

## AN APPRAISAL OF TAX ENFORCEMENT LAWS UNDER THE NIGERIAN JURISPRUDENCE<sup>1</sup>

**Ikenna U. Ibe & Ossai, M.O.**

### **Abstract**

*Tax is one of the major sources of revenue to government. In countries with advanced tax system, the essence of tax is hardly debatable. The greater percentage of taxable adults pay their taxes voluntarily. In Nigeria the issue of payment of taxes is one of things the citizens hate and the enforcement machinery have not been effective. This paper examines the enforcement machineries put in place by the various tiers of government aimed at getting the citizens to fulfill part of their civic responsibility which is payment of tax. The paper found out that despite the efforts being made by the various agencies set up at the various levels of government that there are still some challenges militating against enforcement of taxes. The government on their own part has a huge share of the blame as they have not judiciously put the tax payers' money to use. Finally the paper proffered workable solutions aimed at taking care of the identified problems and making the tax regime more effective for maximum result to be achieved.*

### **Introduction**

Enforcement in administration of taxes plays very crucial role in enhancing tax compliance. Enforcement task involves the use of myriad of tools in ensuring tax compliance. The essence of enforcement is to ensure strict adherence to various tax compliance ranging from timely filing, accurate filing, to payment of tax liability as at when due. Primarily, enforcement is not for tax defaulters alone who fail in their tax responsibilities but to consistent filers to encourage continuous compliance. Tax enforcement mechanisms may take various forms depending on tax authorities. In these modern days, more than often, enforcement tools may include levies, search and seizures of defaulting tax payers, fines, seeking and obtaining information from third parties like banks and court actions. Tax enforcement ordinarily refers to an act of ensuring that tax payer comply with tax law or rule. Enforcement with tax administration takes two forms namely; enforcement of tax laws and enforcement of judgment. There is enforcement of tax which is the application of all those relevant laws that will assist the tax authorities in carrying out their duties of assessment and collection of taxes. Enforcement of judgment on the other hand represents already decided court case against defaulted tax payment. In Nigeria tax system, tax administration may not be efficient without tax enforcement because of the sharp practices among larger percentage of taxpayers<sup>2</sup>. This paper therefore seeks to appraise the various tax enforcement laws, the challenges faced by the relevant tax bodies in the course of tax enforcement and finally solutions will be proffered to ensure better enforcement mechanisms which will ultimately lead to raising enough revenue for the use of government in the provision of the basic amenities needed to better the lives of the citizens.

### **Conceptual Clarifications**

---

<sup>1</sup> **Ikenna U. Ibe, LL.B(Hons), LL.M, BL, AICMC, MNIM**, Senior Lecturer, Department of International Law and Jurisprudence, Faculty of Law, Chukwuemeka Odumegwu Ojukwu University, Igbariam Campus, Anambra State, Nigeria. Email: [iu.ibe@coou.edu.ng](mailto:iu.ibe@coou.edu.ng)

**Ossai, M.O., LL.B(Hons), BL, LL.M(In View)**, Lecturer, Department of Jurisprudence and International Law, Faculty of Law, Delta State University, Abraka, Delta State, Nigeria. Email: [ossyye@yahoo.com](mailto:ossyye@yahoo.com)

<sup>2</sup> Rotimi Oladele, F.O. Aribaba et. al, *Tax Enforcement Tools and Tax Compliance in Ondo State Nigeria*, (Academic Journal of Interdisciplinary Studies, Vol.8, No.2, July 2019) P.28.

For us to better understand this paper, we shall look at the various key words which are the bedrock of this topic. Such terms as tax, enforcement and mechanisms need to be defined.

### **Tax**

A quick perusal of our compendium of tax laws in Nigeria reveals that none of them proffered a definition for tax. However, recourse can be made to other documents and sources for a working definition of tax.

The Black's Law Dictionary defined the term as a monetary charge imposed by the government on persons, entitles, transactions or property to yield public revenue<sup>3</sup>.

Tax in the words of the United States Supreme Court in the case of *Nichols v. Ames*<sup>4</sup>, is the one great power upon which the whole national fabric is based; it is as necessary to the existence and prosperity of a nation as is the air he breathes to the natural man. It is not only the power to destroy; it is also the power to keep alive.

Basically taxation is the process of collecting taxes within a particular location and in this regard, tax can be defined as a pecuniary burden laid upon individuals or property to support government expenditure. It is therefore not a voluntary payment or donation, but an enforced and compulsory contribution exacted with legislative authority<sup>5</sup>.

### **Enforcement**

The Black's Law Dictionary defined enforcement as the act or process of compelling compliance with a law, mandate, command decree or agreement<sup>6</sup>. Enforcement also refers to implementation of the provisions of tax laws by various tax authorities and appropriate law enforcement agencies to ensure that tax statutes are complied with by every eligible taxpayer in the jurisdiction. This is to avoid leakages in the tax net. Enforcement is necessary because not every taxpayer will comply voluntarily. Some or most of the taxpayers may not fulfil their fiscal obligations to the state if they are confident there will be no negative consequences attractable by their behaviours<sup>7</sup>. Therefore enforcement of tax laws by tax authorities and other law enforcement agencies is desirable in order to achieve the primary purpose of taxation which is revenue generation.

### **Mechanism**

Mechanism has been defined as a method or process for getting something done within a system or organization<sup>8</sup>. It has also been defined as a method or process for getting something done which

---

<sup>3</sup> B.A. Garner, *Black's Law Dictionary* (8<sup>th</sup> ed; United States of America, Thomson West, 2004) P. 1496.

<sup>4</sup> 173 U.S 509 (1899) 515

<sup>5</sup> National Tax Policy; Federal Ministry of Finance, April 2012, A.L. Suleman, Taxation Regime In Nigeria: Critical Analysis of Basic Principles, In J.A.A. Agbonika Ed., *Topical Issues on Nigerian Tax Laws and Related Areas* (Ibadan, Ababa Press Ltd, 2015) P.364-365.

<sup>6</sup> B.A. Garner, *Black's Law Dictionary* (8<sup>th</sup> ed., United States of America, Thomson West, 2004) P. 569.

<sup>7</sup> J.J. Odinkonigbo, *Tax Statutes as Instrument for Compliance and Enforcement: An Examination of the Complications Orchestrated by the Scramble for more Taxing Powers by the Different Levels of Government in Nigeria*, in S.A.M. Ekwenze, Ed., *Contemporary Issues in Taxation Law in Nigeria* (Enugu, Snapp Press Nigeria Limited, 2014) P.106

<sup>8</sup> Definition of Mechanism, available at [www.macmillandictionary.com](http://www.macmillandictionary.com) (accessed on 02/09/2019)

is planned or part of a system<sup>9</sup>. It follows that in relation to taxation that it is the various ways or process through which the various tax laws are enforced.

### **Bodies Empowered to Enforce Taxes in Nigeria**

The Nigerian tax system is basically statutory. The 1999 Constitution (as amended) guarantees the existence and powers of the federating units. The functions and powers of the Federal Government are listed in the Exclusive Legislative List<sup>10</sup>, while those of the states are in the concurrent list<sup>11</sup>. The constitution further recognizes the fiscal jurisdiction as well as spells out the area of fiscal jurisdiction of those three levels of government, i.e. Federal, States and Local Government<sup>12</sup>.

The Federal Government is empowered under the relevant tax laws in respect to companies taxes, import and export duties, excise duties, mining rents and royalty accounts, petroleum profits taxes, education tax as well as personal income tax for members of the armed forces, police and residents of the Federal Capital Territory, Abuja. States have taxing powers over capital gains, tax value added tax, stamp duties, pools and betting, personal income tax and other property taxes and levies within their jurisdiction. Local governments are empowered to levy taxes and rates, as itemized under the Constitution and the Taxes and Levies (Approved List for Collection) Act<sup>13</sup>.

The Federal Inland Revenue Service (Establishment) Act, the Personal Income Tax (Amendment) Act as well as the Companies Income Tax (amendment) Act and other tax laws and regulations established different bodies to the three levels of government that were empowered with the assessment, collection enforcement and due administration of taxes in Nigeria<sup>14</sup>.

Section 1 of the Federal Inland Revenue Service (Establishment) Act, established a body to be known as the Federal Inland Revenue Service (FIRS), whose operational arm is to be known as Federal Board of Inland Revenue (FBIR), whose objects are contained under section 2 of the Act. Section 2 of the Act provides, “The object of the service shall be to control and administer the different taxes and laws specified in the first schedule or other laws made or to be made from time to time by the National Assembly, Government of the Federation and to account for all taxes collected.”

The Federal Board of Inland Revenue (FBIR) is also established, with the principal mandate of overseeing and supervising the FIRS. Section 7 of the FIRS Act provides thus: “The Board shall- (a) provide the general policy guidelines relating to the functions of the Service; (b) manage and superintend the policies of the Service on matters relating to the administration of the revenue assessment, collection and accounting system under this Act or any enactment or law; (c) review and approve the strategic plans of the Service; (d) employ and determine the terms and conditions of service including disciplinary measures of the employees of the Service; (e) Stipulate remuneration, allowances, benefits and pensions of staff and employees in consultation with the National Salaries, Income and Wages Commission; and (j) Do such other things which in its

<sup>9</sup> Mechanism-Legal English, available at [www.translegal.com](http://www.translegal.com) (accessed on 02/09/2019)

<sup>10</sup> Item 59 of Part I, Second Schedule to the 1999 Constitution

<sup>11</sup> Items 1, 2, 7 and 9 of Part II, Second Schedule

<sup>12</sup> M.T. Abdulrazaq, *The Nigerian Revenue Law* (Lagos, Malthouse Press Ltd., 2005) P.36

<sup>13</sup> Cap V1, Laws of the Federation of Nigeria, 2004.

<sup>14</sup> A. Salami, *Taxation, Revenue Allocation and Fiscal Federalism in Nigeria: Issues, Challenges and Policy Options*, (Economic Annals, Vol. LVI, No. 189 of 2011), M.A. Musa, *An Appraisal of Income Tax Enforcement Procedures Under the Nigerian Tax System*, An LL.M Thesis Submitted to the School of Postgraduate Studies, Ahmadu Bello University, Zaria, available at [www.kubanni.abu.edu.ng](http://www.kubanni.abu.edu.ng), (accessed on 01/09/2019).

opinion are necessary to ensure the efficient performance of the functions of the Service under this Act.”

Section 8 of the Act, provides the functions of the service, which include assessment, collection, account and enforcement of payment of taxes as may be due to the government or any of its agencies carrying out the examination with investigation, with a view to enforcing compliance with the provisions of the Act. In collaboration with the relevant law enforcement agencies, adopt measure to identify, trace, freeze, confiscate or seize proceeds derived from tax fraud or evasion, etc.

State taxes are to be collected and administered by a body established under Section 87 of Personal Income Tax Act<sup>15</sup>, to be known as State Internal Revenue Service (SIRS) whose operational arm is to be known as State Board of Internal Revenue (SBIR).

Section 90 of the same Personal Income Tax Act established Local Government Revenue Committee (LGRC), whose responsibility is the assessment, collection, account and enforcement of all taxes, rates and levies within the jurisdiction of that level.

Section 86 of the Personal Income Tax Act provided the establishment of Joint Tax Board to complement the activities of the FIRS and SBIR in effective administration of taxes in Nigeria.

### **Tax Assessment**

Tax assessment is a form of arithmetical computation of the amount of tax payable by an individual, group of individuals, unincorporated or corporate organizations in any given year or period of assessment as determined either by the taxpayer himself or by any government recognized tax authority<sup>16</sup>. The basis of assessment is as contained in Section 40 of the Personal Income Tax Act, which affirms that a person shall be assessed or chargeable to tax in his own name or where applicable in the name of a receiver, trustee, guardian, curator or committee having the direction, control or management of property or concern on his behalf.

Assessments are normally raised on the Income or Profit of companies or corporation arising from trade or business carried on in Nigeria. Assessment is to be imposed on the “profit” of an enterprise in relation to an accounting period. There are two principal classes of assessments namely;

(a) **Self assessment:** This assessments scheme aims at shifting the duty of raising of assessment to the taxpayers themselves. This requires the taxpayer to display some level of trust. This is because the taxpayer is expected to complete a standard self assessment form. To encourage taxpayers to file their returns by self assessment two advantages accrue to the taxpayer. The first is that tax payment can be effected by installment in such a way as to follow the taxpayer to pay by six equal installments over six months. The second is that where all the installments are paid on due dates, 1% bonus is deductible from the total tax. This may encourage voluntary compliance by the taxpayers as it acts as incentive to them.<sup>17</sup>

(b) **Government Assessment:** This is an assessment raised on behalf of the Government by the tax authorities, examples of which are:

---

<sup>15</sup> Personal Income Tax (Amendment) Act, No. 21 of 2011

<sup>16</sup> O.S. Obatola, *The Rudiments of Nigerian Taxation* (Lagos, ASCO Publishers, 2013) P.50

<sup>17</sup> J.A.A. Agbonika, *Problems of Personal Income Tax in Nigeria*, (Ibadan, Ababa Press Ltd, 2012) P.173

- (i) assessment raised in accordance with audited accounts and computations filed by the taxpayer.<sup>18</sup> The relevant tax authority may accept the returns made or refuse to accept it. Where the relevant tax authority accepts the return, it shall proceed to compute the assessable profits of the taxpayer.
- (ii) Best of judgment assessment based on estimated profit or profit perceived to be fair and reasonable. This is raised where the audited accounts and other relevant returns are not submitted within the stipulated time in line with the tax law. It is usually based on “fair and reasonable” estimate of income/profit of the preceding year’s results reported by the company.

Section 65(3) of the Companies Income Tax Act<sup>19</sup> provides that:

Where a company has not delivered a return and the Board is of the opinion that such company is liable to pay tax, the Board may, according to the best of its judgment, determine the amount of total profits of such company and make an assessment accordingly, but such assessment shall not affect any liability otherwise incurred by such company by reason of its failure or neglect to deliver a return.

This section empowers the relevant tax authority to make assessment upon taxpayers that fails to submit their returns to it. The problem of this section is how to assess or evaluate the use of this best of judgment as it is prone to being used arbitrarily.

The Court of Appeal in *Nigeria Breweries Plc v. Lagos State Internal Revenue Board*<sup>20</sup> held that:

...where the tax officer has to make an assessment to the best of his judgment against a person who is in default as regards supplying information, he must not be dishonest, vindictive or capricious. He is expected to make what he honestly believes to be a fair estimate of the proper figure of assessment.

This purports that where the taxpayer intends to avoid or evade payment of taxes by not submitting the required returns to the Board, he will be assessed based on the best of judgment principle. The assessment officer is expected to be fair and very honest in his assessment and not to make arbitrary assessments.<sup>21</sup>

(iii) Jeopardy/Protective Assessment<sup>22</sup>: These assessments are raised on the ground of expediency. If the relevant tax authority is of the opinion that such assessments are necessary for any reason of urgency.

(iv) Additional Assessment<sup>23</sup>: The relevant tax authority is empowered to examine the returns submitted by taxpayers in order to ensure that the presentation of the accounting details conform with provisions of the Income Tax Act. Unapproved claims and allowances discovered are disallowed and added back to profit.

Section 48(1) of Companies Income Tax Act states:

If the Board discover or is of the opinion at any time that any company liable to tax has not been assessed or has been assessed at a less amount

<sup>18</sup> Section 65(2) Companies Income Tax Act, Cap C21 LFN, 2004.

<sup>19</sup> Cap C21 LFN, 2004.

<sup>20</sup> (2002) 5 NWLR (Pt. 759) 1 or (2001) FWLR (Pt. 72), 1974, see also *Income Tax Commission v. Badridas Ramrat* (1937) L.R. 641; *F.B.I.R. v. F.M. Solanke* 4 TLRN 165.

<sup>21</sup> M. N. Umenweke and A.R Aladegbaiye, *The Legality of Tax Collection by Force in Nigeria*, (*Apogee Journal of Business, Property and Constitutional Law*, April – June 2010, Vol. 1, No. 4) P. 86.

<sup>22</sup> Federal Inland Revenue Service, Information Circular, February 2006, No. 2006/04, also available at [www.firs.gov.ng/cmst/emplates/FIRS\\_SITE/downloads/Tax\\_Assessment\\_Procedure](http://www.firs.gov.ng/cmst/emplates/FIRS_SITE/downloads/Tax_Assessment_Procedure), accessed on April 12, 2016; See also Section 65 (4) Companies Income Tax Act, Cap C.21 LFN, 2004.

<sup>23</sup> *Commissioner for Finance v. Ukpong* (2000) 4 NWLR (Pt. 653) 386

than that which ought to have been charged, the Board may, within the year of assessment or within six years after the expiration thereof and as often as may be necessary assess such company at such amount or additional amount, and the provision of this Act as to notice of assessment, and other proceedings apply to such assessment or additional assessment and the tax charged thereunder.

In the case of *Mobil Oil Nigeria Ltd v .F.B.I.R.*<sup>24</sup>, for example, the Supreme Court of Nigeria adopted the interpretation of Lord Denning M.R of the word “discovers” in *Parking v. Cattell*<sup>25</sup> which is as follows:

The word “discovers” simply means ‘find out’... An Inspector of Taxes discovers (that income has not been assessed when it ought to have been) not only when he finds out new facts which were not known to him and to his predecessors, but also when he finds out that he or his predecessors drew a wrong inference from the facts which were then known to him, and further, when he finds out that he or his predecessors got the law wrong and did not assess the income when it ought to have been.

It can thus be seen that the key word “discovers” in section 47(1) has been judiciously defined to variously mean come to conclusion from examination or from any information available or from the revelation of an error of law or indeed simply find out. All these definitions can be neatly summed up to mean that additional assessment can be raised where an additional amount comes to light from a further examination of the company’s account after a lesser amount of tax has been raised on an earlier assessment<sup>26</sup> or as a result of fresh information received or facts which came to light at a future date.

The implication of additional assessment is to charge the taxpayer to such an amount or additional amount as ought to have been charged.<sup>27</sup>

(v) Amended/Revised Assessment: Where accounts are submitted and the basis of the assessment is faulted, the original assessment earlier made is revised or amended in line with the new information as disclosed in the tax computations. This type of assessment may also arise from either a notice of objection or appeal that is successful.

Assessment of tax payable on a taxable income is an essential requirement of tax administration and proof of service upon the taxpayer of the notice of assessment is a sine qua non for establishing liability for nonpayment of tax.

### Notice of Assessment

The relevant tax authority is duty bound to serve on the taxpayer the notice of assessment. Section 68 of Companies Income Tax Act provides as follows:

The board shall cause to be served on or sent by registered post to each company or person in whose name a company is chargeable, whose

<sup>24</sup> Suit No. Sc 488/1975; *R. V. Kensington Income Tax Commissioners, (1913) 3 KB 889 or 109 L.T, 714; Commissioner of Revenue V. Attah (1970) N.C.L.R. 12.*

<sup>25</sup> (1971) TR 77.

<sup>26</sup> See the Case of *John Khawam Pools Ltd V.F.B.I.R.*, Suit No. FRC/L/A1/74 where such examination of the earlier accounts of the company was undertaken as a result of which concealment of taxable income was discovered thereby leading to an additional assessment.

<sup>27</sup> See Section 55(1) of Personal Income Tax Act; L. Akinsola, *Personal Income Tax Act: Principles and Cases in Nigeria* ( London, ASCO Prime Publications Ltd, 2014) P.98

name appears on the assessment lists, a notice stating the amount of the total profits, the tax payable, the place at which such payment should be made, and setting out the rights of the company under the next following section.

Also section 57 of Personal Income Tax Act states that:

The relevant tax authority shall cause to be served on or sent by registered post to each taxable person, or person in whose name appears in the assessment lists, a notice stating the amount of any assessable, total or chargeable income, the tax charged, the place at which payment should be made and setting out the rights of that person as contained in sections 58 and 59 of this Act.

In *Lanto v. Wowo*<sup>28</sup>, the Court held that in determining whether taxes are paid as and when due, the notice of assessment must be served on the taxpayer. In other words, a person cannot be held not to have paid his taxes as and when due, if notice of assessment has not been served on him.

In *Fashogbon v. Layade*<sup>29</sup>, the Court of Appeal in construing the provision of Section 56 of the Personal Income Tax Act (now section 57) which is substantially the same provision with section 68 of Companies Income Tax Act<sup>30</sup>, had this to say:

From the steps that must be taken before the tax payable is evolved, to argue that serving notice of assessment on the taxpayer is not part of the procedure under the Decree is unthinkable. It is like staging a Romeo without a Juliet. On the realm of the law to say that the taxpayer whom, by operation of the Personal Income Tax Decree is legally indebted to the tax authority for the assessed income tax, is not entitled to be informed of the assessment of the income tax payable would be an imposition, an arbitrary act that affects his civil right and therefore impinges upon his right of fair hearing under section 36 of the Constitution of the Federal Republic of Nigeria, 1999. That leads me to the conclusion that assessment of tax payable on a taxable income is an essential requirement of the Personal Income Tax Decree and proof of service upon the taxpayer of the notice of assessment as prescribed by Section 56 therefore, is a *sine qua non* for establishing liability for non-payment of income tax under the Decree<sup>31</sup>.

In *Jameldine v. F. B. I. R.*<sup>32</sup>, the Supreme Court made it explicit that infact there were two essential notices, the lack of any of which would render the assessment void; the notice requiring the taxpayer to submit his return of income and the notice of assessment to income showing the amount of tax to which the taxpayer is assessed and warning him of his right of objection<sup>33</sup>. It was also

<sup>28</sup> (1999) 7 NWLR (Pt. 610) 227, See also *Ikuomala v. Ige* (1992) 4 NWLR (Pt. 236) 511, *Onifade v. Oyedemi* (1999) 5 NWLR (Pt. 601) 54.

<sup>29</sup> (1999) 11 NWLR (Pt. 628) 543 or (2000) 1 N.R.L.R., 143.

<sup>30</sup> Except that the former deals with taxation of persons and unincorporated firms and the later deals with registered companies.

<sup>31</sup> Per Olagunju J.C.A, at 551 – 552.

<sup>32</sup> Appeal No. SC 395/66 decided on 09/02/68 (Unreported), restating the position of the Court in *F.B.I.R. v. Rezcallah* (1962) 1 All NLR 1, See also *F.B.I.R. v. Animashawun* (1974) 3 ALR Comm 68 (HC).

<sup>33</sup> For other cases in which an assessment has been held to be invalid because of failure to serve the notice requesting a return, see *Commissioner of Revenue v. Attah* (1970) NCLR 12, *F.B.I.R. v. J.H. Doherty Ltd* (1971) 1 NMLR 162, *Mohammadu v. Oturkpo Local Administration* (1973) NNLR 112 (HC), *F.B.I.R. v.*

held that before an action for recovery can be instituted the taxpayer must have also been served with a demand notice for payment of the tax together with any penalties added thereto.<sup>34</sup> So it follows that failure to serve the necessary notice will affect the assessment negatively.

### **Objection to Assessment**

Taxpayers are free to raise objection to any assessment, which they believe are incompatible with the relevant tax laws or where they are of the opinion that such assessments were raised on wrong premises and are therefore objectionable. An objection can either be valid or invalid. If a taxpayer disputes or is opposed to the assessment made on him, he shall give notice of objection in writing to the relevant tax authority within 30 days from the date of service of the assessment on the taxpayer<sup>35</sup>. This time limit is very important as objections made outside the period is not valid, except in exceptional circumstances in which case, the relevant tax authority must be convinced that the lateness was caused by circumstances beyond the taxpayer's control, eg: where the taxpayer was outside the country within the relevant period or there was a postal delay<sup>36</sup>.

The objection should state precisely the grounds of objection and will require the relevant tax authority to review and revise the assessment.

If an applicant for revision of the tax assessment fails to agree with the relevant tax authority, the amount at which the taxpayer is liable to be assessed, the relevant tax authority shall give notice of refusal to amend the assessment as desired by such taxpayer and may revise the assessment to such amount as the relevant tax authority may, according to the best of its judgment determine and give notice of the revised assessment and of the tax payable together with notice of refusal to amend the revised assessment<sup>37</sup>. In *F.B.I.R. v. Manila Industrial Security Services Ltd*<sup>38</sup>, where the board claimed from the defendant company the sum of N4,400 being income tax and penalty for the year of assessment 1974 – 1975, following a disagreement, it was held by the Federal Revenue Court that the Board was in technical breach of the Companies Income Tax Act, by not serving a notice of refusal to amend the assessment for whatever reason on the defendant company.

### **Tax Enforcement Mechanisms**

#### **Power to Distrain Taxpayer by his Property**

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 court<sup>39</sup>. 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

---

*Animashawum* (Supra), *F.B.I.R. v. Funsho Agencies Ltd* (1978) 4 FRCR 195 (HC).

<sup>34</sup> *S.O. Ola v. F.B.I.R.* (1974) 1 FRCR 70 (HC), *Obute v. Board of Internal Revenue* (Unreported) Suit No. E/5CA/71 decided in the Enugu High Court, *F.B.I.R. v. H. T. & L. T. Construction Co. Ltd* (1978) 4 FRCR 73 (HC)

<sup>35</sup> Section 69(2) Companies Income Tax Act and Section 59(1) Personal Income Tax Act.

<sup>36</sup> Section 69 (3) *Ibid.*

<sup>37</sup> Section 69(5) *Ibid* and Section 58(2) *Ibid*

<sup>38</sup> (1976) 2 F.R.C.R. 116.

<sup>39</sup> 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](http://www.nationonlineng.net) (accessed on 02/07/2015)

so distrained<sup>40</sup>. 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 court<sup>41</sup>. 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 be paid over to the taxpayer, provided he or his representative makes a demand for it within one year of the date of sale<sup>42</sup>.

### **Enforcement by Entry, Search and Seizure**

Forceful entry into a taxpayer's premises and seizure of his properties and documents will occur where it is reasonably assumed by a tax authority that the taxpayer has refused to present to the tax authority all the information expected of him either while filing his tax returns or when invited for further information or that he has committed tax fraud in any form. Where any of the above is found to have been committed, the revenue service or board has the power to authorize any of its officers to forcefully enter the registered, management office or any of the premises of the taxpayer or the place of residence of either the agent, representative or employee of the taxpayer who is believed to be in custody of any information or evidence relevant to the determination of the tax liability of the taxpayer by the tax authority. While carrying out this search, the officer of the board has the power to seize and remove any document which he believe can aid him in the determination of the taxpayer's liability or be useful to the board if there is need to prosecute the taxpayer for tax fraud. Equally, the taxpayer in whose premises the tax officer has obtained a warrant to search and seize documents and properties is expected by law to cooperate with the tax officer by not only allowing him to conduct the search but also to answer truthfully any question that might be put to him by the officer as to the whereabouts of the documents needed for seizure. He is also expected to assist the tax officer in carting away his properties into the custody of the board<sup>43</sup>.

### **Enforcement by 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 commit 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 imprisonment. The FIRS Act<sup>44</sup> 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 Act provide, "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."

These sections 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 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."

---

<sup>40</sup> Section 86(1)(b) Companies Income Tax Act

<sup>41</sup> Section 86(4) and (6) Companies Income Tax Act

<sup>42</sup> Section 86(5) Companies Income Tax Act, Ade Ipaye, *Nigerian Tax Law & Administration, A Critical Review* (London, ASCO Prime Publishers,2014) P.183-184

<sup>43</sup> Section 53 Personal Income Tax Act, Section 64 Companies Income Tax Act, Sections 29,30 and 36 of the Federal Inland Revenue Service (Establishment) Act.

<sup>44</sup> Sections 1 (1) (b), 34 and 47

The Supreme Court, in the case of *Unipetrol Nigeria Plc. vs. Edo State Board of Internal Revenue*<sup>45</sup>, 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 prosecution tax offences, but that power is subject to the powers of the Attorney General.

### **Enforcement by Tax Clearance Certificate**

Section 101(1) of the Companies Income Tax Act, as amended, 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<sup>46</sup>.

Once a certificate issued by the Chairman of the relevant tax authority or his representative is produced, showing the name and address of the defendant and the amount of tax due, that certificate shall be sufficient evidence of the amount due and sufficient authority for the court to give judgment for the said amount<sup>47</sup>. In *RT Administrator v African Press Ltd*<sup>48</sup>, the court took the view that the certificate should be deemed sufficient evidence until evidence is led in rebuttal of it, not in spite of such evidence.

### **Problems Associated with Enforcement of Taxes**

#### **Corruption**

Corruption is prevalent in the administration of taxes in Nigeria. Evaders prefer to bribe officials rather than pay taxes. Tax assessors collude with taxpayer’s particularly with regard to the personal income tax, or in some cases, in connection with the assessment. The multiple process of clearing imports is not only a source of administrative delay, but also an avenue for entrenching corruption<sup>49</sup>. As the Chartered Institute of Taxation of Nigeria noted, governments in Nigeria are perceived as a corrupt and selfish lot, to whom money should not ever be voluntarily given. Taxes paid are expected to end in private pockets<sup>50</sup>, not in public utilities. The use of tax consultants has equally compounded the issue of corruption in tax collection. They print different types of receipts, maintain different account with the sole aim of diverting the taxes collected to their private pockets.<sup>51</sup> This attitude has eroded tax consciousness on the part of Nigerians.

#### **Non-availability of Tax Statistics and Information**

The growth and development of any system in any part of the world depends largely on the availability of statistics concerning the system. This is because, it is the available statistics that will be studied over time and improved upon, in order to bring out a viable system. Unfortunately, the Nigerian tax system has left much to be desired in this respect. There is a great dearth of tax statistics to be relied upon, regarding sufficient information on tax compliance, requirements,

<sup>45</sup> (2006) CLR 28 or (2006) 8 NWLR (Pt. 983) 625

<sup>46</sup> Section 85(1) Personal Income Tax Act contains a similar provision.

<sup>47</sup> Section 87(3) Companies Income Tax Act, *Commissioner of Internal Revenue v Bisi Edionseri* 1 NTC, 342

<sup>48</sup> 1 NTC 160

<sup>49</sup> Ramon Oladimeji, Court remands Lebanese for N49m tax evasion, available at [www.sunnewsonline.com](http://www.sunnewsonline.com), accessed on May 22, 2015

<sup>50</sup> Chinonso Alozie, Imo Govt. moves against tax diversion, available at [www.vanguardngr.com](http://www.vanguardngr.com), accessed on May 14, 2015

<sup>51</sup> CITN, Nigerian Tax Guide Statutes, Lagos, 2002, P. 15. See also Geoffrey Okonkwo, Anambra Traders to pay N3,000 Tax, available at [www.sunnewsonline.com](http://www.sunnewsonline.com), accessed on May 14, 2015

administration and enforcement generally. This is coupled with the low or almost zero information available to taxpayers on tax compliance requirements. All these combine to create uncertainty and room for leakages in the tax system<sup>52</sup>.

### **Lack of Prosecution of Errant Taxable Persons**

Despite the various terms of imprisonment and fines prescribed by the enforcement provisions, there is scarcely any prosecution of errant taxable persons or tax officers even in the face of pervasive tax evasion aided by tax personnel. Several reasons have been attributed to this want of prosecution ranging from corruption to the slow judicial system. The judiciary has not been of help in the enforcement of tax laws. The judicial process is weak, slow and subject to corruption. For instance, the case of *Unipetrol (Nig) Plc v. E.S.B.I.R*<sup>53</sup>, this case lasted for 13 years only on the determination of the preliminary objection on the competence and jurisdiction of the Edo State Mobile Revenue Court and whether the Edo State Board of Inland Revenue has power to sue and be sued. After the 13 years period commencing from 1993 – 2006, the case that went up to the supreme court was sent back to the Edo State Mobile Revenue Court for trial to commence. This long period of time taken to decide on a case on the issue of a preliminary objection shows the pace at which our courts move in the enforcement of laws including tax laws. The cost of prosecution is also a burden for the tax authorities and these constitute serious challenges to enforcement of tax<sup>54</sup>.

### **Conclusion**

This paper examined tax enforcement tools being employed to enhance tax compliance in Nigeria. Effective tax administration plays an important role in generating tax revenue for the government to enable it provides basic amenities that would improve standard of living of the citizenry. Provision of good welfare, infrastructure and maintenance of high standard of living of citizens would be impossible without adequate revenue backing. Certainly, the level of tax income generated by the government to meet her spending depends largely on the degree of compliance and the effectiveness of the enforcement tools. As seen in this paper the citizens view it as a ploy by government to take away or reduce their income. The government on the other hand needs these taxes in other to carry out the act of governance and in doing that have enacted taxation laws. The level of compliance with payment of taxes is too poor and this has been attributed to a number of factor, the major been the government inability to account for the taxes collected through the provision of basic amenities needed to better the lives of the citizens.

### **Recommendation**

Against this backdrop the paper recommends that government should step up its enforcement mechanisms and also provide the basic amenities needed by the citizens to make lives easier for them. Tax authorities should be encouraged to provide incentives and other rewards to taxpayers who voluntarily comply with tax laws. Tax authorities may also a hold forum where such taxpayers are publicly recognized and honored. It is hoped that such gesture would elicit favorable response from taxpayers and result in higher voluntary compliance to payment of tax. In the same manner that rewards and incentives provided to compliant taxpayers, punitive measure should be taken

---

<sup>52</sup> A.L. Suleman, Taxation Regime In Nigeria: Critical Analysis of Basic Principles, In J.A.A. Agbonika Ed., *Topical Issues on Nigerian Tax Laws and Related Areas* (Ibadan, Ababa Press Ltd, 2015) P.372.

<sup>53</sup> (2006) 8 NWLR (Pt. 983) 625.

<sup>54</sup> J.A.A. Agbonika, *Problems of Personal Income Tax in Nigeria*, (Ibadan, Ababa Press Ltd, 2012) P.274

against recalcitrant offenders and non-complaint taxpayers. In this regard, tax authorities shall explore all avenues in the laws and ensure that full weight of the law is brought to bear on such taxpayers and such person shall be exposed and publicized through media stations. It is our belief that these measures if taken will trigger voluntary compliance to payment of taxes.