

## AN APPRAISAL OF TAX ADMINISTRATION AND ITS CHALLENGES IN THE NIGERIAN PETROLEUM INDUSTRY\*

### Abstract

*Nigeria is richly blessed with numerous mineral resources of which crude oil ranks highest. This accounts for the great dependence of the nation's economy on oil revenue. Petroleum taxation is a major source of oil revenue in Nigeria. The objectives of taxation; petroleum taxation in particular are numerous. Apart from being a source of revenue for government funding and provision of essential services for the citizenry, it acts as a tool for wealth distribution between the wealthy in the society and the poor. Despite the foregoing objectives of Petroleum taxation to the nation's economy, several factors abound that militate against the effective collection and administration of Petroleum taxation. These factors result in a huge decline in the expected revenue from petroleum taxation and also inhibit the effective maximization of revenue accruing from petroleum taxation for the benefit of the nation. Hence, the main focus of this research is to analyse the legal and institutional framework set up for the administration of Petroleum taxation in Nigeria, with the aim of proffering solutions to the challenges that plague the administration of taxes in the petroleum industry. In carrying out this research, the researcher adopted the doctrinal method and also employed a combination of the theoretical and analytical approach. Data was majorly collected through secondary sources and reference was made to statutes, law textbooks, notable judicial pronouncements, scholarly articles in local and international journals, and resources on the internet. It was found that some of the provisions of the existing laws in the area of petroleum taxation are ambiguous, obsolete and ineffective. It was also found that tax evasion, corruption by tax officials, public officers, and politicians have short-changed the nation's economy in the area of revenue derived from the taxation of petroleum operations. The lack of skilled tax officials and their lackadaisical attitude towards work and self-improvement also creates a bottleneck in the effective and efficient tax administration. In the light of the foregoing findings, the researcher recommended that Measures should be put in place to ensure regular update of tax laws in Nigeria, to cater for recent developments. Tax evasion and corruption should be duly prosecuted and severe punishments meted out to offenders to serve as deterrent to other tax payers. Furthermore, the process of recruiting and promotion of tax officials should be characterised by transparency and based on merit rather than favouritism and other irrelevant factors. This research is a contribution to the body of literature in the area of Petroleum tax administration, and constitutes a springboard for future research in the subject area.*

**Keywords:** Tax, Taxation, Administration, Challenges, Industry, Petroleum, Oil.

### 1. Introduction

The Petroleum Industry in Nigeria is the largest on the African Continent.<sup>1</sup> Prior to the discovery of oil, Nigeria (like many other African countries) strongly relied on agricultural exports to fund its economy. The history of the Nigerian petroleum industry can be traced to 1908, when a German company called the Nigerian Bitumen Corporation began exploration activities in Araromi of the then Western Nigeria.<sup>2</sup> However, this venture was unsuccessful and was halted by the outbreak of the first World War in 1914.<sup>2</sup> All other exploration attempts were unsuccessful until 1956, when Shell D'Arcy discovered oil in commercial quantity at Oloibiri<sup>3</sup> with a production capacity of 5,100 barrels per day. The Nigerian Petroleum industry is broadly divided into three sectors namely: the upstream, the mid-stream,<sup>4</sup> and the downstream sectors. The upstream petroleum sector is also commonly known as the exploration and production (E&P) sector.<sup>5</sup> and the income of companies operating in this sector is subject to tax under the Petroleum Profits Tax Act. Mid-stream operations link the upstream and downstream entities<sup>5</sup> and mostly include transportation and storage, such as pipelines and gathering systems. <sup>6</sup> The downstream sector commonly refers to the refining of petroleum, crude oil and the processing and purifying of raw natural gas, as well as the marketing and distribution of products derived from crude oil and natural gas. All

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<sup>1</sup> Wikipedia Petroleum industry in Nigeria; available at <https://en.m.wikipedia.org/wiki/Petroleum-industry-in-Nigeria> (last accessed on 12/12/2017). <sup>2</sup> Araromi is presently Ondo State.

<sup>2</sup> Alike, Ejirofor. Nigeria: Rethinking NNPC's Oil Search in the North available at <http://allafrica.com/stories/201608230156.html> (last accessed on 15/03/18).

<sup>3</sup> Oloibiri is presently located in Bayelsa State.

<sup>4</sup> Midstream operations are often included in the downstream category and considered to be a part of the downstream sector.

<sup>5</sup> Industry Overview from the website of the Petroleum Services Association of Canada (PSAC)

<sup>5</sup> What is the difference between upstream and downstream oil and gas operations available at [www.investopedia.com/ask/answers/0602/what-difference-between-upstream-and-downstream-oil-and-gas-operations.asp](http://www.investopedia.com/ask/answers/0602/what-difference-between-upstream-and-downstream-oil-and-gas-operations.asp). (last accessed 14/01/18).

<sup>6</sup> Midstream available at [https://en.m.wikipedia.org/wiki/Midstream\\_\(petroleum\\_industry\)](https://en.m.wikipedia.org/wiki/Midstream_(petroleum_industry)) (last accessed 14/12/2017)

the companies that operate in the midstream and downstream petroleum sectors are assessed to income tax under the Companies Income Tax Act, ) as amended at the rate of 30% of their chargeable profit.

## **2. Petroleum and Petroleum Operations in Nigeria**

Petroleum has been defined as naturally occurring crude oil consisting of a complex mix of hydrocarbons of various molecular weights and other liquid organic compounds as well as inorganic compounds<sup>7</sup>. The Petroleum Act<sup>8</sup> defines petroleum to mean mineral oil (or any related hydrocarbon) or natural gas as it exists in its natural state in strata, and does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation. Section 2 of the Petroleum Profit Tax Act defines petroleum operations to mean:

The winning of, obtaining and transportation of petroleum or chargeable oil in Nigeria by or on behalf of a company for its own account by any drilling, extracting or other like operations or process, not including refining at a refinery, in the course of a business carried on by the company engaged in such operations and all operations incidental thereto and any sale or any disposal of chargeable oil by or on behalf of the company.

The above definition of petroleum operations is significant in the area of taxation. This is because profits derived from petroleum operations are subject to Petroleum Profit Tax Act while those from sources other than petroleum operations are subject to Company Income Tax.

## **3. Petroleum Taxation in Nigeria**

Dalton<sup>9</sup> defines tax as a compulsory contribution imposed by a public authority, irrespective of the exact amount of service rendered to the taxpayer in return, and not imposed as penalty for any legal offence. The history of taxation can be traced to the colonial era when the High Commissioner of the Northern Protectorate, Sir Fredrick Lugard issued the Stamp Duties Proclamation 1903 and the Native Revenue Proclamation in 1906.<sup>10</sup> Since the introduction of taxation into the Nigerian economy, there has been a steady progress in improving the tax regime and various attempts have been made to modernise, expand, reform, and improve the tax processes. Tax revenue accruing to the Nigerian economy has been broadly categorized into two. They include:

1. Petroleum revenue which includes petroleum profit tax, revenue from royalties, rents, oil pipeline and licence fees, signature bonuses, and other levies obtainable in the petroleum sector; and
2. Non-petroleum revenue which include revenues such as direct and indirect taxes paid by other sectors of the economy.<sup>11</sup>

Taxation in the petroleum industry became expedient after the discovery of oil in commercial quantity, which brought about the need to enact legislation to regulate taxation in the industry. The first legislation in this regard was the Petroleum Profit Tax Act of 1959. The Petroleum Profit Tax Act (PPTA)<sup>12</sup> is the most comprehensive legislation regulating petroleum taxation in Nigeria. However, various other laws have been enacted in addition to the Petroleum Profit Tax Act to regulate taxation in the petroleum sector, even as there are now several fees and levies payable by petroleum operators to the government. These other laws deal with some aspects of Petroleum taxation like the Deep Offshore Inland Basin Production Sharing Contract Act (DOIBPSCA)<sup>13</sup>, Company Income Tax Act (CITA)<sup>14</sup>, Tertiary Education Trust Fund (Establishment, ETC) Act, 2011, Niger Delta Development Commission Act<sup>15</sup>, The Coastal and Inland Shipping (Cabotage) Act<sup>16</sup>, Oil Terminal Dues Act<sup>17</sup>, etc. The Nigerian Petroleum Industry is very critical to the survival of the nation's economy. Consequently, much attention has been given to the administration of petroleum revenue. Currently, attempt is ongoing to pass into

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<sup>7</sup>Petroleum Glossary <http://www.petroleum.co.uk/glossary>

<sup>8</sup> Cap P10 LFN 2004 (S15)

<sup>9</sup> G Akrani, What is Tax ? Definition - Adam Smith's Canons of Taxation available at <http://kalyan-city.blogspot.com.ng/2010/12/what-is-tax-definition-adam-smith.html>- (last accessed 23/02/2018)

<sup>10</sup> I Omogui-Okauru, (ed.) (2012) *FIRS and Taxation Reforms in Democratic Nigeria*, (Safari Books Ltd, Ibadan), p. ix available at [https://books.google.com.ng/books?id=S\\_\\_bK5EftU8C&printsec=frontcover&source=gbs\\_ge\\_summary\\_r&cad=0#v=onepage&q&f=false](https://books.google.com.ng/books?id=S__bK5EftU8C&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false) (last accessed 12/01/2013)

<sup>11</sup> CN Worlu & E Nkoro (2012). Tax Revenue and Economic Development in Nigeria: A Macro Econometric Approach. *Academic Journal of Interdisciplinary Studies* 1(2). p.211.

<sup>12</sup> Cap P13 LFN 2004.

<sup>13</sup> Cap D3 LFN 2004.

<sup>14</sup>Cap C21 LFN 2004.

<sup>15</sup> Cap N87 LFN 2004.

<sup>16</sup>Cap C51 LFN 2004.

<sup>17</sup> Cap O8 LFN 2004.

law, the Petroleum Industry Fiscal Bill (PIFB) which if enacted, will represent the most comprehensive law since the history of Nigeria, to regulate the fiscal activities in the petroleum sector, including the administration of oil revenue

#### **4. Legal Framework for Petroleum Taxation**

In Nigeria, apart from the sale of oil produce, government also derives revenue from petroleum activities by way of bonuses, fees, royalties, oil terminal dues and corporate taxes which include the Petroleum Profit Tax (PPT) and the Companies Income Tax (CIT).

The main sources of tax laws are statutes. Generally, for taxes to be imposed on any person (legal or artificial) it must be specifically provided for by the clear words of a statute.<sup>18</sup> The following are some of the major Nigerian legislation which enables the imposition of tax in the Nigerian Petroleum Sector.

#### **1999 Constitution of the Federal Republic of Nigeria (as Amended):**

The Constitution is the *grundnorm* of every society. It is the organic law from which every other statute derives its validity.<sup>19</sup> Section 1(1) of the 1999 Constitution of the Federal Republic of Nigeria (as Amended) provides for the supremacy of the Constitution and its binding force over all persons and authorities. Item 59 of the Exclusive Legislative List in Part 1 of the Second Schedule of the Constitution empowers the National Assembly to enact laws to regulate the taxation of incomes, profits, and Capital gains except as otherwise provided in Part II (Concurrent Legislative List) as regards the collection of taxes. Consequently, the National Assembly in the exercise of this power has enacted various laws to regulate taxation in Nigeria. These taxes include: The Petroleum Profit Tax Act, Deep Offshore Inland Basin Production Sharing Contract Act, Company Income Tax Act, Tertiary Education Trust Fund (Establishment, ETC) Act, Mineral and Mining Act, etc.

#### **Petroleum Profits Tax Act (PPTA)**

The Petroleum Profit Tax Act<sup>20</sup> is the only comprehensive legislation from which the rules regulating matters of taxation within the petroleum industry can be discerned.<sup>21</sup> The PPTA is the principal law that regulates taxation in the upstream sector of the Nigerian Petroleum industry i.e. oil producing companies. An oil producing company is defined as a company engaged in petroleum operations and section 2 of the PPTA, defines petroleum operations as:

The winning of, obtaining and transportation of petroleum or chargeable oil in Nigeria by or on behalf of a company for its own account by any drilling, extracting or other like operations or process, not including refining at a refinery, in the course of a business carried on by the company engaged in such operations and all operations incidental thereto and any sale or any disposal of chargeable oil by or on behalf of the company.

The administration of the PPTA is vested on the Federal Inland Revenue Service (FIRS), by virtue of sections 2, 8, 25, and 68 and also the First Schedule of the Act.

#### **Deep Offshore and Inland Basin Production Sharing Contract Act (DOIBPSCA)<sup>22</sup>**

This enactment gives effect to the fiscal incentives granted to oil and gas companies operating in the Deep Offshore<sup>23</sup> and Inland Basin<sup>24</sup> areas under the Production Sharing Contracts (PSC). The Act by virtue of section 1 applies to all production sharing contracts as defined in section 17 of the Act. Section 17 of the Act defines Production Sharing Contract as ‘Any agreement or arrangements made between the Corporation or the holder and any other petroleum exploration and production company or companies for the purpose of exploration and production of oil in the Deep Offshore and Inland Basins’. Section 3(1) of the Act, provides that petroleum profits tax payable under a Production Sharing Contract shall be determined in accordance with the Petroleum Profits Tax Act provided that the petroleum profits tax applicable to the contract area shall be 50 percent flat rate of chargeable profits for the duration of the production sharing contracts. By virtue of section 3(2), contractors under

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<sup>18</sup>*Cape Brandy Syndicate v LKC* (1921) 1 KR 64 at 71, per Rowland J.

<sup>19</sup>*Njinkonye v MTN Nigerian Communication Limited* (2008) All FWLR (Pt 413) 1343.

<sup>20</sup> Hereinafter referred to as the PPTA.

<sup>21</sup> Kwaji, Sini Fave and Ishaya, John Dabari Empirical Analysis of Tax Revenue Collection by Federal Government in Nigeria *European Journal of Accounting, Auditing and Finance Research* Vol. 5 No 2, pp 1-11, February 2017. Available at [www.eajournals.org/wp-content/uploads/empirical-analysis-of-tax-revenue-collection-bythe-federal-government-in-nigeria.pdf](http://www.eajournals.org/wp-content/uploads/empirical-analysis-of-tax-revenue-collection-bythe-federal-government-in-nigeria.pdf) (last accessed 15/12/2017).

<sup>22</sup> Cap D3 LFN 2004.

<sup>23</sup> Deep Offshore has been defined as any water depth beyond 200 metres by Section 17 of the DOIBPSCA

<sup>24</sup> By virtue of section 17 of the DOIBPSCA inland basin means any of the following Basins, namely, Anambra, Benin, Benue, Chad, Gongola, Sokoto and such other basins as may be determined, from time to time, by the Minister.

the PSC are not exempted from the payment of any other taxes, duties or levies imposed by any Federal, State or Local Government, or Area Council Authority. Sections 7 to 10 of the Act provide for the Allocation of royalty oil, cost oil, tax oil, and profit oil respectively.<sup>25</sup> The Act also provides for chargeable tax on petroleum operations in the contract area under the PSC to be split between the NNPC and the contractor in the same ratio as the split of profit oil as defined in the production sharing contract between them.<sup>26</sup> Section 13 of the Act provides for the use of realisable price as defined in the PSC and in accordance with the provisions of the PSC to determine amount payable on royalty and petroleum profit tax in respect of crude oil produced and lifted. It should be noted that the provisions of the DOIBPSCA are to be reviewed to ensure that if the price of crude oil should exceed \$20 per barrel, the share of the Federal Government in the additional revenue shall be adjusted *to such extent that the Production Sharing Contracts shall be economically beneficial to the Government*.<sup>27</sup> The Act by virtue of Section 16(2) provides that its provisions are to be reviewed fifteen years after its enactment and every five years thereafter.

#### **Companies Income Tax Act (CITA) <sup>28</sup>**

Companies operating in all other segments of the petroleum sector like the midstream and downstream sectors are assessed to company income tax at 30% of taxable profits under the CITA. Again, non-crude oil related income / profits earned by petroleum companies are liable to company income tax, separately. Section 9 of the CITA provides that tax is payable at the rate specified in section 40 (1) upon the profit of any company accruing in, derived from, brought into, or received in Nigeria in respect of certain transactions. Section 23(1) of the CITA provides for the exemption of certain profits of companies from assessment under the Act but omitted to exempt the profits of companies engaged in petroleum operations. However, section 23(2) and (3) of the Act empowers the president to exempt any company or class of companies from all or any of the provisions of the Act, or from tax, on any ground which appears to him sufficient. These provisions of Sections 23(2) and (3) appear to cure the lacuna created by Section 23(1).

#### **Tertiary Education Trust Fund (Establishment, ETC) Act 2011**

Section 1(1) and (2) of the Tertiary Education Trust Fund (Establishment, ETC) Act requires every company registered in Nigeria to pay 2% of its assessable profit as tertiary education tax annually. Section 1(3) provides that the assessable profit of a company for the purpose of Education Tax shall be ascertained in the manner specified in the Companies Income Tax Act or the Petroleum Profits Tax Act as the case may be. The purpose of the Education Tax is to improve the standard of education facilities at all levels throughout the country.<sup>29</sup> The assessment and collection of this tax is the responsibility of the Federal Inland Board of Revenue, but the funds accruing from the tax is managed and administered by the Board of Trustees of the Education Fund.<sup>30</sup>

#### **Niger Delta Development Commission Act <sup>31</sup>**

The Niger Delta Development Commission Act by virtue of section 14(2) requires oil producing companies operating in Nigeria to pay an annual contribution of 3% of their total annual budget to the Commission and this contribution qualifies as allowable deduction for Petroleum Profit Tax purposes.

#### **Oil Terminal Dues Act<sup>32</sup>**

Section 1 of the Act provides that terminal dues may be levied on any ship evacuating oil at any oil terminal for any services or facilities furnished by the Nigerian Port Authority under the Act. Section 7(3) defines oil terminal as 'Oil-loading terminal, pumping or booster station, or other installation (or structure associated with a terminal, including its storage facilities), other than a terminal situated within a port or any approaches thereto within the meaning of the Nigerian Ports Authority Act'.

### **5. Institutional Framework for the Administration of Petroleum Taxation**

Various institutions have been established to administer the laws regulating the administration of petroleum taxation in Nigeria. These institutions make up the institutional framework for the administration of Petroleum taxation in Nigeria. This work shall consider the Federal Inland Revenue Services (FIRS) and the Tax Appeal Tribunal (TAT), under this heading.

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<sup>25</sup> For definition of Royalty oil, cost oil, tax oil and profit oil, see chapter 2 of this work under Production Sharing Contracts.

<sup>26</sup> Section 12 of the DOIBPSCA.

<sup>27</sup> Section 16(1) of the DOIBPSCA.

<sup>28</sup> Cap C21 LFN 2004.

<sup>29</sup> Section 3 of the Act

<sup>30</sup> JO Orojo, *op cit* p. 583

<sup>31</sup> CaP N87 LFN 2004.

<sup>32</sup> Cap O8 LFN 2004.

### Federal Inland Revenue Service (FIRS)

The FIRS was established by the Federal Inland Revenue Service Establishment Act (FIRS) (Establishment) Act, 2007). The FIRS (Establishment) Act 2007 granted autonomy to the FIRS, making it independent in both funding and human resources<sup>33</sup>. The FIRS is charged with the responsibilities for assessment, collection of, and accounting for revenues accruable to the Federal Government and for related matters. Thus, the administration of petroleum profit tax being a tax payable by oil companies to the Federal Government is vested in the Federal Inland Revenue Service<sup>34</sup> by virtue of Section 3 of the PPTA. The Companies Income Tax Act (CITA) like the PPTA, is also administered by the FIRS.<sup>35</sup> Apart from the PPTA and the CITA, the FIRS also administer the collection of other taxes payable by oil companies like the Education Tax<sup>36</sup>, Stamp duties<sup>37</sup>, Value Added Tax (VAT) <sup>38</sup>etc. The FIRS is also empowered to administer statutes imposing collection of taxes, fees and levies collected by other government agencies and companies including signature bonus, pipeline fees, penalty for gas flared, depot levies and licenses, fees for Oil Exploration License (OEL), Oil Mining License (OML), Oil Production License (OPL), royalties, rents (productive and non-productive), fees for licenses to operate drilling rigs. Fees for oil pipeline licenses, haulage fees and all such fees prevalent in the oil industry.<sup>39</sup> Section 8(1) of the Federal Inland Revenue Service (Establishment) Act, 2007 and FIRS Handbook (2012), provides for the functions of the FIRS.

### Tax Appeal Tribunal

The Tax Appeal Tribunal (TAT) was established in 2007 pursuant to Section 59 (1) of the Federal Inland Revenue Service (Establishment) Act 2007 and it replaced the former Body of Appeal Commissioners and Value Added Tax (VAT) tribunals<sup>40</sup>. The TAT is empowered to settle disputes arising from the operations of the Act and others as spelt out in the fifth schedule to the FIRS Establishment Act. By virtue of Section 59 (2) of the FIRS Act, the TAT has jurisdiction to entertain disputes arising from the Companies Income Tax Act; Petroleum Profit Tax Act, Personal Income Tax Act, Capital Gains Tax Act, Value Added Tax Act; Stamp Duties Act; Taxes and Levies (Approved list for collection) Act. The scope of the TAT also covers any other law for the assessment, collection and enforcement of revenue accruable to the Government of the Federation as made by the National assembly from time to time or regulations incidental to those laws, conferring any power, duty and obligation on the Service. Other laws include laws imposing taxes and levies within the Federal Capital Territory; laws imposing collection of taxes, fees and levies collected by government agencies and companies, including signature bonuses, pipeline fees, penalty for gas flared, depot levies and licence fees for Oil Exploration Licence (OEL) Oil Mining Lease (OML) Production Licence, royalties, rents (productive and non –productive), fees for licence to operate drilling rigs, fees for oil pipeline licenses, haulage fees and all other fees prevalent in the oil and gas industry.<sup>41</sup>

## 6. Challenges of Petroleum Taxation

There are a number of issues militating against the effective administration of petroleum taxation in Nigeria. Highlighted below are some major challenges of petroleum taxation:

### Quality of Tax Officials

Knowledge and skill gap is a major challenge in tax administration in Nigeria. The Nigeria's National Tax Policy Report indicates that a major factor limiting the development of tax administration in Nigeria is shortage of qualified personnel.<sup>42</sup> Tax officials lack the requisite experience and knowledge of the laws required to appropriately and effectively assess taxpayers. The challenge of unqualified personnel has been attributed to poor

<sup>33</sup> GI Ayogu, Federal Inland Revenue Service (Firs) and Revenue Generation in Nigeria 2007-2015 *International Journal of Management and Social Science* – Vol. 07 2019 p3 available at [https://www.academia.edu/38916962/federal\\_inland\\_revenue\\_service\\_firs\\_and\\_revenue\\_generation\\_in\\_nigeria\\_2007-2015](https://www.academia.edu/38916962/federal_inland_revenue_service_firs_and_revenue_generation_in_nigeria_2007-2015) (last accessed 27/06/19)

<sup>34</sup> (Formerly Federal Board Inland Revenue).

<sup>35</sup> First schedule of the FIRS (Establishment) Act, 2007

<sup>36</sup> Section 2 Education Tax Act Cap E4 LFN 2004

<sup>37</sup> First schedule of the FIRS (Establishment) Act, 2007

<sup>38</sup> First schedule of the FIRS (Establishment) Act, 2007

<sup>39</sup> First schedule of the FIRS (Establishment) Act, 2007

<sup>40</sup> Section 59 FIRS (Establishment) Act, 2007

<sup>41</sup> J Agbonika, Tax Dispute Resolution in Nigeria: A Storm in a Tea Cup. *Journal of Law, Policy and Globalization*- Vol.29, 2014 p149 available at <https://www.iiste.org/Journals/index.php/JLPG/article/view/15934/16402> (last accessed 27/06/2019).

<sup>42</sup> Nigeria Leadership Initiative (NLI), *The NLI White Papers* Volume 2 p. 47, available at [www.nli-global.org](http://www.nli-global.org) (last accessed 23/02/2018). (). The NLI White Papers were generated to identify critical issues in the Nigerian tax system in relation to policy, legislation and tax administration.

funding of tax administrative agencies<sup>43</sup> which impedes the capacity of the agencies to attract the required qualified personnel. It is important that the operational needs of tax officials are well catered for. The provision of conducive work atmosphere, proper working tools, access to information and research, competitive remuneration, and a working reward system will enhance dedication to duty on the part of tax official and this will impact positively on increased revenue generation.

### **Tax Evasion and Tax Avoidance**

Tax evasion entails taxpayers deliberately misrepresenting the true state of their affairs to the tax authorities to reduce their tax liability and it includes dishonest tax reporting, such as declaring less income, profits or gains than the amounts actually earned, or overstating deductions.<sup>44</sup> While tax avoidance on the other hand, is the legal use of tax laws to reduce one's tax burden.<sup>45</sup> Tax evasion unlike tax avoidance is a crime. However, both of them have been viewed as forms of tax noncompliance, as they describe a range of activities that intend to subvert a state's tax system.<sup>46</sup> In Nigeria today, tax evasion is one of the major challenges plaguing the efficient and effective taxation of petroleum revenue. Unfortunately, tax can be evaded with little or no consequences at all in Nigeria as tax evaders are hardly prosecuted. Taxpayers (especially corporate taxpayers) would rather prefer to give bribes amounting to a substantial fraction of their tax liability to avoid discharging their applicable tax liabilities. The petroleum sector in Nigeria has recorded large cases of tax evasion and avoidance perpetrated by operators, thereby causing the country to be robbed to the tune of billions of dollars yearly.<sup>47</sup> Foreign oil companies have been notorious for a high percentage of the tax evasion incidents in the petroleum industry despite their huge earnings from their commercial activities in Nigeria. Accordingly, the Federal Government seems to have put up a vibrant fight against tax evasion by oil companies operating in Nigeria by sealing up and threatening to seal up oil Firms for tax evasion. Again, the Federal Government on Wednesday, 3 August 2016, approved a multinational competence authority agreement which will enable the government to have a better grip of its tax laws to prevent tax evasion and avoidance by companies operating in the country. The agreement would ensure that multinationals besides filing returns in Nigeria would also file returns on their activities in other countries where they run businesses, for accuracy of figures.<sup>48</sup> It is hereby submitted that the war against tax evasion by the Federal Government is laudable. However, steps should also be taken to effectively prosecute defaulting oil companies and where convicted, they should be penalised accordingly, to serve as deterrent to other companies.

### **Corruption**

Corruption is a menace which has eaten deep into the fabrics of modern societies. It is not only peculiar to the administration of petroleum taxation neither is it synonymous with Nigeria alone. However, it appears that the Nigerian petroleum sector is an attractive sector for corruption to take place as there abound numerous opportunities and incentives to engage in illicit activity in the sector. Moreover, the lack of transparency and accountability in Nigeria's petroleum industry has created a high vulnerability for corrupt practices.<sup>49</sup> Some factors that encourage corruption in tax administration include: the complexity of tax laws, the high discretionary powers of tax officials, and the low rate of punishment for defaulters in this area. In relation to tax administration, corruption can be identified in three major forms, namely:

1. tax evasion committed by taxpayers; and
2. Corruption on the part of tax officers and other tax professionals
3. Corruption and embezzlement of public funds by politicians.

The effect of corruption on tax administration in the Nigerian petroleum sector is widespread. It affects the revenue of the country, as large amounts of the nation's taxable revenues are unaccounted for. Corruption also results in the reduction of voluntary compliance with tax laws and regulations by making evasion a more attractive alternative to taxpayers who would prefer to bribe tax officials to diminish their tax obligations. If an honest taxpayer sees that paying taxes would only further lead to inequities by transferring tax dues to a corrupt and

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<sup>43</sup>Ibid.

<sup>44</sup>Tax Evasion available at [https://en.wikipedia.org/wiki/Tax\\_evasion](https://en.wikipedia.org/wiki/Tax_evasion) (last accessed 15/12/2017).

<sup>45</sup>Ibid.

<sup>46</sup> Wenzel, Michael The Impact of Outcome Orientation and Justice Concerns on Tax Compliance (PDF). *Journal of Applied Psychology* (2002) 87, 629-645: 4–5. *When taxpayers try to find loopholes with the intention to pay less tax, even if technically legal, their actions may be against the spirit of the law and in this sense considered noncompliant.*

<sup>47</sup> Proshare Corporate Tax Evasion in Nigeria available at <https://www.proshareng.com/news/General/Corporate-Tax-Evasion-In-Nigeria/1474> (last accessed 07/02/2018).

<sup>48</sup>Nigerian Government Moves against Tax Evasion by Multinationals *National Daily* available at <http://nationaldailyng.com/nigerian-govt-moves-against-tax-evasion-by-multinationals/>(last accessed 15/02/2018).

<sup>49</sup> MO Oduntan, The Role Of Taxation In Nigeria's Oil And Gas Sector Reforms – Learning From The Canadian Experience <https://ecommons.usask.ca/bitstream/Handle/10388/Etd-2015-11-2282/Oduntan-Thesis.Pdf?Sequence=4>. p 9. (last accessed 23/2/18)

inefficient tax administration, he would rather seek to either evade taxes or bribe an official to pay less, instead of paying huge sums as tax only to enrich individual pockets. The lack of transparency and accountability in the petroleum sector has been attributed to the overlapping role performed by the federal government in the petroleum industry wherein the federal government negotiates and performs commercial activities in the petroleum industry as a commercial entity through the NNPC<sup>50</sup> and also regulates and play a supervisory role through the Department of Petroleum Resources.<sup>51</sup>

### **Multiplicity of Tax**

Multiple taxation refers to situations where the same income is subjected to more than one tax treatment. According to the National Tax Policy Document, multiple taxation occurs where the tax, fee or rate is levied on the same person in respect of the same liability by more than one State or Local Government Council.<sup>52</sup> Since Nigeria operates a federal system of government, it may be impossible to completely avoid multiplicity of tax. This is because the different tiers of governments (federal, state and local governments) would most likely want to charge certain taxes and charges as may be applicable. Multiplicity of taxes affects the administration of petroleum taxation in the following ways: Firstly, it infringes on the cardinal taxation principle of certainty which proposes that a taxpayer should know in advance how much he is obliged to pay as tax. Secondly, when taxes are imposed arbitrarily and administered without recourse to due process, it can be regarded as a form of non-compliance to tax laws on the part of tax authorities and this can serve as a disincentive for compliance with the provisions of the tax laws by taxpayers. Thirdly, a multiple tax system is usually complex and where a tax system is unnecessarily complex, the cost of administration on the part of the government and the cost of compliance for the taxpayers increases. Fourthly, multiple taxation may discourage both indigenous and foreign investment in the petroleum sector and as such, the nation loses out on income which would have accrued to it by way of taxation.

### **Inefficient and Problematic Provisions of Tax Legislation**

It is difficult to isolate a piece of legislation from its implementation and administration. Tax legislation basically provides the foundation upon which tax administration can be implemented. They stipulate what taxes are to be administered, how they are to be collected, the powers of the tax authority to administer or collect them and the various mechanisms for the resolution of tax disputes arising from its administration. To ensure successful and effective tax administration, tax legislation must be sound, robust and practical in application. Some provisions of tax laws are not explicit and are somewhat controversial, thus requiring constant resort to the tax tribunals and law courts for its interpretation. It has been opined that some provisions of tax laws are unnecessarily verbose and complicated.<sup>53</sup> A perfect example is section 11 of the PPTA which always causes oil companies and the FIRS to be at loggerheads over the correct interpretation of the provision that deductible expenditure must, have been *wholly, exclusively and necessarily incurred in petroleum operations*. See the cases of *Shell Petroleum v. Federal Board of Inland Revenue*<sup>54</sup> and *Gulf Oil Company (Nigeria) Limited v. Federal Board of Inland Revenue*.<sup>55</sup> The decisions of the Courts in the foregoing cases seem to have given a robust meaning to the provisions of section 10, thereby extending the range of deductible expenses, under the PPTA. However, it is submitted that the use of explicit terms in tax legislation should be encouraged as it will minimize recurring contentious debates on the provisions of tax laws. This is because contentions in tax legislation render their administration cumbersome and expensive to both the government and the taxpayers. It also delays the inflow of government revenue from taxation and may create room for tax evasion. Furthermore, the issue of redundant or inadequate provisions in petroleum taxation laws poses a huge challenge in the administration of petroleum taxation. One major area affected by such inadequate provision is the area of penalties for tax defaulters. For example, the penalties (especially in the area of fines), prescribed for different categories of offences under Part X of the Petroleum Profit Tax Act are so inadequate in current times and situations. They are paltry and not weighty enough to deter and discourage non-compliance.

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<sup>50</sup> The preamble of the NNPC Act vests the exclusive responsibility for the development of the upstream and downstream sectors of the Nigerian oil and gas industry, in the NNPC and this responsibility entails exploiting, refining, and marketing Nigeria's crude oil.

<sup>51</sup> Oduntan, *op cit* p. 10.

<sup>52</sup> The National Tax Policy Document, p.78 para 6.0

<sup>53</sup> AM Sani, An Appraisal of the Legal Framework for Taxation in Nigeria *Nigeria Journal of Law, Policy and Globalization* Vol.34, 2015. p.85

<sup>54</sup>[1996] 8 NWLR (pt. 466) 256.

<sup>55</sup>[1998] 3 M.I.L.B.Q, 122.

### **Jurisdictional Conflict between Tax Appeal Tribunal and the Federal High Court**

The tax appeal process is an integral and important part of the tax administration hence, the establishment of the Tax Appeal Tribunal.<sup>56</sup> The TAT was established in 2007 pursuant to Section 59(1) of the Federal Inland Revenue Service (Establishment) Act 2007 (FIRSEA) and it replaced the former Body of Appeal Commissioners and Value Added Tax (VAT) tribunals.<sup>57</sup> It is empowered to settle disputes arising from the operations of the Act and others as spelt out in the fifth schedule to the FIRSEA. By virtue of Section 59(2) of the FIRSEA, the TAT has jurisdiction to entertain disputes arising from the Companies Income Tax Act, Petroleum Profit Tax Act, Personal Income Tax Act, Capital Gains Tax Act, Value Added Tax Act, Stamp Duties Act, and Taxes and Levies (Approved list for collection) Act. The scope of the TAT also covers laws imposing taxes and levies and the collection of taxes and levies within the Federal Capital Territory. Any party dissatisfied with a decision of the Tribunal may appeal against such decision on a point of law to the Federal High Court. Appeal before the TAT shall be held in public<sup>58</sup> and its decision (on issues of facts) once registered in the Federal High Court, with the Chief Registrar, is as effective as the judgment of the Federal High Court.<sup>59</sup> However, appeals from the decision of the Tribunal shall lie to the Federal High Court on issues of law and then to the Court of Appeal but those on issues of facts shall lie to the Court of Appeal.<sup>60</sup>

### **The Controversy of the Tax Appeal Tribunal in Nigeria**

On 30<sup>th</sup> day of October 2013, the Federal High Court (FHC)<sup>61</sup> sitting at Abuja and presided over by Hon. Justice Adeniyi Ademola delivered a judgment in a suit between *TSKJ Contruces Internationals Sociadade Unipessoal LDA (TSKJ) v. the Federal Inland Revenue Service (FIRS)*<sup>62</sup> where it stated that the decisions of the TAT affect the civil rights and obligation of companies in relation to taxation in Nigeria and that certain sections of the FIRSEA relating to the powers of the TAT to determine disputes on companies' taxation and federal revenue are inconsistent with the provisions of section 251(1) of the Constitution.

However, the Federal High Court (presided over by Justice Buba) subsequently delivered a contrary decision in the case of *Nigerian National Petroleum Corporation (NNPC) v. Tax Appeal Tribunal (TAT) Lagos zone*. The Court presided over by Justice Buba held that the jurisdiction conferred on the TAT did not interfere with the exclusive jurisdiction of the Federal High Court but that the TAT was only an administrative body set up to determine preliminary matters before proceeding to the Federal High Court and that the FIRSEA that established the TAT was fundamentally different from the VAT Tribunal Act that purportedly set up the defunct VAT Tribunal. The Court examined section 41 of the Petroleum Profits Tax Act and Paras 13(1) & 17(1) of the Fifth Schedule to the FIRSEA (2007), and noted that none of the aforementioned statutes provided for a direct appeal to the Court of Appeal, unlike the VAT Tribunal which interfered with the exclusive jurisdiction of the FHC as provided by section 251 of the 1999 constitution. It finally held that since the jurisdiction conferred on the TAT did not interfere with the original jurisdiction of the FHC, it was constitutional and valid.

### **The Decision of the Court of Appeal on the Jurisdiction of the TAT**

Pursuant to the decisions of the Federal High Court on the jurisdiction of the TAT, the FIRS appealed to the Court of Appeal who on the 17<sup>th</sup> of July, 2017 delivered its judgement in favour of the FIRS and held amongst others that<sup>63</sup> the TAT has the jurisdiction to entertain the subject matter of the appeal as its jurisdiction is not a usurpation of the Jurisdiction of the Federal High Court. It is noteworthy that the Court of Appeal had earlier on 10th March 2017, in the case of *CNOOC Exploration & Production Nigeria Ltd. & Anor v. Nigerian National Petroleum Corporation & Anor*<sup>64</sup> upheld the jurisdiction of the TAT to hear and determine tax disputes. The decision of the Court of Appeal in support of the legality of the TAT is timely and a commendable intervention in the controversy on the jurisdiction of the TAT. However, in order to avoid further controversies on the jurisdiction of the TAT, it is hereby submitted that there is a need to strengthen the statutory backing of the TAT by:

- i. An amendment of the FIRSEA under which the TAT is set up, to clearly delimit its areas of jurisdiction so as not to (in any manner whatsoever) conflict with the provisions of Section 251 of the Constitution which gives exclusive jurisdiction on company tax law to FHC; and

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<sup>56</sup> Hereinafter referred to as the TAT.

<sup>57</sup> See, section 59, Nigerian Federal Inland Revenue Establishment Act (FIRSEA).

<sup>58</sup> Para 15 (5) Fifth Schedule to the FIRS (Establishment) Act, 2007.

<sup>59</sup> Para 16 (2) Fifth Schedule to the FIRS (Establishment) Act, 2007.

<sup>60</sup> Para 17(1) & (3) Fifth Schedule Fifth Schedule to the FIRS (Establishment) Act, 2007.

<sup>61</sup> Hereinafter referred to as FHC.

<sup>62</sup> Suit No. FHC/ABJ/TA/11/12.

<sup>63</sup> *FIRS v TSKJ Contruces Internationals Sociadade Unipessoal LDA (TSKJ) (2017) LPELR 42868 (CA)*

<sup>64</sup> CA/L/1145/2015



ii. Incorporating the TAT in the Constitution, to enable it to derive its validity and authority directly from the Constitution, as was done with the National Industrial Court of Nigeria under the 1999 Constitution (as amended) as well as the Investment and Securities Tribunal. The decision of the TAT may then be made a condition precedent for adjudication by regular court.

### **7. Conclusion and Recommendations**

The discovery of petroleum in Nigeria has been a blessing to the nation. Since the discovery of petroleum in commercial quantity, Nigeria has greatly depended on petroleum revenue to sustain its economy. However, Nigeria is yet to fully maximize its proceeds from petroleum revenue due to the challenges inherent in the administration of petroleum taxation. This work extensively discussed the challenges of petroleum taxation which includes quality tax officials, multiplicity of tax, tax evasion, inefficient and problematic provisions of tax legislation, jurisdictional conflicts between the Tax Appeal Tribunal and the Federal High Court, and corruption. Nevertheless, the implementation of the recommendations proffered in this work and the commitment of all stake holders (the government, tax agencies/consultants and oil companies) to the efficacy of petroleum tax administration will improve and enhance the contribution of petroleum tax to the Nigerian economy. The government of Nigeria should therefore ensure that they continue to provide acceptable and practical fiscal policies that will attract more investment in the petroleum sector and be beneficial to the nation as well. Following the observation pointed out above, the following recommendations if implemented will encourage good and effective tax administration in the petroleum sector thereby, enhancing income generation from petroleum revenue.

1. Proper recruitment and promotion processes; as well as capacity development for Tax Officials should be ensured to improve the quality of tax officials.
2. Improved welfare of tax officials as well as swift and conclusive prosecution of defaulting officials will help dissuade tax officials from corrupt practices and also enhance dedication to duty.
3. The review of tax laws, total computerisation of the tax system and embarking on the orientation of tax officials and tax payers will help reduce the problem of tax evasion and avoidance
4. There is a need for the enactment of a single and comprehensive legislation to regulate the taxation of petroleum activities in Nigeria. Also, legislators are urged to avoid the use of ambiguous and unnecessarily complicated words and sentences in order to avoid constant resort to the courts for interpretation. Furthermore, a mechanism should be put in place for constant review of tax laws to ensure that they meet up and cater for current situations.
5. There is a need for a legislative intervention to reinforce the jurisdiction of the Tax Appeal Tribunal, to avoid further controversies therefrom.
6. There is no single panacea for corruption because all stake holders have a role to play. In a country like ours where corruption has eaten deep into the fabrics of the nation, there is a need for individual self-appraisal and subsequent improvement on the part of tax payers, tax officials and tax consultants in the area of tax compliance.
7. Finally, the government must ensure that revenue gotten from oil exploration should be judiciously used to develop the nation especially the host communities of oil companies who directly bear the consequences of oil exploration activities. Where strategic and visible development is recorded in the country as a result of the judicious use of petroleum revenue, the citizenry including tax officials, and tax consultants will be more enthusiastic in ensuring the effectiveness and efficiency of tax administration; even the oil companies will be motivated to remit their taxes because infrastructural development in their host communities, will reduce the cost incurred in production, as the basic amenities required for optimal operations would have been provided by the government.