

## **An Expository Review of Checking Incidence of Tax Evasion and Tax Avoidance: Nigerian Experience**

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### **Abstract**

The paper aims to examine the legal views of Nigeria's control of the incidences of tax evasion and tax avoidance. In an effort to achieve these goals, a doctrinal research methodology is used in which relevant primary and secondary source materials were used. This includes a critical review of relevant jurisprudence, statutory provisions, and academic literature. A contextual and descriptive analysis was performed on the information obtained through these sources. Finally, the paper reaches its findings by revealing that tax avoidance and tax evasion impede foreign investment and even discourage local business from flourishing. Therefore, the paper recommends that the current penalty regime in contemporary Nigeria does not catch up with social and economic changes. The penalties are now overdue and should be beefed up to effectively deter tax evaders and avoiders.

**Keywords: Evasion, Avoidance, Tax, Incidence, Foreign Investment.**

### **1. Introduction**

Tax is a legal civil responsibility imposed by the Government to her citizens as individuals or to corporate bodies with a view to raising funds to finance its responsibilities economically, socially and politically. The projects the governments at all levels indulge in are so enormous that the government alone cannot undertake, independently, it has therefore introduced the taxing system, a means by which individuals and corporate bodies get involved in the raising of funds to meet the challenges and demands of her citizens in infrastructural development like building of good roads, airports, seaports, bridges, recreational centres, hospitals, schools, electricity, pipe-borne water and good housing schemes and credible electoral processes. All these are the brains behind the taxing need in Nigeria.

Notwithstanding these laudable demands and needs of the citizens which endeared the government into a tax system, it is shocking to note that many citizens and corporate bodies still avoid—and some evade - payment of tax while in some cases. It is worthy of note that a nation's tax goals are not achieved by designing a tax system which is fair. Every fair tax payment system that is not applied as planned is unfair. A good tax system is therefore able to finance the necessary level of public spending in the most efficient and equitable manner possible. It should also (1) collect enough revenue to finance critical expenditure without recourse to unnecessary lending by the public sector, (2) increase revenue in a fair manner and mitigate its disincentive impact on economic activities (3) in ways that do not substantially deviate from international standards..

Therefore, governments worldwide seek resources to develop and sustain their economies to achieve economic stability. This quest has led to checking the legal consequences of tax evasions and tax avoidance on Nigeria's economy. Nigeria can develop their economies, if they can levy and collect taxes effectively from citizens and use the revenue to fund developmental projects. This is because a good tax policy, improved tax collection machinery, and checking incidence of tax evasions and tax avoidance are a recipe for economic growth.

The Nigerian government has taken steps in the right direction by making provisions on checking the incidences of tax evasions and tax avoidance among citizens and others in some legislation, and entering into various bilateral and multilateral agreements, all in a bid to optimize taxation proceeds. Regardless of the efforts highlighted above, there is still room for improvement in the Nigeria's tax system. This article will identify the major inherent weakness and problems of checking the legal consequences of tax evasions and tax avoidance on Nigeria's economy and proffers solution.

It is against this background that holistic approach is to be adopted with a view to properly situate: sources of tax law; principles of a good tax system; meaning and distinction of tax evasion and tax avoidance; forms of tax evasion and avoidance; the reasons for tax avoidance and evasion and conclusions.

## **1.2 Sources of Tax Law**

Law is a body of rules. This is also true of law of taxation. Today the main sources of taxation in Nigeria are:

- i. The Constitution;
- ii. Statutes;
- iii. Case law;
- iv. Budget speech;
- v. Delegated or subsidiary legislation;
- vi. Concession and advance ruling;
- vii. Law textbook and treaties.

### **i. Constitution**

The Constitution is the fundamental law in Nigeria. *Section 1 of the Constitution of the Federal Republic of Nigeria (C.F.R.N) 1999<sup>1</sup>* provides as follows:

The Constitution is supreme and all governments and individuals throughout the Federal Republic of Nigeria are bound by its provisions. The Federal Republic of Nigeria shall not be governed or regulated by any person or group of persons, except in accordance with the provisions of this Constitution, by the Government of Nigeria or any part thereof. If any other law violates the provisions of this Constitution, this Constitution shall prevail and that other law shall be null and void to the extent of the incoherence.

The above provisions proclaim the supremacy of the Constitution over every other law in force in Nigeria.

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<sup>1</sup> (as amended)

Most of the tax laws in Nigeria were enacted during the Military era when the Federal Military Government wielded nearly omnipotent powers vide successive Constitution (Suspension and Modification) Decree as the grund norm. The position is however different with the commencement of the 1999 Constitution and the enthronement of the principles of Constitutional supremacy. The implication, therefore, is that some of the existing tax laws will have some Military flavor which will require a review in order to be in line with democratic tenets. Also a number of provisions under the existing laws stand the risk of being challenged on the ground of unconstitutionality. For instance Section 2(2) *Personal Income Tax Act*<sup>2</sup> provides inter alia that: tax shall be “imposed” by the Federal Board of Inland Revenue (FBIR) when it is clearly indisputable that the Federal Inland Revenue Services (FIRS) lacks powers to impose taxation, being an administrative agency. Another example is an attempt by the Federal Military Government to demarcate the effect of the taxing powers of all tiers of government vide the Taxes and Levies (Approved List for Collection) Act.<sup>3</sup> The Act was launched in a peremptory manner that its provisions were superior to the Constitution by the use of the phrase “notwithstanding anything to the contrary in the Constitution.”

## ii. Statutes

While a tax must be within the powers of a level of government under the Constitution, the actual imposition is to be done expressly by a statute. Consequently, tax law is based entirely on statutes. In Nigeria, there is no single legislation governing all the taxes that are in force. Virtually every type of tax is governed by a separate legislation. Consequently, the law on each type of tax is to be found in a specific statute devoted exclusively to the tax. The major tax statutes are:

- i. **Personal Income Tax Act**<sup>4</sup>: The Constitution of 1979 invalidated the different laws of the state on personal income tax, making it neater to pass a single law to be enforced across the world. In 1993, the Federal Military Government issued the 1993 Personal Income Tax Decree No 104 (now Act), which is currently found with the amendment in the 2004 Federation of Nigeria's Cap P.8 Laws. The Income Tax Management Act of 1961 (as amended) was also replaced and repealed by this act. It is important that the main Statute be revised to reflect the country's current economic realities and comply with the national tax policy.<sup>5</sup>
- ii. **Company Income Tax Act**<sup>6</sup>: A comprehensive Companies Income Tax Act (CITA) was enacted in 1960. This legislation severed the laws guiding the companies income taxes in Nigeria from the laws guiding personal income tax. It gave Companies Income Tax Laws the independence it desired. This enactment with amendment was replaced by the Companies Income Tax Act, 1979 which is a consolidating Act. The 1979 Act consolidated the 1961 and a lot of amendment. Presently, the Act is found as Cap C21 Laws of the Federation of Nigeria 2004.
- iii. **Capital Gains Tax Act**<sup>7</sup>: Capital Gains Tax was enacted by the Capital Gains Tax Act 1967 with effect from 1 April 1967. This Act aimed to tax any capital gains on the disposal of land, whether located in Nigeria or not, accruing to any person. This Act was included

<sup>2</sup> Cap P8 Laws of the Federation of Nigeria, 2004.

<sup>3</sup> No 21 of 1998.

<sup>4</sup>(Ibid).

<sup>5</sup> See C.I.T.N (Chartered by Act No 76 of 1992) Uphold Memoranda to the National Assembly on the P.I.T.A (Amendment) Bill 2010 4<sup>th</sup> March 2011.

<sup>6</sup> Cap C21 Laws of the Federation of Nigeria, 2004.

<sup>7</sup> Cap C1 Laws of the Federation of Nigeria, 2004.

in the Federation's Laws of 1990 and is currently included as Cap C1 in the Federation's Laws of 2004.

- iv. **Petroleum Profit Tax Act<sup>8</sup>**: Petroleum Benefit Tax is a tax on benefit from petroleum winning in Nigeria. Petroleum means either mineral oil or relative hydrocarbon and natural gas in its natural state in Nigeria but does not include liquefied natural gas, coal, bitumen shares or other stratified deposits from which the destructive distillation of oil can be extracted. The Petroleum Income Tax Act of 1958 introduced income tax for petroleum in 1958. Nigeria exported crude oil to the global market in 1958. The purpose of the Act was to regulate and control the procedures, rates of royalties and taxes payable by Petroleum Profit Tax companies. The Nigeria Federation's 2004 Petroleum Profit Tax is now found as Cap P.13 Laws.
- v. **Value Added Tax Act<sup>9</sup>**: Value Added Tax is a consumption tax. It is imposed and charged on the consumption of goods and services. The tax is ultimately borne by the final consumer of the goods or service. It is collected at each stage of the production and distribution chain. This Value Added Tax (VAT) was introduced in Nigeria by the Value Added Tax Decree of 1993 (now Act). This law is presently found as Value Added Tax Act Cap VI Laws of the Federation of Nigeria 2004.<sup>10</sup>

### iii. Case Law

Where the tax authority has refused to favourably consider the objection of a tax payer, the tax payer may appeal to the Body of Appeal Commissioners (BAC) which is a quasi-judicial body. The decisions of the body are given in private and are not generally available to the public.<sup>11</sup> Such decisions are, strictly speaking, not binding, being decisions of a quasi-judicial body. In practice however, the Body keeps records of its decisions and tends to follow them unless they have been reversed on appeals.<sup>12</sup> Appeal goes to the Federal High Court in respect of Federal taxes (with the exception of Personal Income Tax) and the State High Courts in respect of others. There are provisions for further appeals to the Court of Appeal and the Supreme Court. Few cases have gone beyond the Body.<sup>13</sup>

### iv. Budget Speech

In every fiscal year, the President always makes a budget speech setting out, among other things, the monetary, fiscal and economic policies for the year and seeking legislative approval to spend public funds. The proposed policies may impact on the existing tax laws and necessitate their amendment or even abrogation. It must be pointed out that the budget speech is a secondary source of tax laws requiring legislative backing before it can become enforceable. However, the practice

<sup>8</sup> Cap P13 Laws of the Federation of Nigeria, 2004.

<sup>9</sup> Cap V1 Laws of the Federation of Nigeria, 2004.

<sup>10</sup> M. T. Abdulrazaq. *Nigeria Revenue Law*, (1<sup>st</sup> Edition) (Lagos: Malthouse Press Ltd, 2005) See also Umenweke Meshack Nnama, *Tax Law and Its Implication for Foreign Investment in Nigeria*. (Uwani – Enugu: Nolix Education Publication (Nig), April 2008), 20 – 22.

<sup>11</sup> It may be pointed out however that two Volumes of the decisions of the Body of Appeal Commissioners were published early in the 70's, one dealing with Company Income Tax cases while the other dealt with Personal Income Tax cases arising out of the former capital territory of Lagos, when the Federal Board of Inland Revenue was the Tax Authority.

<sup>12</sup> P.G. Whiteman and Milne. *The Law of Income Tax, Surtax and Profit Tax*, (3<sup>rd</sup> Edition) (London: Sweet and Maxwell, 1999), 30.

<sup>13</sup> *Marina Nominees Ltd v F.B.I.R* (1986) 2 NWLR (pt. 20), p. 45, and *Shell Petroleum Development Company v F.B.I.R* (1996) 8 NWLR (pt. 466), p. 256.

during the military era was to commence the implementation of fiscal policies as soon as circulars were issued to that effect. In most cases, the necessary legislation may not be enacted until several months or even years just for the sake of formality. And whenever the laws are eventually enacted, the commencement dates were usually backdated to the date of commencement of implementation of these policies.

Therefore, in practice, budget speeches and pronouncement of the Minister of Finance were elevated to the status of a primary source of tax laws in Nigeria during the Military era. This, however, has not been the practice since the commencement of the 1999 Constitution. An attempt by the President Olusegun Obasanjo led regime to introduce fuel tax through the budget speech without an enabling law was successfully challenged by the civil society. (Nigerian Labour Congress).

**v. Delegated Legislation or Subsidiary Legislation**

These are the enactments made by executive bodies or agencies pursuant to express powers conferred on such persons or bodies by the legislature. The use of delegated legislation has become inevitable due to the dynamic of modern day governance. It is practically impossible for the legislature to make laws for every aspects of human life due among other things, lack of time or even technical expertise on certain details that may be required for the implementation of the law. It thus becomes reasonable and necessary that the legislature should merely provide the general framework of principles, leaving specialists, technocrats and those who are involved in the matter on a day-to-day basis to deal with the details in form of rules and regulations. Any legislation made pursuant to a delegated power must not exceed the limits of the power so granted, otherwise the wrongful exercise of power may render it ultra vires and null and void.<sup>14</sup> The tax authorities, in exercise of their subsidiary legislative power, must act within the principal statutes.

**vi. Concession and Advance Ruling**

There are situations where the law on some points may be very clear but a strict compliance with its provisions may be difficult to apply or bring hardship to the taxpayers. In such circumstances, the tax authority may officially decide not to strictly enforce the rules. Concession may either be general or specific, in some jurisdiction, revenue practice and concession are usually issued for general information, however, it is not normally published in Nigeria. We therefore advocate that existing concession should be compiled and published so as to increase transparency and democratize access to information among the tax payers.

Generally, the Courts in Nigeria do not give advance ruling on tax cases in form of case stated. Also the tax authorities do not officially give advance ruling on proposed schemes by the tax payers. Consequently, any informal advice or opinion that may be offered by any of its officers will as a general rule, not be binding on the tax authority.

**vii. Law Textbook and Treaties**

Law textbooks and treaties written by learned scholars and jurists constitute a secondary source of tax law which may be called in as aid where there is either no authority or the authorities are blurred. The works of eminent writers like Prof. Akintude Emiola, C.S Ola, Prof. O. Akanle, Prof. M.T Abdulrazaq J.K, Naiyeju, and a few others, are highly respected in the Nigerian tax circles.

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<sup>14</sup> See T.O. Owoade. *Jurisdiction in Administrative Law*, (Ibadan: Caltop Press, 2001), 44.

However, it suffices to say that their opinions, notwithstanding their prominence are merely persuasive and not binding on the Court or Tribunal.

### 1.3 Principles of a Good Tax System

According to the former United States President, Franklin D. Roosevelt, “Taxes, after all, are the dues that we pay for the privileges of membership in an organized society.”<sup>15</sup> Taxes play a critical role in maintaining the nation's life and the well-being of its citizens in Nigeria, like many other countries around the globe. From the different tax concepts given and examined in this work, one can discern at the start that tax has the basic goal of raising government revenue. The realities on the ground, however, have shown that taxes can be used to do more than just increase government revenue.<sup>16</sup> A careful observation will therefore reveal that the objectives of taxation as of today are quite multifarious.

Indeed, the first function of taxation is to raise revenue to meet governmental expenditure and taxation has always been employed in this regard. Although there is a number of ways governments can obtain revenue and needed economic resources, which include inflating the currency or manipulating the banking system, borrowing and lending, increasing exports, etc., none of these is suitable as a permanent means of financing a government as taxation does.<sup>17</sup> Revenue from taxation can satisfy the needs of government such as the provision of services like defense, law and order, health services and education. It can also be spent on capital projects and on building social and economic infrastructure that will improve people's social life and strengthen the national economy as well. Furthermore, taxation can be used to achieve economic goals such as stimulating economic growth, for example, when government wants to encourage the production of local export goods, it can abolish or reduce export duties on the basic raw materials of locally produced goods in order to maximize the use of local factories' ability. Taxation can also be used to achieve certain economic objectives such as inflation control, etc. An increased government taxation takes money out of the economy. This should usually keep inflation low, but it can also slow economic activity pace. On the other hand, tax cuts would lead to an increase in the economy's money supply. It also increases or stimulates economic and investment activities.

Still within the realm of economic aims, taxation can be successfully employed in the area of redistribution of wealth. This can be achieved by the graduation or progressiveness of the rates at which the taxes are levied. It could also be the other way round depending on the economic principle at the particular time.<sup>18</sup>

Apparently, taxation has become an important consideration in the planning of savings and investments and by harmonizing it with development strategy and changing economic structure, the government can thus use taxation as a powerful fiscal weapon to plan, direct the economy and shape the economic growth and development of a country.

Accordingly, the objects of taxation can be summarized as intended to ensure a viable economy for any given country it is employed.

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<sup>15</sup> C. Morgan. *What Tax Can Do* (USA: Summerset House, 1990) 10.

<sup>16</sup> *Ibid.*

<sup>17</sup> G.W. Fisher. “The Real Property Tax, *Handbook on Taxation*, (New York: Marcel Dekker Inc., 1999), 101.

<sup>18</sup> M. Bony Bracewell. “The Myth of Tax Progressiveness” (1975) *British Tax Review (BTR)*, 378.

#### 1.4 Tax Evasion and Tax Avoidance

In any economy, taxation has a major and proven function. The tax system is one of the most important rates at any government's disposal: stimulating the cycle of social and economic change which Nigeria is currently experiencing; redistributing income between rich and poor through a fair implementation of progressive taxation; a mechanism for job creation and wealth creation. The Nigerian tax system should therefore be used by the government as a stable forum to ensure growth in the country's development.

Nonetheless, it is understood that leakages are bound to occur in every system. It is therefore the tax authorities' responsibility to find and mitigate or eliminate all such leakage avenues in the Nigerian tax system. Two of the major ways in which the tax system leaks are "tax avoidance" and "tax evasion."

Tax avoidance is the means by which tax liability is minimized or avoided by exploiting the loopholes in the law. Tax evasion on the other hand is a deliberate refusal to pay taxes or make tax returns with the intention to fraudulently retain tax revenue or conceal the actual tax status of a tax payer. While tax evasion is illegal and is a criminal offence, tax avoidance is not illegal, but it is not encouraged.

One of the greatest problems facing the country is the problem of tax avoidance and tax evasion which is prevalent in the country. There is general agreement from many quarters that there is a tremendous gap between actual and potential tax collections. The government for instance has repeatedly complained of the widespread incidence of tax evasion and avoidance in the country with companies and other taxable persons employing all kinds of tax avoidance devices to escape or minimize their taxes not to talk of deliberately fraudulent ways and means of evading tax altogether, sometimes with the connivance of the revenue officials. It must be pointed out, however, that these are problems facing any process, but ours appears to be unique in the sense that, given the scale of corrupt practices, there is no robust tax evasion and avoidance legislation, as is the case in Britain, to curb tax evasion coupled with the lack of qualified administrative tax staff and, consequently, our tax authorities' inertia. Consequently, a proper legal evaluation of the issue of tax evasion and avoidance in Nigeria and an appreciation of the difference between 'tax evasion' and 'tax avoidance' is a prerequisite because they have not been defined in the tax legislation in Nigeria. Rather, the various tax statutes simply criminalize certain conducts which are adverse to the administration or the tax without expressly labeling them as evasion. Evasion of tax is an act of illegally dodging or reducing one's tax liability. This may range from failure to file a return, making a false declaration in the returns, failure to remit a tax, among others. Evasion entails some elements of untruthfulness or moral turpitude. Hence, the law usually imposes severe penalties on evaders when detected.<sup>19</sup> According to Ayua<sup>20</sup> tax evasion is usually defined to mean the failure to pay one's tax as the reduction of one's tax liability through illegal or fraudulent returns or failure to make a return or even failure to pay tax on time.

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<sup>19</sup>AbiolaSanni. "Revenue Law: Structures of the Nigeria Tax System and Its Framework; The Rules, Concept and Laws of Taxation as they Affect the Working of the Nigeria Tax System". At the special training program organized by the chartered institute of taxation of Nigeria Monday 16<sup>th</sup> – Wednesday 18<sup>th</sup> November 2009, 38; Department of commercial and industrial law university of Lagos Nigeria <[albiosanni@yahoo.com](mailto:albiosanni@yahoo.com)>.

<sup>20</sup>I. A. Ayua. *The Nigeria Tax Laws*, (1<sup>st</sup> Edition) (Ibadan: Spectrum Law Series, 1996), 245.

Tax evasion is therefore not only morally wrong but also it involves a breach of the tax law. In *Lord Howard de Walden v IRC*<sup>21</sup> Sir Wilfred Greene M.R. likened Tax Evasion to throwing the burden off one's shoulder unto those at one's fellow subjects. The learned judge went on to underscore the issue thus:

... In the least, it would not surprise us to note that the law has decided to end the war by implementing the most severe penalties. It is hardly in the voice of the taxpayer who plays with fire to complain about the burnt fingers.<sup>22</sup>

Tax avoidance on its part is the act of arranging one's affair in such way that the tax payer pays less than he would otherwise have paid. Tax avoidance requires a good knowledge of the tax laws in order to take advantage of some of its provisions surreptitiously. This theoretically does not entail any moral wrong or act of illegality<sup>23</sup>. Tax avoidance is to minimize tax liability by arranging one's affairs in such a way as to benefit from tax law provisions. The tax payer thus pays less tax than he would otherwise have paid. Tax avoidance does not necessarily denote an activity which is obnoxious in all cases. Many people may consider tax avoidance to be legal<sup>24</sup>. Tax avoidance is a phrase that has been frequently used in a three-cornered-fighting-ring embracing as it were, the tax payer, the legislature and the executive with the court as the umpire<sup>25</sup>. The tax payer has always been the common target. To the tax payer, tax avoidance is synonymous with tax planning which is a legitimate exercise of his legal right to arrange his business or property in such a way as to prevent the revenue authority from putting the largest possible shovel into his stores<sup>26</sup>. In other words, tax avoidance means payment of less or zero tax in a legitimate manner. In *Bullen v Wisconsin*<sup>27</sup> Justice Holmes stated as follows:

When the law draws a line, there is a situation on one side or the other, and if on the safe side there is no better law the party has taken full advantage of what the law allows when an act is condemned as evasion, it means it is on the wrong side of the line.<sup>28</sup>

Menzies J. was being practical when he said in *Pete v Commissioner of Taxation*<sup>29</sup>

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<sup>21</sup>(1942) I. K. B 389.

<sup>22</sup>*Ibid*, 397.

<sup>23</sup>AbiolaSanni. "Revenue Law: Structures of the Nigeria Tax System and Its Framework; The Rules, Concept and Laws of Taxation as they Affect the Working of the Nigeria Tax System". *Op.cit*,38-39.

<sup>24</sup>I. A. Ayua. *The Nigeria Tax Law*, *op.cit*,245-246.

<sup>25</sup>S. O. Fashokun. "Assessment of Efforts Against Tax Avoidance and evasion in Nigeria. The Legal View Point" (Nov 1 and 3 April and December 1976), Vol. 7, *Nigeria Law Journal of Contemporary Law*.13.

<sup>26</sup>Per Lord Clyde in *Ayrshire Pullman Motor Services v C.I.R* (1920) 14 T.C 754, 763.

<sup>27</sup>(1916) 240 U.S 625, 630-631.

<sup>28</sup>*Ibid* 630- 631.

<sup>29</sup>(1963-1964) 11 CLR 443, 445.



it is perhaps inevitable in an exquisite society that taxation is regarded as burden from which those who are subject to it will seek to escape by any lawful means that may be found.<sup>30</sup>

In *IRC v Duke of Westminster*<sup>31</sup> Lord Tomlin held as follows.

Everyone is entitled, if he can order his affairs in such a way that the tax attached under the relevant act is less than it would otherwise be if he fails in ordering them in order to secure this result, then the commissioner of domestic income or his fellow taxpayers may not be compelled to pay a higher tax for his ingenuity.

No matter how legal tax avoidance may be, it is our humble view that it is unpatriotic and anti-social. The avoider normally increases and sheds the burden of tax on the others mainly the illiterates in the society. The terms “tax avoidance” and “tax evasion” have not been defined by the statute however, more light is thrown on the meaning of the terms by learned authors. Flesch M.C has described tax avoidance as ‘the lawful execution of a transaction that has been entered into or has taken a specific form to mitigate taxation’.<sup>32</sup> Professor Wheatcroft defined tax avoidance thus:

A transaction which:

- a. Avoids tax;
- b. Is entered into with the same purpose of avoiding that or adopt some artificial or unusual form for the same purpose;
- c. Is carried out lawfully; and
- d. Is not discouraged by the legislature.<sup>33</sup>

In other words, it is the art of winning games without actually cheating.<sup>34</sup> The pronouncement by judicial authorities and learned commentators are generally in agreement that tax avoidance is generally lawful but that tax evasion is illegal. Consequently, the Courts would not intervene in favour of revenue authority if the tax payer had taken advantage of the provisions of the tax law or the absence of a provision in it to escape or reduce his tax liability. The intention of both the tax avoider and tax evader are the same i.e. to gain tax advantage.<sup>35</sup>

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<sup>30</sup>Ibid 445.

<sup>31</sup>(1936) AC, 19-20.

<sup>32</sup>M.C. Flesch. “Tax Avoidance, The Attitude of the Court and the Legislature”. (1968), 21 Current Legal Problem (CLP), 215.

<sup>33</sup>G.S.A. Wheatcroft. “The Altitude of the Legislature and the Courts to Tax Avoidance”(1955), 18 MLR, 209.

<sup>34</sup>Ibid, 209; See also S. O. Fashokun. “Assessment of Efforts Against Tax Avoidance and Evasion in Nigeria the Legal Viewpoints”, op.cit, 14, who agrees entirely with his position.

<sup>35</sup>S. O. Fashokun. “Assessment of Efforts Against Tax Avoidance and Evasion in Nigeria the Legal Viewpoints”, op.cit, 14.

According to Ola C.S,<sup>36</sup> the distinction between tax evasion and tax avoidance can be seen in the following table:

<b>Tax Evasion</b>	<b>Tax Avoidance</b>
Criminal act.	Not a criminal act.
Tax evader may be responsible to fines and penalties as well as incarceration at times in addition to paying the tax lost through the act of tax payers.	Tax avoider cannot be liable to fines, penalties nor imprisonment since no offence has been committed.
A form of anti tax evasion tool is back dated.	Back dated cases do not arise with tax avoidance.
Could be due to fraud or willful default, fraud or willful could arise for example, by deliberate under statement of income or overstatement of income or overstatement of expenses as well as negligence in safeguarding accounting books and records.	Critical study of the taxes Act is undertaken and plans implemented to take best advantage of all reliefs, exceptions and allowances available to the tax payer. Advantages is also taken of loopholes in the tax laws.
Tax payers may not appear before tax authorities and may therefore not be assessed.	Tax payers will show up and present all necessary paper to the revenue and the subsequent assessment will be settled.

### **1.5 Forms of Tax Evasion and Avoidance**

There are some common forms of tax evasion and avoidance in Nigeria, the following list of methods is not exhaustive, but enough to underscore the problem:<sup>37</sup>

- a. Failure to pay tax by a taxable individual or company;
- b. Making false claim with the aim of obtaining allowances in respect of children, when in fact the tax payer has no child or has fewer children than the maximum number he tenders a claim for;

<sup>36</sup>C.S. Ola. *Income Tax Law in Nigeria* (3<sup>rd</sup>ed.) (UK: Heinemann Educational Books Ltd, 1993), 376.

<sup>37</sup>M. T. Okorodudu. "Measures Against Tax Evasion and Avoidance; some Equity Question and Suggested Reforms" (December 1985), Being a Paper Presented at the 15<sup>th</sup> Annual Senior Staff Conference of the Federal Inland Revenue Department.

- c. Making false claims in respect of capital allowances, when in fact the tax payer never owned any capital assets, or such capital asset had become defunct due to transfer of ownership or sale of the asset, or the tax payer having already exhausted full claim on the property;
- d. Making false claim in respect of allowance for a wife when in fact the tax payer is a bachelor, widower or divorce;
- e. Making false claims with the aim of obtaining allowance for fictitious dependent relative or where the relatives are real, for whom the tax payer is not responsible for their financial upkeep;
- f. Making false claims for allowance in respect of premium on life insurance policy, when in fact the policy is defunct either because the taxpayer has not paid his premium regularly, or indeed has not yet executed a legally binding life insurance policy contract;
- g. Under stating, that is, false declaration of income receipt from trade, business, profession, vocation or employment;
- h. Omission to state gross amount of dividends received from Nigerian Companies;
- i. Omission to receive state tax, including landed property rent;
- j. Omission to state income from sources outside Nigeria obtained or carried to Nigeria;
- k. Omission to state income received in or brought in from other sources not expressly specified in Part 8 of the income Tax form;
- l. False claim of contribution to a Pension Scheme, National Provident Fund or a Charitable Fund, when in fact the tax payer never made such contribution;

Methods employed in tax evasion implicate the two major categories of assessment and collection. These are the pay-as-you-earn (P.A.Y.E.) method and the direct assessment method. The belief is that the incidence of tax evasion is less pronounced with P.A.Y.E. method than that of direct assessment. Tax evasion is often classified as a typical “white collar crime”, defined as “a crime committed during his career by a respectable person of high social status”.<sup>38</sup>

## 1.6 The Reasons for Tax Avoidance and Evasion

The reasons that spur people to avoid paying tax is that taxation is generally very high, and thus tax payers tend to take advantage of the existence of any loopholes in the taxing statutes as a result of inadequate drafted tax legislation. Drafting generally permits manipulation of the statutory provisions in favor of the taxable persons and this manipulation is usually done by lawyers and accountants on behalf of their clients. The problem of tax avoidance particularly in respect of companies is indeed a serious one requiring an urgent solution. Such a solution will entail inter alia, a complete overhaul of the Nigeria tax system with the idea of removing possible loopholes.<sup>39</sup>

Tax evasion has the following effect First, it results in a loss of tax revenue; secondly given that opportunities to evade taxes differ among tax payers, tax evasion impairs the chances of realizing the distribution equity goals of taxation. Thirdly, if tax evasion becomes too widespread and out of control, honest tax payers may lose faith in tax administrations and be tempted to join the rank of tax evaders.<sup>40</sup>

<sup>38</sup> M. Grooves Harold. “On Legal Sanction”, (1958), 34, *University of Chicago Law Review*, 274.

<sup>39</sup>I.A. Ayua. *The Nigeria Tax Law*, op.cit, 264.

<sup>40</sup>M. T.Abdulrazaq.“Indices for Measurement of Tax Evasion; A Useful Tool for Nigeria” (1988) Vol. 2 No 3M.P.J.F.I.L, 179.

## 1.8 Conclusion

There is no gainsaying that no matter how legal tax avoidance and evasion is, it is our humble view that it is unpatriotic and anti-social. The terms “tax avoiders” and “tax evasion” have not been defined by the statute, however more light is thrown on the meaning of the terms by learned authors.

Having traversed the tax statute and case laws, it is our submission in this paper that the tax authorities are fully equipped to handle and check tax evasion and avoidance if they are prepared to do so. There however seems to be a dearth of sufficiently knowledgeable persons to check the antics and intrigues of these tax evaders and avoiders in the system. Another problem is perhaps the issue of corruption where the officers are corrupt, even if they are aware of the tax evasion or avoidance scheme; they are likely to compromise their position upon financial or other inducement. The tax authorities still have much to do in closing the gaps open to these unpatriotic tax evaders and avoiders who discover new and more advanced ways of evading and avoiding taxes daily especially now that they are well armed with power under the law.<sup>41</sup>

The paper recommends that the present regime of penalties fails to catch up with social and economic changes in contemporary Nigeria. The penalties are now behind times and should be beefed up to provide effective deterrence against tax avoiders and evaders

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<sup>41</sup>Umenweke Meshach Nnama. *Tax Law and its Implication for Foreign Investment in Nigeria*, (Enugu: Nolix Educational Publication (Nig), 2008), 170-176.