

**TAX COMPLIANCE BY LEGAL PRACTITIONERS AND THE ATTENDANT PROSPECTS TO GOVERNANCE IN NIGERIA: A LEGAL APPRAISAL\***

**Abstract**

The expectation of the law is that legal practitioners like every other citizen of Nigeria earning income are bound to pay tax. The tax payers are required to complete and file their tax returns correctly stating their income in the year of assessment. While complying with this basic requirement, a legal practitioner like any other tax payer will be allowed to make claims for expenses to be deducted and other reliefs available. But, it has been puzzling for legal practitioners to ask questions like are lawyers doing or involved in business? Are lawyers supposed to pay tax? Payment of tax is an obligation for all and sundry that makes income. This position of the law has not gone down well with legal practitioners. It has generated unnecessary embarrassment and avoidable frictions between relevant tax authorities and Legal Practitioners. This work appraises the different taxes legal practitioners are not immune from paying and exposes the attendant consequences for non-payment of tax on the individual legal practitioner and the society at large. The accelerated gains for the payment of tax on a particular legal practitioner and the overall impact on the society highlighted. Doctrinal method of data collection was adopted and analytical approach used in examining the research materials like the Constitution, tax statutes, judicial decisions, text books, journal articles and internet sources. The work discovered that the income from legal practice whether on a self employed status, either as a sole proprietorship, partnership or registered firms or lawyers in employment, (that is, those employed as employees who pay their taxes under Pay-As-You-Earn (PAYE) Scheme is taxable, hence, legal practitioner is a taxable person. Interestingly, tax laws provide for benefits accruing to a legal practitioner who honestly declares his tax and pays same as and when due and its benefit to the entire country in general.

**Keywords:** Tax, Legal Practitioner, Assessment, Tax returns, Income and Taxable person.

**1. Introduction**

Generally, every person resident in Nigeria and/or earning income from a source inside or outside Nigeria is bound as a matter of obligation to pay tax to his state of residence.<sup>1</sup> The Constitution<sup>2</sup> makes same an obligation for every citizen to declare his income honestly to the appropriate and lawful agencies and promptly pay his tax. Legal Practitioners usually work as either employees or as self employed person.<sup>3</sup> Legal Practitioners in practice are engaged either as Sole Proprietorship, Partners or Registered Firm. Legal Practitioners in employment, that is, who work as employees pay taxes under Pay as You Earn (PAYE) Scheme. Under this system the employer is mandated to deduct the tax from the emoluments of the employee monthly and remit to the relevant tax authority. Each of the taxes has a particular rate.<sup>4</sup> Tax laws provides taxes to be paid by Legal Practitioners, among them are Personal Income Tax,<sup>5</sup> Value Added Tax,<sup>6</sup> Stamp Duties tax,<sup>7</sup> Capital gains Tax,<sup>8</sup> Stamp and numerous property taxes made by the Local Government bye-laws.<sup>9</sup> The Personal Income Tax Act<sup>10</sup> imposes tax for each year of assessment on the aggregate amount each of which is the income of every taxable person for the year from a source inside or outside Nigeria including without restricting the generality of the foregoing as gains or profit from any trade or business, profession or vocation. Every legal Practitioner involved in legal practice is carrying on and makes income from the profession.<sup>11</sup> In *AL-Maseer law Firm v FIRS*,<sup>12</sup> the Court of Appeal held that a lawyer in a firm of lawyers in private practice undoubtedly supplies legal services to the public for a fee and so are caught by the provision to pay tax. Another good example is the Stamp duties tax which is charged upon the general instruments specified in the Act.<sup>13</sup> Stamp Duties are taxes paid in perfecting documents. Any instrument

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<sup>1</sup> K J Bielu, Lawyers as Taxable Persons under the Value Added Tax Act: An appraisal in *AJLHR* 4(1) 2000 at 53-60

<sup>2</sup> Constitution of the Federal Republic of Nigeria, 1999 as amended. (CFRN) s.24 (F)

<sup>3</sup> Legal Practitioner's Act, Cap L11, LFN 20004, Entitlement to Practice as Barristers and Solicitors order.

<sup>4</sup> Personal Income Tax Act, 2011 S.37 and the sixth schedule to the Act, Value Added Tax Act (VAT) Act, 2007, s.4, however, see the Finance Act, 2019, S.34 which amended section 4 of VAT Act.

<sup>5</sup> Personal Income Tax (Amendment) Act, 2011

<sup>6</sup> Value Added Tax (Amendment) Act, 2007

<sup>7</sup> Stamp Duties Tax Act, Cap 58, Laws of Federation of Nigeria (LFN) 2004

<sup>8</sup> Capital Gains Tax Act, cap CI LFN, 2004

<sup>9</sup> Bwari Area Council Trade Licence on private Lockup Shop and Allied Matters Bye-law, (No3), 2016, Bwari Area council liquor licencing Bye-Law (No 9) 2016. Kuje Area Council Delegation of its control and Regulation of outdoor Advertisement and signage Powers byelaw 2012. However, see the decisions in *M.I Nig Ltd v Eti-osa Local Government Council & Anor* vol. 8 All NTC 389, *AEDC Plc v Bwari Area Council* (2019) 41 TLRN 41 and *AEDC Plc v Kuje Area Council* (2019) 42 TLRN 25 on the issue of whether or not Local Government had power or not to enact a bye-law to demand and collect levies.

<sup>10</sup> PITA (Amendment) 2011, S.1 and 3 (10 (a))

<sup>11</sup> *Al-Maseer Law Firm v Federal Inland Revenue Service* (2019) 12 NWLR (pt.1687) 555

<sup>12</sup> *Supra* at 571-572

<sup>13</sup> Stamp Duties Act, cap S8 LFN, 2004, S.3 and the schedule to the Act

executed in Nigeria or relating where-so-ever executed, to any property situate or to any matter or thing done or be done in Nigeria shall not except in criminal proceedings be given in evidence. Documents shall be accepted when duly stamped in accordance with the law in force in Nigeria at the time when it was first executed.<sup>14</sup>

## **2. Definition of Tax**

Tax is defined as a monetary charge imposed by the government on persons, entities or property to yield public revenue. Most broadly the term embraces all governmental impositions on the persons, property, privileged, occupations and enjoyment of the people and it includes all duties, imports and exercises.<sup>15</sup> Tax is a pecuniary burden laid upon individuals or property to support government, a payment exacted by legislative authority or compulsory contribution to the support of government levied on persons, property, income, commodities, transactions and others.<sup>16</sup> In *Matthews v Chicory Marketing Board (v)*,<sup>17</sup> a tax was defined as a compulsory exaction of money by a public authority for public purposes or raising money for the purposes of government by means of contributions from individual persons. A tax therefore by general understanding of the term and as used in the constitution,<sup>18</sup> signifies an exaction for the support of the government.<sup>19</sup> Importantly tax is not a voluntary donation or payment but enforced contribution exacted pursuant to legislative authority.<sup>20</sup>

## **3. Objectives of Taxation**

The major objectives are:- (i) To raise revenue to finance government expenditure; and (ii) To influence activity in the economy as a whole. Tax policy provides a mechanism for influencing consumer demand and for providing incentive for production, investment and savings. It is therefore a key factor in promoting the government overall economic and social objectives. Tax is the most powerful macro-economic lever available to the governments, which can be used to promote growth to stimulate investment through tax concessions and to maintain a stable economy. Being the most important and sustainable source of finance for a nations development, Abdulrazaq<sup>21</sup> summarized the functions and objectives of taxation to be, (a) Rising of the revenue to meet government expenditure, (b) Redistribution of wealth and (c) Management of the economy. Adam Smith, in his Treatise, 'Wealth of Nations'<sup>22</sup> set out the canons that are used as criteria for judging a good tax system as:

**Equity:** This is subdivided into horizontal and vertical equity. Horizontal equity requires that those with the same income should pay equal amount of tax while vertical equity requires that those with different incomes should pay different amount of tax. It is believed that the strongest tax systems create fairness, assure adequacy, simplicity, transparency and promote administrative ease.

**Certainty:** Tax which an individual has to pay should be certain not arbitrary. The tax payer should know in advance how much tax he has to pay, at what time he has to pay and in what form the tax is to be paid to the government.

**Neutrality:** A tax is neutral if it avoids distortions of the market. It does not discriminate between different activities in the economy.

**Administrative Efficiency:** Tax personnel must administer the tax system efficiently. The administrative cost should not exceed the revenues realized from tax. The appropriate arm of the sovereignty reposed with the power to impose tax is the legislature.

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<sup>14</sup> Ibid, section 22(4) provides; Except as aforesaid and subject to the provisions of section 91(3) of the Act; But Section 91(3) of the Act also provided that where in any legal proceedings or before any arbitrator or referee may having regard to the literacy and ignorance of the party tendering having regard to the literacy and ignorance of the party tendering the receipts in evidence, admits the receipt upon payment of penalty upon the face of the receipt so admitted and receipt shall be given for the same. In *Okuwobi v Ishola* (1973) All NLR 233,. The magistrate rejected a document in accordance with section 67 of the Property and Conveyancing Law 1959 of the Western State of Nigeria.

<sup>15</sup> B A Garner (ed) *Black's Law Dictionary* (10<sup>th</sup> edition, USA, Thomson Reuters, St Paul MN, 2014)1688

<sup>16</sup> A B Ahmed,; Residence and Permanent Establishment Issues in Nigeria Taxation in *AECA Tax Law Journal of Nigeria*, 2012 Vol. 1, 97

<sup>17</sup> (1938) 60 CLR 263 at 276

<sup>18</sup> CFRN, 1999 as amended, S 24(F), *United States v Butler* 2279 US (1963) 61, I A Ayua, *Nigerian Tax Law* (Ibadan, Spectrum's Law Publishing, 1995) 25

<sup>19</sup> *United States v Butler* 227 9 US (1936) 61

<sup>20</sup> I A Ayua, *Nigerian Tax Law* (Ibadan, Spectrum's Law Publishing, 1996) p25

<sup>21</sup> MT Abdulrazaq, *Nigerian Revenue Law* (Lagos, Malthouse Press Ltd, 2005) 2

<sup>22</sup> Cited in I A Ayua, *Nigerian Tax Law* (Ibadan, Spectrum's law Publishing Ltd, 1996) P9

#### 4. Who is a Legal Practitioner?

A Legal Practitioner is a person entitled to practice as a barrister and solicitor, whose name is on the roll.<sup>23</sup> The name shall be on the roll only if he had been called to the Bar by the Benchers and he produces a certificate of his call to Bar to the Registrar.<sup>24</sup> He is someone who having been licensed to practice law is qualified to advise people about Legal matters, prepare contracts and other legal instruments and moreover represent people in court.<sup>25</sup> A Legal Practitioner is a person, who because of his or her high ethical standards and knowledge gained through education and experience, meets the requirements of a state regulatory body and receives a licence to practice law in the state. From the above description, Legal practitioners engage in virtually all fields of human endeavour and therefore earn income which will in turn attract payment of tax. Legal Practitioner is therefore a person entitled in accordance with the provisions of the Act<sup>26</sup> to practice as a barrister or as a barrister and solicitor, either generally or for the purposes of any particular office or proceedings. The remuneration for firms, partnership and individual Legal Practitioners are provided for under the Act.<sup>27</sup> The services provided by Legal Practitioners to clients are liable to tax. In *Al-Maseer Law Firm v FIRS*,<sup>28</sup> the question was whether the services rendered in legal practice qualified as valuable services within the context of the provisions of the Value Added Tax Act. The Value Added Tax Act<sup>29</sup> provides that supply of services means any service provided for consideration. Legal Practitioners provide or supply services to clients upon charges and clients as beneficiaries of those services pay for the services. Legal Practitioners as a matter of obligation know that the services they provide to the public are paid for or provided by the clients. As a duty added to this, the law enjoins the Legal Practitioner to keep records of transactions, operations and other related activities to valuable services sufficient to determine the correct amount of tax due.

#### 5. Legal Practitioner Income Chargeable and the Rate

Every Legal Practitioner involved in the legal practice is carrying on a profession and therefore income from it is chargeable to tax.<sup>30</sup> For instance, under the Personal Income Tax Act,<sup>31</sup> the rates at which taxes are paid are;

- i. First N300,000.00 at 7%
- ii. Next N300,000.00 at 11%
- iii. Next N500,000.00 at 15%
- iv. Next N500,000.00 at 19%
- v. Next N1,600,000.00 at 21%
- vi. Above N3,200,000.00 at 24%

The rate is applicable to employees of the Federal, State and Local Governments as well as employees of the private sector. The rate of minimum tax under the Act<sup>32</sup> has been increased from 0.5 percent to one (1) percent of gross income. However, the schedule specifies that National Housing Fund contribution, the National Health Insurance Scheme contribution, Life Assurance Premium, the National Pension Scheme and Gratuities are tax exempt. The rate is applicable to all persons and involves the total income, gain, salary, wage, fee, allowance or other gains, or premiums, benefits or other perquisites allowed, given or granted. For Legal Practitioners in private practice, the two major charges applicable are professional and appearance fees. Legal Practitioners are allowed some reliefs and deductions under the Act,<sup>33</sup> or where the lawyer falls within the exempt,<sup>34</sup> he is excused or relieved of paying tax to that extent. The reliefs however, must be claimed as it is not granted as matter of course. In *Williams v Regional Tax Board*,<sup>35</sup> the court held that in computing the chargeable income of the Appellant, the sum of N600 which was annual rent of the apartment he uses exclusively for the earning of his income was rightly deducted as falling within the spirit and intendment of the words outgoing expenses as necessary for the carrying on of his profession. Legal practitioner has other subtle means of making income which include appearance fee or transport allowance. In the view of Umenweke<sup>36</sup> on claims concerning appearance/ transport fees, he said;

One may ask at this juncture, whether the appearance/transport or fuel fee by whatever name called received by Legal Practitioners for going to court from clients is taxable. If the

<sup>23</sup> Legal Practitioners Act, (LPA) Cap L11 LFN 2004, S.2(1)

<sup>24</sup> LPA, Cap L11, LFN, S 7 (a) & (b)

<sup>25</sup> B A Garner, *Black's Law Dictionary*, 10<sup>th</sup> ed (Thomson Reuter, St. Paul MN, West publishing Co 2014) 1021.

<sup>26</sup> LPA, S.24

<sup>27</sup> *Ibid*, S5.19 (3)(4), 15 and 16

<sup>28</sup> (2019) 12 NWLR (pt1687) 555

<sup>29</sup> Value Added Tax (VAT) Act, 2007, S.46

<sup>30</sup> PITA, 2011, S.33(1) (1) (a) but Legal Practitioner's in employment are charged under s.3(1) 81) (b)

<sup>31</sup> *Ibid*, S.37, the sixth schedule to the Act.

<sup>32</sup> PITA 2011, S.27

<sup>33</sup> *Ibid*, S.3 (b) (1) – (xii)

<sup>34</sup> *Ibid*, S.19 and third schedule to the Personal Income Tax Act

<sup>35</sup> Vol. 1, All NTC 141-147

<sup>36</sup> M N Umenweke, 'Income Tax Law and Assessment of Tax payable by Legal Practitioners,' *Court Digest, Justice and Law in the Society*, Vol. 12 October to December 2007, 3-19

money represents a valid and accurate reimbursement of fuel and hotel expenses, then it is not taxable.

In fact, most times it is not an accurate representation of the fuel and hotel expenses. Legal Practitioners' who adopt this system of charging may move from his chambers to the courtroom a distance not more than 2 kilometers or at most 3 kilometers and collect N10,000.00 for each of the cases. The petrol needed to get to the court and back may not worth more than N1,000. If tear and wear is calculated, then the total expenses may not exceed N2,000.00. The lawyer pockets N6000.00 if he came for one case and pockets N30,000.00 if he came for 5 cases. The law is that that the balance of N6,000.00 or N30,000.00 as the case may be is taxable. It is a trend that some Legal Practitioners' fees are drastically and at times ridiculously reduced as some relies on this transport/appearance fee to recover what they reduced from their professional fee.

## **6. Legal Basis for Taxing Legal Practitioners**

It is well established that taxation is not an all comer's affairs or an arbitrary issue. No tax can be imposed on or collected from the subject without the words of or an act of parliament clearly showing intent on it to lay a burden on the subject.<sup>37</sup> It is the duty of a citizen to obey, oblige and comply with laws of the land and it is fundamental and concomitant with the duty of a citizen, more importantly a legal Practitioner to pay tax.<sup>38</sup> Nigeria citizens are mandated to declare their income honestly to the appropriate and lawful agencies and pay their tax promptly.<sup>39</sup> This is to the effect that legal Practitioners who are Nigeria citizens have a constitutional duty to pay taxes. Taxes are paid by citizens to the Government (Lawyers inclusive) who earn income from such sources as enumerated by the law. Taxes are spelt out by the Constitution to be paid three tiers of Government as follows;

- a. Federal taxes include the items contained in the exclusive legislative lists<sup>40</sup> which are Customs and Exercise duties, Export duties, Stamp duties, Value Added Tax, taxes on corporate profits and gains<sup>41</sup> respectively.
- b. State taxes include Personal Income Tax, Stamp Duties on documents and transactions, capital gains and their taxes paid by individual Legal Practitioners.
- c. Local Government taxes which is in the form of tenement rates and property taxes.

The Personal Income Tax<sup>42</sup> imposes tax on all incomes of persons, on the following incomes;

- a. gains or profits from any trade, business, profession or vocation
- b. Remuneration (salary, wage, fees, allowance, gain, or profit, benefits and others) of an employment excluding sums paid to the employee;
  - i. Reimbursement of expenses incurred by him in the performance of his duties and from which it is not intended that the employee should make any profit or gain.
  - ii. In respect of medical or dental expenses incurred by the employee.
  - iii. In respect of any passage to or from Nigeria incurred by the employee and others.

Value Added Tax is another tax payable by Legal Practitioners amongst other citizens. The Act<sup>43</sup> stipulates that the tax shall be charged and payable on the supply of goods and services other than those listed in the first schedule to the Act. The rate of Value Added Tax (VAT)<sup>44</sup> is 7.5%. The tax is monthly shared between the Governments in the ratio of 15%, state 50% and the local Government is 35%. The stamp duties tax is the duty charged upon instruments specified in the schedule to the Act.<sup>45</sup> The duties are paid as taxes for perfecting documents. For Capital Gains tax,<sup>46</sup> it is paid on any capital gain, that is to say, gains accruing to any person (including Legal Practitioner) on the disposal of assets which is taxed at the rate of 10%. The chargeable assets include options, debts and incorporeal property generally, any currency other than Nigeria currency and any form of property created by the person disposing of it or otherwise to be owned without being acquired. This is paid whenever there is a disposal of asset (land and building in practice) and receipt of any capital sum when gain accrues. Lawyers who are self employed and have a registered company pays companies Income Tax. The Act<sup>47</sup> provides that companies Income Tax is chargeable on the income of all companies operating in Nigeria except those specifically

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<sup>37</sup> *A Authority v Regional tax Board* (1970) All NLR 177, *Scottish, Widows LC & ors v Commissioner for Her Majesty Revenue and Customs (SCOTLND)* and ors (2011) LPELR-17822, *Vodacom Business Nig Ltd v FIRS* (2018) 35 TLR 01 at 18

<sup>38</sup> *Best Children Int'l Sch v FIRS* (2019) 4o TLRN 33

<sup>39</sup> Constitution of the Federal Republic of Nigeria, 1999 as amended S.24 (F) and S.44 (2)(A).

<sup>40</sup> CFRN, 1999 as amended, second schedule, part 1 item 16, 2, 58 and 59

<sup>41</sup> Finance Act, 2020, part 1, items subject to tax under capital gains

<sup>42</sup> Personal Income Tax (PITA) s.3 (1)

<sup>43</sup> Value Added Tax (VAT) Act, 2007 S.2

<sup>44</sup> Finance Act, 2020, S.34. This amended sections of the Value Added tax Act, 2007

<sup>45</sup> Stamp Duties Tax Act (SDA) cap S8 LFN 2004

<sup>46</sup> Capital Gains Tax Act, cap CI LFN, 2004

<sup>47</sup> Companies Income Tax Act (CITA) 2007. S.9

exempt.<sup>48</sup> It is charged at 30% adjusted profit and from the dividends payable to the shareholders as withholding tax. Local Governments are expected under the law to enact bye-laws for the collection of tenement and other rates which must be consistent with the spirit, intentions and provisions of the Constitution.<sup>49</sup> The tenement is a locally assessed property tax payable also by the legal practitioner within the jurisdiction.

From the above, the liability of legal practitioners to pay statutory taxes cannot be overemphasized. It behooves on the legal practitioners, therefore, to show an example and be in compliance with the law for prompt payment of tax.

### **7. Taxes Payable by a Legal Practitioner, Exemptions' and Allowable Deduction**

The taxes that are legally and validly payable by legal practitioners are clearly enumerated under the law.<sup>50</sup> The discussion under paragraph 5 above is applicable and will suffice under this sub topic for Personal Income Tax, with additions thus;

- i. In respect of the maintenance or education of a child; if any provision of this Act provides that any such received by the employee during a year of assessment shall be granted to him for the next following year.
- ii. So much of any amount of rent the employee is treated as being in receipt equal to the annual amount deemed to be incurred by the employer under the Act.
- iii. Gain or profit including any premiums arising from right granted to any other person for the use or occupation of any property.
- iv. Dividend, interest or discount
- v. Any premium, charge or annuity

#### **Value Added Tax**

The Value Added Tax (VAT) is payable by legal Practitioner amongst other citizens or persons.<sup>51</sup> This is charged and payable on the supply of goods and services other than services exempt,<sup>52</sup> goods exempt<sup>53</sup> and zero rated goods and services.<sup>54</sup> The current rate of Value Added Tax (VAT) is 7.5%.<sup>55</sup> In *Al-Maseer Law Firm v FIRS*,<sup>56</sup> the question was whether legal services qualified as valuable services within the context of the Value Added Tax Act. The facts of the case was that sometime in May 2016, the firm received a letter from the Respondent (FIRS) titled 'Non-remittance of VAT Returns wherein the Appellant was required to charge its client 5% VAT for professional fees and remit same to the respondent. The appellant also stated that another letter was served by the respondent demanding for the payment of the sum of N100,000.00 as Best of Judgment (BOJ) VAT Assessment. The Appellant, however, claimed that it never registered with the respondent and a legal Practitioner or law firm is not a taxable person under the VAT Act. The Court of Appeal rightly held;<sup>57</sup>

The Value Added Tax Act does not limit itself to only supplies of good but extends the duty of collection and remission of VAT to also those who also supplies services. A lawyer or firm of lawyers in private practice undoubtedly supplies legal services to the public for a fee and so are caught by the provision and bound to charge and remit to the respondent Value Added Tax Act on the fees they charge their clients. A taxable person shall upon commencement of business, register with the service for the purpose of the tax.<sup>58</sup> A taxable person who fails or refused to register with service within the time specified in subsection (1) is liable to pay as penalty an amount of;<sup>59</sup> (a) N50,000 for the first month in which the failure occurs; and (b) N25,000 from each subsequent month in which the failure continues.

There are also other offences like failure to keep proper records of accounts,<sup>60</sup> failure to collect tax<sup>61</sup> and failure to submit returns<sup>62</sup> amongst others attract various stiff penalties. Under the new regime,<sup>63</sup> a taxable person who

<sup>48</sup> CITA S.23 (1) ©, PITA, 2011, S.19(1) VAT Act, 2007, S.3 part III of the Schedule of the Act

<sup>49</sup> CFRN, 1999 as amended, part 2 second schedule, paras, 9 & 10

<sup>50</sup> Taxes and levies (approved list for collection ) Act, cap T2 LFN 2004

<sup>51</sup> Value Added Tax (Amendment) Act, 2007 s.2

<sup>52</sup> VAT Act, 2007, S.3

<sup>53</sup> Ibid, First Schedule to the Act, part I

<sup>54</sup> Ibid, First Schedule to the Act, part III

<sup>55</sup> Finance Act, 2019 S.34 which amended section 4 of VAT Act

<sup>56</sup> (2019) 12 NWLR (pt 1687) 555. See also *Barr. Odo v ESIRB* (2020)52 TLRN27

<sup>57</sup> Supra at 572

<sup>58</sup> Finance Act, 2019, S.35 which substitutes section 8(1) of VAT Act (amendment) 2007

<sup>59</sup> Ibid, which substitutes section 8(2) of At, 2007

<sup>60</sup> Ibid , S.33

<sup>61</sup> Ibid, S.34

<sup>62</sup> Finance Act, 2019; S.44,

<sup>63</sup> Ibid,

fail to submit returns to the service is liable to a fine of N50,000.00 in the month of default and N25,000 of every month in which the default continues.

### **Stamp Duties**

The stamp duties are charged upon the several instruments specified in the schedule to the Act.<sup>64</sup> The Finance Act<sup>65</sup> gave the meaning of stamped to be with reference to instruments and material to mean instruments and material impressed with stamp by means of an engraved or linked block die, adhesive stamps affixed thereto as well as instruments and materials digitally tagged with electronic stamp or notional stamp on an electronic receipt.

Legal Practitioners are involved in either the production or authentication of instruments readily for stamping. The law envisages that certificates of occupancy, appointment, bank guarantees, warrants of attorney, receipts, deeds, stock and share certificates, legacy, promissory notes, tenancy agreements, mortgage, charges and leases there from, oaths, affidavits and other like documents should be appropriately perfected by stamping them.<sup>66</sup>

### **Capital Gain Tax**

This stipulates that gains accruing to any person (including lawyers) on or after the 1<sup>st</sup> day of April 1967 on disposal of assets.<sup>67</sup> The rate of the tax is 10%.<sup>68</sup> It is charged on the total amount of chargeable gains accruing to any person in the year of assessment after making such deductions as may be allowed under the Act. The list of chargeable assets includes;<sup>69</sup> (i) Options, debts and in corporeal property generally; (ii) Any currency other than Nigeria currency and. (iii) Any form of property created by the person disposing of it, otherwise coming owned without being acquired. The properties in addition to the above include property which is an asset in respect of which qualifying expenditure has been incurred under the schedule to the Companies Income Tax Act or the Petroleum Profits Tax Act. The Act exempts certain person or bodies and gains from the tax.<sup>70</sup> It is expected that lawyers are to pay capital gains tax whenever they dispose of assets (land and buildings) and receive any capital sum where gain accrues. The law<sup>71</sup> provides that every person having disposed a chargeable asset shall, not later than 30 June and 31 December of that year, compute the capital gains tax, file self assessment return and pay the tax computed in respect of the chargeable assets disposed in the periods.

### **Companies Income Tax Act**

Tax is imposed under this Act<sup>72</sup> on the preceding year basis on:

- a) Income Tax at 30% of adjusted profit from whatever such profits are distributed to the shareholders or not.
- b) When dividends are payable, tax has to be deducted (presently at the rate of 10% of the amount of dividends) from the gross amount before the net is paid over to shareholders. This is the withholding tax on dividends.
- c) It is levied upon profit of any company accruing in, derived from, brought into or received in Nigeria. There is however, the rural investment allowance<sup>73</sup> to encourage investment in rural areas at the following rates;
  - a. No facilities at all 100%
  - b. No Electricity 50%
  - c. No water 30%
  - d. No tarred road 15%

Legal Practitioners who are self employed should always remember to claim capital allowances for their capital assets used in earning income. Companies Income tax is currently 30% of profits as adjusted by revenue authorities. In *Williams v Regional Tax Board*,<sup>74</sup> the Regional Tax Board refused the claims of the Appellant in respect of the sum of N600 which he said should be deducted from his chargeable income before assessment and in respect of N186 which he said was charged to him by virtue of the provisions of the Income Tax and Development Contribution Order, 1962. On appeal against the decision of the Board, the claim of the Appellant who was a legal Practitioner carrying on his profession in an apartment in his own house as rent for the apartment which he used in the said house exclusively for earning his chargeable income was allowed. The reasoning of the

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<sup>64</sup> Stamp Duties Act, cap S8 LFN, 2004 S.3 but see s.56 Finance Act, 2019 for the changes

<sup>65</sup> Finance At, 2019, S.52

<sup>66</sup> Ibid, S.65 (a)

<sup>67</sup> Capital Gains Tax Act (CGTA), cap C1 Laws of the Federation of Nigeria, 2004 S.1(1)

<sup>68</sup> CGTA, LFN 2004 S.2(1)

<sup>69</sup> CGTA, LFN, 2004 S.3

<sup>70</sup> Ibid, S.226 (1& 2) and 27 (1 & 2)

<sup>71</sup> Finance Act, 2020, s. 2 part 1 which amended Section 2 of the Capital Gains Tax Act.

<sup>72</sup> Companies Income Tax Act (CITA) 2007 ,S.9

<sup>73</sup> This is found in both PITA and CITA, capital allowances are deducted before arriving at tax table.

<sup>74</sup> 1 All NTC 141

court was that for the purpose of arriving at the balance of profits, all that expenditures which as necessary for the purpose of earning the receipts had to be deducted otherwise one would not arrive at the balance of profits, indeed, one would not ascertain, whether there was such a thing as profit or not.

### **Customs and Exercise Management**

The Customs and Exercise Management Act<sup>75</sup> prescribes that tax on import and export duties shall be imposed on goods being imported and exported.<sup>76</sup> A custom duty is a tariff or tax on the import of or export of goods. Usually, there is a tariff which serves as the basis for imposing duties. These are listed in the Custom, Exercise Tariff etc and Consideration Act.<sup>77</sup> By the provisions of the Taxes and Levies (Approved list for collection) Act,<sup>78</sup> a total 21 taxes were listed. The taxes that are legally and validly payable by lawyers are clearly prescribed. Legal Practitioners moreover, are subjected further to the payment of all other aforementioned taxes including many countless levies collected by the Local Government. Now that tax payment by legal practitioners have obviously become a norm, tax payment by legal practitioner should not only be voluntarily paid but should be paid as when due.

### **8. Rights of a Legal Practitioner to Objections and Appeal**

A legal Practitioner who has reasons to believe that he has been assessed wrongly may object to the assessment that was made upon him to the appropriate tax authority.<sup>79</sup> He shall by a notice in writing apply to the relevant tax authority to either review or revise the assessment. The application shall be made within 30 days of the service of the notice of assessment and shall specify the grounds upon which the objection is based.<sup>80</sup> The relevant tax authority may upon the receipt of the objection require the person objecting to furnish such particulars and produce books of account and other documents that the relevant tax authority may deem necessary. The tax authority may summon any person that can give information which is material to the determination of the objection.<sup>81</sup> After the tax payer who has objected to the assessment, agrees with the relevant tax authority as to correct amount of the tax chargeable, the assessment shall be amended accordingly and notice of it shall be served on the person.<sup>82</sup> But if the person fails to agree with the relevant tax authority on the amount of tax chargeable, the relevant tax authority shall give notice of refusal to amend the assessment and may revise the assessment based on its best of judgment.<sup>83</sup> In *Oando v FIRS*,<sup>84</sup> the court however held;

...and the Act does not require a notice of refusal to Amend (NORA) from the tax authorities. Therefore NORA is not a requisite pre-action protocol for appeal against assessments. Moreover the delay by the tax authority to issue a NORA can also be deemed an issuance of NORA.

The position therefore, is that an applicant may appeal against the assessment or revised assessment where there is issuance of NORA or not within 30 days of the issuance.<sup>85</sup> In *Williams v Adelaja & Anor*,<sup>86</sup> the court welcomed the appeal against the tax authority on the ground that it failed to act judicially as adequate opportunity was not afforded to the appellant when it unilaterally increased the chargeable income without putting his interest into consideration. Legal Practitioners should note that appeals may lie to the State High Court or Federal High Court as the case may be and to the Court of Appeal and the Supreme Court.

### **9. Conclusion and Recommendations**

Legal Practitioners are looked upon in the society as being versed in the knowledge of the law. They are not expected to be found among the law breakers. The expectation is that they will not be among person involved or associated with problems of avoidance and evasion of tax that have bedeviled the Nigerian tax system. Legal Practitioners by their very training should spearhead the lead in the voluntary compliance to the payment of tax. The 100% compliance expectation on the Legal practitioners is one on the stipulation of the Constitution.<sup>87</sup> Legal Practitioners stand a better chance to claim or ask for allowances, deductions and reliefs as provided under the

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<sup>75</sup> Capp. C45, Laws of the Federal Republic of Nigeria (LFN) 2004

<sup>76</sup> *Ibid*, S.37 and 59

<sup>77</sup> Cap C49 Laws of the Federal Republic of Nigeria

<sup>78</sup> Cap T2, Laws of the Federal Republic of Nigeria (LFN) 2004

<sup>79</sup> *Barr. Odo v ESIRB*(*supra*)

<sup>80</sup> PITA, 2011 as amended, S.58(1)31

<sup>81</sup> *Ibid*, S.58(2)

<sup>82</sup> *Ibid*, S. 58

<sup>83</sup> *Ibid*, see the proviso, *Oando v FIRS (2011) 4TLRN 113*

<sup>84</sup> *Supra*

<sup>85</sup> PITA, 2011, S.60

<sup>86</sup> 1 All NTC 209 at 215

<sup>87</sup> CFRN, 1999 s amended, S 24(F). This stipulated that legal practitioners and other citizen to declare their income honestly and pay his tax promptly to the appropriate and lawful agencies.

law as in *Williams v Regional Tax Board*.<sup>88</sup> In *Williams v Adelaja*,<sup>89</sup> a legal practitioner took advantage of his knowledge in law while in voluntary compliance, fully claimed deductions allowable for a tax payer. He succeeded in getting the court to declare that of the N600.00 should be deducted as expenditure for the payment of his law firm apartment in his own house before arriving at the balance of profits. Again, in the case,<sup>90</sup> following his insistence, the court voided another N186 levied for being illegal, unconstitutional and ultra vires.

Legal Practitioners when in full and total compliance with the payment of tax must also ensure that there is commendable utilization of the tax revenue in the country. When legal practitioners take payment of tax as acceptable norm or way of life in Nigeria, they will ensure that there is good use into which the tax payers' money is put into for the benefit of the society. With the acceptance, legal practitioners will join the Joint Tax Board to ensure that our society is a better place to live by all. For instance, Legal Practitioners will ensure that the provisions of the Act<sup>91</sup> which stipulates that a tax clearance certificate must be produced and certified by the relevant for the appointment or election into public office in Nigeria. It means that when there is any political aspirant who did not pay his tax correctly and as when due,<sup>92</sup> legal practitioners should insist that he be declared to lack moral capacity to occupy a political office and preside over the spending of taxes paid by law abiding citizens. This will cause everybody to sit up with respect to the payment of tax and this will help the society to be better. This will help the country to achieve maximum or total tax compliance.

Furthermore, with Legal Practitioners in the circle of citizens that complies with payment of tax, all illegal tax collections must stop. In *Attorney-General of Cross River State & Anor v Mathew Ojua*,<sup>93</sup> a Legal Practitioner and property owner in Ikom, Cross river State of Nigeria served with assessment notices for payment of Urban Development Tax, Tenement Rated, Sanitation Levy and Refuse collection charges in respect of his properties located in Ikom in 2005. He challenged the assessment as amounting to double taxation.

Moreover, Legal Practitioner's will join in the education and enlightenments which should be made mandatory to encourage every citizen to build a culture of voluntary tax compliance. Where Legal Practitioners pay taxes as and when due, they will serve as role models in attaining the culture of voluntary tax compliance and that will render good governance in the country for better living of the people of Nigeria.

Legal Practitioners like every other citizen in the country has a duty to pay tax as and when due. It is only when Legal Practitioners comply with the provisos of the tax laws, that they can claim rights and privileges like deductions allowances and reliefs under the tax law. Legal Practitioners in order to pay the correct tax should always keep record or accounts of their incomes and file returns of their income with the relevant tax authority promptly. A Legal Practitioner can only challenge the assessment coming from the relevant tax authority after he has filed his tax returns as and when due. Failure by the Legal Practitioner to file his tax returns as and when due will create an avoidable opportunity for the appropriate tax authority to assess the Legal Practitioner based on a best of judgment. Where the Legal Practitioner is wrongly assessed, Legal Practitioner conversant with the stipulations of the tax laws should challenge the action.

Compliance with the relevant tax laws by the Legal Practitioner will help build a compliance culture in Nigeria. When Legal Practitioner pays tax as and when due, he stands a better chance to ensure good governance and utilization of tax payers' money in Nigeria. Above all, Legal Practitioner who pays his tax as and when due, are harbinger of culture of tax compliance by all and sundry in Nigeria. Sensitization and orientation is imperative for Legal Practitioners on the importance of participation in tax matters. The need becomes more emphasized now that the country is struggling to shift from overdependence on oil revenue to tax revenue.

A well sensitized Legal Practitioners will certainly become models to the society on the fundamentals and culture of tax compliance. Their stand will become a challenge to the political class which will be forced to stick to the laid down rules in taxing, collecting and utilization of the tax revenue. Legal Practitioners should as a matter of urgency keep records of their income, this will help them to file their tax returns to the relevant tax authority and pay their tax as and when due, insist on taking advantage of the reliefs and other allowable deductions under the law to reduce the amount to be paid. With this the opportunity for taxing them on Best of judgment or blanket assessment will be avoided.

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<sup>88</sup> *Supra*

<sup>89</sup> *Supra*

<sup>90</sup> *Supra*

<sup>91</sup> PTA, 2011, S.85(4) (5)

<sup>92</sup> *Gwatawa & anor v Balawai & ors*, 4 All NTC 299, *Oyaleke v Alamu & anor*, 4 All NTC 89, and *Ango v Achida*, 4 All NTC 161

<sup>93</sup> 7 ALL NTC 167