crown, so far as he can do so within the law, and that he may legitimately claim the advantage of any express terms or any omission that he can find in his favour in taxing acts. In so doing he neither comes under liability nor incur blame".

This line of judicial thought in favour of tax avoidance was

also followed in the case of LEVENE V. C. I. R[21] and a more

stronger pronouncement came from Lord President Clyde in the

case of AYISHIRE PULLMAN MOTOR SERVICES AND D. M. RITCHIE V.

C. I.R[22] where he stated that:

> "No man in this country is under the smallest obligation, moral or other, so to arrange his legal relations to his business or to his property as to enable the Inland Revenue to put the largest possible shovel into his stores. The Inland Revenue is not slow and quite rightly to take advantage which is open to it under the taxing statutes for the purpose of depleting the tax payers pocket. And the tax payer is, in like manner entitled to be astute to prevent, so far as he honestly can, the depletion of his means by the Revenue."

From the above line of cases, the conclusion that can be drawn so far is that, prior to the second world war, judicial opinions in the United Kingdom generally view tax avoidance as lawful and recognised the right of the tax payer to minimize his tax burden.

However, attention must be drawn to the fact that, during the last war years, these attitudes of the court changed some what; and speaking about tax avoiders, Viscount Simon in the case of LATILLA V.C.I.R, stated very succinctly in which the House of Lords upheld the decision of the court in favour of the Revenue:

> "My Lords, of recent years much ingenuity has been expended in certain quarters in attempting to devise methods 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 in the appropriate burden of British taxation. Judicial dicta may be cited which point out that however, elaborate and artificial such methods may be, those who adopt them

are "entitled" to do so. There is, of course, no doubt that they are within their legal rights, but that is no reason why their efforts, or those of the professional gentlemen who assist them in the matter should be regarded as a commendable exercise of ingenuity or as a discharge of the duties of good citizenship. On the contrary one result of such methods, if they succeed, is, of course, to increase pro-tanto 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 manoeuvre."[23]

Also in the case of LORD HOWARD DE WALDEN V.C.I.R[24] Lord

Greene, M. R said:

"The section is a penal one and its consequences, whatever they may be, are intended to be an effective deterrent which will put a stop to practices which the legislature considers to be against the public interest. For years a battle of manoeuvre has been waged between the legislature and those who are minded to throw the burden of taxation off their own shoulders on to those of their fellow subjects. In that battle the legislature has often been worsted by the skill, determination and resourcefulness of its opponents, of whom the present Appellant has not been the least successful. It would not shock us in the least to find that the legislature has determined to put an end to the struggle by imposing the severest penalties. It scarcely lies in the mouth of the tax payer who plays with fire to complain of burnt fingers."

After the war, there was a swing back towards the pre war attitude with increasing favourite dispos. ion towards tax avoidance in the United Kingdom. The following two cases clearly show this change of judicial attitude. In LORD

VESTLEYS EXECUTORS V.I.R.C[25] Lord Normand in 1949 said, " Tax avoidance is evil, but it would be the beginning of much greater evils if the courts were to over stretch the language of the statute in order to subject to taxation people of whom they disapproved". Lord Simon in the case of I.R.C. V. WOLFSON[26] confirmed this favourite disposition towards tax avoidance where he said;

> "It was urged that the construction favour leaves an easy loophole through which the evasive tax payer may find escape that may be so but respect what has been said before. It is not the function of a court of law to give to words a strained and unnatural meaning because only thus will a taxing section apply to a transaction which had the legislature thought of it, would have been covered by appropriate words."

In the 1950,S there were still prevalent dispositions in favour of tax avoidance in the United Kingdom. The courts were said to be in conspiracy with the tax payers in their efforts to minimized their tax burdens.[27] This period is also said to have marked a positive boom in the tax avoidance industry in the United Kingdom.[28] These same attitudes continued up to the 1960,S although by 1962 a warning note to potential tax avoiders was being sounded by the judiciary.[29] In 1967, Lord Up-John in the case of I.R.C.V BREBNER[30] said, "No commercial man in his senses is going to carry out commercial transaction except upon the footing of paying the smallest amount of tax involved."

In the 1974 decision in the case of RANSOM V HIGG[31] Lord Glaisdale lay emphasis on the strict approach to the construction of taxing statutes as still being the correct approach even where elaborate tax avoidance schemes are still under consideration.

So far, the foregoing decisions clearly indicate the fluctuating judicial attitudes between favours and disfavours of tax avoidance in the United Kingdom. In order to understand the present day position in respect of tax avoidance in the United Kingdom, it is important to distinguish two different types of tax avoidance activities liken to two extremes in a continuum with many intermediate forms between them. We shall start by describing cases representing the two extremes in this continuum for purposes of easy understanding.

An example of tax avoidance activities is that of the company manager who realizes that while interest payment to his companies creditors are deductible at the company expenses for tax purposes, payment of dividend to the companies shareholder are not deductible. Accordingly instead of investing N1,000.000 in his company as equity, he invest only N300,000 as equity and the balance of N700,000 he gives it as loan which a commercial interest rate is payable to him. This type of tax avoidance is legal and effective in practically every country and the statement of Lord Tomlin in I.R.C. V. DUKE WESTMINSTER[32] quoted in

the body of this chapter fully applies to it.

At the other extreme, we find a high artificial arrangements as that exemplified in the case of RAMSAY, W.T. LTD V. I.R.C.[33] In that case, the tax payer company had made a capital gain on a sale and lease back transaction of which it was liable to pay capital gains tax. It wanted to avoid this liability by creating an allowable capital loss to set against the gain. The company bought the shares capital of Caithmead Ltd (a company expressly incorporated for the purpose) for 18.034 pounce . RAMSAY Ltd then borrowed 437.500 pounce from a Finance company and made two loans to Caithmead Ltd., each of 218.750 pounce. Both loans carried interest at ll percent but the first loan was repayable after thirty years, and the second after thirty one years. Ramsay had the right which it could exercise only once to increase the rates of interest on one loan, and decreased the rate on the other loan by a corresponding percentage. Accordingly, a week after the loans had been made, Ramsay decreased the rate of interest on the first loan to zero percent, and increased the rate of interest on the second loan to 22 percent. This immediately made the second loan much more valuable, and it was sold to a third party for 391.481 pounce. Thus having received 391.481 pounce for a loan which it had cost 218.750 pounce to provide, Ramsay had made a capital profit of the loan of 172.731 pounce (which was exempt from capital

gains tax). One week after this change in rates, Caithmead Ltd was put into liquidation, and the first was repaid. Caithmeads shares on liquidation were worth 9.387 pounce and since Ramsay had paid 185.034 pounce to them, it had a capital loss on the shares of 175.647 pounce, which should have been available to set against capital gain on the sale and lease back transaction. After having accepted for some years the validity for purposes of tax avoidance of these highly artificial schemes, the British courts decided in this hallmark case what came to be known as the Ramsay principle that where there is a series of pre ordained transactions into which there are inserted steps which have no commercial purpose apart from the avoidance of tax liability, then these steps are to be disregarded for fiscal purposes.[34] The effect of the Ramsay principle would therefore mean that tax cannot be avoided by the adoption of artificial schemes involving a pre ordained series of transaction with the end result being tax saving. However, if series of transactions which do not form part of a pre ordained series, then any tax saving achieved is lawful.

Also in the case of COUNTESS V. I.R.C.[35] an elaborate scheme was devised to avoid capital transfer tax by taking advantage of exemptions for serving spouse, deeds of family arrangement and other provisions. The scheme was challenged by the Internal Revenue under the Ramsay principle, it was held that

the scheme was effective because it was not a pre ordained series of transactions which the Ramsay principle did not contemplate. In fact the Ramsay principle had been regarded by many judges and commentators[36] as subject to special limitation, such limitation as to arrangement which have self canceling effect. For example, arrangement in which individual steps are intended to provide profits and losses of equal amounts so that an assessable item may be offset by a deductible item.

However the Ramsay principle was much enlarged by the decision arrived at in the House of Lords in the case of FURNISS V. DAWSON [37] as a result of the limitation mentioned in the preceding paragraph. In that case, the tax payers were holders of all but a small proportion of the shares in two manufacturing companies. It was agreed in principle on behalf of the tax payers and a purchaser that, the purchaser would acquire all of their shares (the sale shares). However, a direct sale by the shareholders to the purchaser would have given rise to a liability to capital gains tax. Accordingly, after taxation, advise was obtained and it was arranged that the tax payers would sell the sale shares to a company to be incorporated in the Isle of Man for a price to be satisfied by the issue of shares in that company and that company would thereafter sell the shares to the purchaser for the same price. This arrangement was duly carried out, and in consequence the tax payers held shares in the Isle of Man company instead of the sale shares.

The Isle of Man company received the sale price from the purchaser and the purchaser obtained a transfer of the sale shares from the Isle of Man company. The tax payers were nonetheless assessed for capital. The tax payers were nonetheless assessed for capital gains tax and the decision in Ramsays case was given, and reliance was placed on it by the Revenue. Nonetheless Lord Vinelott before whom the case came for hearing, held that the principle does not apply, and a transaction cannot be disregarded, if it has enduring legal consequences. In this present case he held that here were enduring consequences since the Isle of Man company remained in existence and owned the proceeds of sale of the sale shares and the purchaser's right were against the tax payers. Accordingly he held the principle was inapplicable. The Revenue appealed unsuccessfully to the Court of Appeal and then appealed further to the House of Lords. In the House of Lords it was held that the Revenue was entitled to succeed and the House of Lords took advantage of the occasion to put forward a number of propositions as set out in the leading speech of Lord Brightman where he observed:

> "First, there must be a pre ordained series of transactions; or if one likes, one single composite transaction. This composite transaction may or may not include the achievement of a legitimate commercial (that is, business) end. The composite transaction does, in the instant case; it achieved a sale of the shares in the operating companies by (the tax payers) to (the ultimate purchaser). It did not in the W.T. Ramsay Ltd case. Secondly, there must be steps inserted which have

> no commercial (business) purpose apart from the avoidance of a liability to tax not no business effect. If those two ingredients exist, the inserted steps are to be disregarded for fiscal purposes. The court must then look at the end result. Precisely how the end result will be taxes. will depend on the terms of the taxing statute sought to be applied."[38]

Lord Brightman applied this principle by holding that in the circumstances being considered by him the inserted step was the introduction of the Isle of Man company and held that this inserted step "had no business purpose apart from the deferment of tax, although it had a business effect." At this juncture, it can be concluded that Lord Brightman classical exposition in the House of Lords seems to have marked a significant change in the approach adopted by the courts in its judicial role towards tax avoidance schemes in England based on sound and logical reasoning to tax cases.[39]

In some other common law countries, New Zealand, for example had earlier adopted similar approach through statutes. For instance the New Zealand Land and Income Tax Act [40] provides in section l08 that; "any contract, agreement, plan or understanding... shall be absolutely void as against the commissioner for income tax purposes if and to the extent that, directly or indirectly, (a) its purposes or effect is tax avoidance." What the above section then presupposes is that, in New Zealand tax avoidance has been declared illegal and unlawful.

In Nigeria in relation to the attitude of the courts towards tax avoidance, the courts have actually had the opportunity of evincing an attitude but surprisingly the attitude has been one which favoured the tax avoiding companies who incidentally were multinational corporations.[41] For instance, REISS AND CO. (NIG) LTD. V. F. B. I. R,[42] in that case Reiss and Co (Nig) Ltd., a subsidiary of Reiss and Co (Amsterdam company sold certain goods to his Nigerian buyers). The consideration for the transaction was a buying commission varying between two the companies. The Nigerian subsidiary company was assessed to tax in respect to all the profits made by its principal on all business introduced to them by the company. The question then arose whether the Federal Revenue Court (now the Federal High Court) could disregard the legal entity of a Nigerian subsidiary for purposes of taxing profits on the expatriate parent company Reiss and Co. (Amsterdam) which were derived in Nigeria. Justice Karibi Whyte after conceding that there is a dark cloud of suspicion regarding the grievances of the two companies surprisingly held that on the evidence before him, no trade or business was carried out in Nigeria by the Nigerian company or by the Amsterdam company and so allowed the appeal.

In the same vein, in that case of ALUMINIUM INDUSTRIES AKTIEN GESELLSCHAFT V.F.B.I.R.[43] a contract of an investment was made in Nigeria

though the place of payment of the interest was to be outside Nigeria. The Supreme Court of Nigeria held that, the foreign company cannot be made to pay tax on the interest thereby unwillingly allowing a foreign company to escape tax on the income of profits it made on investment in Nigeria. The above two cases displayed an apparent lack of judicial will by the Nigerian Courts to strike down cleverly devised tax avoidance schemes by multinational corporations operating in Nigeria through subsidiaries. In this way, they seem to encourage tax avoidance schemes.

Nevertheless, the case of OFFSHORE INTERNATIONAL V.F.B.I.R[44] shows evidence of the change of attitude towards tax avoidance schemes amongst multinational corporations by the Nigerian courts. In that case, the court held that a foreign company was taxable on profits made through its subsidiary in Nigeria.

In Cameroon, the attitude of the courts in respect of tax avoidance schemes is very uncertain. Regrettably, the courts have made no far reaching impact as far as the subject matter is concerned. The reason for this is partly because of the absence of law reporting tradition in Cameroon and secondly because the Tax Authorities have always dealt decisively with any issue of tax matters and the general tendency of the tax payers and the Tax Authorities not to take tax matters to courts.[45] However, in view of the long legal tradition that existed between

Nigeria and Cameroon it is unlikely that if the matter goes to court it will be different from Nigeria.

So,far, the conclusion to be drawn from the brief review of the attitudes of the courts towards tax avoidance schemes in these jurisdictions is that it is no longer exact to say without qualification that tax avoidance schemes are fully allowed by the law. While that is true of ordinary tax planning procedures, it is no longer true almost everywhere of the most artificial schemes. Where a taxable person embarks on artificial arrangements for the purposes of escaping or reducing tax liability otherwise due, such arrangements should be circumscribed and condemned as reprehensible.

4.3 CAUSES OF TAX AVOIDANCE IN NIGERIA AND CAMEROON

In Nigeria and Cameroon some general causes have been identified responsible for the prevalence of tax avoidance in both countries.These causes so far identified include:

a. LOOPHOLES IN THE TAX LAWS

A more acceptable cause of tax avoidance in Nigeria and Cameroon relates to the existence of legal loopholes in the tax laws as a result of inadequately

drafted legislation. These legal defects in the tax laws permits for manipulation of the statutory provisions in favour of the educated tax payers. It is submitted that, the entire tax laws of both countries should be studied and critically analysed with the view of plugging the loopholes in order to minimise the effects of tax avoidance.

b. THE GROWTH OF TAX AVOIDANCE INDUSTRIES

Another reason that has been responsible for tax avoidance in Nigeria and Cameroon can be attributed to the growth of tax avoidance industries. These tax avoidance industries are made up of professionals such as seasoned tax advisers, lawyers, accountants and sometimes retired Personnel of the taxation department. These professionals are versed in the tax laws and they tend to manipulate the statutory provisions in favour of their clients. In this vein, tax which ought to have been paid to the Revenue, part of it is used to pay as fees to these professionals in Nigeria and Cameroon which is on the increase. Commenting on the growth of these industries and the practices of these professionals one source puts it thus:

> "Tax evasion (sic) is one of growth of the industries in the West, and in the developed and developing world there are highly qualified accountants who earn good living solely by advising businessmen how they and their firm can legally escape from tax burdens. This might

be regarded as deplorable by many, but indicates an acceptance of the fact that men are reluctant to pay taxes. There must be penalties for criminal tax avoidance..."[46]

c. **HIGH TAX RATES**

High rates of taxation remains one of the main causes of tax avoidance in every tax system and will likely continue to do so when the rates of taxation are believed to be high. This is because the burden of taxation is seen to have a major influence upon the affairs of business and every other aspects of social and personal life in the society.

Talking about high rates of taxation as an important cause of tax avoidance, Menzies J, in the Australian case of PEATE V. COMMISSIONER OF TAXATION said, " 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"[47]

d. **LACK OF CIVIC RESPONSIBILITY**

Lack of a sense of civic responsibility on the part of some tax payers is another cause of tax avoidance in Nigeria and Cameroon. Some tax payers in these two countries are capable of paying their full taxes but for lack of sense of

civic responsibility and honesty[48]. It is believed that, tax rates may be low and the law may be without loopholes, yet complete voluntary compliance would still not be achieved unless the taxpayer accepts the payment of tax as a civic obligation which every citizen must contribute to the support of the government.

4.4 DEVICES EMPLOYED TO AVOID TAXES IN NIGERIA AND CAMEROON

In recent times, an innocent type of tax avoidance can be by perfectly using legal measures against the purpose and spirit of the law which sometimes is referred to by the French as " Abusive Avoidance"[49] or simply an abuse of the right to pay tax. This occurs, for instance, when a person decides to give up smoking or drinking alcoholic beverages which are subject to tax or refuse to place himself in circumstances warranting the payment of taxes. This happened in Cameroon during the intermittent call by some major opposition parties in early 1990 for the boycott of French made products, such as products from "Brasseries Du Cameroun", "Monoprix Supermarche" and many more widely believed to be owned by the French. Of course, if everybody stopped smoking or drinking alcoholic beverages or consuming French products, these would reduce government earnings but do not mean it is a criminal act.

A common mode of tax avoidance scheme practiced amongst civil servants in Nigeria and in Cameroon relates to their under declaration of other income sources in a bit to minimize tax payment. This practice is so common amongst civil servants who do so out of fear of contravening openly government general order which frown on acute involvement by public officers in business enterprises.[50] The fear is however reserved by the governments that, such involvement is likely to adversely affect the public officer's devotion to duty or create a conflict of interest between the public officer's role as civil servant and his business activities.

Thus, in Nigeria and Cameroon, you will notice some astute men choosing to register their business enterprises in fictitious names or even choose to register them in their spouse names. Some open accounts in other peoples names who are very insignificant and they are not likely to be called upon to pay tax, let alone asked to account for the riches they are supposedly said to possess.[51] Although the main aim is to keep their involvement in business enterprise out of the notice of their employers, nevertheless, the fact is that enormous revenue is lost by way of tax avoidance amongst these public officers.

Also in Nigeria it is a common practice amongst civil servants especially the unmarried ones, who know that the law allows for certain percentage of relief for

children and other dependents to claim these allowances without any substantive evidence. These practices has been obsvered by Igweike when he remarked "Today an average tax payer whether in fact married or not is a married man with four children and a number of dependent relatives"[52]

The most devastating and the most rampant corporate device of tax avoidance especially among multinational corporations relates to transfer pricing.[53] In most multinational enterprises, many transactions usually take place between group members or subsidiaries such as the sale of goods, the provision of services, the licensing of patents and know-how, the granting of loans and so on. It is an open secret that tax factors affect the prices for such transfer which are usually not at arms length prices. The multinational corporations adopt transfer prices which are not arms length prices in order to minimize tax. For example this could be done by selling, goods at an inflated price to a subsidiary (this price is a deductible expense) which depletes the profit margin of the subsidiary. The effect is that little profit is posted for tax purposes by the subsidiary while the bulk of the money is transferred to the parent company by way of price of the goods sold. And if the tax rate in the home country of the parent company is lower than what obtains in the country of the subsidiary then tax advantage is secured.

Apart from transfer pricing, another mode of tax avoidance amongst

corporate bodies is by fixing high remuneration and expenses benefits for directors who themselves are shareholders. These remuneration would naturally rank as deductible expenses for tax purposes thereby minimising the incidence of high company income and the sheltered income would then be converted into individual benefits.

The structure of a limited liability company can also be used as a device to avoid tax. In this way persons especially the high income earners can mitigate their liability to higher rates of tax by incorporating a company. Thus they enjoyed income without its formal ownership.

4.5 STATUTORY MEASURES AGAINST ACTS OF TAX AVOIDANCE IN NIGERIA AND CAMEROON

The Nigerian and the Cameroonian tax laws are not without anti tax avoidance provisions.

In relation to these anti tax avoidance provisions, the main weapon in the hands of the Revenue in Nigeria is section 18 of the Companies Income Tax Act.[54] Its first sub section provides as follows:

> "Where a tax authority is of the opinion that any disposition is not in fact given effect to or that any transaction which reduces or would reduce the amount of any tax payable is artificial or fictitious, the authority may disregard such dispositions or direct that such

> adjustments be made as respects the income of an individual or an executor or a trustee as the authority consider appropriate so as to counteract the reduction of liability to tax effected, or reduction which would otherwise be effected by the transaction."

Thus, from the foregoing section, the Tax Authority is empowered to disregard "dispositions" and "artificial or fictitious" transactions carried out with the intention of reducing the amount of tax payable. In this connection the term "disposition" is given an extensive statutory definition and includes any trust, grant, covenant, agreement or arrangement.[55] From this definition of the term " disposition" therefore embraces a whole range of activities including all ways in which property or income could be alienated to other persons. For instance, where a high income taxpayer transfers some of his income producing assets to some close relatives or associates in order to mitigate his tax liability and actually be shown of retaining control of the assets or the income the disposition will be disregarded. The transferor will be taxed as if he were still the owner of the assets or the person receiving the income.

Furthermore, section 18 also gives power to the Tax Authority to counteract their reduction of liability to tax produced by a transaction that is "artificial or fictitious". The section does not define the term "artificial or fictitious transaction" nor received any judicial interpretation in Nigeria.[56] Therefore according to the

United Kingdom Income and Corporation Taxes Act, 1970,[57] a transaction cannot be considered " artificial or fictitious" if the taxpayer can show that the transaction was carried out for bona fide commercial reason, and do not have as its main objects the obtaining of tax advantages.[58] For a transaction to be so deemed as "artificial or fictitious", it must fulfilled two conditions;[59] (a) one of the parties carrying it out has control over the other, or both parties are controlled by the same person or in a case of an individual both are related; and (b) In the opinion of the tax authority the transaction has not been made on the terms that could fairly have been expected if it had been carried out at arms length. An obvious example would be that of two companies controlled by the same shareholders and engaging in sales at an undervalued or an overvalued price for the purpose of causing a loss or a reduction of profit in one of them. Another example could be a man selling a lorry that he uses in his business to his brother for say N10.000 and then renting it from him for N500. per month.

A critical view of the provisions, of Section 18 of the Companies Income Tax Act seems to be made to depend on " the opinion" of the tax authority. The first relevant passage provides " where a tax authority is of opinion that any disposition is not in fact given effect to or that any transaction... is artificial or fictitious" It further extend to provide that "it shall be deemed to be artificial if

in the opinion of the tax authority have not been made on terms that might fairly have been expected.. ." The question then asked is, does this mean a tax authority can hide behind a declaration that it is his opinion that the conditions have been fulfilled without giving any reason for it? Most certainly not. Suffice it to mention here that the section has not found favour with the Nigerian tax authorities.[60] One reason for the negative approach to section 18 of CITA could be that the language is rather vague and imprecise so that it places an enormous burden on tax officials, by requiring them to examine every transaction which can sometimes be very sophisticated and complicated to make a ruling as to whether it is fictitious or artificial. Thus the reluctance by tax officials to use these sections could indeed make it counter productive by causing loss of badly needed revenue.[61]

In light of the above, it is suggested that section 18 should be amended the lines of section 460 of the United Kingdom Income and Corporation Taxes Act 1970 which attracts any transaction in securities, the purpose of which is to obtain a tax advantage. It is also suggested further that the amendment should be much detailed and comprehensive by specifying the kinds of transactions or arrangements that should be attacked and with equal precision the consequences which are to follow.

S.17 (1) of the Companies Income Tax Act[62] provides that where it appears

to the Board that a Nigerian company which is under the control of five persons or less and has failed to distribute to its shareholders as dividend, profits made in any of its accounting periods with a view of reducing the aggregate of the tax chargeable in Nigeria on the profits of income of the company, the Board is empowered to direct that any such undistributed profits be treated as distributed to its shareholders. This is however, subject to one important condition namely that only such profits that could have been distributed without detriment to the companies business as it existed at the end of that period that could be deemed distributed as aforesaid. This qualification is essential otherwise the section would have been counter productive by preventing firms from ploughing back their profits for expansion.

Accordingly, any amount of profits deemed to be profits of income from dividend accruing to those persons who are shareholders in the company in proportion of their share capital would be treated as distributed profit taxable as personal income in the hands of each shareholder. This provision was designed to cover all companies that are in a few hands controlling and enjoying income without its formal ownership.

In Cameroon, the General Tax Code contains provisions against acts of tax avoidance as aforesaid. Article 160 of the code provides that, no operation

concluded in the form of a contract or any legal act whatsoever, dissimulating a realization or transfer of profits or income effected directly or through an intermediary, shall be binding on the tax authority who shall be entitled to reconstitute the true character of the operation.

Although this provision is intended to check against acts of tax avoidance in the country, it has been observed[63] that taxpayers in Cameroon still take advantage of the loopholes in the tax laws to avoid taxes.

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3. Ibid.

4. Ibid.

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6. Ibid.

7. Ibid.

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9. Ibid.

10. Chenge, N. R (1986) Personal Income Taxation in Nigeria. Unpublished LL.M Thesis, A.B.U, Zaria .

11. Karibi Whyte, A. G (1991) "Interpreting and Understanding Nigerian Tax Legislation", Nigerian Institute of Advanced Legal Studies Conference Series, Lagos.

12. See chapter one of this thesis

13. Karibi Whyte, A. G (1991) Op cit.

14. (1921) 12 TC 358 at P.366. See also Ormond Investment Co Ltd V. Betts (1926) 13 TC 400, where the House of Lords held, no taxes can be imposed upon the subject unless the statute imposing the tax does so in clear and unambiguous terms.

15. (1869) L. F. 4E and 1APP. H. L. 100

16. (1966) LLR 195

17. (1968) 3 All E.R.1

18. (1889) 23 Q.B. 574 at P.593

19. (1936) TC 490 at P.520

20. (1926) AC 395 at P.412

21. (1928) AC 217.

22. (1929) 14 TC 754 at PP. 763 - 764. See also Gregory V. Helvering (1935) 293 US 465.

23. (1942) 25 TC 117

24. (1941) 25 TC 121

25. (1949) 31 TC 1.

26 (1949) 1 A11.E.R. 865

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29. See Griffiths V. J.P. Harrison Ltd (1963) AC 1 where the House of Lords by a majority of three to two confirmed that dividend stripping worked as a tax avoidance device.

30. (1967) 2 A.C 18

31. (1974) S.T.C. 539

32. Supra

33. (1984) A.C 300

34. This principle is said to have served a great blow on the apparent sanctity of tax avoidance in the United Kingdom. See Abdulrazaq, M.T (1991) "The Application of the Doctrine of Fiscal Nullity in Nigerian Tax law", In: "Justice", A Journal of contemporary Legal Problems, Vol.2, No.5 P.48.

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52. Igweike, K. I. (1984(" Adaptation of Received Commercial Law o f Contemporary Nigerian Conditions" Nigeria Commercial laws, Department of Commercial law, A.B.U, Zaria P.18.

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54. Cap 60 LFN 1990. See also section 17 of PITA Decree No 104 1993 which is similarly worded.

55. Section 18 (3) CITA (cap 60) LFN 1990.

56. Ijewere, E. I. (1993) "Incidence of Tax Evasion in The Nigerian Tax system And its Negative Effects on The Economy" A paper presented at the MVAT Train The trainers Course, Ile Ife, May 10th P. 11. See also section 460 of the United Kingdom and Corporation Taxes Act, 1970, an anti tax avoidance provision that applies to transactions in securities for the purpose of minimising tax liability. the effects of the
section is quite different from that of section 18 of CITA. The English courts have given to the expression "transaction in securities" to include payment of dividend and redemption of debentures see Greenberg V. I.R.C. (L972) 47 TC 240.

57. Section 460 (1)

58. Note, it is conceivable that a court could wish to consider a transaction of which one but not the only or main object were the obtaining of a tax advantage as " artificial or fictitious" see Lord UpJohn in I.R.C. V. Brebner (1967) A.C 18, where he said: "When the question of carrying out a genuine commercial transaction, as

this was, is reviewed, the fact that there are two ways of carrying it out one by paying the maximum amount of tax, the no, or must less, tax it would be quite wrong, as a necessary consequence, to draw the inference that, in adopting the later course, one of the main object is, for the purposes of the section, avoidance of tax".

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60. Ayua, I. A (1984) Op cit. P.75

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CHAPTER FIVE

5.0 SUMMARY AND CONCLUSION

5.1 SUMMARY

5.1.1. GENERAL INTRODUCTION

The introduction of this thesis commenced with a discourse on the general concepts of taxation, definition and its historical perspectives in Nigeria and Cameroon. Prominence is given in the chapter to the importance of taxation to developing nations like Nigeria and Cameroon. There is no doubt that taxation remains the main source of government revenue, the world over. The moral authority of the Governments to levy and collect taxes rest on the fact that Government is for the good of all and therefore everyone has a duty to contribute to the cost of discharging the functions of Government which a free market economy cannot provide.

Apart from the revenue consideration that we have seen, taxation constitutes a major fiscal policy tool used by Governments to maintain equilibrium and stability in the economy. Taxation could also be used as an instrument for managing the socio economic issues such as wealth distribution, protection of home industries and protection of obnoxious consumptions. Prominence is further underscored to the subject by Adam Smith in his postulation that tax contributions

should be in direct proportion to revenue earned and this concept of equality does not imply equality of contribution but rather equality of sacrifices. Furthermore, that tax liability should be certain to the tax payer in terms of payment period, amount to be paid and the manner of payment. He also said that tax should be levied and collected in a manner and at a time that payment is most convenient for the tax payer. And, finally Adam Smith said that the economy of tax collection is the function of the relationship between revenue generated from taxes and the cost of tax collection. Therefore in order to achieve a broader objective of social justice, it is advised that the Nigerian and the Cameroonian tax systems should be based on the above mentioned principles and to be guided also by clearly laid down rules.

The pre-colonial Cameroonian and Nigerian societies reveal that there had existed some indigenous fiscal systems of taxation long before the whitemen came. Written and oral sources had it that revenue were collected in kind, mainly in food stuffs by traditional rulers and their officials. The gradual adoption of few commodity currencies (manilla and cowrie shell) simplified to some extent the payment of taxes in these societies and those who could not afford were compelled to offer compulsory services to these rulers.

The structure and organisation of the indigenous system of taxation in Nigeria and Cameroon varied from one part to another. The indigenous fiscal system of taxation in the Emirates and Lamidats of the muslim communities of Northern Nigeria and Cameroon were the most advanced. These communities had embraced the Islamic faith

and under its influence they had a highly and well organised fiscal system of taxation under the sharia which the people regarded as a duty imposed upon them by "Allah", the "Almighty God." Although the Lamidoes and the Emirs had little or no difficulties in administering the taxes in their domain, the major defect of the pre-colonial systems of taxation in Nigeria and Cameroon laid in the complete absence of uniformity as it remained largely uncoordinated. Assessments were often arbitrary with lots of irregularities in the imposition of taxes by the Emirs, Lamidos, Fons and the Obas.

With the arrival of the whitemen the tax system was organised. They enacted laws aimed at standardizing and bringing about a reasonable level of uniformity in the Nigerian and Cameroonian tax systems. They introduced stringent laws and adequate sanctions which were scrupulously implemented but nevertheless the problem of tax evasion could not be totally eradicated. The year 1960 marked the end of colonial administration in Nigeria and Cameroon, and at that time, there was an appreciable improvement in the tax systems. However, today in Nigeria the relevant tax legislation are the Companies Income Tax Act LFN 1990, Value Added Tax Decree No. 102, 1993, Personal Income Tax Decree No. 104, 1994 and the Petroleum Profit Tax Act LFN 1990. On the other hand the General Tax Code year 1973 and the Finance Law of 1995 introducing new tax regimes such as Global Tax, Axle Tax are the Laws governing taxation in the Republic of Cameroon.

5.1.2 TAX ADMINISTRATION AND TAX EVASION/TAX AVOIDANCE

It is but true that revenue from tax collection forms an important source for every nation. In fact revenue is what gives the governments the impetus for a successful implementation of its social and economic programmes. It is universally acknowledged that no government can survive without an efficient tax system. It is against these backgrounds that the Governments of Nigeria and Cameroon have instituted various bodies under the relevant tax statutes and subsidiary legislation charged with the prudent management of their tax systems. In Nigeria these bodies are the Federal Board of Inland Revenue, the Joint Tax Board, the Body of Appeal Commissioners, State Board of Internal Revenue as well as Local Government Revenue Committees. In Cameroon, the role of the Ministry of Finance and Economy the Directorate of Taxation and it external services such, provincial tax centres, divisional tax centres e.t.c in tax administration have been considered.

Although these bodies play a vital role in the administration of the tax systems and the realization of maximum revenue for the Governments, they do have some structural defects. Besides, all forms of taxation in Nigeria and Cameroon are proned to avoidance and evasion because tax administration are plagued with a lot of problems. Some of these problems are lack of skilled personnel, low salary scales, lack of motivation and basic facilities in the efficient discharge of duties such as office accommodation, good vehicles, and office equipments.

5.1.3 TAX EVASION IN NIGERIA AND CAMEROON

The problem of tax evasion remains one of the major problems plaguing tax administration in Nigeria and Cameroon. This problem is not suffered by Nigeria and Cameroon in isolation but rather it is a world wide phenomenon.

Outside the rank and file of the salaried employees in the economy, most citizens in Nigeria and Cameroon either pay inadequate taxes or no taxes at all. The reasons for this could be attributed to a number of factors, the main causes being the high rates and proliferation of taxes, inadequate and inefficient administrative organs, lack of civic responsibilities on the part of tax payers, uneven distribution of resources and excessive corruption.

While it is difficult to estimate the degree of tax evasion in both the Nigerian and Cameroonian tax systems, it is equally not possible to provide an exhaustive list of the various methods adopted to evade tax, apparently as new ones come into play every now and then. Nevertheless tax evasion in Nigeria and Cameroon takes several forms. For example, failure to file returns of income, failure to report all incomes subject to tax, failure to keep records or adequate records, failure to pay to Revenue the amount deducted from employee's wages and smuggling.

In these two countries, although there are monetary penalties and criminal sanctions for acts of tax evasion, it has been noticed that the sanctions seem not to be adequate and more over tax administration is weak because of the absence of necessary procedure for enforcement. Hardly will you find any notable prosecution that have been

instituted in Nigeria and Cameroon for tax frauds. Fraud on Revenue is a serious offence both at common Law and under the statutes, but regrettably, in Nigeria and Cameroon the common Law prosecution for revenue fraud are not applicable. However emphasis have been laid for criminal prosecution for frauds to be vigorously pursued but only in the more serious cases of evasion.

5.1.4 TAX AVOIDANCE IN NIGERIA AND CAMEROON

Tax avoidance simply put, means that less tax is paid by a taxpayer. But unlike tax evasion this is achieved by means within the spirit of the tax law. Tax avoidance like tax evasion are associated problems of tax administration in Nigeria and Cameroon with tax payers developing ingenuious schemes to pay less taxes than otherwise due.

The legal importance of the distinction between tax evasion and tax avoidance was once great. While tax avoidance activities however blatant were perfectly lawful, tax evasion constituted a criminal offence punishable with jail. However over the years there has been an evolution in the attitude of the law towards tax avoidance in many countries including Nigeria and Cameroon to the point that nowadays it is seriously misleading to keep saying as the great majority of people do that tax avoidance is an activity fully accepted by the law. In fact presently, the general attitude of the law towards tax avoidance is far less permissive than it once was. It is no longer exact to say without qualification that tax avoidance schemes are fully allowed by the law as examplified by section 104 of New zealand Land and Income Tax Act 1954.

5.2 CONCLUSION AND RECOMMENDATIONS FOR REFORMS

It should be bear in mind that the problem of tax evasion and tax avoidance cannot be totally eradicated in any tax system, at best it can only be reduced to its bearest minimum. Thus, in conclusion, the following recommendations for reforms should be implemented.

1. The Governments of Nigeria and Cameroon should carry out vigorous public campaigns to educate the tax payers on the importance of taxation as the major source of revenue to the nation. These campaigns have to be undertaken to convince the public that the taxes they pay are not for the benefit of the governments but to provide goods and services for the citizens, the Governments being a mere agent in the provision of these goods and services. To achieve this, tax questions should become a regular news features on the television, radio and other information media. It is hoped that these campaigns will go a long way to instill a sense of civic responsibility and honesty in those who are capable of paying their taxes but who voluntarily evade payment.

2. The Governments of Nigeria and Cameroon should take steps in reducing the tax payers discontent and instill a sense of public confidence in the management of states affairs and resources. This can be achieved through the judicious application of tax revenue and equitable distribution of resources by both Governments and making its presence to be felt in all the geographical corners of the country by providing for roads, health centres, electricity, schools etc. Also both Governments

must ensure public accountability by public officers and those found guilty of misappropriating tax payer's money should be vigorously prosecuted.

3. The Governments of Nigeria and Cameroon must place greater attention to tax administration if the goals of the tax policy are to be achieved. The raising of maximum tax yield for the nations depend among other things on the adequacy and efficiency of the staff in the Revenue Department or the Board of Inland Revenue. To this end, the Governments of Nigeria and Cameroon should recruit more qualified personnel and such personnel must through training be given a proper understanding of how the tax systems operate. The training must be conducted by instructors qualified in taxation. Furthermore intensive training facilities should be organised for the existing staff in the Revenue Departments or Revenue Boards and it is hoped that this retraining will supply these persons with the requisite intelligence and aptitudes in the efficient discharge of their duties. It is also suggested that promising staff in the Revenue Department should be awarded scholarships to study abroad in order to develop and acquire technical skills and procedure in tax administration. Such staff on return to the country will inject the new spirits or skills so acquired in the tax administration of both nations.In addition, Revenue staff in Nigeria and Cameroon who have demonstrated hard work ,dedication and honesty with practical results of high revenue yield for the Nation should be promoted and honoured with National honours as and encouragement to the lazy ones.

4. Monetary penalties should be increased drastically three times the amount due as tax so as to make it unworthwhile for any tax payer indulging in acts of tax evasion. Criminal prosecutions for frauds should be vigorously pursued but only in the more serious cases of tax evasion in Nigeria and Cameroon. Their names, addresses, occupations as well as their convictions should be well publicised to serve as a deterrence to other delinquent tax payers.

5. It is recommended that every public office seeker especially in Nigeria must present his tax clearance certificate and this should be made a public document available for public viewing before appointment or any election is made. The suggested period to be covered by the tax clearance certificate in these respects in Nigeria should be as follows:

President and Vice president	20 years
Governor and Deputy governor	15 years
Senators	15 years
Federal and state legislators	10 years
Federal Ministers	15 years
Board Appointment	10 years
State Commissioners	10 years
Local Government	5 years

To start with, it is proposed that a general tax amnesty should be granted to every Nigerian up to 31st December, 1975. This mean that every public office

seeker in this country should go back and re-declare his income since January 1st, 1976 to date, failure of which automatically disqualifies his or her candidature for any appointment or election as the case may be. It is hoped that, this kind of legislation if carefully designed and well policed will go a long way to change the attitudes of many prominent Nigerian toward tax payment and improve their voluntary compliance habit.

6. Adequate and well ventilated office accommodation should be provided for the Revenue staff in Nigeria and Cameroon by the Governments, this will assist more in the efficient handling of office files. Also the provision of basic office equipments to the Revenue offices such as stationeries, photo copier machines, good vehicles, office shelves as well as a handsome pay will make the tax man mobile and more efficient in discharge of his duties.

7. In Cameroon, one of the greatest discontent of the tax payers is the high rates of taxation in the country. It is recommended that the entire tax system should be carefully study with the view to reducing the present rates. This reduction in the tax burden will go a long way to promote a healthy tax climate to attract and encourage local and foreign investors in the country.

8. The tax appellate bodies in Nigeria and Cameroon should be made up of full time members who are seasoned tax experts. They should operate

independently without Government influence and with powers of sanctions against any party.It is hoped that this will go a long way to ensure a fair adjudicatory process devoid of bias against any party whether the government or the tax payer.

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APPENDIX I

Questionnaire administered to some tax administrators in Nigeria & Cameroon.

Mark x against the appropiate column and fill in the blank.

1. For how many years have you been in the Revenue service?

   a. Less than 5 yrs ( ) b. 5 - 10 years ( )

   c. 10 - 20 years ( ) d. above 20 years ( )

2. What are you academic qualifications ?

a. Primary ( ) b. Secondary ( )

c. Professional Diploma ( ) d. University Degree ( )

3. Will you say the pay package at the Revenue is satisfactory? Yes or No

4. How would you describe the condition of service at the Revenue ?

a. Satisfactory b. Medicore c. unbearable

5. Is there anything you think the Government can do in order to improve the condition of service at the Revenue (state them) if any.

6. Will you say the tax administrative structures in the country are adequate. Yes or No (give reasons).

7. In your opinion whatt do you think account for the reasons why people pay inadequate or no taxes at all.

8. Who amongst the these taxpayers are proned to tax evison in the country

a. Politicians b. Businessmen c. Professional.

d. An individual.

9. How many matters on tax evasion have you taken to court?

APPENDIX II

Questionnaire administered to tax payers in Nigeria and Cameroon.

Mark x against the appropiate column and fill in the blank.

1. How will you comment on the rate of taxation in the country.

a. High ( ) b. Moderate c. Low

2. What is your approximate annual income?

3. How often do you get to know about the existence of a new tax law.

a. Radio/TV b. Newspapers c. Friends

d. None of the above.

4. How will you assess government assistance in terms of development to your community.

a. Satisfactory b. Grossly inadequate c. Average.

5. Do you keep records for accounting. Yes or No.

6. Have you for reason or the other ever failed to pay your taxes Yes or No (Give reasons)