

AN ANALYSIS OF THE LEGAL FRAMEWORK FOR THE ADMINISTRATION OF COMPANIES INCOME TAX IN NIGERIA*

Abstract

The Companies Income Tax Act is the principal law that regulates the taxation of companies in Nigeria. The tax regime in Nigeria is a multi-level tax system, which simply means that taxation is administered by the three tiers of government. The Federal Inland Revenue Service (FIRS) administers or oversees the income tax for companies. Companies income tax is a tax on the profits of registered companies in Nigeria. It also includes the tax on the profits of foreign companies carrying on any business in Nigeria. The Companies income tax is paid by limited liability companies inclusive of the public limited liability companies¹. This paper explores the nature of companies' income tax in Nigeria, its legal framework and administration. Attempt is made to concisely analyze companies income tax, the issues and challenges surrounding assessment and collection of companies income tax. The paper found out that the issue of multiple taxation, tax evasion, corruption amongst other challenges have affected negatively the output of companies income tax. This paper therefore recommends that the various tiers of government should adhere strictly to the taxes they are legally empowered to collect. Where there are serious incidences of multiple taxation it discourages investors who want to maximize profits and will make companies to move their business out of the state with the attendant consequence on the revenue output of the state. The FIRS should also step up their administrative strategy to combat the incidence of evasion by companies and also to block other means of tax revenue leakages. The legislators should as a matter of urgency amend the Companies Income Tax Act, to impose a stiff penalty for failure to pay taxes by corporate bodies as this will discourage non compliance with payment of taxes by some companies.

Introduction

Government all over the world undertakes huge public expenditures on behalf of their citizens such as the provision of infrastructure in form of roads, bridges, and social amenities. To meet up with these numerous wants and obligations, government requires substantial amount of funds. Such funds are usually generated from various sources, which usually include the imposition of government compulsory levies such as taxation². The Companies Income Tax (CITA) is one of such tax and imposed through the enabling law which is the Companies Income Tax Act³. Companies Income Tax is a tax on the profits of registered companies in Nigeria. It also includes the tax on the profits of foreign companies carrying on any business in Nigeria.

This paper therefore seeks to analyze the legal framework for the administration of Companies Income Tax in Nigeria. It looked at the concepts of tax, meaning of company for tax purposes and tax administration, the Companies Income Tax Act, liability to companies income tax, the mode of assessment and filing of returns, the challenges to the administration of Companies Income Tax Act and finally solutions will be proffered to ensure better

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¹ Nigeria: Brief Overview Of Company Income Tax In Nigeria, available at <https://www.mondaq.com/nigeria/tax-authorities/976992/brief-overview-of-company-income-tax-in-nigeria> (accessed on 02 October 2021)

² IA Gololo, "An Assessment of the Contribution of Company Income Tax on the Nigerian Economic Development",

International Journal of Accounting & Finance Review; Vol. 2, No. 1; 2018, 9

³ Cap C.21 Laws of the Federation of Nigeria, 2004.

enforcement mechanisms which will ultimately lead to raising more revenue through companies income tax for the use of government in the provision of the basic amenities needed to better the lives of the citizens. The paper concludes that the lofty provisions of the Companies Income Tax Act on the payment of companies' income tax will mean little or nothing if there are no proper enforcement of same.

Conceptual Clarifications

Tax

Tax is a contribution for the support of a government required of persons, groups, or businesses within the domain of that government⁴. Tax can be defined in very simple words as the government's revenue or source of income. The money collected under the taxation system is put into use for the country's development through several projects and schemes.⁵ A tax is a compulsory financial charge or some other type of levy imposed on a taxpayer by a governmental organization in order to fund government spending and various public expenditures. A failure to pay, along with evasion of or resistance to taxation, is punishable by law.

Taxes consist of direct or indirect taxes and may be paid in money or as its labour equivalent. The first known taxation took place in Ancient Egypt around 3000–2800 BC⁶.

Traditionally, tax has been thought of as a compulsory payment, which is not a penalty, fine or user charge, imposed by a public body for a public purpose under the authority of the legislature. This is a long way from being an effective, exhaustive or universally applicable definition⁷.

One of the most frequently debated political topics is taxation. Taxation is the practice of collecting money from citizens based on their earnings and property. The money raised from taxation supports the government and allows it to fund police and courts, have a military, build and maintain roads, along with many other services. Taxation is the price of being a citizen.⁸

Meaning of Company for Tax Purpose

A company formed and registered under the Companies and Allied Matters Act (CAMA) or any enactment replaced by it is what the Act recognizes as a company in Nigeria⁹. Although CAMA defines a foreign company to mean company incorporated elsewhere than in Nigeria, it does not recognize its existence in Nigeria for business activities. It only defines it for the purpose of identifying it to comply with the mandatory incorporation processes before carrying on business in Nigeria and to benefit from exemption from registration.

⁴ Tax Meaning, available at <https://www.yourdictionary.com/tax> (accessed on September 22, 2021)

⁵ TR Barik, Meaning of Tax, Available at <https://taxguru.in/income-tax/meaning-types-tax.html> (accessed on September 22, 2021)

⁶ Tax, Available at <https://www.shabdikosh.com/dictionary/english-bengali/tax/tax-meaning-in-bengali> (accessed on September 22, 2021)

⁷ On the Meaning of Tax, available at <https://www.austaxpolicy.com/on-the-meaning-of-tax/> (accessed on September 22, 2021)

⁸ Taxation, available at <https://www.vocabulary.com/dictionary/taxation> (accessed on September 22, 2021)

⁹ CAMA, Cap 20, LFN, 2004, section 54.

Section 54(1) CAMA provides that:

Subject to sections 56 - 59 of this Act, every foreign company which, before or after the commencement of this Act, was incorporated outside Nigeria, and having the intention of carrying on business in Nigeria shall take all steps necessary to obtain incorporation as a separate entity in Nigeria for that purpose, but until so incorporated the foreign company shall not carry on business in Nigeria or exercise any of the powers of a registered company and shall not have a place of business or an address for service of documents or processes in Nigeria for any purpose other than the receipt of notices and other documents as matters preliminary to incorporation under this Act.

Carrying on business in Nigeria may be at profit or loss. Corporation tax is charged by reference to profits. Besides, Nigerian system of taxation does not operate in isolation from the rest of the world. Some foreign companies operate globally and render returns on global basis. The profits made by these foreign companies cannot be ignored. In this regard, the definition of 'company' by CAMA cannot be accurate for tax purposes.

The Companies Income Tax Act¹⁰ defines 'company' in a broader sense. Section 105 of the Act defines a company as: "any company or corporation (other than corporation sole) established by or under any law in force in Nigeria or elsewhere"¹¹.

By this definition, the Act recognizes both Nigerian companies and foreign companies though on different basis. Be that as it may, a thorough digest of CITA in its entirety reveals that companies yet to commence business; a profit-making company; a company on liquidation; a reconstituted company, a holding company are all contemplated by the Companies Income Tax Act¹².

It is worthy of note that the mandatory statutory provision of CAMA is clearly unambiguous in prohibiting the existence of a foreign company in Nigeria for any purpose (including carrying on business to make profit. In fact, any violation of the provision is slammed with a penalty¹³. The CITA on the other hand permits the existence of foreign companies and charge their profits derived from Nigeria to tax¹⁴. These enactments are both Acts of the National Assembly made to serve economic and fiscal purposes. While CAMA regulates incorporation, control and management of companies, CITA charges to tax the profits of these companies. Before CITA can be effective, there must be existence of companies brought into being by CAMA. When CAMA prohibits the existence of a class of company can CITA permit or legalize it? This, no doubt, brings about two conflicting public interest. One is the prevention of proliferation of foreign companies, unless registered as Nigerian company. The second is the revenue generation from the profits of companies including foreign companies. The two constitute key components of Nigerian economic policy and needs to be reconciled and harmonized. It is instructive to state that the definition of company above analyzed is the same under the Petroleum Profit Tax Act¹⁵.

¹⁰ Cap C21, LFN, 2004

¹¹ See also Petroleum Profits Tax Act, Cap P 13, LFN, 2004, Section 2.

¹² Companies Income Tax Act, 2004, Sections 40 (4), 47, 29 (10).

¹³ CAMA, Section 55

¹⁴ CITA, Section 13 (2).

¹⁵ CITA, Section 105 and Petroleum Profit Tax Act (PPTA.), Cap LFN, 2004, Section 2.

However, one is disturbed about the rationale behind the treatment of oil companies under a separate statute from other companies. After all, oil companies are companies even though, they are operating in the petroleum sector, just as there are companies in the manufacturing sector and in other sectors. A company is a company, and its income should ideally be taxed under the regular Companies Income Tax Act¹⁶ otherwise it is antithesis of a simple tax system which Nigeria aims at.

From the definition of 'company' under CITA encapsulates other statutory or registered friendly corporations apart from the ones registered under CAMA; such as cooperative societies. The CITA exempts the profits of cooperative societies from tax. However, if the profit is from trade or business outside cooperative activities solely carried out with its members, it is taxable. In other words, if the profit of the cooperative society is derived from any activities that constitute established badges of trade, it is taxable.

The question that comes to mind is whether the federal government or any of its revenue agencies can charge to tax the taxable profits of any cooperative society. Nigeria is a federal state that recognizes the doctrine of separation of powers and upholds the principle of autonomy of states within the federation. To this end, the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides for separate legislative lists namely: Exclusive, Concurrent and residual lists¹⁷.

Under the Exclusive Legislative List of the 1999 Constitution, item 32 empowers the federal government to legislate on incorporation, regulation and winding-up of bodies corporate (other than cooperative societies, local government council and bodies corporate) established directly by any law enacted by a House of Assembly of a state. This makes any matter regarding cooperative societies an exclusive preserve of state government including taxation of their profits. Surprisingly, item, 59 of the same Exclusive Legislative List empowers the federal government to charge incomes and profits generally to tax whether or not they are from the cooperative societies. This inconsistency poses a serious legal issue in Nigerian fiscal federalism. Also it may constitute legal fallacy while defining a company for tax purpose¹⁸.

Companies Income Tax Act

Companies income tax regime was introduced in 1939 through the instrumentality of the Companies Income Tax Ordinance¹⁹. Before this law came into effect, the regulation of both personal and business taxation was vested in one and the same legal regime.

The Companies Income Tax Ordinance was repealed a year after its passage by the Income Tax Ordinance.²⁰ The practice of one law regulating both personal and business taxation was re-introduced and carried on for another twenty-one years when the second separate enactment on companies' income tax was again enacted.

¹⁶ Nigerian Tax Reform in 2003 and Beyond- The Main Report of the Study Group on the Nigerian Tax System 2003, 266.

¹⁷ Second Schedule, Parts I & II of the 1999 Constitution

¹⁸ DC John, "Corporate Taxation Laws in Nigeria: A Review", International Journal of Advanced Legal Studies and

Governance, Vol. 2, No. 1, April 2011, 238-240

¹⁹ No. 14 of 1939

²⁰ No. 3 of 1940

The second time a law was passed aimed at the exclusive taxation of companies income was in 1961. This was the Companies Income Tax Act, which was a landmark legislation. First, because from the date it came into force, the provisions of the Income Tax Ordinance Cap 85 and the Income Tax Administration Ordinance²¹, together with all rules made there under ceased to have effect with respect to companies income tax²². Second the Act established the Federal Board of Inland Revenue as a statutory body and vested it with the power to administer companies' income tax,²³ as well as all federal taxes.

The Companies Income Tax Act, 1961 was in force until 1979 when it was repealed by the Companies Income Tax Act.²⁴ The Companies Income Tax Act 1979 has been amended severally by various Finance (Miscellaneous Taxation Provisions) Decree.²⁵ In 2007, the Companies Income Tax, 1979 was further amended by the Companies Income Tax (Amendment) Act, 2007. The Companies Income Tax Act divides companies into two categories, Nigerian and Non-Nigerian companies. A Nigerian company²⁶ is one the control and management of whose activities are exercised in Nigeria under section 13 of the Companies Income Tax Act (as amended). All other companies fall into the remaining category. This distinction is important in relation to profits, which are deemed to be derived from Nigeria and is therefore subject to Nigerian tax under section 13. Thus, the profits of a Nigerian company are deemed to accrue in Nigeria wherever they arise and whether or not they have been brought into or received in Nigeria. On the other hand, the profits of a company, other than a Nigerian company are only deemed to be derived from Nigeria to the extent that they are attributable to some part of the operation of the company carried on within Nigeria under section 1(2).²⁷

Liability to Companies Income Tax in Nigeria

Section 9 of the Companies Income Tax Act,²⁸ creates liability for incorporated companies to pay taxes in Nigeria. The Companies Income Tax Act, which was enacted to guide and regulate the taxation of incorporated bodies in Nigeria, in its section 9 provides as follows:

Subject to the provisions of this Act, the tax shall for each year of assessment, to be payable at the rate specified in subsection (1) of section 40 upon the profits of any company accrued in, derived from, brought into, or received in, Nigeria in respect of:

- (a) any trade or business for whatsoever period of time such trade or business may have been carried on;
- (b) rent or any premium arising from a right granted to any other person for the use or occupation of any property, and where any payment on account of such a rent as is mentioned in this paragraph is made before the expiration of the period to which it relates and is included for the purposes of this paragraph in the profits of a company, then, so much of the payment as relates to any period beginning with

²¹ No. 39 of 1958

²² Section 77, Companies Income Tax Act, No. 22 of 1961.

²³ Section 3 (1) and 4 (1)

²⁴ No. 28 of 1979

²⁵ Some of the Decrees include Nos. 21 of 1991 30, 31 and 32 of 1996, 18 and 19 of 1998 and 30 of 1999.

²⁶ Incorporated under the Companies and Allied Matters Act, Cap C. 20 Laws of the Federation of Nigeria, 2004.

²⁷ *Karam v. Commissioner of Income Tax*, 12 WACA, 331, MT Abdulrazaq, *Revenue Law and Practice in Nigeria* Third Edition (Lagos: Malthouse Press Ltd 2015) 184-185.

²⁸ Cap. C.21 Laws of the Federation of Nigeria 2004.

- the date on which the payment is made shall be treated for these purposes as accruing to the company proportionately from day to day over the last mentioned period or over the five years beginning with that date, whichever is the shorter;
- (c) dividends, interests, royalties, discounts, charges or annuities.
 - (d) Any source of annual profits or gains not falling within the preceding categories;
 - (e) any amount deemed to be income or profit under a provision of this Act or, with respect to any benefit arising from a pension or provident fund of the Personal Income Tax Act;
 - (f) fees, dues and allowances (whatever paid) for services rendered;
 - (g) any amount of profits or gains arising from acquisition and disposal of short-term money instruments like federal government securities, treasury bills, treasury or savings certificates, debenture certificate or treasury bonds, treasury or savings certificates, debenture certificates or treasury bonds.

Section 9 of Companies Income Tax Act, cited and reproduced above are the charging provisions that exist in the Companies Income Tax Act. Charging provisions are provision which create liability to pay taxes upon the tax payers Section 9 of the Companies Income Tax Act imposes a liability upon companies incorporated in Nigeria and outside to pay taxes upon profits "accruing in" derived from, brought into, or received in, Nigeria.

Administration of Companies Income Tax

The Federal Inland Revenue Service (FIRS) is the major body/institution for the administration and enforcement of companies income tax in Nigeria and it was established by the Federal Inland Revenue Service (Establishment) Act, 2007²⁹. Before the Act was enacted, the Companies Income Tax Act provided for the administration of its provisions. However, upon coming into force, the Federal Inland Revenue Service (Establishment) Act repealed sections 1-7 (Part I) of CITA³⁰ and further dissolved the Federal Board of Inland Revenue established pursuant to the repealed enactments³¹. The Federal Inland Revenue Service was therefore empowered by virtue of Section 25 (1) Federal Inland Revenue Service (Establishment) Act to administer all the enactments listed in the First Schedule to the Act and any other enactment or law on taxation in respect of which the National Assembly may confer on the FIRS. The laws which are to be administered as contained in the First Schedule to the Act include the Companies Income Tax Act.

The taxable period is the fiscal year, which runs from 1 January to 31 December. Companies are required to register for tax and file their audited accounts and tax computations with the FIRS within six months of their financial year-end on a self-assessment basis or 18 months after incorporation (whichever comes first). A company may file an application for extension of filing tax returns for up to two months at the discretion of the FIRS. Upon registration, a company is issued a Taxpayers Identification Number (TIN), which serves as the company's file number for all federal taxes and future correspondence with the FIRS.

The company must file the following documents with the tax authority on an annual basis:

- a. Tax computation for the relevant year of assessment.
- b. The audited financial statements for the respective period; this should be in conformity with the International Financial Reporting Standards (IFRS).

²⁹ Section 1 (1) FIRS Act; JU Anyebe, The Federal Inland Revenue Service (FIRS) and Companies Income Tax Enforcement in Nigeria, available at <https://www.linkedin.com/pulse/federal-inland-revenue-service-firs-companies-income-tax-uche-anyebe> (accessed on 29 September 2021).

³⁰ Section 62 (1) FIRS Act.

³¹ Section 62 (2) FIRS Act.

- c. A duly completed and signed self-assessment form for Companies Income Tax (CIT).
- d. Evidence of remittance of the income tax liability (partly or in full).

Estimated tax returns must be filed within two months of the fiscal year. Actual tax returns should be filed within five months after the end of the accounting period, that is, not later than 31 May.

Nigerian companies file their tax returns based on a self-assessment system where the taxpayer prepares its annual returns and determines its tax liability. However, the FIRS may apply a best of judgment (BOJ) assessment where it is of the opinion that the tax returns filed are deliberately misstated or where no returns are filed within the stipulated period³².

Enforcement of Companies Income Tax

There is no gainsaying the fact that tax enforcement has become an essential aspect of tax administration in view of the ingenious ways corporate taxpayers use to undermine the revenue generation process by not remitting what is due to government, under declaration of income as well as withholding revenue due to government for their own use etc³³. Under this heading we shall consider the various enforcement mechanisms available to the revenue authority to ensure compliance with payment of companies income tax.

Enforcement by Civil and Criminal Litigation

There are provisions in the Nigerian tax laws that empowered the relevant tax authority to file a civil action or a criminal action against a taxpayer who commits any of the itemized offences contained in the relevant tax laws. On conviction the defaulting taxpayers or tax officials may be subjected to various fines and or terms of imprisonment³⁴. The Federal Inland Revenue Service (Establishment) Act³⁵ empower the Service to sue and recover from any defaulting taxpayer any amount that is due for payment which was not paid, or prosecute any taxpayer or tax official who violates any of the provisions of any relevant tax law. Section 34(1) of the Federal Inland Revenue Service (Establishment) Act provides:

Without prejudice to any provision of this Act or any other law listed in the first schedule to this Act, any amount due by way of tax shall constitute a debt due to the Service and may be recovered by a civil action brought by the Service.

This section gave the Service a power to file a civil action against any defaulting taxpayer to enforce the payment of the overdue tax. Section 47 of the Federal Inland Revenue Service (Establishment) Act specifically, provides that;

The Service shall have powers to employ its own legal officers who shall have powers to prosecute any of the offences under this Act subjects to the powers of the Attorney General of the Federation.

The Supreme Court, in the case of *Unipetrol Nigeria Plc. vs. Edo State Board of Internal Revenue*³⁶, held that the phrase “sue and be sued” is wide enough to include civil and criminal actions”. This means that the service can use its staff in the legal department to prosecute tax offences, but that power is subject to the powers of the Attorney General. This

³² T Oyedele, E Agbeyi and K Erikume, Nigeria: Corporate - Tax administration, available at <https://taxsummaries.pwc.com/nigeria/corporate/tax-administration> (accessed on 29 September 2021)

³³ MI Gwangdi and A Garba, “Administration of Companies Income Tax in Nigeria: Issues of Compliance and Enforcement”, *European Journal of Business and Management*, Vol.7, No.8, 2015, 18

³⁴ IA Ayua, *Nigerian Tax Law* (Ibadan: Spectrum Law Publishing 1996) 297.

³⁵ Sections 1 (1) (b), 34 & 47.

³⁶ (2006) 8 NWLR (Pt. 983) 625 or (2006) 4 CLRN 28.

has created a great controversy and robust literatures in academic circle³⁷, and a number of case reviews³⁸. However, in line with the decision of the Supreme Court in the *Unipetrol's case*, the relevant tax authorities prosecuted many cases, both civil and criminal to enforce the payment of delinquent taxes. However, despite the statutory and judicial authorities conferred on the service to prosecute criminal offences, the service rather prefer to file civil suits to recover delinquent taxes, even where the cases exhibits some criminal elements³⁹. In the case of *FBIR vs. West African Pictures Co. Ltd.*⁴⁰ where the Respondents, by their acts clearly committed offences against tax laws, it was held that:

It could be seen from the evidence that non-chalant attitude of the defendants in matters of taxation and the levity which they had all along treated notices served on them under the law until they found that proceedings were imminent and that their defence was nothing short of findings an escape valve for their acts of irresponsibility and wanton disregard of constituted authority. But since the amount was being claimed as a debt due to the Federal Government the Defendants were liable for the amounts and penalties stated on the demand.

However, despite the ample provisions to prosecute tax offences and to file civil suits to recover delinquent taxes, the courts and tribunals are very slow in tax proceedings, which causes delay in justice delivery, which makes both the relevant tax authorities and taxpayers to show strong reluctance to seek legal redress. This makes it necessary for the establishment of tax courts that will be clothed with exclusive jurisdiction to adjudicate on tax matters as obtainable in other foreign jurisdictions. This will ensure speedy disposition of tax matters and the delinquent companies brought to book. It will also enhance confidence in the judicial process.

Enforcement by Tax Clearance Certificate

Tax clearance certificate is a written confirmation from revenue authorities that person's tax affairs are in order at the date of issue of certificate. The best description on what a Tax Clearance Certificate is can be found in the statutory provision of section 101(1) of the Companies Income Tax Act which provides as follows:

Whenever the Board is of the opinion that tax assessed on profits or income of a person has been fully paid or that no tax is due on such profits or income, it shall issue a tax clearance certificate to the person within two weeks of the demand for such certificate by that person, or, if not, give reasons for the denial.

A contentious question with regard to tax assessments and tax clearance certificates is whether they are by themselves final and conclusive tax documents? In the case of *Alhaji Audu Bado vs. Commissioner of Revenue*⁴¹, the Supreme Court held that a Tax Assessment Certificate is sufficient and conclusive evidence of the tax amount due for payment provided that no contradictory evidence is produced by the tax payer to displace the figures in the Tax

³⁷ F Nwadialo, *The Criminal Procedure of Southern States of Nigeria*, 2nd Edition (Lagos: MIJ Publishers 1987)

368-370.

³⁸ K Ajayi, Revisiting Police Power to Prosecute: A critique of *FRN v. George Osahan & 7 Ors*, *The Appellate Review*, Vol. 1 No.1 2009 67; S Abiola, "The Power to Prosecute Tax Offences: A Critique of *Unipetrol Nigeria*

Plc v. Edo State Board of Internal Revenue", *NIALS Journal of Criminal Law and Justice*, Vol. 1 201, 2012.

³⁹ *FBIR v. Blue Penican Casino Co. Ltd* (Unrep) Suit No. FRC/PH/2/76.

⁴⁰ (Unrep) Suit No. FRC/L/8/73.

⁴¹ (1972) 4 SC 46.

Assessment Certificate. The Assessment Certificate was therefore upheld to be valid for payment by the tax payer. Therefore, the amount of tax paid and indicated as such in a Tax Clearance Certificate will be final and conclusive where it has been adjudicated upon and or finally determined by a judicial authority.

With the use of Tax Clearance Certificate more problems existed than estimated when the device was introduced. Obviously, here is a good example of how a good device of improving tax collection has been abused. Some of these abuses are: (a) unnecessary delays in the process of issuing the certificates leading to bribe taking; (b) Large scale forging of the certificates by organized syndicates and (c) the production of the certificate itself does not ensure that adequate tax is paid⁴². Some of these problems are largely because some of the companies do not discharge their tax responsibilities as and when due. They are desperate to do so only when they have a demand from the government and it is made a condition. It is our considered view that companies in such situation should either be denied the certificate or made to pay heavy penalties, as that will serve as a lesson to others and enhance tax compliance as and when due.

Enforcement by Distrain

Distrain is defined in the Black's Law Dictionary as:

the taking, either with legal process, or extra judicially subject to the performance of some necessary condition precedent, by a private individual or by an officer of the court, of a person chattel, out of the possession of a wrongdoers, or defaulter and into the custody of the law to be impounded as a pledge in order to bring pressure to bear upon the owner of the chattel to redress an injury, to perform a duty, or to satisfy a lawful demand subject, however to the right of the owner to have the chattel returned to him upon the injury being redressed or the duty performed or the demand satisfied or upon security being given so to do⁴³.

Where an assessment has become final and conclusive and a demand note has been properly served upon the company or upon the person whose name the company is chargeable, payment must be made within the time limited by the demand note. Failure to do so, the board may distrain the taxpayer by his goods or chattels, bonds or other securities to enforce the payment, subject to prior authorization by the court⁴⁴. Similarly the board may distrain upon any land, premises or places in respect of which the taxpayer is the owner and recover the amount of tax due by sale of anything so distrained⁴⁵. Distrained goods may be sold if the tax and incidental costs of levying the distress are not paid within fourteen days of seizure. However, immovable property cannot be sold except by an order of a High court⁴⁶. Where sales are made of distrained goods, the proceeds are expended in a prescribed order of priority. First to be settled are the cost and charges of and incidental to the keeping and sale of the goods and second is the amount of tax due. Any amount left after these deductions is to

⁴² D Asada, The Relevance of Tax Clearance Certificate (TCC) in Nigerian Democracy, available at www.nairametrics.com (accessed on 02 September 2021).

⁴³ BA Garner, *Black's Law Dictionary* (8th ed; United States of America, Thomson West, 2004) 542-543.

⁴⁴ Section 86(1) Companies Income Tax Act, Section 33 Federal Inland Revenue Service(Establishment) Act, 2007,

Lagos State Internal Revenue Board v First Bank of Nigeria Plc (1999) 1 NRLR 1; *First Bank of Nigeria v Attorney General, Anambra State & Anor* (2000) NRLR 129; Nduka Chiejina; Tax Evasion: Law Court to the Rescue, available at www.nationonlineng.net (accessed on 30 September 2021).

⁴⁵ Section 86(1)(b) Companies Income Tax Act.

⁴⁶ Section 86(4) and (6) Companies Income Tax Act.

be paid over to the taxpayer, provided he or his representative makes a demand for it within one year of the date of sale⁴⁷.

Issues and Challenges in the Administration and Enforcement of Companies Income Tax

Multiple Taxation

Multiple taxes occur when two or more taxes are charged on the same subject in respect of the same income, transaction and activity by the same tax authority⁴⁸. The phrase multiple taxation is often used in Nigeria to describe a situation in which a corporate body or business concern is subjected to two or more different types of taxes. The more the variety of taxes charged, the more the complaints of multiplicity. It does not seem to matter that the taxes in question have different bases and are charged by different authorities under different laws and for different purposes. If for instance, one tax is on income, the other on sales, yet another on property etc., the scenario may still be referred to as one of multiple taxation in as much as the entity paying is still the same⁴⁹. Multiplicity of taxes is characterized by multiple layers of tax collection arising from different tax jurisdictions. It is a situation where some of the taxes captured by different jurisdictions are actually the same but under different names. In Nigeria, multiplicity of taxes is linked to federalism which accorded the different tiers of government in the country with the powers to impose different taxes, duties or levies⁵⁰.

Multiplicity of taxes makes investment climate tempestuous as investors are not sure the extent to which their incomes would be taxed. There are cases of large corporate entities that have moved their operations out of some states or from Nigeria to neighboring countries on account of multiplicity of taxes and rising cost of doing business in Nigeria⁵¹. Multiple taxation is counter productive and it destroys investor's confidence. The cost of doing business in Nigeria has become prohibitive and many businesses have collapsed due to the effect of multiple taxation.⁵²

The courts have stood firmly against double taxation. In *Fast Forward Sports Marketing Ltd v. The Port-Harcourt City Local Government Area Council*⁵³ The plaintiff was served with demand notices by agents and officers of the defendants in respect of Agricultural

⁴⁷ Section 86(5) Companies Income Tax Act; Ade Ipaye, *Nigerian Tax Law & Administration, A Critical Review*

(London, ASCO Prime Publishers 2014) 183-184.

⁴⁸ B Shodipo, Re: Multiple Taxes, available at www.punchng.com, (accessed on 12 December 2020).

⁴⁹ A Ipaye, Multiple Taxation- Lagos State Government Assessment and Response, available at www.iiste.org, (accessed on 30 September 2021).

⁵⁰ FE Nlerum, "Taxation in Nigeria: Matters Arising", *AJBPC*, Vol. 1, No. 4, April-June, 2010, 3

⁵¹ Abiola Sanni, "Multiplicity of Taxes in Nigeria: Issues, Problems and Solutions", *International Journal of Business and Social Science* Vol. 3 No. 17; September 201) 230 also available at www.ijbssnet.com, (accessed on

30 September 2021); 'Keke Marwa Operators Lament Over Excess Taxes', *Vanguard* (Lagos, 29 July, 2010) 17;

'Multiple Taxation As Monster Holding Down Economy', *The Guardian* (Lagos, 7 February 2017) 33.

⁵² 'Multiple Taxation Remains Discontenting, says ALTON', *Vanguard* (Lagos, 8 September 2010) 26, O Oseni, 'Multiple Taxation as a Bane of Business Development in Nigeria', available at www.mcsr.org (accessed on 30

September 2021) 'Multiple Taxes: Telecoms Threaten to shut Down Networks' (available at www.omojuwa.com,

accessed on 30 September 2021) J Orintunsin, 'Multiple Taxation Killing Firms', available at

www.thenationonline.net, (accessed on 30 September 2021)

⁵³ (2011) 4 TLRN 45.

Development Levy for 2008 as well as the Rivers State Board of Internal Revenue for 2008 Economic Development Levy respectively. The plaintiff filed the suit to challenge the action of the defendant after it had been threatened with seizure and/or distraint repeatedly by the latter. The court in its judgment held *inter alia* that the imposition of the Agricultural Development Levy and Economic Development Levies by the Port Harcourt Local Government Area Council and Rivers State Government on the plaintiff amounts to double taxation.

The issue of multiple taxation remains a very serious challenge to companies' income tax in Nigeria. Almost all the revenue authorities especially at the state and local government level sees companies as money making avenues and this has led to the imposition of all manner of taxes on companies and threats to shut down their business or making the environment unfriendly for them if they refuse to pay. Despite judicial pronouncements against this, it has not solved the problem as it still persists till date.

Tax Evasion

Tax Evasion is the deliberate refusal or 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 pay tax on time⁵⁴. Tax evasion usually entails taxpayers deliberately misrepresenting or concealing the true state of their affairs to the tax authorities to reduce their tax liability and includes, in particular dishonest tax reporting (such as declaring less income, profits or gains they actually earned, or overstating deductions)⁵⁵. Quite a large number of companies declare losses year in, year out, yet it is surprising that such companies do not voluntarily wind up, neither are they compulsorily liquidated. Rather they still continue in business unabated with directors remuneration increasing every year as well as increases in luxurious or conspicuous and prestigious investments such as landed properties and expensive cars⁵⁶. There can be no clearer evidence of tax evasion than these. Tax evasion is therefore not only morally wrong but also it involves a breach of the tax laws.

Electronic Commerce

Since the invention of computers in the first half of the 20th century⁵⁷. This 20th century wonder has been transformed rapidly from a mere calculating machine to one that has touched virtually all facets of human lives. E-trade and commerce which now characterizes our modern globalized world has led to serious tax evasion. This is because most transactions are carried out online using the internet without trace by tax authorities resulting in huge revenue loss to government⁵⁸ and this constitutes a serious challenge to taxation of companies.

Inadequate Penalties and Sanctions

⁵⁴ IA Ayua, (n.34) 250.

⁵⁵ "Tax Avoidance and Tax Evasion", available at http://en.wikipedia.org/wiki/tax_avoidance_and_tax_evasion (accessed on 12 December 2016).

⁵⁶ IA Ayua, (n.34) 264.

⁵⁷ The first Automatic Computer (i.e. Aiken's Automatic Sequence Controlled Calculator) was made by IBM in 1937.

⁵⁸ Uviomo Akpo, 'The People As Government: Imperatives of Tax Payment' (Being a Paper Presented at the 1st Akwa Ibom State Revenue Summit, April 6 & 7, 2009) 14, See also O.E. Ebubechukwu, 'Challenges to Effective

Copyright Administration in Nigeria' (being a Post Graduate Seminar presented the Faculty of Law, Nnamdi Azikiwe University, Awka, 2011) 21, IU Ibe, An Appraisal of the Legal and Administrative Framework for Taxation in Nigeria, AJCAL 1 (2017), 18-19.

Our tax laws are replete with sanctions and penalties⁵⁹ to be imposed by tax authorities on tax defaulters so as to serve as deterrence to other taxpayers as well as to ensure voluntary compliance. The sanctions and penalties in the tax laws need to be reviewed or amended to reflect the modern realities as they are mostly archaic. It would appear however, that these sanctions are under used by tax authorities. Tax evasion is not only shrinking from ones civic duty but a wrong against the entire society that ought to be visited with stiff sanctions rather than a mere restitution of the lost tax revenue to government. Where the penalties and sanctions are not punitive then it encourages non-payment of taxes, but the fear of the punitive sanctions will elicit voluntary compliance and not payment when tax clearance is required by the company to pursue government contracts or any other benefit(s) from the government.

Corruption

Some tax officials collude with some companies to defraud the government of her taxes. A large chunk of revenue that is supposed to come into government coffers ended up in private pockets compounding the problems of government inability to provide the basic infrastructure needed for the orderly development of the society⁶⁰.

Conclusion

This paper has analyzed the legal framework for the administration of Companies Income Tax in Nigeria. It appraised its readers with certain relevant provisions of the Companies Income Tax Act which every company should be conversant with to ensure compliance with payment of Companies Income Tax in Nigeria. The issue of collection of multiple taxation, tax evasion amongst others has affected negatively the administration of this tax. This paper therefore advocates that the various tiers of government should adhere strictly to the taxes they are legally empowered to collect. Where there are serious incidences of multiple taxation it discourages investors who want to maximize profits and will make companies to move their business out of the state with the attendant consequence on the revenue output of the state. The FIRS should also step up their administrative strategy to combat the incidence of evasion by companies and also to block other means of tax revenue leakages. The legislators should as a matter of urgency amend the Companies Income Tax Act, to impose a stiff penalty for failure to pay taxes by corporate bodies as this will discourage non compliance with payment of taxes by some companies.

⁵⁹ Sections 92-99 of the Companies Income Tax Act empowers the FIRS to charge penalty and interests on a defaulting taxpayer owing companies income tax. Section 94 to 101 also deals with offences and penalties.

⁶⁰ AF Akintola, TO Olurin and BO Ebo, "Tax Administration in Nigeria: Challenges and Prospects", *IJSEAS*, Vol.7, Issue 8, 2021, 248.