ANALYSIS OF THE LEGAL FRAMEWORK OF INCOME TAX ENFORCEMENT AND COMPLIANCE STRATEGY FOR REVENUE GENERATION IN NIGERIA

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

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DECLARATION

I hereby declare that the work in the dissertation entitled: '***Analysis of the Legal Framework for Income Tax Enforcement and Compliance Strategy for Revenue Generation in Nigeria***' has been performed by me under the supervision of Prof. D.C John and Prof. A.R Agom.

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

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CERTIFICATION

This dissertation entitled: "***Analysis of the Legal Framework for Income Tax Enforcement and Compliance Strategy for Revenue Generation in Nigeria***" by Pius Ukeyima AKUTAH meets the regulations governing the award of Master degree in Law (LLM) of Ahmadu Bello University, Zaria and it is approved for its contribution to knowledge and literary presentation.

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DEDICATION

This dissertation is dedicated to my dear mother, my dear wife and four sons who have stood by me at all times, during the years of my studies.

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ABBREVIATIONS

A.C.	Appeal Cases
A.E.R.	All English Report
C.A.M.A	Companies and Allied Matters Act
C.G.T.A	Capital Gain Tax Act
C.H.D	Chancery Division
C.I.T.A	Companies Income I ax Act
K.B.	Kings Bench
P.A.Y.E	Pay-As-You-Earn
P.I.T.A	Personal Income Tax Act.
S.C.R	Supreme Court Rules
S.D.A.	Stump Duty Act.

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ABSTRACT

From the inception of modern taxation in Nigeria in the first decade of the 20th century the problem of poor tax administration has been the cankerworms that militate against an optimum revenue generation which affect negatively the government ability to render essential services to the citizenry. The problem of the attitude of most tax payers in Nigeria is negative. Most of the people, feel that tax imposed on them by the government is a means to exploit their limited resources for their personal use. With this impression, they see no reason why they should comply in paying such taxes. They would therefore prefer to devise any method to evade or avoid taxes. The government and the tax authorities on the other hand, have made very little effort in educating tax payers, especially those from the rural areas to understand that such taxes are used for their benefit in assisting the government in providing social amenities or public utilities such as education, defence, health, communication, infrastructures and many others that yield no revenue, which are supposed to be financed by the government with the citizen fulfilling their civic duties. With the above problems in mind, various reforms were initiated aimed at educating the taxpayers on their civic obligation to pay their taxes which will help government to raise revenue in order to provide the most needed infrastructures for the public good, to further examine the possible ways to educating tax payer on the importance of tax compliance and enforcement so as to encourage them on performing this civic responsibility place on them. This work is intended to cover the general background of income tax administration in Nigeria. The scope will be base on methods of assessment to personal income tax and collection by the avoidable administrative machineries. The work is limited by the non-doctrinal method of research that would have involved the conduct of interviews and the administration of questioners. Indeed, because of lack of time, the researcher was unable to do that. This study assesses the income tax enforcement and compliance efforts under the Nigerian Income tax laws. In assessing these penal provisions, the weaknesses of our taxing provisions shall be examined analysed and processed with a view to making laudable suggestions and recommendations that will improve revenue generation in Nigeria. The research project concludes that the tax authorities and the government should educate the taxpayers on their civic obligation to pay their taxes because, voluntary tax compliance by the tax payers is hardly possible under a condition in which the public have no confidence in the revenue officials. The importance of tax and the issue of tax as a source of government revenue must be pointed out to both the government and the governed should be talked about also. Hence, all hands must be on deck for the country to achieve great percentage of tax compliance from the taxpayers.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the study

Taxation may be defined as the demand by the government of a country on its citizens for a compulsory payment of part of their wealth. The aim of taxation is to raise revenue to finance government expenditure to achieve economic development and to distribute income on a socially acceptable basis. Hence, the first need of a modern government is revenue which is indeed the breath of its nostrils[1]. Expenditure has shown that connection is not a simple task, especially in developing countries like Nigeria where its economics, social and political structure is so complicated. Tax has to be collected with caution as voluntary compliance is lacking. Income tax and every other form of taxation have not being readily accepted and even where it is accepted, it *is* not favoured. Members of the public are usually touchy about forms, notice and letters tax authorities. The result is an attempt to create or avoid taxes as much as possible, causing a low rate of the compliance.

It is necessary at this juncture to distinguish between: "tax evasion" and "tax avoidance", either of which could be the result of non compliance with payment of " tax evasion is usually defined to mean the failure to pay one's tax or the reduction of one's tax liability through illegal or fraudulent return or failure to make a return or even failure to pay on time. Evasion is not only wrong, but also it involves breach of tax laws. Ola C.S, opined that:

> Tax avoidance is the minimization of tax liability by arranging one's affair as to take advantage of provision in the tax law.[2]In this way the tax payer pay less than otherwise would have been payable.

[1] Aiyar, P.R. (2014), "Concise Law Dictionary" (5th ed.) Lexis Nexis, New York, p 385.
[2]Ayua, I.A.(1999) 'The Nigerian Tax law,' Spectrum Publishers Ibadan (Revised Edition) p.15

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

The Personal Income Tax Act[3], (P.I.T.A) for instance, lays down income tax offences and penalties for their breach, such as legal proceedings, distraint of property, public auction of seized properties and monetary penalties for various income tax offences.[4] Likewise, part XXI of Companies Income Tax Act (C.I.T.A) 1990, (as amended) listed various offences and penalties against any tax defaulter such as failure to comply with the provisions of C.I.T.A or rules, failure to comply with notices or summons, failure to answer questions on tax matters, failure to furnish returns, statement, information or keep correct records of income.[5]

Preliminary examination of these penal provisions reveal their ineffectiveness to check the activities of tax defaulters. This study is to examine and analyse the penal provisions with a view to suggest better methods of making effective penal provisions in our tax statutes.

The present penalty provisions do overlap and are in some places mutually inconsistent especially in terms of the severity of the penalties and are thus defective and ineffective to deal

[3] 1993 (as amended)
[4] S.S. 87(1) 88, 89-96 of P.I.T.A 1993
[5] SS. 66(5) a & b 71-73 of C.I.T.A 1990

with current economic trends in our fiscal policies. This calls for thorough review and re-arrangement of the penalty provisions on a more adequate and rationale basis.

Additionally, the attitude of the tax officials, the law makers and the courts leaves much to be desired as a result of their lukewarm behaviour towards tax offences. This adversely affects income tax compliance efforts.[6] The courts responses are usually slow and are passive in taking decisions.[7] Thus, even though the law provides sanctions against those defaulters, these provisions are hardly used by the tax officials.[8]

Enforcement of income tax in Nigeria; which is the aim of this research can be well understood if considered into parts: Firstly, with regards to the tax payer and secondly, with regards to the Nigerian tax administration system.

1.2 Statement of the Problem

Considering the nature of the Nigerian society, one can highly say, this contributes highly to the manner to which income tax enforcement is treated in Nigeria. Thus, problems of this study hinges on the following areas:

Why do the citizens of Nigeria have an unpatriotic tendency towards tax payment. The general behaviour of some tax payers as well the rate of poverty in the country may be responsible for the effect given to income tax enforcement and compliance in Nigeria.

The problem of the attitude of most tax payers in Nigeria is negative. Most of the people, feel that tax imposed on them by the government is a means to exploit their limited resources for their personal use. With this impression, they see no reason why they should comply in paying such taxes. They would therefore prefer to devise any method to evade or avoid taxes.

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[6] Layade P.S.A (1976) ' Tax evasion in fifth annual senior officers conference of F.B.I.R p. 301

[7] F.B.I.R. v. Omotesho (1971) N.C.L.R 6

[8] Surrey S.S (1975); 'Tax Administration in underdeveloped countries, John Hopkins, University Press, Baltimore & London p.486

The government and the tax authorities on the other hand, have made very little effort in educating tax payers, especially those from the rural areas to understand that such taxes are used for their benefit in assisting the government in providing social amenities or public utilities such as education, defence, health, communication, infrastructures and many others that yield no revenue, which are supposed to be financed by the government with the citizen fulfilling their civic duties. Thus, from the above problems, the following research questions comes to mind:

a. Why is there low tax compliance efforts by the tax payers in Nigeria?
b. Why do the taxpayers engage in tax evasion and avoidance?
c. Why do the government and tax authorities not really serious in educating the taxpayers about the importance of tax payment to generate revenue that will be beneficial to the Nigerian society as a whole?

1.3 Aim and Objectives of the Study

The aim of study, is to determine the problem associated with enforcement and compliance of income tax in Nigeria and propose useful system that will reduce to a great extent, these problems through the following objectives:

a. To educate the taxpayers on their civic obligation to pay their taxes which will help government to raise revenue in order to provide the most needed infrastructures for the public good.
b. To further examine the possible ways to educating tax payer on the importance of tax compliance and enforcement so as to encourage them on performing this civic responsibility place on them.
c. To examine the ways in which the government and tax officials can be made to intensify tax enforcement and compliance efforts in Nigeria so as to improve revenue generation.

1.4 Scope of the and Limitations of the Study

This work is intended to cover the general background of income tax administration in Nigeria. The scope will be base on methods of assessment to personal income tax and collection by the avoidable administrative machineries. The research has also gone further to proffer some possible methods of income tax administration on which will be a solution to the problems faced by the tax administrative bodies, that will also enhance tax compliance by the various taxable bodies or person(s). The work is limited by the non-doctrinal method of research that would have involved the conduct of interviews and the administration of questioners. Indeed, because of lack of time, the researcher was unable to do that. The researcher state that the quality of the work has not been affected in any way even with these constraints.

1.5 Significance of the Study

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

The study is also significant because, it assesses the income tax enforcement and compliance efforts under the Nigerian Income tax laws. In assessing these penal provisions, the weaknesses of our taxing provisions shall be examined analysed and processed with a view to making laudable suggestions and recommendations that will improve revenue generation in Nigeria.

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

In this study, we shall be able to know what happens to those persons who refuses to pay tax? Thus, the tax payers will understand the dangers involved in failure to pay tax which result in heavy penalties. They will also be willing to pay their taxes as and when due and the revenue officials will find it easy to collect taxes. This will in turn, improve the revenue of the government through taxes.

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

1.6 Research Methodology

The method chosen in this research is doctrinal. This includes statutes and case law as the primary sources as well as the secondary sources such as academic materials available in the libraries such as text book, written by various authors, articles and seminar papers, gazettes and internet on the subject matter, and other relevant materials on the subject matter.

These become necessary because it would help us in achieving understandable base on the perspective of the tax payer which we would try to compare with opinion of some writers and that of the position of the law. This method used, will aid us in providing possible remedies, also to agree or not with the comment that says, most of the problems associated with income tax compliance lies with the law and taxing authorities than the taxpayers[9].

[9] Ibid

1.7 Literature Review

The topic of research which analyses the income tax compliance effect in Nigeria is a topic which has attracted the attention of many writers and also legal authorities which have provided methods through which this tax can be administered.

For instance, Ola C.S,[10] posit that the Personal Income Tax Act identifies taxable person and determine their assessment income. This is achieved by determining the resident of the taxpayer and the source or origin of his income. Ayua I.A further explains the meaning of residence by the Act as living in a particular locality and it is possible that a person may have two places of residence. Residence therefore is the idea of renaming and setting in a place for a fairly long period[11].

What can be deduced from the above statement is; one can be a taxable person where the law has said he is a taxable person and such personal income to be taxed, must be those contemplated in the law. It is the attempt of this study to further assess the various taxable persons provided by the law and to move a step forward on the work of the writings in finding some problems that are associated with such persons whom are taxable in term of assessment and collection.

Some additional materials on Nigerian income tax policies, both at the federal, state and local government, collated and presented in a coherent whole, are provided in a special edition by the Nigerian institute of advanced legal studies, Lagos, under the authorship of Ajomo and Akanle[12]. In the book, several articles on Nigerian income tax were presented as part of the conference series of the institute. Under this, we found interesting topics such as: "the government, the constitution and the tax payers;" "An analyses of federal and state taxing

[10] Ola C.S (1999) Income Tax law and practice in Nigeria (Revised edition) 1999
[11] Communiqués issued by the Joint Tax Board, The Guardian, Wednesday, July 21, (2004). P 28
[12] (1991)'Tax Law and Tax Administration in Nigeria" published by Nigerian Institute of Advanced Legal Studies.

powers", " Interpreting and understanding Nigerian tax legislation",. "Tax administration; the problems of assessment and collection," "A new framework for tax administration in Nigeria", "State taxation; the problems of interstate commerce and trade and federal government instrumentalities" and "Nigeria; tax treatment of business concerns with international connection"; to mention but few.[13] One key topic of interest to this research is; 'The socio-economic and legal foundations of tax evasion and tax avoidance."[14] These topics shall be analysed and used in the work. Even with this, there gaps to fill.

For instance, Arogundade, J. A. in his book: "*Nigerian Income Tax and its International Dimension,"*[15] explained the Nigerian income tax with international taxation. The book deals with international tax concepts and the Nigerian income tax principles; principle of law and practice of chargeable income determination in Nigeria; assessment determination and collection procedure in Nigeria and principle of double taxation avoidance.

For this research purpose, the book could have been useful when discussing international taxation and transfer pricing but he did not consider the Nigerian national tax policy This is because, the learned author only dwelt on transfer pricing and zeroed it on the practice in Nigeria. The learned author did not discuss the dispute resolution process as relates to transfer pricing which this study shall focus on.

Likewise, Arcotia, H. et al carried out extensive work in his article on a website entitled: "*Introduction to Transfer Pricing"*[16]*IBFD International Tax Academy*. This was a seminar paper presented to the staff of the Federal Inland Revenue Service. It is a power point presentation that captures the legal framework of transfer pricing, process for setting and reviewing transfer

[13] Ibid
[14] Ibid
[15](2005) Spectrum Books Ltd., Ibadan. 1st Edition.
[16](2010) www.ibfd.org. accessed on 5th June 2018, at 2.12pm

prices, and transfer pricing adjustments and administrative approaches to avoiding and resolving transfer pricing disputes. However, the learned authors did not discuss Nigerian national tax policy and international tax regime. The issues treated are at variance with the subject matter of this study, neither did the authors aver their minds to the effect transfer pricing on international relations. This research work shall capture these important aspects within its ambit.

Avi-Yonah's article: "*International Tax as International law: An analysis of the International Tax Regime"*[17] is relevant to this study. The learned author in this article, argues that a coherent international tax regime exists, embodied in both the tax treaty network and in domestic laws and that it forms a significant part of international law (both treaty-based and customary). The author suggests that the practical implication, is that countries are not free to adopt any international tax rules they please, but rather operate in the context of the regime which changes in the same ways international law changes over time. Thus, unilateral action is possible, but is also restricted, and countries are generally reluctant to take unilateral actions that violate the basic norms that underlie the regime. He said nothing on Nigerian national tax policy. The learned author did not even discuss transfer pricing at all and the approaches to resolving disputes arising from transfer pricing were not discussed. This research work shall incorporate these topics, left out by the learned author in the article.

Another article on a website by Osadare, B. is entitled: *"Taxation, Transfer Pricing and Conflict Resolution: Issues for the Extractive Industry"*[18] which is relevant. The learned author submits that the problem of taxation and transfer pricing is so sophisticated that many government of developing nations are far from finding a solution and their developed counterparts have been placed on edge by constantly reviewing their laws and regulations on

[17](2007)Cambridge University Press, London
[18] (2011)http/www.google.com. Accessed 16/05/2018.

taxation and transfer pricing. He notes that disputes relating to transfer pricing are now increasing and examines how the resultant disputes between MNEs in the extractive industries and host governments are resolved. The paper concludes that existing regulations are not enough in most cases and as a result of the serious tax implication, more attention should be given to it. But the learned author restricts his discuss to the extractive industries and fails to discuss the nature of Nigerian national tax policy as it affects international tax law. This study shall also focus on these areas.

Abdulrazaq's work entitled: '*Tax laws and foreign investment in Nigeria'*[19], is also relevant. He postulates that Nigerian tax statutes requires serious amendments to suit changing times, but he did not analyse the Nigerian national tax policy and transfer pricing at all.[20] Hence, this work is meant to cover such lacuna.

Umenweke's work entitled: *'Impact of tax statutes on investment in Nigeria'*[21]is also relevant to this work. In this book, the writer presented a clear picture on Nigerian tax laws and its implication on foreign investment in Nigeria but said little or nothing on national tax policy.[22] Thus, due to the few literatures on this subject, it becomes necessary to pick a research topic from this area.

According to Adedokun[23],the legal and institutional framework for tax enforcement and their application to tax practice is a*s inequanon* for effective tax administration. He also examined several mechanisms employed by the tax administrators in enforcement and recovery of tax in Nigeria, amongst which are distress, litigation, use of tax clearance certificate, monetary penalties and criminal prosecution and search and seize.

[19](2005) Malthouse Publications LTD Lagos pp12-16
[20] Ibid p 26
[21] (2008) Nolix Educational Publication LTD Enugu, pp40-56
[22] Ibid p 60
[23]Adedokun, K.A.,op. cit

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

The *Nigeria Tax Law* by Ayua[24] is one of the oldest, detailed works on Nigerian taxlaw. It examines the structure of the Nigerian tax system from a legal perspective. These include Personal Income Tax and Companies Income Tax. The work is rich in its treatment of the rules for the interpretation of taxing statutes as well as in other aspects; however its limitations lie in the fact that, while it generally discussed tax administration, it did not specifically treat the issue of reforms. In addition, there have been far reaching reforms in Nigerian tax law and tax administration, since the publication of the work. Some of the tax laws have been repealed and several others enacted. Nevertheless, the work forms a useful foundation for any legal discussion of tax matters in Nigeria.

Although Ojo,[25] discusses tax from the accounting perspective, his work contains issues of relevance to the law. His work, however, examines the basic principles of taxation in Nigeria amongst which includes various tax laws e.g. Value Added Tax (VAT),[26] Stamp Duties Act, Petroleum Profit Tax, Personal Income Tax, Capital Gain Tax, taxation of companies, partnership assessment, taxation of non-residents, and administration of tax in Nigeria as well as the management of taxation in Nigeria.

Some of the topics in his work made a lot of references and quotations from the existing laws as at that time and these laws have been amended. For example, the former administrative

[24] Ayua, I.A. (1999) The Nigerian Tax Law, Spectrum Books, Ibadan-Nigeria.
[25] Ojo, S. (2003) Fundamental Principles of Taxation in Nigeria, Sagribra Tax Publications, Lagos-Nigeria.
[26] See also, Philips, D. (2004) ‗Nigerian Tax System: Which Way Forward?' A paper presented at the 6th Annual Tax conference of the chattered Institute of taxation in Nigeria, held at Abuja, on May 13, p. 1.

machinery, which was the Federal Board of Inland Revenue (FBIR), has now been replaced with the FIRS and also the composition of each of these machineries has also been changed. The work aids the researcher in appreciating circumstances and short comings in the past system that led to present reforms[27]. With all these works, a huge knowledge gap exist and it is hoped that the present work will fill this yawning gap.

1.8 Organisational Layout

This essay contain six chapters, chapter one, provides a general introduction to the essay and gives a *synopsis*, of what the researcher seek to achieve, issues like problems associated with the research, aim and objectives of the study, literature review, scope of the study, method of research and organizational layout are discussed.

Chapter two deals with the definition of key terms, meaning of tax enforcement, objectives of taxation, Raising of Revenue, tax evasion and tax avoidance, Economic price stability, Redistribution of wealth, economic growth and development, meaning of income for the purposes of the taxing statutes.

Chapter three, is concerned with the income tax enforcement, interpretation of statutes on tax enforcement, personal income tax enforcement and compliance by tax payer, problems *of* income tax enforcement and compliance, problems of revenue tax authority, administrative cost of enforcement of income tax compliance.

Chapter four deals with the role of taxation in the economic growth and development by considering the organization of the recurrent and capital expenditure for revenue development. It also discussed the importance of taxation as it relates to income tax compliance and enforcement drive through good fiscal policies and incentives.

[27] Ibid

Lastly, chapter five consists of the conclusion, summary of findings, recommendations and suggestions.

CHAPTER TWO

CONCEPTUAL FOUNDATION AND CLARIFICATION OF KEY TERMS

2.1 Meaning of Tax Enforcement

Income for tax purposes has been defined by section 3(3)b[28] as 'including an amount deemed to be income under the Act". This definition by the statute law has not be satisfactory, therefore recourse must be made to case law. In **COITNESS IRON CO. V. BLACK**[29], Lord President defined income as:

> *...everything of the nature of income shall be assessed from what source so ever it may be derived whether from invested capital or from skill and labour or from a combination of both, and whether temporary or permanent, steady or fluctuating, precarious or secure.*

Enforcement of tax liability and, the steps likely to be taken by the relevant authorizes to recover a tax debt, have constitutional underpinning. Section 44(1) of Constitution of the Federal Republic of Nigeria 1999 provides as follows:

> No moveable property or any interest in an immoveable property can be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law.

Subsection (2) is relevant to the above. It provides that: *Nothing in subsection (1) of section shall be construed as affecting any general law for the imposition or enforcement of any tax, rate or duty*[30].

2.2 Meaning of Tax Evasion

One of the greatest problems facing the country is the problem of tax avoidance and tax evasion which is prevalent in the country. There is general agreement from many quarters that

[28] Personal Income Tax Act Cap. P.8 LFN 2004
[29] Cointness Iron Co. v. Black (1881) ITC 289
[30] Ibid

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

It must, however, be pointed out that these are problems that face every tax system but ours seem to be unique in the sense that considering the scale of corrupt practices there is no comprehensive tax avoidance and evasion legislation, as there is in Britain, to curb tax evasion coupled with the lack of skilled tax personnel and consequently with the inertia of our tax authorities.

We shall, therefore, in this chapter be looking into the problem of tax avoidance and evasion with a view to highlighting the major weaknesses in the income tax legislation on the subject and making the necessary suggestions for the~ improvement of the situation.

A proper appraisal of the problem of tax evasion and avoidance in Nigeria, and understanding of the distinction between •'tax evasion" and "tax avoidance" is, therefore, a pre-requisite in that they have not been defined in Nigerian tax legislation. "Tax evasion" is usually defined to mean the failure to pay one's tax or the reduction of one's tax liability through illegal or fraudulent returns or failure to make a return or even failure to' pay tax on time. The evasion is therefore not only morally wrong but also it involves a breach of the tax law. Tax evasion must be distinguished from tax avoidance which is the minimisation of tax liability by so arranging one's affairs as to take advantage of provisions in the tax law. In this way, the tax payer pays less tax than otherwise would have been payable. Tax avoidance does not necessarily denote an

activity that is in all cases obnoxious. Indeed, tax avoidance may be considered by some people as being legal.

Of course, at first sight it might seem difficult to see why a taxpayer should not get the benefit of statutory provisions which are part of a tax structure by adopting its legal position for that purpose. But the matter is not as simple as this might appear. Where there are manipulations of various kinds which have the effect of reducing considerably the revenue that is due to the government, such practices should be prevented. No one says that a person should so arrange his personal affairs that the Revenue Authority can put the largest shovel in it, however, the tax law requires and expects the observance of its rules, the underlying purpose of which is to ascertain the true amount of taxable income. Where a taxable person embarks on artificial arrangements for the purposes of escaping or reducing tax liability otherwise due, such arrangements would be circumscribed and condemned as reprehensible or obnoxious. There is an even greater justification in a developing country like Nigeria where capital formation is badly needed for penalising tax avoidance schemes. We shall now consider the two terms beginning with tax avoidance and later on tax evasion

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

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

ii. Failure to make return for corporate tax;

iii. Incorrect return or accounts.

The various acts must be done with fraud, wilful default or neglect[31] and knowingly[32] for them to constitute the offence of tax evasion. This approach of stating acts which constitutes tax evasion is similar to other common law jurisdictions. In the United Kingdom[33] United States[34], Australia[35] New Zealand[36] Canada[37] and India[38] the law recognizes the distinction between tax evasion and tax avoidance but there is no statutory definition. It is however accepted that to come within the ambit of tax evasion an activity must include some element of fraud or unlawful conduct, accompanied by intent on the tax payers' part to deliberately defraud the Revenue. The inability to statutorily define tax evasion has however not precluded its usage in the various laws.

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

(a) Where he is of the opinion that the avoidance of tax has been due to fraud or evasion at any time.

(b) … amend the assessment

The use in this subsection of the terms "avoidance of tax" and "evasion" was considered by Fullagar J in **Westgarth's Case**[39]. According to his lordship: "the word 'avoidance' is, I think to be contrasted with the word 'evasion'. It involves, I think notion of escaping by any device or artifice but conveys simply the notion of actually escaping through not being called up to pay."

[31] Companies Income Tax Act (CITA) 1979 S. 47 (1)
[32] Personal Income Tax Act (PITA) 1961 s. 56
[33] Taxes Management Act 1970 Part X
[34] Internal Revenue Code 1954
[35] Income Tax Assessment Act 1936
[36] Income Tax Act 1976
[37] Income Tax Act ss. 239(1)
[38] Income Tax Act 1961 Chapter 21
[39] *Federal Commission of Tax v Westgarth* (1985) 18 Commonwealth Law Report (C.L.R) 396 at p. 414

In its context in s. 170, the word 'evasion' appears to mean something more than avoidance but, something less than fraud. The views of Dixon J in a case involving the Commissioner of taxation of New South Wales seem to outline its accepted meaning[40] *"... that it means more than avoid and also more than a mere withholding of information or the mere furnishing of misleading information. It is probably safe to say that some blame worthy act or omission on the part of the tax – payer or those for whom he is responsible is contemplated"*

Within the context of S.170(2), it seems that both "avoidance" and "evasion" means payment of less tax than is legally required, but in the case of evasion, this is achieved by deliberate or wilful acts or failures to act on the part of the tax payers. Although the word "evasion" has not been explicitly defined, it does seem that it has a slightly different meaning for the purpose of S.170(2) than it might have for ordinary purposes, particularly because it distinguishes between different types of evasion that is, those resulting from deliberate actions of tax – payer and those resulting from failures to act. Where the tax payer escapes payment of tax by mere failure to furnish information, mere furnishing of misleading information or where for some other reason he is not called upon to pay the correct amount of tax on his true taxable income, then the term "avoidance of tax" is applicable. This distinction would only seem relevant in S.170(2) since elsewhere these elements would be characterized as evasion.[41]

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

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

[41] Wallschutzky I.G (1985) Understanding Tax Evasion{public finance} no.3, vol.40

No commission of Enquiry on Taxation in Nigeria has offered any definition of tax evasion till date as they all seem to concern themselves with matters more relevant to politics than taxation. From the Phillipson Commission of 1946 to the Aboyade Technical Committee on Revenue Allocation of 1978, the terms of reference was mainly with Revenue Allocation[42]and Division of Taxing Powers[43]. The approach in the United Kingdom, Canada and Australia has been for the government enquires to attempt a definition of the term, in particular those of

(1) The Royal Commission on Taxation of Profits and Income, United Kingdom 1975 often referred to as "the Radcliffe Commission"[44]

(2) The Royal Commission on Taxation, Canada 1966 referred to as the Carter Commission[45]

(3) The taxation revenue committee, Australia 1975 referred to as "the Apsrey committee".[46]

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

> … all those activities which are responsible for a person not paying the tax that the existing law charges on his income. Ex hypothesis, he is in the wrong, though his wrong doing may range from the making of a deliberate fraudulent return to a mere failure to make a return to pay his tax at the proper time.

This definition was also accepted by the Carter Commission

The Asprey Committee stated that:

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

[42] Hicks/Phillipson Committee (1951, Chicks Commissions 1953 Binn's Commission 1964 Dina's Interim Revenue Allocation Review Committee 1968 Aboyade Technical Committee on Revenue Allocation 1978
[43] Raisman Commission 1958
[44] Final Report , Cmnd 97474, London 1955
[45] The Report of the Royal Commission on Taxation, Canada 1966
[46] Taxation Review Committee, Full report, 1975 it should be noted that the Asprey Committee was not a Royal Commission as were Radcliffe and Carter Commissions.

This definition of tax evasion is no different from that already outlined by the two Royal Commissions. What emerges from all these definitions is the underlying distinction made with tax avoidance.

The view of the tax Authorities in this respect is also relevant as to what amounts to tax evasion. The definition offered by the Canadian Department of National Revenues[47] is quite comprehensive and of immense assistance in the quest for an acceptable definition. They state that:

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

An adoption or endorsement of this view in Nigeria would indeed make the routes of escape extremely narrow, but opinions or circulars or legislation are not self – operative. Their applicability depends on the interpretation given to them by the courts. It is the function of the judicial branch of the government to resolve the doubt, and in performing their judicial function the courts are called upon to determine whether in view of the facts proven and the language employed in the statute the individual is or is not subject to the prohibition or burden of the statute.[48]

In determining the question what is tax evasion? Lord Hobhouse pointed out in **Simms v Registrar of Probates**[49] that:

> It does not appear to their Lordships that an examination of the decisions in which the word 'evade' has been the subject of the

[47] Canada Narrow Information Circular No. 73 – 10R
[48] Angell M.B Interpretation of Taxing Statutes: An overview. B.TR.pp 50-61
[49] (1900) A.C at p. 334:

> comment leads to any tangible result. Everybody agrees that the word is capable of being used in two senses, one which suggests underhand dealing, and another which means nothing more than the intentional avoidance of something disagreeable.

Tax evasion was also considered in the case of **Bullen v Wisconsin**[50] by Justice Oliver Wendell Holmes where he said:

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

These decisions have added little to the legislative meaning and in essence have adopted them. The meaning of tax evasion is therefore dependent upon a descriptive definition setting out the acts that constitutes evasion in contrast to tax avoidance. This view was endorsed by the Supreme Court of Nigeria in **Akinsete Syndicate v Senior Inspector of Income Tax**[51] where Bairamian, J.S. C stated that " *a person may use lawful means to avoid tax' what he may not do is to try to evade it. What he does should be genuine not merely a veil to hide or dissemble the reality of things".*

The cases quoted above show that the basic ingredient in tax evasion is mens rea and absence of any credible explanation for fraud, wilful default or neglect.[52] As was correctly stated by Williams J. in **Baripp v Commission of Taxation (N.S.W)**[53]

> It is sufficient for the purpose of the appeal to say that where a tax payer makes a profit which he knows to be taxable income and wilfully omits this profit from his income tax return, he would be

[50] 240 U.S 625 630- 631 (1916)
[51] F.S.C 164/63 30/10/64 (Unreported)
[52] Obi J. I (1983) Tax Evasion and Its Solution Paper presented at the Seminar on Taxation held by the West African Sub – regional Committee of the Association of African Tax Administrators 22nd – 24th February, 1983, Lagos Nigeria pp. 22, 23 see also s. 56 P.I.T.A 1961 and S. 68 C.I.T A 1979
[53] (1941) 2 Australian Income Tax Report (A.I.T.R)

> guilty of evasion in the absence of some satisfactory explanation for the omission.

It now appears that the definition of tax evasion is dependent upon the presence of two elements in the acts prohibited by the tax statutes. These two elements are the act itself (false statement of evasion of tax) and the guilty intent of the accused (mens rea). A lengthy list of cases confirms this conclusion and the bulk of jurisprudence currently being elaborated in the area of tax evasion addresses itself to determine whether the relevant facts demonstrate these two elements. It is therefore necessary for the prosecution to prove that the evader knowingly made a false or deceptive statement in his return of income or that he wilfully (with guilty intent) evaded or attempted to evade payment of taxes.[54]

To the professional mind, the phrase "tax evasion and tax avoidance" has been familiar for many years, for the legal problems which are implied by the phrase arose with the passage of ht Nigerian Income Tax Ordinance in 1943.[55] Through official use and wide appearances in the press, the phrase is now brought home to the public generally, with it is feared, rather bewildering consequences. Charges of "tax evasion and avoidance" have been made broadcast, public outcry has been raised against "evaders and avoiders".[56] Care in language and precision of statement have been lost and laymen unversed in the fundamental canons of statutory interpretations which have been applied for centuries, have lead to conclusion which in many instances are unwarranted.

The confusion, perhaps is the result of the use of words, rather than of any difficult wording which often occurs where a word or phrase is employed for the sake of brevity.

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

"Avoidance" – "evasion": in the defined meaning, as appearing in the Oxford English Dictionary, there is perhaps only a slight difference in shade between the two, the verb "avoid" is defined as "to avoid escape form by guilt or trickery; avoid doing or answering directly".[57] Each is given as a possible synonym of the other. Thus in common use the two words have only a shade of difference, though that shade indicates the fundamental difference between the two words have always had in the field of income tax interpretation, or in fact, in the application of any statute which undertakes to draw within its field certain situation, while excluding others

2.3 Objectives of Taxation

This section of the essay examines what tax system sets out to achieve through tax legislation. The objectives to be considered, hereunder are the raising of revenue, economic price stability, redistribution wealth and economic growth and development.

2.3.1 Raising of Revenue

The classical function of a tax system, is raising of the revenue required to meet government expenditure. In this sense, taxes are to government as incomes are to business and individuals. In a federation like Nigeria, this characterization is true for all non-federal taxes are more taxes at the state and local government level are for the purpose of their raising revenues to provide the particular government level with income. This income is required to meet the expenditure which are either the provision of goods and services which the free market cannot provide or which the state government feels are better provided by itself, such as health, services, education etc.

The federal government, unlike the state and local governments, private business and individuals has wider tax objectives more raising of revenue. Since the control of the nation's economy rests largely on the federal government its tax system ought to have wider dimensions

[57] The Oxford Dictionary of Current English 1985 Ed.

than the classical function of raising funds to finance the public sector. It has been said that, if the federal governments tax objective were merely to raise revenue, it could spend any amount of money it wishes without even collecting taxes since it controls the power to create money. ABBA[58], an economist, expressed the view dearly when he wrote:

> …There is never any need for the government of a well established sovereign state to raise an amount of money by taxes just because it needs the money, if it does not wish to bring the actual effect of a tax on the economy If there is merely a need for money, it is easier to borrow it and much easier to print…..A national taxing policy is directed at the effects from the tax payers having to pay the money and not only at the government's gain in getting it.

Similarly, as ALLAN[59] has put it, "if that were al (i.e. raising revenue) that was required of taxation, a benevolent government will abolish taxation and finance all its expenditure by printing more or borrowing it".

2.3.2 Economic Price Stability

It has been stated that the most fundamental reason why government tax its citizen is to provide a reasonable degree of price stability within the nation Much spending by the public and private sectors without taxes generates high demand which is inflationary. In such a situation, the function of taxation is to reduce private expenditure in order to allow government to spend without causing inflation. Thus, taxation become basically a deflationary measure. On the other hand, when aggregate demand is lower than the desired level, government has two options, viz, to reduce taxes while learning government spending stable or to increase government economic measures but they are carried out through the instrumentality of legislation and enforcement.

[58] (1980) 'The Economics of Control,' New York, Macmillan co.ltd. p.233
[59] (1971) 'Theory of Taxation ', Macmillan Press Ltd, Lagos p. 24

2.3.3 Redistribution of Wealth

This objective is connected with progressive system of taxation or vertical equity. It means that the tax system should exact a greater proportion of tax from those who are well off. In modern times, great emphasis has come to be placed on the redistribution of wealth as an economic and welfare measure. This has two quite distinct forms. The first is the doctrine that taxation should be based on ability to pay and is summed up by the saying that "the greatest burden should be borne by the broadest backs", and these taxes used to pay for social services for those that are less fortunate. The second form, presupposes that the present distribution is unjust and concludes that this should be therefore be undone. The economic effects of this objective (redistribution of wealth) are two, viz., that high rate sprint of enterprise which ought to be the mainspring of every human activity. The first view is that a high marginal tax rate would encourage the individual to work even harder to achieve that increase in net income which he seeks —this is income effects. The second and contrary view is that a high marginal tax rate discourages the individual who becomes reluctant to work harder to earn an increased income which is almost all taken away in taxes and decides to spend his time on other things like leisure-this is substitution effects. It suffices to emphasize that it is only adequate tax enforcement measure that can crusade towards the achievement of these economic goals.

2.3.4 Economic Growth and Development

In addition to maintaining reasonable price stability, government is determined to promote near-full employment of all the resource of the country (including human resource i.e. *labour) and* ensure a satisfactory rate of economic growth. Collective economic growth with full employment and reasonably stable price has come to be recognized as the *raison d'etre* for most

of the fiscal policies of modern governments, the present economic policy of Nigeria attest to this fact.

Economic growth and development programmes are geared towards raising the standard of living of the masses of the country through the improvement of our economical and social conditions. Tax is one way may discourage, post pone or reduce consumption and encourage savings for private investments. This is only possible when the basic necessities of life are available and accessible to the citizens and these, the government can provide by engaging in the sufficient production of goods and services. To sum it up, it can be said that taxes are levied by government to raise revenue that will help in the government to raise revenue that will help in the administration of government. Such as paying salaries and allowances to civil servants. Revenue raised by taxation enables the government to provide infrastructural facilities like, schools, hospitals, housing, roads, defence, law and order and other socio-economic and cultural facilities. As an important weapon for redistribution of income between the rich and poor; tax is used progressively to balance the tax burden the 'haves" and "have nots" in a way that the rich are taxed higher than the poor to achieve economic and social equality. Tax can be used as a vehicle for economic revitalization, increase investments and saving incentives. It controls and redirects the economy to boom against recession as well as to regulate or discourage negative activities such as; smoking, alcoholism, and pools betting respectively."

2.4 Meaning of Income for the Purposes

Income tax is a tax on income… This famous aphorism of Lord Mac' Naghten,[60] has been frequently quoted usually out of its proper context. If, however, one includes in the expression. "Income", for the purposes of the taxing statutes, those accretions to wealth which the statutes specifically provide shall be so treated, whether or not such items would normally be regarded as

[60] London country Council V. Attorney General (1901) A.C. 26 at 35

"income", then the statement is broadly true. Income tax is a tax upon that which is properly regarded as "income" for the purposes of the appropriate taxing acts, that is to say "taxable income".[61]

There is no complete definition of income to be found anywhere *in* the Nigerian legislation, *but various* rules *are* laid down for computing receipts liable to tax, and the decisions of the courts contribute to the law on the subject. Income tax, is not a tax on capital and thus one of the major concerns of the Acts and of the tax cases is the distinguishing of capital from income. In ***Aderawos Timber Trading Co. Ltd. V. Federal Board of Inland Revenue,***[62] the appellant received 30,000 pounds from a company called African Timber and plywood (Mg.) Ltd. As a result, of an agreement for concession to feel timber from the land on which the appellant had licence. The agreement included another amount to be paid per cubic foot of the area of concession.

The appellant had originally treated the 30,000 ponds as rent and apportioned it over 5 years, and paid 7,000 pounds tax on it for 3 years of assessment, 1962/63 to 1964/65, to the respondent subsequently, the appellant sought to treat the 30,000 pounds as capital, and demanded the refund of the 7,000 pounds tax paid from the respondents.

The appellant contended that the receipt was a windfall by way of scale of capital and not profit as it was to secure an agreement over a certain period. The respondent contended that since the company was in business of selling timber, all the receipt in that respect should be revenue receipt. The supreme court held that the lump sum payment was derived from the trading *activity* of selling timber which constitutes a trading receipt and not capital, and dismissed the appeal.

[61] G.S.A Wheat Croft, (1975) What is taxable Income? B.T 310
[62] I.N.T.C.P 154

The scope of the change to tax is outlined in the personal income Tax Decree (P.LT.D) section 3 and the companies Incomes Tax Act (CJ.T.A. 1990, section 8. Tax is payable for each year of assessment upon all income accruing in, derived from, brought into received in Nigeria. P.I.T.D 1993 section 3(3) provides as follows:

(A) “Allowance” includes any sum paid or payable in respect of Expenses and any sum put by an employer at the disposal of an employee paid by the employer;

(B) “Income” includes any amount deemed to be income under this Decree.

CHAPTER THREE

NATURE OF INCOME TAX ENFORCEMENT

3.1 Interpretation of Statutes on Tax Enforcement

Because tax laws is entirely statutory, tax disputes almost always raise the issue of statutory interpretation. As a rule, tax statutes are interpreted very strictly, there is no common law of taxation, hence no general principle of law can displace the true meaning and effect of a tax statute which has been validly passed. For tax liability to arise, therefore there must be a clear link between the charging provisions and the intended taxpayer. This link must be direct, not inferential[63].

In line with these, judges generally agree that the proper approach in the interpretation of tax legislation is to adopt the literal rule. The ordinary meaning of the provision in issue prevails. However, where the provision is found to be clearly ambiguous, i.e. where there are more than one ways of interpreting it, then the interpretation that most favours the taxpayer is adopted. This is because, tax is an imposition on the citizen. At common law, any statute by which the government seeks to expropriate its subjects must be construed strictly in favour of the subjects. As a result, the key issue in tax disputes is whether or not the words of a statute cover the alleged subject of taxation.

In **Cape Brandy Syndicate V. IRC**[64], Rowlatt J. presented a summary of the duties of a judge in tax adjudication, stating thus:

> … 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 be implied. One has to look fairly at the language used.

[63] Authority V. Regional Tax Board (1967) N.C.LR. 452; Tenanant V. Smith (1892) A.C. at 1544
[64] Cape Brandy Syndicate V. IRC (1921) 2 K.B. 403

This approach was approved in the Nigerian cases of **Municipal Cocoa Board V. Regional Tax Board[65] and Aderawo Timber company ltd V.F.B.LR**[66] The nature of the provision under consideration did not matter**. In I.R.C.V. Ayshire Employers Mutual Insurance Association, Ltd,[67]** where a provision clearly intended to widen the tax net failed to achieve that purpose, Lord Simmonds declared;

> It is at least dear what is the gap that is intended to be filled and badly less dear how it is intended to fill the gap. Yet I can come to no other conclusion than that the language of the section falls to achieve its apparent purpose and must decline to insert words or phrases which might succeed where the draftsman failed.

However, the apparently settled judicial approach, which gives no consideration to the intendment of a tax provision was slightly disturbed by Bello 1S.C (as he then was), while delivering, the majority decision in **Mobil oil Nigeria Ltd V Board of Inland Revenue.**[68] According to him:

> In construing a statute, regard shall be given to the cause and necessity of the Act and then such construction shall be put upon it as would promote its purpose and arrest the mischief which it is intended to deter.... Some companies have been manipulating their accounts with intent to hide their true assessable profits and in that manner have been avoiding tax which they ought to have paid. The purpose of section 30 (of the companies income tax act) is to deter companies from engaging in such a fraudulent practice'

Perhaps, the proper inference to be drawn from this decision, is that only anti avoidance provisions (i.e., provisions which are inserted in tax laws for the specific purposes of preventing tax evasion or avoidance) are to be construed liberally in order to give effect to the intention of the legislature. This *would* therefore be an exception to the general principle that there is no room for any intendment in the construction of a tax statute.

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[65] Mangin V. IRC (1971) A.C. 739
[66] Authority V. Regional Tax board (1967) supra
[67] (1946) 1 ALL E.R. 637
[68] (1977)I.N.C.L.R.I

Justification for this approach, could be found in the fact that anti avoidance provisions are usually very widely drawn, and the process, often so prolix as to be meaningless, if, in this circumstances, the strict interpretation approach is taken, many tax avoiders will still escape untouched and the legislature may be forced into even more complex and ambitions anti avoidance provisions ultimately, the innocent taxpayer may become the easy prey of such provisions[69].

3.2 Income Tax Enforcement and Compliance by Tax Authority

Under subsection 2 of section 49 PITA[70] it is emphasized that:

"for the purpose of this section the relevant tax authority may require any person to give information as to any money found, or other assets which may be held by him, for or of any money due to him or to any." By virtue of this subsection (2) of section 49, the relevance of tax consultant in tax administration has become very imperative but it however depends on the qualification and qualities possessed by the consultants. It is imperative that the scope of this tax practice as well be defined and the firm organized to carry out functions for which it is engaged.

Again, the personal income tax Act, provides that the state government has the authority to define who is it's Tax Authority. There is no provision where the personal income Tax Act describes the state Board of Internal Revenue as the relevant tax authority of any state. There is more, so the implication of this is that the state has the power to delegate anybody to serve as his relevant tax authority.

It is submitted with due respect that in carrying out their functions as consultants, it should be primarily a supervisory machinery to supervise the activities of the board in order to consolidate their work into more efficient and viable inter-revenue generating body. The service

[69] The analysis of Lord Reid Greenberg Botman V. IRC 1972 A.C. 109 at 137
[70] Cap P8 LFN, 2004

of tax consultant should include preparation of tax estimate for audit-purposes, preparation and submission of corporation tax.

Computation, providing assistance to audit and other technical staff in the preparation of personal income tax returns. Also preparation of personal income tax returns. Also preparation of trust and executorships accounts, administration of accounts, agreement of assessments and tax payable, attendance at appeal hearing (non-contentious cases) and acting as trustees or executor as other scope of tax practice. If tax consultants are engaged in tax administration, they should not do so only according to statutes provision, they should rather possess or have in their employment persons with at least first degree in law or accountancy and above all such consultants must be members of the chartered institute of taxation. Consultants should have clear and thorough knowledge of detailed law of any particular aspect, which is involved in any particular case to diagnose tax problems and to appreciate the extent of their capacity to deal with tax matters. In dealing with tax problems, a good knowledge of business practice is also essential because the consultant must always take into account the existing laws.

3.3 Enforcement and Compliance of Income Tax by Taxpayers

It has been clearly shown that the issue of tax enforcement and compliance has to be tackled as it concerns both the tax authorities and taxpayers. Tax authorities include the government-legislature, executive, including tax officials at all level, and judiciary.

To encourage tax payers to pay tax voluntarily, the government should prudently manage the tax proceeds. To do this, funds should only be diverted into viable projects which are geographically spread nationwide. Government officials should also exhibit accountability in the handling of the funds.

In addition statutory penalties should be Instituted and radically enforced. Tax official as well as tax payers should be subject to criminal penalties where necessary for deterrent purposes. The penalties should include fines and prison sentences. Personally having obligations to deduct tax at source, such as employers from salaries, companies from dividends and banks from Interest, should be punished for violating such obligations, distract properties of defaulters whether officials or taxpayers should be carried out. The tax clearance certificate requirement; already in operation, should be strictly enforced, particularly among the self-employed[71].

3.4 Problems of Relevant Tax Authority

Taxation basically is a statutory matter as tax can only be imposed under the authority of the legislature and for a public purse. Therefore, if laws are clear, precise, less complicated, easily understood and administered, that will be a sign that laws will be largely complied with. It is then the duty of the legislature to enact such laws as will make compliance possible and easy. The tendency in most developing countries, including Nigeria is the pattern of their tax statutes greatly resembles British tax statutes.

This makes the resulting laws too complex and complicated for their tax payers who are largely less educated generally and on tax matters in particular and even illiterates when compared with the citizens of those countries from which the law are derived.

Only a good, and efficient tax administration, can successfully comply with the requirements of the tax statutes. However, the history of tax legislation is essentially pre-occupied with the problems of control of tax avoidance and evasion. The intension to be gathered from the legislation, is invariably either to introduce or declare a new formula for taxation or to check the abuses of existing tax laws. Consequently, it is important in consulting tax statutes to adhere strictly to the words used, and to the full and fair application of particular facts found.

[71] Ola, C.S. (1993) Income Tax Laws and Practice in Nigeria (revised edition) University of Ibadan Press ltd. P.45

The concept of tax compliance by tax authorities can be interpreted widely to include the legislature and the tax administrators.

The tax system of developing countries was introduced in developing countries, particularly those of Africa, through colonialism. The colonialists applied various sorts of coercive measures to extort the tax out of the colonial subjects who knew little or nothing as to the purpose of the revenue so derived[72].

Another problem of tax compliance is the nature of the societies and their inhabitants. The societies are generally rural, thus making taxpayer identification almost impossible. Even in the fast growing urban centres the towns are not planned — naming of streets and numbering of houses. In addition to this is to the fact that taxpayers do not willingly identify or reveal themselves. The reason is that they do not accept and recognize taxation as a civic responsibility, which they owe to themselves and to the society at large. In some developing countries, where the pool tax system operates. The poll tax system is one where all male adults are subjected to a flat rate whether they have income or not. *This* appears to be an arbitrary system which does not consider the principle of "ability to pay" in levying the tax. The end result is that those without income fail to comply. In fact, usually some do not even have the means of subsistence.

Low tax compliance is also prevalent among the self-employed. This group ranges from the unprofessional general traders to the highly skilled profession of law arid accounting. The reason for their non-compliance includes:

i. Lack of permanent business address and residence

ii. Lack of record in some cases and in others, the keeping of falsified records for tax purposes. Some of the self- employed particularly the professional men derived huge sum

[72] Ayua .I.A (1996) The Nigerian Tax laws Spectrum Press Ibadan, p.,56

of money from their practices and when they are known to pay little or no tax, this causes low tax compliance morale among the other willing taxpayers with less income.

iii. Finally, uneven distribution of development projects has enforcement and compliance. Compliance is to instill in the objective of paying taxes"[73].

3.5 Administrative Cost of Enforcement of Income Tax Compliance

Administrative cost means the efforts that are put in place by the government through the appropriate taxing authorities in order to ensure compliance to income tax in general and personal income tax in particular.

These efforts could be in different forms, ranging from finances to providing social amenities in order to boost compliance and government providing amenities are some of the ways of encouraging people to pay tax.

A good taxing system should be coherent, simple and straight forward, but a caveat, has to be entered here, as simplicity per-se is not all that is needed for a good tax system. A tax that is designed to deal with a complicated situation will enviably be complicated in itself. Be that as it may, the tax system should join be clear to the taxpayers. In fact, the taxpayers should have a clear picture of what is and what is not taxable. The taxpayer, apart from knowing clearly what is to be taxed, should also be made to understand the purpose the tax is intended to serve.

In a federal system like Nigeria, the importance of having a coherent tax system need not be stressed. It is indeed desirable that the taxing powers of the different and independent with each other for if they clash this could be disastrous. From the standpoint of their effects on incentives, which if adverse, are bound to cause distortion in the national economy.

The public must accept the tax system, which simplicity is one sure way of making this possible. Efficient administration of a tax system requires trained personnel. The tax system must

[73] Personal Income Tax Act, Vol 13, Cap. 8, LFN, 2004.

also entail easy understanding and simplicity of administration there by rediscovering the cost of administration. The high cost of administration on tax collection could be counter-reproductive from the standpoint of enforcing the tax and consequently from the standpoint of raising the required revenue. The cost of application of a given tax system must therefore be judged not only from official administration costs, but also from the cost of private compliance, which must not be too heavy otherwise it will encourage tax evasion and avoidance cost of administration and of compliance with the tax system can be reduced by ensuring that the system used is a simple, straight forward and precise, but this is very difficult in practice. Above all, for the required revenue to be raised, their must be an efficient tax administration where everybody will be fairly and duly assessed, but not expressed.

But the primary objective of the federal Board of Inland Revenue, is to collect revenue for the government of Nigeria, according to law and in the most effective manner.

Similarly, every responsible tax payer is required by law to pay the correct amount of tax, no more no less. The best way to achieve this, is for every person to voluntarily comply with laws. For instance, the tax laws enjoin the tax payers[74].

1. To keep proper books and records of their transactions;
2. To file their tax returns correctly and promptly; and
3. To pay the correct amount of tax and when due.

The self-assessment system is the modern approach to elicit the voluntary compliance of every tax payer with it. The tax payer, is presumed to be an honest and responsible citizen, who will discharge his civic obligation voluntarily. To encourage the highest possible level of voluntary compliance, therefore; revenue strives from time to time to:

[74] Ola, C.S. (1993) Income Tax Laws and Practice in Nigeria (revised edition) , University of Ibadan Press ltd, p.25

1. Make it easy for taxpayer to comply with law by letting them know their rights and obligations, through massive tax education programme;
2. Administer the law in a consistent, impartial, courteous and proper manner and;
3. Deter those who do not comply and take appropriate action against them.

CHAPTER FOUR

ROLE OF TAXATION IN THE ECONOMIC DEVELOPMENT OF NIGERIA

In this chapter, we shall examine the contribution of agricultural taxation, direct and indirect taxation to Nigeria's economic growth. The purpose is to illustrate in numerical data the contribution of different types of taxes collected in Nigeria to the Nation's economy.

Agricultural taxation which is mainly, produce and export taxes, form part of the direct taxes. It is treated separately here because of its significant contribution to the development of early Nigeria economy.

The contribution of agricultural taxation prior to oil revenue before 1974, the burden of financing the economic development in the Nigeria Economic was enormous. Prior to the oil boom, Nigerian economy depended very much on agriculture. The flow of the economic surplus to the state treasury during these years, was also from peasant agriculture. Agricultural exports were tax twice: through (a) Export duties and (b) through Produce, Purchase/Sales taxes, with later collected and retained by the regional or state governments.

The combined effect of those taxes imposed a heavy burden on peasant incomes. Rough estimate exist which put the average tax burden Nigeria's four major export crops namely Coca, palm kernels, groundnut and cotton at roughly 38% during 1974-1954 with the highest burden of 42 on cotton, 20% during 1954-1961 with the highest burden of 32.3% palm kernels[1].

[1] Computed Data in Helleiner A.X (1960)"Peasant Agriculture Government and Economic Growth in Nigeria" Heinemann Publishers ltd p.163

From particular source[2]. The percentage revenue per GDP for all taxes collected in Nigeria between 1961-63 were given as 18.8% out of the above figure, produce and export duties on agriculture contribute immensely. These dates on produce and sales realized on agriculture taxation and the tremendous impact on the early Nigeria economy.

As oil revenue became increasingly available, agricultural taxation was relaxed and eventually scrapped. In 1974, on the eve of the third National Development Plan 1975-1980, export and produces taxes on Nigeria agricultural exports were completely removed. Direct taxation are levied on chargeable person income or capital and are paid directly by the person to the tax authority. Personal Income tax, company Income tax and tax on capital, will fall into the categories of direct tax[3].

Out of total revenue collected between 1976-1978 (which was 18.89% per Nigeria GDP) direct taxes has 14.73%. This large number was due to corporate tax which have much as 14.72%[4] per GDP. The above data shows the direct taxes generate the greater part of the entire revenue from tax in the early stage of Nigeria economy (direct taxes has only 4.16% between the same period) Presently, direct taxes still maintain the highest amount of revenue with the introduction of petroleum profit tax which provide more than 80% of the total Federal Government Revenue from tax. Taxes on expenditure are paid indirectly as part of the pa[y]ment of some goods, services and permit to do something. The most important

[2] Odiongenyi O.T (1987) Personal Income tax law in Nigeria O.A.U.Press ltd p.2

[3] A source from I.M.F 1984 of World Bank 1983 op. cit p. 208-9 from the person providing the goods or services, their burden is usually born by the ultimate user or consumers in the form of higher prices. Because of their indirectives in incidences, this class of tax is sometimes referred to as h[i]dden tax. Indirect tax include import duties. export duties and sales taxes no (VAT)

[4] Ibid at p 209

component of indirect taxes worth of elucidation here is the import duties. Out of the total 18.8% per GDP of all tax revenue between 1976-1978, indirect taxes has 4.16% per GDP[5]

Import duties have fulfilled a dual purpose, namely as a source of Public Sector revenue on the one part, and on the other as potentially effective stabilization instrument given the very "open" nature of Nigeria economy. The major candidate for import duty have been until 1950s, however final consumer goods, textiles beverages, automobiles etc. As from 1960s Import duties emerged as an instrument for protecting domestic industries by increasing duties on imported items. But this protectionist role has been for less effective given the inelastic nature of import consumption in Nigeria. High import duties have always meant higher revenue for merit instead of reduction import consumption. Though in absolute terms, import duty revenue has expanded, its relative importance has declined remarkably. With the restriction imposed on Imports in the wake of declining trend in oil export, it recorded a decline as in the case of Personal Income Tax the incident of evasion of payment of Import duties often with

We have seen in practical terms, of the various contributions of various forms of tax collection in Nigeria to the development of economy. Taxation, is one of the oldest institutions for the support and regulation of the Nigeria economy and development, financing, prior to oil boom. It was the principal foreign exchange earner before the modern Nigeria economy. But a total abandonment of agricultural sector, by Nigeria government in recent years, means a total loss of revenue especially, from produce or sales tax, export duties on agricultural product. A lot need to be done by the Nigeria government to revitalized this important sector of the economy.

[5] Ola C.S (1984) Income Taxation for Corporate and Uncorporated Bodies in Nigeria.. New Ed,.Hienemann Educational Books Nig. Ltd Ibadan p.78

The true mirror of Nigerian's pride had faded away because culture lost its pride of place to oil and brought in its trail series of social adversaries ranging from inflation, squander mania rooted in large-scale corruption on domestic scene and serious erosion of our foreign-exchange reserved as a result of gross mismanagement of our newfound oil wealth. Taxation is now considered not only as revenue raising device but as an instrument by which government can influence the direction of economy.

4.1 Raising of Revenue for Government Services

The classical purpose of taxation, is the raising of funds to most government expenditure in one form or the other. Tax has been the most important sources of government revenue. We have two types of taxes; mainly tax to meet the expenditure in the form of current and capital expenditures.

4.1.1 Recurrent Expenditure:-

It refers to the ordinary government expenditure on running cost which has to be met.

Recurrent formation is an important part of government expenditure because it deal with Provision and maintenance of very vital services and day to day administration of the country. Government uses taxes levied on the People like Personal Income Tax to finance recurrent expenditure. Salaries and allowances of Public and Civil Servants office holder, legislatures, Judges and many law grade officers and University Lecturers

It also includes expenditure on economic services as maintenances of roads social and community services as payment of teacher’s salaries. Free education, payment of pension and gratuity to retired Public Servant.

4.1.2 Capital Expenditure:-

This is the cost of bringing in to existence, a new project and institutional services. It refers to all government expenses on new buildings roads facilities or schools and equipment for provision of social and economic services. In short, capital expenditure is an expenditure made by government in acquiring structure that may used for further production.

These are areas where government expends its capital expenditure. The expansion and construction of roads, hospitals, clinics maternity centre's, schools and military institutions. Granting loans to government organizations to finance their capital project as well as gains to other government supported institutions for the physical expenditure. Meeting the country's external financial obligations /relationship such as movement in foreign exchange reserved and deposits in the international institutions etc. This project will be sponsored from the government treasure and is as a result of tax payers' money used in services the workers. In the Meade Report the question on who bare the burden of tax was answered, by these who are to benefit from the government revenue and expenditure should be the one.

4.1.3 Distribution of Income

With the increasing disparity in wealth distribution in the society and a view for stalling social upheaval that may likely result therefrom, government have often resorted to using taxes system to redistribute wealth.

Income distribution refers to the forces which, in free exchange or centrally planned economy, govern the division of the product of a nation between those who perform different function or supply different factors. In a free exchange economy the forces that govern income distribution are demand and supply better known as market Mechanism. In a centrally planned economy on the other hand, the forces are the various government policies, programmes and

activities that regulate direct and control what Portion of the national income goes to individuals, Communities and institutions.

In any of these economies, these shares of the total income may be "according to the contractual arrangement under which the proceeds are received, accordingly to the persons receiving them and according to the underlying function or factors which constitute the sources of the income6. Income distribution may be either because of social value judgment, that excesses in the distribution of the private wealth are undesirable or because of the economic judgment that wealth redistribution is required a maintenance a desired level of economic wealth7. It is the value of equity and social justice that lead to the search for a viable criteria that distributes and allocates the national resources among individuals and organizations each according to his/her relative worth.

By criteria, we mean the yardstick or the measuring rods employed by policy makers in the country in determining who gets what and how much. The yardstick in this direct and regulated economic activities in generals the revenue allocation formula that distributes Federal collected revenue among various levels of governments and the budget that allocates resources among various sectors in the economy or among Programmes and Projects of an organization - governmental or business.

Income distribution in Nigeria, involves the private and the public sectors and the role played by each of these sectors in shaping the income level of the economy8.The private sector in a mixed economy is nothing but a sector whose main motives is profit making. The individual in this sector has many economic Freedom - freedom to serve, freedom to consume -freedom to

[6] Meade Report on the structure and Reform of Direct taxation. London: 1978 PP 7 — 11.
[7] (1951) The American Economic Association-Reading in the theory of income Distribution. The Blackstone company, Philadelphia, p. 58
[8] Ola C.S. op cit.

possess Properties. It is this system of private property that gives great incentives to work, everybody tries to accumulate property and became rich. The criterion for distribution income in the private sectors in perpetuated by the “Price mechanism". or "Market system" Price mechanism is the termination of the market price of a commodity---- goods or services. In this way one satisfy his wants and only by possessing the means to acquire such goods or services.

The Public Sector is a sector where the forces of production are totally and partially possessed by the state. The criteria that guide income distribution in those sectors are:

1. Community Preference and
2. Public interest

The mechanism employed in distributing income in Nigeria can be classified into three:

(i) The revenue allocation formula.

(ii) The Annual budget.

(iii) Government Policies on Income and Wealth distribution.

Some examples of government policies are:- Universal Basic Education (UBE) Unified Income Tax ,System, Minimum Wage i.e. (Uniform Salary Structure) marketing Board System and government agencies, like the Nigeria Agricultural and cooperative Bank (NACB). All these Policies and Operations of these agencies have direct bearing on the income distribution. The revenue allocation formula is the ratio of distribution between the three tiers of governments where each is allocated a portion. Annual Budget on the other hand, is a mechanism through which the income of a particular unit of government or organization is allocated among the various sectors.

Budgeting as an economic policy indicates the direction of the economy and expresses intention regarding the Utilisation of the community's resources. It also strives to promote

macroeconomic balance in the economy. Budgeting at both national, state and local level are governed by the same principles and as such, there is no clear attempt to allocate the scare resources at their disposal to the satisfaction of the collective demands.

Generally speaking, the four main macro-economic aims of the government achievement through economic policies, are to attain full employment, stable price to prevent inflation, economic growth and balance payment equilibrium namely:

a. The Universal Basic Education (U.BE) This scheme guarantee free Primary and Junior Secondary School Education. This scheme is applicable throughout the nation, complemented in reduction and Pegging of tuition fees in boarding Secondary Schools. This Policy couple with already existing scholarship schemes for Higher Institutions which help in shaping the income distribution pattern in the country.

Unified Income Tax System is accomplished through the pint-Tax Board Comprising of all the states. Their areas felt more in Personal Income Tax since it deals with the approval of Pension schemes. With a unified tax system, a comprehensive income distribution policy, can be effected through a steeply progressive income tax structure.

b. Minimum wage (Unified Grading and Salary Structure) (UGSS). The need for a uniform structure at any time the system from existing multifarious structures thereby nursing different wages, which should be equivalent to one hundred Dollars.($100). But this had not been properly implemented.

c. Marketing Board:- This Board began to come into focus during the agricultural policy of taxes in Nigeria during the sales of ginger Farmers and Exporting Board. Presently, it is rice and cassava that are in focus. This Board assisted in influencing the level of savings and improving the standard of peasant farmers.

The Nigeria Agriculture Bank, is another vital instrument for income distribution established by the Federal Government to promote developing in the agricultural sector of the Nigerian economy, through provision of credit to farmers (Peasantries) and Agro-business ventures. It equally involves in Rural Electrification Programme, Rural Adult Education Program, Rural Boreholes Projects, Agricultural Extension Services etc. All these were designed to improved welfare, standard of living for farmers' awareness and their agricultural efficiency rather than alienate them.

4.2 Economic Revitalization

The basic traditional objective of taxation was simply to raise sufficient revenue to satisfy the need of the government to meet its recurrent expenditure. Today, however, we have traveled a long way from that as taxation now has multifarious dimensions. Today, therefore, taxes have an important role to play, especially in any government economic and social policy. The certainty of tax (as of death) and its utility are now accepted as norms that bear relation to all facets of human economic, social, and political activities.

It is trite that fiscal consideration are Paramount on shaping development Policies of given economy, be they at the micro or macro level and whether domestic or international. The globalization of economic activities presupposes that interdependence and' their relationship must be forged amongst all people and nations of economic well-being meaning.

Important consideration must be given to Planning of services and investment by harmonizing them with developmental strategy and changing economic structure. The government can use powerful fiscal weapon to Plan and direct the economy. By so doing steep booms and deed recession can be avoided. The government can use income taxation to provide effective and flexible instrument for the day to day management of the economy or to achieve

specific economic objectives. For examples tax can be used to direct private investment in line with national needs and practices. Tax incentives to attract industries to remote areas of the country.

Income tax also provides the government with effective and flexible instrument for shaping the economic growth and development of the country. For example, capital allowance can be used as a means of stimulating the manufacturing sector by increasing the value added content of the domestic output in some key industries in Nigeria. Income tax, can also be designed in such a way as to direct private investment.

Taxation can be used to provide reasonable degree of price stability within the nation. Combined public and private spending is likely to create serious inflation. If price stability is to be maintained, the government must either decrease it's spending, or decrease private spending. Once this kind of decision is formulated, the government then, is ready to set a tax policy. In this way, income tax has becomes the residual buffer that regulates private demand. In this manner, income tax becomes primary method of contributing to the reasonably price stability of a nation. Obviously, many policies can be used to promote price stability.

4.3 Nigeria Economic Situation

Nigeria has often been described as an "Underdeveloped" or "developing" Nation. These terms refers to a number of things. They could mean, a country with low level per capital income per head of its population which are low by the standard of Western World or a country with very low level of Economic and Technical advancement1 or achievement

Both, definition apply to Nigeria, but this project is more concerned with the second definition. In underdeveloped countries with particular reference to Nigeria, there is a prevalence

[1] Hiller J. and K. M. Kanfiman K.M (1963) Tax incentive for industry in less developed Economic. Harvard Law school. at pp. 16.

of high level of illiteracy and malnutrition coupled with inadequate housing and lack of proper medical facilities and care. Those countries also suffer serious Political Instability, unsettled monetary (loans of I.M.F.) conditions and lack of continuity in economic life. Apart from all these, there is no large scale application of the fruits of scientific and technological advancement to agriculture and Industry and subsistence production is generally the order of the day.2

Nigeria situation is not an exception to the above described problems which had led the country's growth industrialization process being at its best standard. This country suffers from myriad of ailment which include lack of infrastructure and these infrastructures where they are in place are insufficient to cater for the growing need of the populace. Then, transport is inadequate, with an insufficient road network and a great majority of roads being unmemorable. Our Airports are dead ports due to lack of modern navigational aids. Efforts are being made to revitalized the rail network yet such effort have not been much fruitful.

In a country like Nigeria with potentials for growth and development inadequacy of the transportation network constitutes a major stumbling block especially in the area of domestic trade. Another basic necessity for economic growth is electricity.

In Nigeria today, the generated power supplied is far below equipment the need of this country. The electricity consumed is approximately 2,800 mega watts. While, there is a generation capacity of 5,000 mega watts. There is an improvement in the year 1960 with a figure of 10,000 mega watts for a, country of over 140 million people in a country with high potentials for historical economic development. In the manufacturing sector, where power failure often mean idle machinery and workers, and loss of production capacity of about N750 million is spent

[2] Adorno M.A.(2000) Tax Law & Administration in Nigeria. Nigerian Institute of Advance Legal studies Journal Lagos. Intech. Printers Ltd pp272 — 274.

every year on the purchase and maintenance of electric generating sets3. The portable generator market adds another N100 million or so a year.

In 1981, for example, -N-100.5 million went into potable. non-industrial generator purchase4. This figure jumped to N34.1 million in 1983 when power supply deteriorated even further. These generators, consume an estimate of 400,000 to 500,000 tonnes per year of petrol and diesel, which amount to 5-6% or Nigeria's total consumption of Petroleum product. Voltage fluctuations also took its toll, not only in damages to Scientific Research, Laboratories and domestic appliances but also in our capital expenditure, Foreign exchange, on buying voltage stabilizers, numbered about which mounted about 330,000 of them brought into this country in 1983 alone, costing about N36 million.6 It raised production cost and reduced the rate of production, leading to an Increase in price of goods in the domestic market as well as in the International market. This makes Nigerian goods less competitive than goods of other countries. This not only affected the revenue accruing to the government, but also discouraged would-be entrepreneurs from investing in the country economy thereby slowing down the rate of economic growth and industrialization. Even in the area of Industrialization, there is lack of an efficient Communication system, despite the fact that is a vital tool of development.

It is necessary for the exchange of ideas and information, therefore, if Nigeria's aspiration to be an Industrialized nation is to be achieved, it need an efficient Improvement in telecommunication technology industry. Despite the introduction of G.S.M Mobile lines, there are still problems of in insufficient trunks and very poor network and their services are expensive, comparing with other developing nations. Nigeria needs more effective modern advance telecommunication technology as the world is

[3] Lokoja Hydro Electric Product Exchange Summar[y] 1978 pp.8
[4] ABUBAKAR S.M (1999) Planning and Energy. The case of NEPA (unpublished M.Sc. thesis) ABU, Zaria
[6] Business Concord., Lagos 20"' April. 1983 p. ibid.

becoming a global village with advancement in telecommunication and other information services network like Internet, Telefax, T.V. via satellite etc.

Nigeria's human resources is underutilized despite the surplus resources. Nigeria with approximately 140 million have over 100 million, that are illiterate or below secondary school leavers as well as many unemployed people with inadequate health care and living below standard of living. Nigeria is been describe by some scholars that Nigeria is rich but very poor, meaning rich in all manner of resources but unequal distributions of the resources. Millions or majority of Nigeria are living in penury. In this situation, the country hardly achieve their full potential growth.

Lack of Educational Infrastructure in the Institution of learning and poor living conditions all contribute to high level of illiteracy. We also have poor economic schemes, high level of drop outs from schools and corruption has led to increase in the number of half baked graduates produce yearly. This results to lack of skill personal manning the nation's industries. Thus, a lot of companies wind-up as a result of weak managerial and operational skills on the part of entrepreneur, which in turn leads to high level of unemployment.

Inadequate health care, arising from ill-equipped hospital and partly from a lack of qualified healthcare staff of which the brain-drain (the search by nation's trained, skilled medical personnel for greener pastures) is a contributory fact, which lead to high level of mortality as well as unhealthy population in the nation's work force. In a country with few opportunities for employment and remuneration for such employment as well as low productivity, one cannot but have low standard of living.

However, the criterion for judging economic development is widening and the range of alternatives opened to people as consumers and producers and the extent of achieving the goal is

not one which can be measured quantifiably. Economic development improves the range of choice and opportunities in economic life. As we judge from the above, Nigeria has an uphill task in increasing the rate of economic development, which because of the nature of its organization and the process of ensuring accountability cannot be done alone. So, private initiatives are needed to put to optimal use the limited resources of the Nigeria. Also by the nature of public service, people instinctively see it as communal work, the success or failure of which is unlikely to have direct impact on them, and consequently commitment is undermined. However productivity is easier where people have vested interest of some sort in the undertaking, which is not possible to create in public service. For improvement in economy, there is need to address the problems enumerated above with regards to our social and other infrastructural problems, these requires a huge amount of revenue by the government. With recent event in the petroleum sector it would be unwise not to look for and consolidate alternative sources of revenue like taxation.

4.4 Taxation as a Tool for Economic Growth

Direct taxes are those taxes levied on changeable persons income or capital and are paid directly by the person to the tax authority. Personal Income Tax falls into these category of tax.

Income Taxes is a method of raising revenue while revenue are diverted and channeled back entirely into productive use by the government. It promotes economic policies such as savings, investment, product on and consumption, it regulates and directs the country economic and social development through its incentives.

A tool for redistribution of income revenue operation for government, inculcating in the citizenry the spirit of industry, hard work and self relevance, encourages

export and discourage import. Induces economic activities for example granting of generous tax relief and allowances.

Income Taxes become an important consideration in the planning for saving and investment by harmonizing it with development stagy and changing economic structure. The government can used Income Tax as a powerful fiscal weapon to plan and direct the economy, by so doing steep booms and deep economic recessions can be avoided. Incomes Taxes can be used in shaping the economic growth and development of the country. Incomes System can also provide the government with effective and flexible instrument for the day to day management of the economy. Hence, Income Taxes can be used to achieve specific economic objectives of the nation. For example, capital allowance can be used as a means of stimulating the manufacturing sector by increasing the Value Added content of the domestic output in some key industries in Nigeria.

Income Taxes can also be designed in such a way that it will direct private investment in line with the national needs and its priorities. For instance, tax incentives have been used to attract industries to remote area of the country which will gear up development.

4.5 Tax as Incentive for Economic Development

The government of most developing countries of which we have identified Nigeria as one, profess to desire to be stimulated and guide the economic and social development of their nations. The taxes system is one of the instruments which is often said to be available to translate development policies of objectives into practice, particularly the tax incentive being employed as a vehicle. Rationally, given the nation's aversion to tax incentive, it will be affective once motivation is base on tax saving in one form or the other.

Tax Incentive is defined as "reduction in affective tax burden on favored activity, as against that currently imposed upon it in the hope that deduction in government revenue (due to tax forgone) would be compensated by an expected expansion of national economy and ultimately by resulting increases in total revenue from broaden economic base"[7]. Tax incentives is by far, the most critical issue regarding tax policy and the rate.

Objective of Tax Incentives, are to encourage forei[g]n and domestic investment towards rapid industrialization and creation of investment opportunities to entrepreneurs self-reliance in local production of essentia**l** goods, to provide more employment opportunities for the general populace and by relieving the society of some social associated problems of mass unemployment to be self-reliant as possible and to prelude towards political stability.

Since Independence, Nigerian government had been embarking on tax incentive measures. This is due to the fact that the economy had been undergoing growth and development remarkably. Tax incentive measure is a tax policy, some incentives measures include tax exemption. Accelerated depreciation allowance import duties relief, long-term fiscal system and enterprises agreements etc. We shall have a look and consideration on few of these accordingly.

Tax Exemption is period by which the government of a country exempt companies and other tax payers from the payment of taxes. It is also known as "Tax Holidays" which may be partial or complete granted to the tax payer.

[7] The effect of Taxation, Foreign Trade: Investment, United Nations Dept. of Economic Affairs Lakes success (New York) 1950 p.17

It is partial if the tax exemption is for few years. On the other hand, if it is for an indefinite period of time, it is complete tax exemption. This exemption is always applicable to pioneer companies to help them establish a firm footing[8]

Tax Exemption:- Is an important aspect of revitalizing Industrial growth and development. Hence, many countries either developed or developing country like ours, embark on it as a vehicle for Industrialization. Tax exemption improves the commercial profitability of investment through tax-free income to pioneering companies and businessmen. It subsidizes the pioneering cost of new companies by allowing the companies to recover its capital cost faster. It also enables firms to easily re-invest tax free earning for the expansion of its business. What is more, it encourages the establishment of capital intensive labour intensive industries which generates employment. It also attracts foreign investors to come and invest in the economy[9]. Tax exemption has some drawbacks. For instance, it grants unequal benefits to firms which enjoys higher rate of profit than profitless companies[10]. Tax exemption tends to reduce the revenue base of the government due to the nonpayment of tax at that short run of such a period. There is also the problem of identifying genuine new pioneer companies[11]. Ayua is with the view that tax exemption is ineffective and inefficient stimulus to investment.

According to him, it encourages tax evasion and complicated tax legislation, especially developing nations like Nigeria. In actual fact, tax exemption, is a good tax incentive mechanism especially in developing countries

[8] Ayua .I.A (1999) Nigeria Tax Law: Spectrum Books Ltd Ibadan Revised Ed. p.p 306 -308.
[9] Philips A.O. (1968) Nigeria's Experience with Income Tax Exemption. A Primary assessment. N.I.E & SS Vol. 10. No.1, p. 46.
[10] Ayua.I.A. Op. cit
[11] Eliash T.O.(2008) Law in developing society UNI Ife Press p.170,

because it encourages the establishment of new industries, attracts foreign investment, which will no doubt generate employment and Increase government revenue at the long run[12].

Some examples of tax incentives legislation for pioneer industrial relief (Tax exemption) are the pioneer Industrial ordinances of 1952. Industrial Development (Income Tax Relief) Act of 1958 and industrial development (Income Tax Relief) Act Cap. 17 LFN 2004.

It grants tax relief for 3-5 years for foreign and Nigerian Industries which are establish to give employment to indigenous Nigerians and local raw materials in its business[13].

Accelerated Depreciation Allowances is another tax incentive measures. It includes the writing off the original cost of new capital equipment minus any depreciation value in the early years of investment. In this. Vein, the actual cost of the capital equipment is deducted from the firm taxable income**.** Two methods call to mind namely: the straight line methods and the declining balance method. The former involves the writin[g] off the cost depreciable property in equal annual installment on its lifespan. While the latter deals with deduction on a static fraction of the unamortized balance of the cost of the asset but a declining fraction of the original cost. Nigeria uses the declining balance method. Accelerated depreciation allowance includes investment allowance and initial allowance. They all allow depreciation in excess of the cost of the assets.

The merits of accelerated allowances is that it enable a company to obtain interest- free loan by means of postponed taxes thus, giving more profit to the company, thereby allowing the company to have more money to invest and

[12] S.S. 12 of the industrial Dev.(Income Tax Relief) Act cap. 17 L.F.N. 2004.
[13] Ayua op.cit at p. 311

expand its operation. It enables the company to rely on its internal finance rather than external financing which makes the company to enhance its operation. In addition, it helps the company to acquire new equipment for increase expansion and productive capacity. It is easy to apply and the government finds it easier to use for specific nation objectives of investment on particular areas of the national economy. Another merit of accelerated depreciation allowance hinges on taxable income which can be set-off. It will not be good where there is insufficient taxable income[14]. It only favour capital s intensive industries.

At any rate, accelerated depreciation allowance is a good form of tax incentive measure and more reliable than tax exemption. The Companies' Income Tax Act of 2004[15], grants an automatic depreciation allowance to all companies liable to income in Nigeria. They are granted in respect of capital asset to be utilized to expand their trade and business. It varies with the nature of the business.

Import Duties Relief. Another incentive measure is the grant of relief from custom and excise duties for industrial equipment imported by firms in Nigeria. This also includes raw materials either for internal or external uses after production. However, import duties relief may reduce government revenue and balance of payment deficit at the short run but higher benefits will be derived at the long run.

Long Term Fiscal System: According to Ayua,[16] the aim of long term fiscal system as a form of tax incentive measure is to stabilize tax change so as to achieve benefit of tax rates stabilization at a given level for several years. Long term fiscal system actual permits

[14] Cap. C 21 LFN 2007
[15] Ayua .I.A. Op.cit at 32
[16] George .E.I.(2000) Tax Incentive for Investment in Developing Countries. Oxford Press London.at p.p 225-256.

exemption of change in tax assessment and collection procedure at a given period of time. The exemption also extends to new Taxes Introduced at a given point in time.

Enterprise Agreement:- This is another tax incentive measure, it is much more extensive than long term fiscal system, though similar to each other. The benefit that can be derived from tax exemption and stabilization under enterprise agreement is greater in the sense that many benefit accrues to the firm concerned. These includes among other things as financial guarantees for profit and capital repatriation and economic guarantees. Covering all kinds of business activities of the firm[17].

It allows free-tax import of primary materials and capital equipment. There is also right to emplo[y] foreign personnel as regular employees. The enterprise agreement and long term fiscal system of tax incentive measure is very vulnerable to development countries especially in Africa, Asia and Latin America. The reason is that it can serve as an effective economic weapon in the hand of multinational companies/ corporation who can use it to *control the economics of developing countries. For instance. the tax* exemption policy and financial guarantees that provides for repatriation of capital and profits for pioneer multinational corporation can easily manipulate the economic resources of the countries concerned. It does this by sapping their revenue through capital and profit, repatriation to the parent *companies* who are *well* established in developed countries like United Kingdom and United States of America. A country that dare tax free importation of' raw materials and capital equipment including the right *to* employ foreign personnel as regular employees within the Country, will be an easy prey to international capitalism and imperial powers who are ready to control the world economy.

[17] Wheatcroft. G.S.A. (1969) The implication of the second budget, . BTR 2971.

Developing Countries are advised to approach tax incentive measures, especially the long-term fiscal system and enterprise agreement with special care and caution. It should be constantly reviewed from time to time. Wheateroft, abhorred the use of taxation to achieve special economic objective because of its dangerous wrongs.[18]

However, Ayua, is of the option that the best tax incentive measure for developing countries are the tax exemption and accelerated depreciation allowances which forms part of company tax legislation[19]. He further postulated that tax incentive should not be easily granted across the board, but should form part of an integral national plan with proper emphasis on realization of national needs and priorities[20]

It should be realized that the Federal Ministry of Industries, Federal Board of Internal Revenue Services, the cabinet and Federal Executive Council that administer Tax Incentive Policies[21].

4.6 Effects of Fiscal Policies on Economic Development

Fiscal Policy and taxation are birds of the same feathers. Since one cannot talk about the budget policy of the Federal Government of Nigeria without considering, the generation of revenue through the taxation of Income from various source in the economy. It is out of the revenue so generated from taxation of Income that the government will be able to formulate the fiscal policy of the country. It is also known as the government budget which is given in form of financial statement showing the amount of money the government will spend (expenditure) and what it will obtain as income (receipt) from taxation in a fiscal year.

[18] Ayua op cit
[19] Income Tax Relief Act of 2004.
[20] Income Tax Relief Act of 2004.
[21] C.B.N Bulletin no 17, 2000

Policies in effect are deliberate action defined by a given government or authority in which major decision are taken to direct the running of the state agency. Simply put fiscal policy is an official statement by the government of a country's Income from taxes and how it is going to be spent. Hence, the Implementation of the fiscal policy is the ability of the government to keep its word by administering the budget statement according to its form and substance so as to ensure its actual execution with a given fiscal year.

Despite previous plans to diversify the revenue base of government, Nigeria fiscal and budget landscape has been dominated by oil income which in turn, is a major source of instability in the domestic economy. Oil revenue account for not less than 70% of total government revenues. Thus, following savings in the international oil price and production, government revenue is volatile. In many cases, expenditure is patterned after oil Income, such that in period of oil boom, expenditures is ratcheted up -while period of oil price dip are treated temporally, through the Federal account system, the same pattern is repeated in the states and local government[22].

[22] Budget Statements 1993, 1998, 2005, Federal Ministry of Information. FCT, Abuja

CHAPTER FIVE

SUMMARY AND CONCLUSION

5.1 Summary

From the foregoing it can be clearly understood and foreseen that Nigeria has underutilized the potentials of taxation. Although, there has been much improvement to the amount contributed as revenue to the nation, which is attributable in no small way to the introduction of Personal Income Tax Act which is the law that governs the imposition and collected of Personal Income Taxes in Nigeria.

Direct taxation is a source of revenue which our nation must depend upon for centuries to come, because Income taxes is a direct tax can serve as an instrument of economic, social and political development if it is properly harnessed. Due to the under utilization of this medium the assessment of collection and the contribution of Income Taxes to the gross domestic product (GDP) is yet to be fully actualized.

There has not been much success in achieving one of the bedrock goals of Income taxes system, which is reduction of disparity in Income distribution redressing the imbalance, unfair and inequitable distribution of our national cake or wealth. The Nigeria tax legislative especially the income taxes law fails to reflect the cultural aspect of the people, especially their social habits in penchant, ostentation and conspicuous consumption pattern.

In addition even though the tax incentives and relief granted under our Income Tax Act are welcome innovation especially as they contribute in attracting investment in to the Nigerian Economy, we might say it presents a no win-situation in that these relief and allowances are granted under the assumption that the claimants are honest and that they are declaring the full position of their financial standing when they sign a tax declaration. Despite the stiff penalty

attracted to this act the level of prosecution is low. We have thus, seen the role of Income Taxes in the economic development of our Nation Nigeria in the context of economic, social and political progressed.

An attempt had been made to suggest various system of raising revenue through agricultural products, properties and Personal Income Taxes by the government apart from relying on accruing oil wealth. We equally examined the basis of Income Taxation with the view or focus to identifying the importance contribution Income Taxes play in the economic development of the Nation Nigeria.

In line with the significance of this work, we can clearly understand, see and acknowledge the contribution and awareness of the potential form, pattern and system of taxation and portray its usefulness to an ordinary citizen of this country, policy maker and even to the executive alike.

5.2 Findings

In light of the above, the following findings are made:

1. Enforcement and compliance to personal income tax as already discussed, does not get the required attention from tax payers as a result of the ignorance in some part of the tax payers who do not want to be patriotic citizens and instead engage in the practice of deliberate acts of tax avoidance or evasion.
2. Some tax payers, do not know or appreciate why this tax is being levied on them, because these factors have also been recognized to be a major cause of low compliance among tax payers. An average Nigerian, most especially, among the illiterate not pay for what he does not see that value of what one is paying for.

3. Most tax officials are not adequately trained in a manner that the can impact on the taxpayers mind the significance of paying their taxes in addition to corrupt tendency of some tax officials.

5.3 Recommendations

Conversely, the following recommendations are made:

1. The tax authorities and the government should educate the taxpayers on their civic obligation to pay their taxes because, voluntary tax compliance by the tax payers is hardly possible under a condition in which the public have no confidence in the revenue officials.
2. The taxpayers should be educated on the importance of tax and the issue of tax as a source of government revenue must be pointed out to both the government and the governed. Hence, all hands must be on deck for the country to achieve great percentage of tax compliance from the taxpayers.
3. An effective monitoring system should be set up by the various revenue authorities against corruption in the tax administrative organs. Growth through taxation can only be seen if there are sincere and honest tax policies within the tax system.

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