EXAMINATION OF THE LEGAL FRAMEWORK ON TAX AVOIDANCE AND EVASION UNDER THE PERSONAL INCOME TAX ACT IN NIGERIA*

Abstract

Tax is a statutory compulsory contribution imposed by government exacted from a person's or entity's income, property or transaction for the purpose of funding governance. The motivation for this article is that taxation is a major source of government revenue all over the world and governments use tax proceeds to render their traditional functions, such as the provision of goods, maintenance of law and order, defence against external aggression, regulation of trade and business to ensure social and economic maintenance, and the provision of these services will be impossible without adequate revenue backing. This study found that the Personal Income Tax Act did not specifically make provisions for tax avoidance, rather the Act contained anti-avoidance provisions which are specifically intended to plug the identified loopholes and forestall tax avoidance scheme. It was also found that the distinguishing factor between tax avoidance and tax evasion was that while tax avoidance is considered as legal, tax evasion is considered to be illegal and attracts penal sanctions, such as fine and imprisonment terms. It was recommended that government should endeavour to provide social amenities to all nooks and crannies of the country and provide employment opportunities to all by the judicious use of tax proceeds. In this way, all will have the sense of belonging thereby encouraging voluntary compliance. It was also recommended that government should embark upon other means of publicity such as radio messages, television advertisement, post bills as well as the use of town criers to inform taxpayers of changes in tax legislation and need for compliance.

Keywords: Tax Avoidance, Tax Evasion, Personal Income Tax Act, Legal Framework, Nigeria

1. Introduction

The word 'tax' first appeared in the English Language in the 14th century. It was derived from a Latin word which means to 'assess'[1]. The word assess has continued to be the basis for the imposition of taxes till today. However, before then taxation had developed informally in the course of human activities on earth. As man evolved in history and learnt to plant grains, the issue of landownership or occupation thereof arose. Consequently, it became imperative for landholders and the communities to organize themselves into groups for the purpose of self-defense against predatory animals and roaming bands[2]. Every family contributed for the communities and groups to secure self-defense. The contributions may have been in-kind until the cash economy came into being. Later, the communities selected Chiefs to whom they transferred the responsibilities of organizing their affairs. The Chief needed to be remunerated for his services. A kind of tax was therefore imposed on members of the communities so that the Chief would be remunerated for his services and support to the community[3].Thus, the concept of taxation and tax came into being. From this point in history, man grew in civilization by being organized under a leadership, be they chiefs, landlords, kings, emperors, etc. and later governments. Taxes were paid to each of these leaderships of human organizations for the maintenance of the communities in whatever form. It has to be noted here that taxes were paid because of services rendered especially that of defense, during the early history of taxation, although the services were not, and still not, easily measurable and quantifiable or tied to a particular service as in the case of levies and user charges. This distinction is made for reasons of the justification of taxes with regard to tax compliance. As human communities began to grow they became complex. Also, the system of taxation for the maintenance of the communities became complex; and developed into various forms such as charges, tithes, rents. Later, other types of taxes and levies, licenses, custom duties, road taxes, sales tax, luxury tax and income tax[4] evolved. For the purpose of maximization of taxes collected the administrative means of collecting them became necessary. During the reign of the Pharaohs of Egypt, scribes performed the duties of tax collection. At a time they had to impose taxes on cooking oil and carried out weekly audits of household use of cooking oil, to ensure that cooking oil was not recycled as a means of avoiding paying tax on it[5]. The objective of the audit was to maximize tax collection. Thus assessment and collection which are the basis for modern tax administration originated from the early times of taxation. This point will be material in the appraisal of the effectiveness of tax administration vis-a-vis tax compliance behavior in Nigeria. In the Roman Empire, during the reign of Caesar Augustus, the publicans at a time were responsible for the collection of taxes for the central government, the Roman Empire.

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[1] New Internationalists/(index.html), 2019, A short History of Taxation, Online, New Internationalist, available at <http://newwint.org/features/2020/20/01/tax-history> accessed on 20/02/2024

[2] Iqsharemarket, June 11, 2007, available at <hppt://www.iqsharemarket.com.au/newsview/the-origin-oftaxation-112>, assessed on 20/01/2024

[3] Ibid.

[4] Tax World, <www.taxworld.org>, 5/1/2018, A History of Taxation, available at <http://www.taxworld.org/ History/Tax History.htm>, assessed on 20/01/2024.

[5] Ibid.

2. Conceptual Clarification

Personal Income Tax

This tax is imposed on individual taxable persons on their taxable incomes. Example of those taxpayers and their taxable incomes includes incomes of employees, sole proprietors and partners in their partnership business. The administrative authority vested with the power is the Joint Tax Board (JTB). Each state of the Federation has a State Board of Internal Revenue (SBIR) which is responsible for the assessment and collection of pay-as-you-earn taxes from taxable persons resident in that state, while the Federal Inland Revenue Service is responsible for assessment and collection of such taxes from persons resident in Abuja, armed forces personnel, police officers of Nigeria, Foreign Service and nonresidents, who derived income or profit from Nigeria.[6] It should be noted that, the above stated tax-based revenues are not exhaustive, as there are other tax based revenues, which include but not limited to, stamp duties, toll taxes, pools betting and lotteries, gaming and casino taxes, business premises registration and renewal levies, development levies, tenement rates naming of streets registration fees in State Capitals, Advertisement and permits etc. However, despite the existence of those relevant tax laws and regulations that govern the procedure of assessment, collection, enforcement and general administration of those tax-based revenues in Nigeria, there are still multifarious administrative and procedural problems, some emanating from tax laws and regulations themselves, hence, the need for workable suggestions/recommendations and review/reform of the entire tax system, so as to bring the Nigerian tax system into a world accepted and standard tax system.

Tax Avoidance

This refers to a situation where the taxpayer arranges the financial affairs in a way that would make him pay the least possible amount of tax without infringing the legal rules. It is a term used to denote those various devices which have been adopted with the aim of saving tax and thus sheltering the taxpayer's income from greater liability which would have been otherwise incurred.[7]

Tax Evasion

This refers to an outright, dishonest action whereby the taxpayer endeavors to reduce his tax liability through the use of illegal means. According to Farayola (2000), tax evasion is the fraudulent, dishonest, intentional distortion or concealment of fact and figures with the intention of avoiding the payment of or reducing the amount of tax otherwise payable.[8] It can also refers to any intentional, illegal reduction of tax payment, which usually takes the form of underreporting income, sales or wealth, or overstating deductions,[9] including failure to file appropriate tax returns.

3. The Menace of Tax Avoidance and Tax Evasion

Tax avoidance arises in a situation where the tax payer arranges his financial affairs in a way that would make him pay the least possible amount of tax without infringing the legal rules.[10] In short, it is a term used to denote those various devices which have been sheltering the tax payer's income from greater liability which would have been otherwise incurred.[11] Adinkrah described tax avoidance as follows: the taxpayers knowing tax law, decides not to be caught by it arranges the business in such a manner as to escape tax liability partially or entirely. It is a lawful trick or manipulation to evade the payment of tax.[12] The meaning of tax avoidance is vividly captured in the case involving *Ayasire Pullman Motors Services and David M. Rijchin v. Commissioner of Inland Revenue* in 1982 when the Lord President, Lord Clyde held that:

> No man in this country is under the smallest obligation moral or otherwise so to arrange his legal relations to his business or to his property as to enable the Inland Revenue to put the largest possible shovel into his stores. The Inland Revenue is not slow and quiet rightly to take every advantage, which is open to it under the taxing statutes for the purpose of depleting the taxpayer's pocket. And the taxpayer is in like manner entitled to be astute to prevent so far as the honestly can the depletion of his means by the revenue.[13]

Thus, it is clear that the tax avoidance is legal or at least not illegal since one is mostly, probably using the tax laws to limit his tax liability under the same laws. Examples of tax avoidance include reducing ones income by submitting claims

[6] C. Ossai, Public Service Agenda, Understanding Your Tax Obligation in *The Leadership*, Tuesday 4, January, 2011, p.30-31
[7] B. Kaibel, *Personal Income Tax in Nigeria*. (Owerri, Springfield Publishers, 2001)
[8] O. Farayola, *Guide to Nigeria Taxes*. (Lagos: All Crown Nigerian Ltd, 2000)
[9] Friedrich S. and Valeir B and Monika R., Individual behavior in the cash/shadow economy in Australia: Facts, empirical findings and some mysteries, *Economics Working papers* 2001-07, Department of Economics, (Johannes kepler University Linz, Austria, 2001)
[10] B. Kiabel, *Personal Income Tax in Nigeria*. (Owerri, Springfield Publishers, 2001)
[11] Ibid.
[12] K. Adinkrah A New Tax Source for Development in Ghana and Nigeria. It Effects on Peasants, *Journal of Private and Property Law*, 2004
[13] N. Solo, 'Tax Evasion Problems in Nigeria: A Critique'. *The Nigeria Accountant* 40 (2) April and June, 2007)

for expenses in earning the income; increasing the number of one child; and taking additional life assurance policy. Tax avoidance is thus considered to be a matter of being sensible.**[14]**

While the tax law regards tax avoidance as legitimate game, tax evasion is seen as immoral and illegal. No doubt, tax evasion and avoidance had robbed the Nigeria government of substantial tax revenue. Tax evasion as an intentional effort by people, corporate bodies, trust and other institutions to illicitly refuse to pay their tax and reporting true and fair value of their earnings by a means of evading.**[15]** Tax evasion is characterized as an intentional wrongful attitude, or as a behaviour involving a direct violation of tax laws, norms and ethics regarding citizenry obligation to escape the payment of tax. The intentional underreporting of income, as well as over-claiming of a tax deduction, is an obvious example of tax evasion**[16]**.Tax evasion as an intentional and conscious practice of not revealing full taxable income.**[17]** It is a violation of tax laws in which the tax rate due by a taxable person is unpaid after the minimum required period**[18]** Tax evasion is clear evidence in a situation where taxpayers are reducing, making or proclaiming false statement about their liabilities on the revenue tax through exploiting ineffectiveness in the tax laws and regulations Tax evasion typically involves taxpayers consciously misrepresenting or hiding the true position of their affairs to the relevant tax authorities to ease their tax burden.

However, tax evasion can be classified as fully evasion or partial evasion**[19]** Partial evasion occurs when individual or corporate entity understated its earnings for the purpose of tax and declares low income. While fully evasion occurs when the person or corporate entity qualifies to pay tax but fails to register with tax authorities to enroll in the tax system. This act comprises, in specific, fraudulent tax reporting like declaring less earnings and overstressing deductions. In the face of law, tax evasion is a crime and subject to execution by way of fine, imprisonment or even both in many countries of the world. Tax evasion is representing illegal practices by taxpayer to escape his civic responsibility enforce by the law and generally accepted by the society or nation. Due to this situation, the taxable income and other tax activities are being concealed, the amount or sources of income are misrepresented and the reductions, reliefs or exemptions are intentionally overstated.[20] Tax evasion is an outright dishonest action whereby the tax payer endeavours to reduce his tax liability through the use of illegal means.**[21]**Tax evasion is the fraudulent, dishonest, intentional distortion or concealment of facts and figures with the intention of avoiding the payment of or reducing the amount of tax otherwise payable. Tax evasion is accomplished by deliberate act of omission or commission which in them constitutes criminal acts under the tax laws.[22] These acts of omission or commission might include failure to pay tax e.g. withholding tax failure to submit returns; omission or misstatement of items from returns; claiming relief (in Personal Income Tax) for example of children that do not exist.[23] The most common form of tax evasion in Nigeria is through failure to render tax to the Relevant Tax Authority. A tax evader may be charged to court for criminal offences with the consequent fines, penalties and at times imprisonment being levied on him for evading tax.[24]

4. Causes of Tax Avoidance and Evasion in Nigeria

Tax avoidance and evasion have adverse effect on government revenue. Tax avoidance generates investment distortion in the form of the purchase of assets exempted from tax or under-valued for tax purposes. Avoidance takes the form of investment in arts collection, emigration of persons and capital.[25] And as observed by Toby, the tax payer indulges in evasion by resorting to various practices. These, practices erode moral values and build up inflationary pressures.[26] This point can be buttressed with the fact that because of the evasion of tax individual and companies has a lot of money at their disposal. Companies declare higher dividends and individuals have a high take home profit. This will increase the quantity of money in circulation but without a corresponding increase in the goods and services.[27] This then build up what is known as inflationary trends where large money chases few goods. According to Fjeldstad, he says tax evasion

[14] B. Faseun,*Nigeria Taxation: An Approach.*(EgbeKogi, Bhoti International Publishing Ltd., 2000)
[15] O. Edwin *Good Tax Planning and Tax Avoidance as Legal Options to the Illegality of Tax Evasion.* A Paper delivered at the Tax Awareness Forum for the Public Sector and Organized, 2007)
[16] J. F. Adebisi, and D.O. Gbegi, *Effect of Tax Avoidance and Tax Evasion on Personal Income*, Ibadan: (Special Publisher, 2013)
[17] L. Soyode, and S.O. Kajola, *Taxation: Principles and Practice in Nigeria*: 1st Edit. (Silicon, Ibadan, 2006)
[18] O.T. Fagbemi., M.O. Uadiale and O. A. Noah: The Ethics of Tax Evasion: Perceptual Evidence from Nigeria. *European Journal of Social Sciences* – 2010 17 (3) 360-371.
[19] A.S. Fakile and F. F. Adegbie, Company Income Tax and Nigeria Economic Development: *European Journal of Social Sciences* 2 (6) 326-330, 2011)
[20] C. Chiumya, 'Counteracting Tax Evasion in Malawi: An Analysis of the Methods and a Quest for Improvement', Munich Personal RePEc Archive. 1 – 42, 2006).
[21] M. Okorodudu 'Analysis of Federal and State Taxing Powers' in Ajomo M.A, (eds) Tax Law and Tax Administration in Nigeria, Lagos: Nigerian Institute of Advanced Legal Studies
[22] F. Grown, *Guide to Nigeria taxes.* (Lagos: All Crown Nigerian Ltd, 2007).
[23] F. Grown, *Guide to Nigeria taxes.* (Lagos: All Crown Nigerian Ltd, 2007).
[24] F. Larry. *Tax Planning,* Lagos tax. *The CITN Newsletter*, Vol No 1, 2014).
[25] J. F. Adebisi, and Gbegi, D.O. *Effect of Tax Avoidance and Tax Evasion on PersonalIncome,* Zaria, AZ Publisher, 2013)
[26] R. Toby, *The Theory and Practice of Income Tax.* (Macmillan Press Ltd. 1983).
[27] Ibid.

has had a variety of fiscal effects and there are at least three reasons responsible for this, in the first place, revenue losses from noncompliance and corruption become significant at a time of substantial budget deficit.[28] Second, horizontal and vertical equity suffer because the effective tax rates faced by individuals' may differ because of different opportunities for tax evasion.[29] Again, Shome stressed that, an important adverse effect of tax evasion is perhaps on equity.[30]

There is horizontal and vertical inequity where in both forms of inequity, the higher-taxed person pays for the lower-taxed person since, had there been no tax evasion; the tax rates would have been lower under the premise of revenue neutrality. Third, there is a growing concern about the expanding underground economic activities, and how these activities affect economic policies.[31] Acts of corruption by tax collectors often play a role in promoting or sustaining underground economic activities and in facilitating tax evasion.[32] Tax evasion and fiscal corruption thus contribute to undermining the legitimacy of government. Furthermore, citizens' disrespect for the tax laws may expand disrespect for other laws. Toby acknowledged that, tax evasion has undoubtedly affected adversely the government revenue generation capability and the economy as a whole and observed that, the taxpayer indulges in evasion by resorting to various practices.[33] These practices erode moral values and build up inflationary pressures. This point can be buttressed with the fact that because of the evasion of tax, individuals and companies have a lot of money at their disposal. Companies declare higher dividends and individuals have a high take home profit. This increases the quantity of money in circulation but without a corresponding increase in the goods and services. This then build up what is known as inflationary trends where large money chases few goods. Russo, reported that, in Italy, one of the effects of tax evasion is loss of revenue to the government.[34] Marion and Muehlegger added that, lack of compliance with tax laws are likely to alter the distortionary costs of raising a given level of government revenue and may affect the distributional consequences of a given tax policy. In addition to, resources spent evading taxes represent a deadweight loss to the economy.[35]

Another effect of tax evasion is discussed by Matsaganis and Flevotomou stressed that, tax evasion raises significant issues from the point of view of efficiency.[36] Shome added that tax evasion distorts economic efficiency. In sectors that are less subject to the administrator's scrutiny as in the informal economy, there will be more investment.[37]Inefficiency leads to lower revenue intake for government, its functional capacity, efficiency and effectiveness suffer because of tax evasion. Capacity suffers due to lower availability of resources. Efficiency declines since important functions may have to be given less priority than others. It is noted that, effectiveness declines as compliant taxpayers realize that government is unable or unwilling to take corrective action, and, therefore, feel increasingly comfortable in joining the rest in the act of tax avoidance and evasion

5. Legal Framework on Tax Avoidance and Evasion under the Personal Income Tax Act in Nigeria

Personal income tax predates the modern Nigerian state having evolved from the pre-colonial era through the colonial era and still evolving in this post-colonial era. Income tax administration post-independence was first regulated by the Income Tax Management Act (ITMA) 1961, which was later replaced by ITMA, 1979. ITMA, 1979 was repealed and replaced by the Personal Income Tax Decree (PITD) 1993. The Act was revised in 2004 as Personal Income Tax Act, 2004 with some sections and schedules later amended in 2011.[38] The core concern of the past and present Acts is the determination of taxpayers' tax liabilities by outlining procedures to determine gross income,[39] allowable and disallowable deductions[40] from income in ascertaining taxable income, income exempted from tax,[41] applicable marginal tax rates,[42] exemptions, etc. Income under the PITA encompasses all income received by a taxable person such as employment related income including benefits in kind, income from self-employment as well as income derived from investment, that is interest, dividend and rent.

The First Schedule to PITA 2004 provides that earned income in relation to an individual means income derived by him from a trade, business, profession, vocation or employment carried on or exercised by him and a pension derived by him in respect

[28] O. Fjeldstad, *Tax Evasion and Corruption in Local Government in Tanzania:* Alternative Economic Approaches, 1996)
[29] J. Alm, J. Martinez-Vazquez, *Societal Institutions and Tax Evasion in Developing and Transitional Countries*, A Paper Prepared for Public Finance in Developing and Transition Countries: A Conference in Honour of Richard Bird International Studies Program Andrew Young School of Policy Studies, Georgia State University, (2001)
[30] P.A. Shome, *Premier on Tax Evasion*; IMF, 2008 Staff Paper 40(4) 807-828
[31] Ibid.
[32] Ibid.
[33] R. Toby, Op. Cit.
[34] O. Edwin, (2007), Good Tax Planning and Tax Avoidance as Legal Options to the Illegality of Tax Evasion. A Paper delivered at the Tax Awareness Forum for the Public Sector and Organized
[35] Ibid.
[36] M. Matsaganis and M. Flevotomou, Distribution implication of Tax Evasion in Greece. Hellenic Observatory Papers on Greece and Southeast Europe, GreeSE Paper No 31, 2010.
[37] P. A. Shome, Op. Cit.
[38]Cap. P8 LFN, 2004.
[39] Section 36 PITA, 2004.
[40] Sections 20 and 21 PITA, 2004.
[41] Section 19 and Third Schedule of PITA, 2004
[42] Sixth Schedule of PITA, 2004.

of a previous employment. The Act provide for a consolidated relief allowance to be granted on income at a flat rate of ₦200,000.00 subject to 1 percent of gross income, whichever is higher plus 20 percent of gross income and the balance shall be taxable in accordance with the income table in the Sixth Schedule of the Act.[43] The Act provides for the payment of a minimum tax by a taxpayer who has no taxable income after all allowable deductions have been made from its entire income. The taxpayer has no chargeable income or where the tax payable on the chargeable income of the taxpayer is less than 1 percent of the total income, the taxpayer shall be charged to tax at the rate of 1 percent of the total income.[44]

Under PITA,[45] any salary, wages, fees, allowances or other gains or profits from an employment including bonuses, premiums, benefits or other perquisites allowed, given or granted to an employee are chargeable to tax. Taxable income is assessed to tax at graduated rates ranging from 7 percent to 24 percent, depending on the income band being assessed. Non-residents are subject to the same tax rates as residents. The maximum tax rate is currently 24 percent on taxable income.[46] The Act provide that for each year of assessment, a taxable person shall file a return of income in a prescribed form, containing the prescribed information with the tax authority of the State in which the taxable person is resident containing the amount of income from every source of the year preceding the year of assessment. The form of return shall contain a declaration by the taxable person that the return contains a true and correct statement and the return shall be filed with the tax authority within ninety days from the commencement of every year of assessment.[47]The Act also provide that every employer is required to file a return with the tax authority of all emoluments paid to its employees not later than 31st January of every year in respect of all employees in its employment in the preceding year.[48]No return of income is required to be filed by a person whose only source of income in any year of assessment is employment in which he earns ₦30,000 or less from that source.[49] Also, there is a bonus of 1 percent for early filing and payment of tax.[50]

After the expiration of the time allowed for filing of returns, the tax authority may proceed to assess every taxable person chargeable with income tax.[51] The tax authority after assessment shall serve or cause to be serve a taxable person with an assessment 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 right of the person as contained in the Act.[52] If the taxable person disputes the assessment, he may apply to the tax authority by notice of objection in writing within thirty days from the service of the notice of assessment to review or revise the assessment and shall state the grounds of the objection to the assessment.[53]

Section 85 of the Act provides that where payment have been fully made by a taxpayer on the income assessed for three years immediately preceding the current year of assessment or that no tax is due on the income or that the person is not liable to tax for any of those three years, is shall be the duty of the tax authority to issue a tax clearance certificate to the person within two weeks of demand for the certificate by that person or give reasons for denial. In another vein, where a taxable person has been properly served with an assessment which has become final and conclusive and a demand notice has been served, if payment of tax is not made within the time specified by the demand notice, the tax authority may for the purpose of enforcing payment of tax due distrain the taxpayer by his goods, other chattels, bond or other securities or distrain upon any land, premises or places in respect of which the taxpayer is the owner[54] for the purpose of recovering the tax due to the tax authority.

6. Tax Avoidance under the Personal Income Tax Act

The term tax avoidance refers to the use of legal methods of arranging a taxpayer's tax books and affairs without contravening the law. It may also be achieved by prioritizing investments that have tax advantages. Tax avoidance is not the same as tax evasion, which relies on illegal methods such as underreporting income and falsifying deductions. In tax avoidance, the taxpayer exploits certain provisions or lack of provisions in the tax law to legally reduce his or her tax liability. Whereas the tax authority would like to take every advantage available to it under the tax laws to empty the taxpayer's pocket, the taxpayer is in like manner entitled to be wise to adopt lawful means to prevent the depletion of his pocket by the tax authority. Taxpayers escape tax liability if they are not clearly caught by the express provisions of the tax laws. The courts in a plethora of authority have given judicial backing to tax avoidance. Viscount Sumner affirmed judicial backing in tax avoidance scheme in the case of *Levene v I.C.R*[55] when he commented that it is trite law that His majesty's subjects are free, if they can, to make their own arrangements, so that their cases may fall outside the scope of the taxing Acts. They incur no legal penalties and strictly speaking, no moral censure if having strictly considered the lines drawn by the legislature for the imposition of taxes, they make it their business to walk outside them. The same attitude was taken in the latter case of *Ayrshire Pullman Motor Services v*

[43] Section 33 PITA, 2004.
[44] Section 37 PITA, 2004; Section 7 PITA (Amendment) Act, 2011.
[45]Section 3 PITA, Cap. P8, LFN 2004.
[46] Sixth Schedule of PITA, 2004.
[47] Section 41 PITA, 2004.
[48] Section 81 PITA, 2004.
[49] Section 43 PITA, 2004.
[50] Section 45 PITA, 2004.
[51] Section 54 PITA, 2004.
[52] Section 57 PITA, 2004.
[53] Section 58 PITA, 2004.
[54] Section 104 PITA, 2004.
[55] (1929) AC 217.

C.I.R,[56] where the court held that every man is entitled if he can to order his affairs so that the tax attaching under the appropriate Acts is less than it otherwise would be. If he succeeds in ordering them so as to secure this result, then, however unappreciative the Commissioners of the Inland Revenue or his fellow taxpayers may be of his ingenuity, he cannot be compelled to pay an increased tax. In the aftermath of successful tax avoidance by a number of taxpayers, the legislature often introduces fresh provisions which are specifically intended to plug the identified loophole and forestall future avoidance scheme. These are referred to as anti-avoidance provisions.[57] There are anti-avoidance provisions contained in the Personal Income Tax Act to plug loopholes in the tax law and to combat tax avoidance by tax authorities.

Given the fact that not every transaction may be anticipated by the Act, section 17 of the Personal Income Tax Act creates a trap for transactions that are largely taxable but that would otherwise escape taxation due to the absence of specific anti-avoidance provisions. Section 17 of the Act provides that where a tax authority is of the opinion that any disposition is not in fact given effect to or that any transaction which reduces or would reduce the amount of any tax payable is artificial or fictitious, the tax authority may disregard the disposition or direct that such adjustments shall be made as respects of income of an individual, an executor or a trustee, as the tax authority considers appropriate so as to counteract the reduction of liability to tax effected, or reduction which would otherwise be effected by the transaction. Subsection 3 of section 17 is to the effect that transactions between persons one of whom either has control over the other or in case of individuals who are related to each other or between persons both of whom are controlled by some other person, shall be deemed to be artificial or fictitious if in the opinion of the tax authority those transactions have been made on terms which might fairly have been expected to have been made by independent persons engaged in the same similar activities dealing with one another at arm's length.[58]

The above provision of the Personal Income Tax Act gives the tax authority the power to disregard any transaction considers to be artificial or fictitious and to make appropriate adjustments to the income of the taxpayer to counteract the reduction of liability to tax effected, or reduction which would otherwise be affected by the transaction. Also, section 33 of the Personal Income Tax Act provides for consolidated relief allowance where it provides that there shall be allowed a consolidation relief allowance of ₦200,000.00 subject to a minimum of 1 percent of gross income whichever is higher plus 20 percent of the gross income and the balance shall be taxable in accordance with the income table in the Sixth Schedule of the Act. By this provision, every taxpayer is entitled to the consolidated allowance only which has reduced the incidence of tax avoidance. This provision has also prevent the depletion of tax liability by surreptitious means, that is, by claiming different kinds of reliefs and allowances by taxpayers in order to avoid tax.

Paragraph 7(2) of the Fifth Schedule to the Personal Income Tax Act stipulates that where capital expenditure is incurred on the purchase of an asset and either the seller has control over the purchaser or both of them are controlled by a third person, the amount of an initial allowance to be granted in respect of the expenditure shall be such an amount as the relevant tax authority may determine to be just and reasonable having regard to all circumstances. The provisions of the Personal Income Tax Act also strikes at settlement schemes and trusts to plug loopholes through which taxable persons can minimize or escape tax liability or use of family income to avoid tax liability. Paragraph 1 of the Second Schedule to the Act provides that the income of a settlement or trust shall be deemed to be the income of the settlor or person creating the trust if the settlor or person retains or acquires an immediately exercisable general power of appointment or makes use either directly or indirectly any part of the income arising under the settlement or trust or the settlement or trust is revocable in circumstances whereby that settlor or person, or the spouse thereof, resumes control over any part of the income or assets comprised therein. Paragraph 4(1) of the Second Schedule to the Act also provides that where in consequence of a settlement and during the lifetime of the settlor, an income is paid to or for the benefit of the settlor's child in any year of assessment, such income shall be treated as the settlor's income for that year and not as income of any other person provided the child was an infant and unmarried at the time of payment.

A trust is one of the devices that can be used in tax planning, for example, by transferring income from a higher rate taxpayer to one who pays tax at a basic rate, for instance, a wealthy grandfather transferring income bearing assets to trustees for the benefit of his grand children by ensuring that the income of the trust belongs to no individual. It is noteworthy that one of the clear cases of tax avoidance is the use of the family settlement. This includes any disposition, trust agreement, arrangement or transfer of assets. Where a person creates a family settlement, his or her intention may be among others to ensure that the tax authority is prevented from dipping her hands into the family fortune. Although such tax planning may be allowable[59] according to the provisions of the Personal Income Act but the owner of the income has to completely divest himself or herself of such income and should not benefit at all from it. The allocation of such income must be irrevocable if it is not to attract tax.

[56] (1929) 14 TC 754.

[57] A. Ipaye, *Nigerian Tax Law and Administration: A Critical Review*, (Asco Prime Publishers, 2014), 101.

[58] The arm's length principle requires that the conditions of a controlled transaction should not differ from the conditions that would have applied between independent persons in comparable transactions carried out under comparable circumstances. In effect, the arm's length principle would be said to be at play where the relationship or lack of it existing between parties to an economic transaction have not impacted on the prices chargeable or payable by the respective party. Where parties to a transaction are related or otherwise connected, the transactions must be priced as with those between independent enterprises conducted in similar circumstances.

[59] J. Mugalula, 'Anti-Tax Avoidance Provisions under Income Tax Act Cap 340: A Perspective Analysis'.

7. Penalties for Tax Evasion under the Personal Income Tax Act

Tax evasion as an intentional effort by people, corporate bodies, trust and other institutions to illicitly refuse to pay their tax and reporting true and fair value of their earnings by a means of evading.[60] Tax evasion is characterized as an intentional wrongful attitude, or as a behaviour involving a direct violation of tax laws, norms and ethics regarding citizenry obligation to escape the payment of tax. The intentional underreporting of income, as well as over-claiming of a tax deduction, is an obvious example of tax evasion.[61] Tax evasion is an intentional and conscious practice of not revealing full taxable income.[62] It is a violation of tax laws in which the tax rate due by a taxable person is unpaid after the minimum required period.[63] Tax evasion is clear evidence in a situation where taxpayers are reducing, making or proclaiming false statement about their liabilities on the revenue tax through exploiting ineffectiveness in the tax laws and regulations Tax evasion typically involves taxpayers consciously misrepresenting or hiding the true position of their affairs to the relevant tax authorities to ease their tax burden. However, tax evasion can be classified as fully evasion or partial evasion.[64] Partial evasion occurs when individual or corporate entity understated its earnings for the purpose of tax and declares low income. While fully evasion occurs when the person or corporate entity qualifies to pay tax but fails to register with tax authorities to enroll in the tax system. This act comprises, in specific, fraudulent tax reporting like declaring less earnings and overstressing deductions. In the face of law, tax evasion is a crime and subject to execution by way of fine, imprisonment or even both in many countries of the world. Tax evasion is representing illegal practices by taxpayer to escape his civic responsibility enforce by the law and generally accepted by the society or nation. Due to this situation, the taxable income and other tax activities are being concealed, the amount or sources of income are misrepresented and the reductions, reliefs or exemptions are intentionally overstated.[65]

The Personal Income Tax Act imposes fine and in some cases, imprisonment terms for certain act of tax evasion by taxpayers and non-compliance with the provisions of the Act. Section 49 of the Act as amended by section 28 of the Finance Act, 2019 requires everybody who intends to open a bank account for the purpose of business to provide a Taxpayer's Identification Number (TIN) as a precondition for the opening of the bank account. The section also requires anybody engaged in banking business to prepare returns at the end of every month specifying the names and address of new customers and deliver same to the tax authority not later than seven (7) days of the following month. The penalty provided by this section is that any employer who contravenes the provision of this section shall be liable upon conviction to a penalty of Five Hundred Thousand Naira (₦500,000.00) in the case of a body corporate and Fifty Thousand Naira (₦50,000.00) in the case of an individual. Section 81 of the Act requires every employer to file tax return with the tax authority of all the emoluments paid to their employees not later that 31st January every year and any employer who contravenes the provision of this section shall be liable upon conviction to a penalty of Five Hundred Thousand Naira (₦500,000.00) in the case of a body corporate and Fifty Thousand Naira (₦50,000.00) in the case of an individual.

Section 85 of the Act requires every Ministry, Department and Agency of Government and commercial banks to demand the production of a tax clearance certificate as a precondition of transacting business with that person. The first offence provided under this section is that where a person who for the purpose of obtaining a tax clearance certificate, gives incorrect information in relation to any matter or thing affecting his liability to tax; or obtains a tax clearance certificate through misrepresentation, forgery or falsification, the person shall be guilty of an offence and liable on conviction to a fine of Fifty Thousand Naira (₦50,000.00) plus twice the tax payable by him or to imprisonment for three (3) years or to both fine and imprisonment. In the same vein, any person be it a government organisation or corporate entity who fails to comply with the provisions of this section is guilty of an offence and is liable on conviction to a fine of Five Million Naira (₦500,000,000.00) or to imprisonment for three (3) years or both fine and imprisonment.

Section 94(1) of the Act as amended by section 26 of the Finance Act, 2021 provides that a person guilty of an offence under the Act or a person who contravenes or fails to comply with any of the provisions of the Act or any rule or regulation made thereunder for which no other penalty is specifically provided shall be liable on conviction to a fine of Twenty Thousand Naira (₦20,000.00) and where the offence is failure to furnish a return, statement or information or to keep records required, a further sum of Two Thousand Naira (₦2,000.00) for each day for every day during which the failure continues, and, in default of payment, to imprisonment for six (6) months and the liability to such further sum shall commence from the day following the conviction, or from such other day thereafter as the court may order.

Section 95 of the Act is to the effect that a person who without reasonable excuse makes an incorrect return by omitting or understating any income liable to tax under the Act or gives an incorrect information in relation to a matter or thing affecting the liability to tax of any taxable person is guilty of an offence and liable on conviction to a fine of Twenty Thousand Naira

[60] O. Edwin *Good Tax Planning and Tax Avoidance as Legal Options to the Illegality of Tax Evasion.* A Paper delivered at the Tax Awareness Forum for the Public Sector and Organized, 2007).

[61] J. F. Adebisi, and D.O. Gbegi, *Effect of Tax Avoidance and Tax Evasion on Personal Income*, (Special Publisher, 2013).

[62] L. Soyode, and S. O. Kajola, *Taxation: Principles and Practice in Nigeria*: 1st Edit. (Silicon, Ibadan, 2006).

[63] O.T Fagbemi. M.O Uadiale and O. A. Noah, 'The Ethics of Tax Evasion: Perceptual Evidence from Nigeria *European Journal of Social Sciences'* 2010 17 (3) 360-371.

[64] A.S. Fakile and F. F., Adegbie, Company Income Tax and Nigeria Economic Development: *European Journal of Social Sciences* 2 (6) 326-330, 2011)

[65] C., Chiumya, 'Counteracting Tax Evasion in Malawi: An Analysis of the Methods and a Quest for Improvement', *Munich Personal RePEc Archive*. 1 – 42, 2006).

(₦20,000.00) of the correct tax and double the amount of tax which has been undercharged in consequence of the incorrect return or information, or would have been so undercharged if the return or information had been accepted as correct. The Act also provides that no person shall be guilty of any offence under the provisions of section 95 unless such complaint was brought in the same year of assessment or within six (6) years from the commission of the offence. In a like manner, the tax authority has the powers to compound any offence committed under section 95 of the Act.[66]

Section 96 of the Act provides that a person who for the purpose of obtaining a deduction, set-off, relief or an overpayment in respect of tax for himself or any other person, or who in a return, account or particulars made or furnished with reference to tax, knowingly makes a false statement or false representation or aids, abets, assists, counsels, incites or induces any other person to make or deliver a false return or statement under the Act; or to keep or prepare false accounts or particulars concerning any income on which tax is payable under the Act; or unlawfully refuses or neglects to pay tax, is guilty of an offence and liable on conviction to a fine of Five Hundred Thousand Naira (₦500,000.00) in the case of a body corporate and Fifty Thousand Naira (₦50,000.00) for individual or to imprisonment for not more than six (6) months. The provision of section 97 of the Act imposes sanctions on tax administrators and or persons' authorised by tax administrators to assess or collect tax on behalf of the tax authority. This provision aimed at curbing corruption in the day to day activities of the tax administrators.

Section 97 of the Act is to the effect that a person who being a person appointed for the due administration of the Act or employed in connection with the assessment or collection of the tax, demands from a person an amount in excess of the authorised assessment of the tax; or withholds for his own use or otherwise, a portion of the amount of tax collected; or renders a false return, whether orally or in writing, of the amount of tax collected or received by him; or defrauds a person, embezzles any money, or otherwise uses his position to deal wrongly with the relevant tax authority; or not being authorised under this Act to do so, collects or attempts to collect the tax under the Act, shall be guilty of an offence and liable on conviction to a fine of Ten Thousand Naira (₦10,000.00) or to imprisonment for three years or both such fine and imprisonment. The Operation of Pay As You Earn Regulations made pursuant to PITA provides under Regulation 2, paragraph 1 and 2 of the Regulations provides that an employer shall within six months of the commencement of the Regulations or within six (6) months of commencing a business, whichever is earlier deduct tax from emoluments of his employees and remit to the relevant tax authority. An employer who fails to or refuses to register with the relevant tax authority within the time specified in the Regulation commits an offence and is liable on conviction to pay Twenty-Five Thousand Naira (₦25,000.00) in addition to the payment of arrears of the tax due.

8. Conclusion and Recommendations

Tax is a contract between the government and its people. This contract propels the people to demand better governance from their leaders and places a burden on the leaders to provide purposeful leadership and development. Tax avoidance and tax evasion are two distinct terms in the laws of taxation which have different legal effects but are often misconstrued to mean the same thing. Suffice it to state however, that the duo constitutes the greatest impediment to revenue generation through taxation. This study examined the anti-tax avoidance provisions in the Personal Income Tax Act and the various penal sanctions provided under the Act to curb tax evasion. This study established a relationship between tax avoidance and tax evasion and identified the distinguishing factor between the two terms. The government should therefore embark upon public enlightenment campaign and adequate utilization of tax revenues on public goods to discourage tax avoidance and tax evasion and also the reduction in tax rate. This will certainly enhance and boost revenue generation in the country and engender development.

In the light of the above, the following recommendations were proffered. Government should endeavour to provide social amenities to all nooks and crannies of the country and provide employment opportunities to all by the judicious use of tax proceeds. In this way, all will have the sense of belonging thereby encouraging voluntary compliance. Government should embark upon other means of publicity such as radio messages, television advertisement, post bills as well as the use of town criers to inform taxpayers of changes in tax legislation and need for compliance. The tax authorities should properly review and evaluate the assessment and collection procedures so as to encourage compliances by the taxpayers. The usual practice of reprinting parts of the tax laws and sending same to the taxpayers expecting that they would understand is not encouraging since these laws are written in legal jargons or terms that are not easily understood. Moreover, tax forms should be made less complex. Vast improvement can be made by improving the design of the forms. Suitable personnel should be recruited and revenue personnel generally trained and retrained to cope with the challenges and demands of the job. Staff should also be motivated through good salary package to insulate them from fraud and other corrupt practices. The setting up of revenue courts should be embraced by the government. These courts should be made to impose heavy monetary penalties and criminal sanctions. The handling of tax clearance certificates should be well decentralized such that neither the assessor nor the collector can issue tax clearance certificates. The audit unit of the authority should be strengthened to always audit tax remittances by collectors at all levels. The measure will go a long way to curb corrupt practices among tax officials. A census of the taxable population should be conducted in the country. This will now update the tax database so that at any given time the tax office can give details of taxable adults and businesses thus reducing the incidence of tax evasion. Since majority of the people are poor, tax evasion becomes inevitable. Government should therefore aggressively tackle the inflationary trend and also ensure that the poor or the lower class pay very minimal tax.

[66] Section 95(2) and (3) of PITA.