

Abstract

This article is titled 'challenges of tax administration and enforcement of tax laws in Nigeria'. Tax administration and enforcement are crucial for achieving the objectives of tax laws and generating revenue for essential social amenities in Nigeria. However, numerous challenges hinder the effective implementation of tax policies. Tax evasion and avoidance are major problems, resulting in significant revenue losses. The high level of illiteracy among taxpayers and a lack of understanding of their tax rights and obligations contribute to the strained relationship between tax authorities and taxpayers. This article acknowledges that tax administration in Nigeria relies on outdated standards in a rapidly changing commercial landscape. To address these issues, it is proposed that tax payment processes should be made more user-friendly. The Federal Inland Revenue Service (FIRS) has initiated reforms that aim to improve the taxpayer experience. Additionally, government policies related to population and national identification systems can enhance tax administration. In an effort to improve tax administration and enforcement to achieve best practices obtainable in other jurisdiction it has been recommended that there is a need for consultation among stakeholders, adequate funding for effective tax administration and enforcement and administrative tax reforms.

Keywords: Tax Laws, Tax Administration, Tax Enforcement, Nigeria

1. Introduction

The classical function of tax is raising revenue for government to enable it discharge its duties of providing basic social amenities to its subjects even though is not the main aim of tax. As it is evident in our nation monies generated from taxation have been used to actualize certain government objectives such as construction of good roads, hospitals, schools and defense. it is pertinent to note that, government decides the way and manner the tax collections are expended in providing certain basic facilities and amenities in accordance to priority at any given time, thus a citizen has no right known to law to demand for a refund of tax paid because he does not find a particular amenity in the area where he resides.¹ The redistribution of wealth is an objective of tax that much emphasis has been placed in modern times.² In order words, it provides the mechanism for achieving equitable distribution of income, influencing consumer demand and providing incentives for production, investment and-savings. The Second leg presupposes that the present distribution is unjust; although this assertion is difficult to justify.³ This second arm concludes that the rich should be taxed until the pips squeak.⁴ Tax is distributed or imposed in proportion to the income of taxpayer.⁵ The Drafters of the tax legislatures intends the wealthy to pay more taxes than the poor, the principle is based on the fact that the rich earn more income and as such have more ability to pay. But the reality is that the rich begin to run away from paying tax by employing various means of evading or avoiding payment of tax as the case may be, thereby negating the above stated intendment of tax statues. Thus, the idea is to redistribute the wealth in such a way that the poor is not unduly burdened. Another objective of taxation is the management of the economy. This probably accounts for the usual fiscal policy issues raised in the budget.⁶ In fact, as earlier noted the 2022' budget is said In Nigeria, it would appear that greater emphasis is placed on the use of monetary policies in the management of the economy.⁷ However, it would seem that the tax system is more than a matter of economics. It has been described as the most pervasive and privilege exercise of the policy power in determining the direction in which people may become wealthy by determining the directions in which they may not.⁸ The foregoing further reinforces the fact that tax is not a means for obtaining revenue but can be used for more specific purposes such as discouraging the use of alcohol or the purchase of cigarettes.⁹ Taxation is used to fight inflation and deflation, to allocate resources in a socially desirable manner to encourage and protect new industries within a country and to ensure that the balance of payments of a country is in a healthy position.¹⁰ At this juncture it is worthy to note that most citizens all over the world consider tax not as a civic duty but as an unwanted burden regardless of the above mentioned advantages of taxation.¹¹

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¹ O. Akanle, 'Tax Law & Tax Administration', *Nigerian Institute of Advance Legal Studies Journal*. Lagos, 1991,

² M.T. Abdulrazaq, *Nigerian Revenue Law*, Mallhouse Press Ltd., Lagos, 2005.

³ Ibid.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ J. F. Due *Taxation and Economic Development in Tropical Africa*: Harvard University Press (1963).

⁹ Ibid.

¹⁰O. S. Abioio, 'An Examination of the Significance and Objectives of Taxation in Nigeria' *The Advocate!* Vol. 18, International Journal oi the Law Students' Society, Obafemi Awolowo University, Ile-tfe, 1997.

¹¹ Ibid.

2. Tax Administration in Nigeria

Tax Administration can be defined as the implementation of the tax laws in order to achieve its objectives.¹² In other words, a proper administration and implementation machinery is key to the successful administration of tax in any system. Thus, the aim of taxation will be defeated if there are only good taxes which are badly administered. Tax Administration can also be taken to include policy making, capacity building and collaboration with other relevant agencies. It would ordinarily involve the process of making tax payment friendly as the Federal Inland Revenue Service FIRS in its on-going reform has branded taxpayer 'the King' Government Policies in respect to population and national identification system would in no small means assist existing tax administration system. Administration of tax is the function of the three tiers of Government. Thus, the Federal Inland Revenue is the body that administers tax at the Federal level,¹³ the various States' Board of Internal Revenue administer taxes at the various States,¹⁴ subject to certain conditions that might be prescribed by the National Assembly, while the Local Government Revenue Committee¹⁵ of the States administer taxes at the Local Government Areas subject to such conditions prescribed by the States.

3. Tax Enforcement in Nigeria

Taxation is a creation of the statute, as earlier discussed. The Courts are saddled with the role of interpreting statutes and often times tax authorities approach the Courts for the enforcement of some of the provision in the tax statutes.¹⁶ Hence, the basic doctrine of the construction of tax statutes is key to the role of the judiciary in fighting the surge of tax avoidance and evasion. However, the judicial approach by foreign Courts to tax avoidance and evasion has grown over time as against the Nigerian Courts where much has not been achieved, the fault cannot be placed at the door step of the courts alone since the tax authorities are found wanting in charging tax evasion cases to Court.¹⁷ The approach adopted by the foreign Courts is now more purposeful and rather radical in nature.¹⁸ The aim of this purposeful and radical approach was to unveil preordained devices manufactured for the principal purpose of avoiding tax rather than producing any commercial effect. This was highlighted in the English case of *Ramsey Ltd. v. IRC*¹⁹ where it was held in favour of the Revenue that a taxable company cannot create an artificial step-by-step transaction to manufacture capital loss and cancel out the gain. In the early times in the United Kingdom, the judiciary seemed to favour tax avoidance because taxation, was at that time seen as a violation of the bill of rights.²⁰ In the English case of *Graven v White*,²¹ Lord Jauncey held that 'The function of the Court is to construe the relevant charging section and to apply it to the facts found. I do not conceive it to be the function of the court to act as a third arm of the revenue in seeking to attack tax avoidance at large'. The rationale behind this at the time was due to the fact that a subject is not supposed to be taxed unless the words of the statute expressly impose tax on the subject in clear terms.²² However, where the wordings of the tax legislation are ambiguous or unclear, then the onus is on the revenue authority to show that the intendment of the legislation is to impose tax on the taxpayer. *Bartington v AG*²³ In the Nigeria case of *Commissioner of Revenue v. Attah*²⁴ The High Court of the former North Central Nigeria held in dismissing the defendant's contention; that there is nowhere in the Personal Income Tax that a return must be served on the defendant before an additional assessment can be raised and served on the defendant. It is clearly discernable from the decision of the Court that our Courts will look beyond the mere form to the substance of the case to justify the intendment of the tax statute, in order to discourage tax evaders.²⁵ The attitude of the Nigerian judiciary towards the enforcement of related cases suggest that the role of our court in the eradication of tax evasion and avoidance is crucial.²⁶ The Nigerian tax legislations which our courts are called upon to interpret and enforce their provisions from time to time provide for both criminal and civil sanctions without a clear understanding on the part of the tax authorities.²⁷ This occasions a situation whereby tax authorities bring before the courts facts which are although on a proper understanding fall under tax evasion cases as mere enforcement of additional assessment from the evading taxpayer.

4. Challenges of Tax Administration and Enforcement in Nigeria

There are many challenges associated with administration and enforcement of tax laws in Nigeria. Some of these challenges include:

¹² S. Abiola, in a paper titled 'Tax administration and Constitution - Issues on Multiplicity of Taxes and Federation Account' delivered at an intensive training on tax for Legal Officers of the FIRS of Bolingo Hotel, Abuja 13-15th June 2007

¹³ Hem 58, part 1, second schedule of the Exclusive Legislative List, see also Item 59 Part 1, Second schedule of the 1999 Constitution.

¹⁴ Paragraph 7 of the concurrent legislative lists at the 1999 Constitution of the Federal Republic of Nigeria

¹⁵ Para. 3 of the concurrent legislative lists of the Constitutions of the Federal Republic of Nigeria.

¹⁶ M.T. Abdulrazaq, *Nigerian Offences and Penalties*, Batay Law Publications Ltd., florin 1993, p.115.

¹⁷ *Ibid.*

¹⁸ A.A. Olowofoyeku, J. Kirbride, and D. Butler, *Revenue Law, Principles and Practice*, Liverpool Academic press, 2003.

¹⁹ (1981) 12 WLR 449.

²⁰ *Ibid.*

²¹ 1988 STC 476.

²² *Cope Brandy Syndicate v. I.R.C.* (1921) 2 KB 403, *Tenant v Smith* A.C. 150.

²³ (1969) LR 4HL 100 at 122.

²⁴ 1970 Nigerian Commercial Law Report (N. Comm. LR).

²⁵ M.T. Abdulrazaq, *Nigerian Offences and Penalties*, Batay Law Publications Ltd., florin 1993.

²⁶ *Ibid.*

²⁷ *Ibid.*

Advancement in Technology

The concept of e-commerce/internet transaction is relatively new and fast growing in Nigeria this is against the backdrop of the role of communication in reducing the world to a global village. There are yet to be put in place new rules for the treatment of the income from e-commerce/ transactions done via the internet.²⁸ It would appear that the old rules i.e. the well-established concept of Permanent Establishment (PE) in Double Taxation Agreements' (DTA) parlance is the jurisdiction of a source country to tax profits from foreign trade carried on by non-resident company within its jurisdiction. Thus, a non-resident company must have sufficient presence in another country to be liable to tax in respect of its profits from business operations in the other Country. This, would not be applicable to e-commerce.²⁹ The problem posed by the inapplicability of PE to e-commerce is that it is a transaction done via the internet website. A website cannot qualify in terms of spatial and temporal location because of its intangible nature, since it is a combination of software and electronic data. Thus, the operations of an e-commerce are clearly exempted from the scope of source taxation. E-Commerce technology 'epitomizes border lessness, and irrelevance of being in a particular physical location.'³⁰ The problem posed by this is the possible impact e-commerce may have on the revenue-base especially as the e-trader would only be taxable on PE threshold which is impossible as earlier stated. This in turn 'will allow unwilling taxpayers to hide more easily' according to The Economist, especially in the areas of products like music, retail and book industries. However, the same edition of the Economist highlighted the problem of e-commerce in the following succinct words today's tax system relies on knowing where a particular economic activity is located. But the internet may enable individual worker to operate in many different countries while sitting at the same desk. The Advancement in technology such as e-commerce has been a challenge to tax administrators in the area of combating tax evasion.

The problem posed by the tax treatment of the year 2000 computer Software Conversion gained prominence in early 2000 among financial institutions in Nigeria and other companies. The software conversion was borne out of the need for the private and public sectors at the time to reluctantly incur the additional costs of updating computer software so that it properly functions after 1999, since computer system and software were programmed with a two-digit date which might function improperly after December 31, 1999 because of failure to recognize a year input as '00' and also due to the rumor that systems not configured to work in the new millennium might crash.³¹ In the United Kingdom, Software acquired under a license is normally treated as belonging to the trader as long as he is entitled to the right, while computer software is treated as being machinery or plant. Although, the meaning of 'computer software' is to be determined by the Court.³² In *Gray v. Seymours Garden Centre*³³ the English Court of Appeal considered a claim for plant and machinery allowances in respect of planteria, which is a form of 'high tech' glasshouse used in a garden. The Court in rejecting the claim held that 'While the cold frames which formerly provided a similar function to the planteria might well have been plant, the same cannot be said of the planteria itself.' However, in the United States case of *United Stationers v United States*³⁴ the Court disallowed the taxpayer's internet-use software development research tax credits on the basis that the activities (1) were not technological in nature nor to expand or refine existing principles of computer science. (2) not for experimentation and as such did not meet the requirements of qualified research so as to qualify as deductible tax allowance. In Nigeria, there is no judicial pronouncement on this issue, but the Courts are likely to follow the decisions from the other jurisdictions cited above if faced with similar situation. In view of the foregoing, and due to the non-responsiveness of FIRS to taxpayers as per 2000 software conversion costs, it would appear this matter was not resolved and that each taxpayer was at a liberty to treat same as allowable expenses, exempted from tax. However, it has been observed that in Australia, tax avoidance is on the increase by large business firms, who adopt sophisticated strategies for circumventing tax laws. In other words, tax avoidance is on the increase than tax evasion in Australia.³⁵ It would appear as if the scorch of Internet Banking poses the challenge of making tax audit trail almost non-existent. Also, the e-payment technology assists in easy movement of funds this poses a challenge to the tax administrator as it is ill equipped to match this emerging technology.³⁶ It is also pertinent to note the issue of Scratch Cards introduced recently by most organizations for recruitment, checking JAMB, and School Leaving Certificates Examination results in the Country is deplorable. Huge amount of money is realized through the sale of these scratch cards without tax being paid on this transaction thereby occasioning huge revenue loss to government.³⁷ Thus, the emergence of e-commerce and other technological development has enhanced capabilities of the big players in the economic world to engage in financial

²⁸ J.A. Arogundade, *Nigerian Income Tax & Its International Dimension* Spectrum Books Ltd., Ibadan, 2005.

²⁹ *Ibid.*

³⁰ The Economist of January 20, 2000.

³¹ M.T. Abdulrazaq 'Tax Treatment of Year 2000 Software Conversion Costs' an Article published in *Modern Practice Journal of Finance & Investment Law Nig. & International* MPJFIL Vol. 4 No.1 Jan, 2000.

³² *Ibid.*

³³ (1977) 2 All ER, 2.

³⁴ (1966), 1 All ER, 1.

³⁵ V. Braithwaite & J. Braithwaite, *An Evolving Compliance Model for Tax Enforcement* Oxford University Press, New York, 2001.

³⁶ T. Amoman in a paper titled 'FIRS in Anti-Money Laundering Regime-The Journey So Far' presented at the FIRS Enlarged Management Meeting held on May, 2006.

³⁷ Daily Trust Newspaper of Tuesday Aug, 4th 2008 @ Pt 10 reports that over N100 Million was generated through the sale of Scratch Cards to Applicants in Police Recruitment Exercise.

engineering geared towards threatening the companies' tax base. These big taxpayers/ avoiders have the means to employ sophisticated accounting firms to engineer new derivative products for their clients that would not be apparent to tax authorities or that would not run afoul of the existing tax laws.³⁸ For instance, if a Nigerian Subsidiary of a transnational company wishes to buy components from another subsidiary of the same corporation based in South Africa, there exists computer software to show exactly how to route the purchase through a chain of subsidiaries to minimize tax liability.

Non-Remittance of Taxes Collected on Behalf of Tax Authority

The Tax authorities are often faced with the major challenge of non-remittance of funds collected on its behalf for government. This was prevalent before the introduction of *Project Fact* by the FIRS in 2007.³⁹ Hereto; some of the problems are as follows.⁴⁰ The System of tax collection used by collecting banks were not unified and easily manipulated which occasioned timing difference (delay) between payment and remittance to FIRS, Errors due to the manual process, there was no single source of information on all tax payers, Difficulty in tracking offshore Tax Payments. Under the new dispensation known as *PAY Direct* there are Collecting Banks i.e. First Bank, Zenith Bank, Union Bank. So that collections could be tracked on-line from all the FIRS offices. And daily, Interswitch sweeps collected funds from the collecting banks to the FIRS Account at the Central Bank before it hits the Federation Account and other designated accounts as the case may be i.e. VAT Pool Account designated for VAT Collections.⁴¹ Hence, the payment of taxes to Federal Inland Revenue Service is now easier as taxpayer completes the requisite tax form or prepares the beneficiary schedule for WFT tax payments. This can be a physical form, or completed online on the portal. Thus, payments are now User-friendly, convenient, efficient and without encumbrances.⁴² However, the SBIR still have some of the above mentioned challenges to which FIRS had proffered solutions through the introduction of PROJECT FACT. The collection system in most SBIRs is still done manually which occasion delayed, converted or diverted funds. It is worthy to note that the FIRS still face the challenges of unremitted or delayed funds. Federal Government Ministries, Departments and Agencies (MDAs), including the Nigerian Petroleum Corporation (NNPC), Central Bank (CBN), Corporate Affairs Commission and the National Assembly owe the Federal Government the sum of N72 Billion in unpaid taxes.⁴³ FIRS suspended two unidentified collecting banks from collecting tax revenue. The banks were accused of colluding with some Ministries, Departments and Agencies of Government (MDAs) as these MDAs are in the habit of using collected tax revenue to award further contracts without remitting the money as required by law, while there is criminal collusion between these MDAs and some of the Banks in the misappropriation of the money.⁴⁴ The aforesaid lends credence to the fact that not only banks and MDAs are found wanting in unremitted or delayed funds, GSM providers and some employers are equally liable. The Tax administrator the face of the ever-changing economy lacks the proper machinery to track unremitted funds. Also, there is the need for FIRS to improve on the existing collection system. As part of the measures to combat unremitted taxes collected by MDAs, the tax Statutes empower the Accountant-General of the Federation (AGF) to deduct such amount from the monthly fund allocation at source.⁴⁵ But, the challenge faced by tax authorities is that this method has not been exploited due to the fact that The AGF lacks the constitutional backing for doing this.

Lack of Accuracy and Integrity of Data Collection

There was lack of accuracy in data on tax collection. In fact, it was common place then, to have conflicting data on tax revenue collected at the Federal Inland Revenue with a totally different data while the Federal Ministry of Finance would have a different one entirely. The attendant effect of this was lack of integrity in the tax authority on the part of taxpayers and the general public. There was lack of data warehousing for easy retrieval to be used for analysis and evaluation. States Revenue Boards are equally faced with this challenge.⁴⁶

Methods employed to combat lack of Accuracy of Data Collection

In combating the aforesaid problem FIRS now renders Quarterly Reports on collected taxes and targets to the Federal Ministry of Finance. These reports render accounts of collections per quarter as against the targets for the period.⁴⁷ It would seem that the State and Local Government tax Revenue Bodies are yet to confront this problem.

³⁸V. Braithwaite & J. Braithwaite, *An Evolving Compliance Model for Tax Enforcement* Oxford University Press, New York, 2001.

³⁹In a paper titled *Project Fact, the journey so far*, presented by Oduba O., (FIRS Project Consultant) at the Project Fact Training organized by FIRS at Aptech Computer Institute, Abuja 4th -18th July, 2008.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid.

⁴³ *The Vanguard Newspaper* of 17th July, 2009.

⁴⁴ *The Punch* Friday March, 6 2009 p. 20, see also *Daily Trust Newspapers*, Wednesday, T8 November, 2009.

⁴⁵ Section 2.4 of the FIRS Act.

⁴⁶In a paper titled *Project Fact, the journey so far*, presented by Oduba O., FIRS Project Consultant at the Project Fact Training organized by FIRS at Aptech Computer Institute, Abuja 4th -18, h July, 2008.

⁴⁷ Information gathered from the Tax Policy Department of the FIRS through verbal communication.

Challenges faced by Tax Collectors on the field (i.e. assault, killings)

There is no gain saying that Tax Collectors are exposed to danger in the cause of their duty since by the nature of tax it is an imposition which taxpayers often employ all means to evade paying tax. In fact, a Writer has observed that one of the objectives of Tax is generating revenue for the provision of certain social amenities in the Society; and as such an imposition that people are likely to be reluctant to pay, since tax defaulters cannot be excluded from the benefit of amenities provided by Government from the revenue generated from tax paid.⁴⁸ It was reported that a Tax Revenue Collector with the Edo State Board of Internal Revenue was mobbed to death by an irate mob in Benin City when a taxpayer was crushed by a moving vehicle in an attempt to flee from the deceased tax collector.⁴⁹ The Federal Inland Revenue Service (Establishment) Act in protecting the tax authorities in the cause of their duty against armed attack creates a penalty upon conviction to an imprisonment for the term not exceeding 5 years.⁵⁰ This is a fair attempt but more protective measures should be put in place in protecting tax collectors.

Money Laundering

Traditionally money laundering has been viewed as the processing of all illegal or dirty money derived from the proceeds of an illegal activity i.e. the proceeds of drug dealing, smuggling, fraud, theft, tax evasion etc. In the modern parlance it can be said to be a process whereby the origin of funds generated by illegal means is concealed, thereby rendering such funds not taxable.⁵¹ Ashang⁵² likened the techniques used to commit the crime of tax evasion to that employed in laundering the proceeds of other crimes and further stated that money laundering offences actually started with tax evasion and tax schemes. The Federal Inland Revenue Service has a role to play in the anti-money laundering regime by taxing laundered money and to recover all tax lost since the FIRS is empowered to tax all income both legal and illegal.⁵³ At this juncture, it is worthy to note that the new FIRS (Establishment Act) enjoin the FIRS to collaborate with relevant agencies to combat economic crimes.⁵⁴ Although Section 8(1) (g) of the FIRS Act empowers the FIRS to identify, trace, freeze, confiscate, or seize proceeds derived from tax fraud and tax evasion, Amoman identifies the major challenges faced by the FIRS as follows: Increasing sophistication in techniques used by Money Launderers; Internet Banking Making audit trail almost non-existent; and E payment technology which assist in easy movement of funds; Terrorist financing.⁵⁵ He however, identified a steady progress foundation of inter-agency collaboration of FIRS with EFCC, ICPC, Police and other law Enforcement Agents. Fie further noted that annual rise in tax revenue is indicative that leakages are gradually being plunked and that search and seizure by FIRS field offices have engendered a spirit of voluntary compliance.⁵⁶ In view of the foregoing, it would appear that tax administrators lack the machinery for tracing and detecting this money laundered with the purpose of taxing same, this is largely due to the sophistication that is employed by money launderers, thereby occasioning loss in revenue to government.

Adverse Use of Tax Consultants

The incursion of tax consultants into the administration of tax in a few States of the Federation i.e. Lagos, Osun, Oyo Edo, Kwara etc was due largely to the dwindling fortune of the States.⁵⁷ The appointed tax consultants were responsible for the monitoring of tax collections in the different States of Nigeria. This is in flagrant disregard to the provisions of the Personal Income Tax Act,⁵⁸ Constitution or any other tax legislation. Thus, it is only a tax authority mentioned in the Taxies and Levies (Approved List for Collection) Act⁵⁹ that can assess and collect tax in Nigeria. Section 2(1) Taxies and Levies (Approved List for Collection) Act provides that: *No person other than the appropriate tax authority shall assess or collect tax, on behalf of government any tax or levy.* It is however, contentious whether or not the appointment of tax consultants to carry out these exercises is legal.⁶⁰ the answer would seem negative. An appointed agent is responsible for scouting round identifying the employer whose books are to be checked, engaging in tax audit of taxpayer companies, forcefully locking up defaulting taxpayer companies. The major draw backs in the system of using tax consultant include open abuse of the system, the use of force in collecting tax, lack of respect for due process. There were several public outcries that some of the funds collected do not get to government.⁶¹ The danger posed by the use of tax

⁴⁸ I. Bolodeoku in a paper titled Tax Administration and the Power of the FIRS under the Federal Inland Revenue Act.

⁴⁹ The Guardian Newspaper of Thursday, 18th June, 2009.

⁵⁰ Section 45 of the FIRS Act.

⁵¹T. Ashang in a paper titled 'The FIRS Anti-Money Laundering Strategy' being a paper presented at the FIRS Enlarged Management Meeting held on May, 2006.

⁵²In a paper titled Access to Information Gathered by Anti-Money Laundering by Tax Authorities presented at the FIRS Enlarged Management Meeting held on Feb., 2007.

⁵³T. Amoman, in a paper titled FIRS in Anti-Money Laundering Regime-The Journey So Far, presented at the FIRS Enlarged Management Meeting held on May, 2006.

⁵⁴ Section 8 (f) of the FIRS Act.

⁵⁵ T. Amoman, op. cit.

⁵⁶ Ibid.

⁵⁷ S. Ojo, *Elements of Tax Management and Practice in Nigeria*, Sagribra Tax Publications.

⁵⁸ Section 95 & 96 PITA.

⁵⁹ Cap T2, Laws of the Federation, 2004.

⁶⁰ S. Ojo, Ibid.

⁶¹ Ibid.

consultants was that various State Boards of Internal Revenue no longer perform their functions as they were relying mainly on tax consultants.⁶² The payment of tax Consultants are usually paid on commission basis that is on the tax collected and as such the tax consultants were desperate, which earned them appellations such as 'robbers', 'terrorists'.⁶³ On one hand, the tax consultants determined what they want as income and huge sums were usually provided to the consultants even before the commencement of work this has the attendant effect of killing the morals of the tax administrators who if provided with these sum would be motivated and reduce incidence of collision with tax payer. On the other hand, the high cost of maintaining these tax consultants was ridiculous, they were provided with mobile Police, accommodation, vehicles, and this is against the backdrop that the cost of enforcement should not be more than the amount of tax recovered. In fact, in most States of the Federation where consultants are involved, some of their actions are not better than that of the tax authority.⁶⁴ The provisions of the Federal Inland Revenue Service (Establishment) Act 2007⁶⁵ states that 'the Service may appoint ...agents to transact any business or to do any act required to be transacted or done in the execution of its functions under the Act'. This power can only be exercised taking into consideration the fact that consultants or agents so appointed shall not carry out duties of assessing and collecting tax or routine responsibilities of tax officials. Thus, it would be illegal for FIRS to appoint Consultants for the purposes of assessing and collecting tax.

Lack of Adequate Infrastructure

The working conditions in the areas offices and Local VAT offices are appalling. The basic working tools like duplicating papers, inter-com facilities, Photostating machines, pins, tags, tax forms, tax machines, telephones etc. are lacking. The working environment is uncomfortable as fans and air-conditioners are lacking. Lack of vehicles and other logistics such as stationeries to work with. Very few states have computerized their operations. The manual operations lead to fraud, expropriation of collected revenue and lack of a good database. Proper records keeping are therefore lacking.⁶⁶ It was identified that some of the challenges faced by the tax administrator especially at the State level is a lack of infrastructure as non-provision of mobility in terms of motor vehicles, motorcycles and speed boats to reach taxpayers, poor communication facility to provide suitable tax environment for effective tax administration.⁶⁷ It is no gain saying that the Federal, State and Local Governments have not addressed their minds to the provisions of adequate Infrastructure such as good roads, stable power supply, good office accommodation, funds, office equipment and stationeries for their tax revenue bodies. Hence, it is recommended that all tiers of government should make the aforesaid provisions available to their relevant tax organs. A minimum of 5 per cent of monthly collection should be ducted at source as costs of collection to enable Revenue Authorities provide the required facilities for their operation. This has already been implemented at the Federal level by the Federal Tax Organ. The working environment is generally poor and de-motivating. Working materials like tax forms, duplicating papers, tags, tax machines, furniture, telephones etc are generally lacking. Motor vehicles are lacking for monitoring and serving demand notices.⁶⁸

Lack of Capacity Building

Tax officials who are in charge of administration and enforcement of taxes are still largely untrained and unqualified.⁶⁹ In fact, it is said that Ill-trained tax officials populate the SIRS and unqualified staff are many.⁷⁰ The need to fully develop tax officials to cope with e-commerce, e-banking, vis-a-vis taxation calls for serious human capacity building and utilization. This involves training and re-training tax officials of the FIRS and SBIR. Also, there is the need to adequately utilize tax administrators to track down large quantities of untaxed incomes as the present situation on the ground demands. In our modern world of e-commerce and e-banking lots of incomes go unnoticed and untaxed if Revenue officials remain untrained and under-utilized as they presently are.

Endemic Corruption and Fraud

The challenge of Corruption and tax evasion seem to take place in practically every country in the world, and should be considered a potential problem everywhere. Tax evasion and fraud in tax administration are phenomena which hit developing countries hardest.⁷¹ Evidence from different developing countries indicate that half or more of the taxes that should be collected cannot be traced by the government treasuries due to corruption and tax evasion.⁷² Nigeria is said to

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Section 12(4) of the FIRS Act.

⁶⁶U. Akpo in a paper titled 'Ensuring an effective personal income tax administration, approaches and challenges' (2006) (2006) delivered at the FIRS Enlarged Management Meeting held January, 2006.

⁶⁷Communique issued by the Joint Tax Board at the end of the 1995 Post Budget Meeting held at the Sheraton Hotel and Towers on 31st Jan., 1995.

⁶⁸ Ibid

⁶⁹U. Akpo, ACT! in a paper titled 'Tax Administration in Nigeria' (2004) *Delta State Board of Internal Revenue Journal*.

⁷⁰ Ibid.

⁷¹R. Klitgaard, A framework for a country program against corruption, Occasional Working Paper No. 4 (1994). Berlin: Transparency International.

⁷²B. Gauthier, and R. Reinikka 2001. Shifting tax burdens through exemptions and evasion: an empirical Investigation of Uganda.' Policy Research Working Paper no. 2735 (December). Washington DC: World Bank.

be one of the most corrupt countries in the world⁷³. The societal problem of corruption has taken its toll in the tax administration which results in negative impact on revenue generation. Revenue Officials especially at the State level behave like touts as they openly extort money from members of the public under the pretense of collecting taxes and levies for which receipts are not issued to taxpayers and this result in huge revenue loss to government.⁷⁴ Tax payers often induce revenue collectors so as to pay less than the due taxes.⁷⁵ The problem of fraud and expropriation of collected revenue is still prevalent in revenue offices and needs to be properly addressed. They are problems that are offshoots of the corruption playing the entire society. Fraud by its nature is a stealthy method of siphoning government revenue without notice. Revenue Authorities and Customs officials in Nigeria were considered as some of the most corrupt revenue agencies in the world. The tax system is susceptible to corruption with tax officials colluding with taxpayers to defraud the government because there appears to be no current consideration for adequate controls or checks and balances. Although FIRS ahead other State Tax Authorities has placed advertisement in newspapers and other forms of media⁷⁶ to inform customers about some of the issues that corrupt tax officials use to extort money from taxpayer, there is need for a lot more to be done in this regard.

Tax Avoidance

Tax Avoidance has been described⁷⁷ as the legal utilization of the tax regime to one's advantage in order to reduce the amount of tax that is payable by means within the law. In the United States just like in Nigeria there are anti - avoidance provisions which affects the administration of Tax in Nigeria. However, some other countries do not have these anti-avoidance provisions in their tax laws.⁷⁸ In *IRC v. Willoughby*⁷⁹ Lord Lonan held that 'Tax avoidance is a situation when a taxpayer reduces his liability without incurring the economic consequences that parliament intended to be suffered by any tax payer qualifying for such reduction in tax liability.' A writer has defined tax avoidance as 'the act of dodging tax without breaking the law'.⁸⁰ In view of the foregoing, if is carried out lawfully, but it is not a transaction which the tax legislation encourages. These anti-avoidance provisions consider some transactions illegal where the main reason for such is to enable the tax payer take tax-advantage or where they are only steps with no commercial purpose other the sole aim of avoiding tax.⁸¹ However, in several tax jurisdictions like England and Nigeria tax avoidance is viewed as non-criminal.⁸² The rationale for this view is that it is legal in that it only flouts the spirit of the law unlike the tax evasion which flouts the letters of the law and thereby illegal. The existence of several loopholes in the Nigeria tax provisions has in no small means contributed to tax avoidance. In fact, the poor drafting of some of these laws allows the tax payers to catch in on this to manipulate the statutory provisions in the favor of the tax payers.⁸³ It is pertinent to note that, even where their amendments to certain tax provisions, other opportunities arise for the tax avoider to take advantage of this. Also, there are contradictions in the tax statutes which tax avoiders can employ to their advantage.⁸⁴ Nigerian Courts have indeed not helped in clarifying some of the contradictions in the tax laws. For instance, in the Supreme Court case of *Shell v. FBIR*⁸⁵ here the Federal Ministry of Finance had entered into a binding agreement with Shell on the need to deposit tax payable into an account domicile in England, pay 0.5% into Central Bank, award scholarships to deserving students all these agreements were in flagrant breach of the provisions of the Petroleum Profit Tax Act, 1959.

Tax Avoidance has been held to be an evil, but that it would be the beginning of much greater evil to overstretch the language of the Statute in order to subject to taxation people of who are not taxable.⁸⁶ But there came a change by the English Courts in the case of *Ramsey WT Ltd v. IRC*⁸⁷ where the taxpayers had argued that the tax avoidance schemes had to be looked at step by step in order to see if it would secure an exemption from capital gains tax. But the Inland Revenue had on the other hand argued that the Court need not limit its consideration to each step of individual schemes but should consider the overall effect. The Flouse of Lords upheld the Inland Revenue's Argument and found for it. This approach presents a large number of difficulties mainly because in certain circumstances the decisions seem to apply to normal commercial transactions and what many tax consultants and the tax authorities may regard as bona fide tax planning. But there is a problem of distinguishing between tax planning and tax avoidance as there would appear to be no straight jacked distinction between both. Tax Planning has been defined as transactions carried out by a company to

⁷³In an article tiled Nigeria is still the most corrupt country in the world by Aderounmu A. Published Dec., 5, 2007 in <<http://aderinola.wordpress.com>> 12th July 2023.

⁷⁴ Nigerian Tax Reform in 2003

⁷⁵ Ibid.

⁷⁶ Back page of the Gauge a quarterly Magazine of the FIRS Jan-March, 2.009 Edition.

⁷⁷N. Cole in a paper titled 'Strategies for Increasing Federal Inland Tax Collection' at the FIRS Enlarged Management Meeting & Annual Conference 2006 held at Nicon Hilton Hotels, Abuja on January, 2008.

⁷⁸ Ibid.

⁷⁹ (2001) All ER 865 at 889.

⁸⁰ W. P. Croft Modern Law Review, the Attitude of the Legislature and the Courts on tax Avoidance.

⁸¹ Ibid.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Supra.

⁸⁶ *Vestey Executor v. IRC* (1949) 31 TC 1 at 90 per Lord Norman.

⁸⁷ (1981) All ER 865.

minimize taxation which are acceptable to the Inland Revenue i.e. transactions which are agreed by them without recourse to the Courts to achieve their objective. While Tax Avoidance is said to be those transactions carried by a company to minimize taxation which the Inland Revenue do not accept achieve their objectives.⁸⁸

The locus Classicus in Nigeria between tax avoidance and tax evasion was first raised in the case of *Akinsete Syndicate v. Senior Inspector of Taxes*⁸⁹ In the case, an agreement was signed between Chief Akinsete the Licensee of a certain timber extraction rights and another company for the extraction management and sale of timber.⁹⁰ Another supplement Agreement signed by the licensee, the company and a joint licensee made up of four wherein certain interests in the first agreement and second agreement were merged and said to belong to Chief Akinsete syndicate thereby creating a partnership. The Respondent assessed Chief Akinsete to tax from the income accruing to him out of the timber business for the account year of 1958. The Appellant contended that because of the word 'now belongs' in the second Agreement, the income and benefit accruing to Chief Akinsete had reverted to the Joint Partnership. It was found that the shares of the profits of the partnership were paid into the accounts of Chief Akinsete' who withdrew as he pleased. The Supreme Court held that the existence of the syndicate was not proved prior to the second Agreement. Hence the taxpayer was rightly assessed as the bona fide owner of the income accruing to him. The Supreme Court however, remained silent on the point of tax avoidance and tax evasion.

Tax Evasion

Tax evasion has been defined as the efforts by individuals, firms and other entities to evade the payment of taxes by illegal means.⁹¹ In other words, tax evasion is illegal and a criminal offence. In fact, it has been described as an economic and financial crime in the interpretation section of the Economic Financial Crimes Commission (Establishment) Act, 2004.⁹² The Learned Justice Holmes defined tax evasion as fraudulent or illegal attempt to escape or avoid the payment of their dues.⁹³ An author defines tax evasion an illegal way of avoiding tax liability⁹⁴- Tax evasion connotes willful neglect or refusal to pay tax due. Tax Evasion entails taxpayers deliberately misrepresenting or concealing the true state of their affairs to the tax authorities to reduce their tax liabilities and this includes dishonest tax filings popularly called cooking the books such as under declaring income, profits or gains or over stating deductions.⁹⁵ The bane of our society is that tax defaulters engage in tax evasion through various means such as money laundering, diversion of funds etc.⁹⁶ The wealthy do not help situation are found wanting of this practice. The action of tax evader mostly the wealthy one's occasion significant and negative impact on the amount of tax collected by the tax authorities thereby occasioning loss in huge refund to the government. It was found that some unregistered companies have been lifting oil in the country for the past 31 years made profit of over N348 Billion without paying tax to the Nigerian government.⁹⁷ In other words, what these companies did and have been doing in Nigeria is tax evasion, which attracts serious sanctions abroad. For instance, in a country like China tax evasion attracts death penalty. In the US, measures are put in place to ensure that irrespective of one's status, that one is expected to pay tax in fact President Barack Obama made public his tax returns for the 2008, even after he became president. It is worthy to mention, that the debate preceding the 2010 British Polls which herald David Cameron as Prime Minister featured tax issues as one of the main issues debated upon. In fact, the candidates of the Labour and Conservative Parties, David Cameron and Gordon Brown made promises on tax rebate and tax incentives among others ⁹⁸ It is tax evasion for a tax payer to make a false claim with the aim of obtaining allowances in respect of children, when in fact the tax payer has no child or has less children than the maximum number he tenders a claim for, making false claim in respect of allowances for a wife, when in fact the tax payer is unmarried. False claim of contribution to pension's scheme, failure to state benefits in kind received from taxpayer's servants, omission to state income receipts, that is rent from landed property.⁹⁹

5. Conclusion and Recommendations

This dissertation enunciates the varying challenges of tax administration and enforcement such as tax evasion, tax avoidance, corruption and its negative impact on the Nigeria economy, lack of enlightenment and education of taxpayers, challenges of e-transactions conducted on the internet. It was found that tax administration and enforcement is presently in a position where old standards and principles are being applied to a new and fast changing world of commerce. In

⁸⁸ B. Michael Squires, *Tax Planning for Groups of Companies*, 2nd Ed., Butterworth, London, 1990, p. 3.

⁸⁹ 1, NTC109.

⁹⁰ *ibid*

⁹¹ *Op. Cit.*

⁹² Section 46 of the EFCC Act, 2004.

⁹³ *Bullen v Evisconsin* (1927j 275 US 100.

⁹⁴ H. L. Bhatia, *Public Finance*, 5th Ed., London Oxford University Press 1980.

⁹⁵ *Ibid.*

⁹⁶ T. Ashang in a paper titled 'The FIRS Anti-Money Laundering Strategy' being a paper presented at the FIRS Enlarged Management Meeting held on May, 2006, p. 2.

⁹⁷ In an article titled Checkmating the big tax offenders by Simon Ekpe at the back page of the Punch, June 17, 2009 2.20. *Ibid*, back page.

⁹⁸ <www.aooale/britishpolls debate.2010> last accessed 8 January 2024.

⁹⁹ M.T. Abdulrazaq, 'Indices for the Measurement of Tax Evasion': A Useful Tool for Nigeria, *MPJFIL*, VOI 2, No 3 July 1998.

recognition of the above discussed challenges faced by tax administrators in the course of tax administration and enforcement in Nigeria, laudable recommendations on various proposals for the way forward were suggested. These suggestions include the process of making tax payment friendly in order to enhance voluntary compliance, proper identification of taxpayers through the issuance of Universal Tax Identification Numbers U-Tin enlightenment of taxpayers, capacity building and training of tax administrators, automation of tax collection, autonomous tax authorities to enable them deal with issues of lack of adequate funding among others.

From the foregoing, it can be clearly deduced that tax authorities are faced with a plethora of challenges in the area of effective tax administration and enforcement, these problems range from the social malice of corruption to that of tax avoidance and evasion which has eaten deep into the Nigerian fabric. In an effort to improve tax administration and enforcement to achieve best practices obtainable in other jurisdiction the following recommendations should be considered:

Collaboration/Consultation among Stakeholders

The relationship between the States and Federal Revenue Authorities is centered on how revenues collected would be allocated rather than, how to improve on collections. The states revenue bodies tend to work alone as if they are in competition with the federal revenue body.¹⁰⁰ In view of the foregoing observation, there is the need for an extensive consultation/collaboration among all stakeholders.¹⁰¹ In other words, there need to be effective communication among the three tiers of tax administration organs, Joint Tax Board on the one hand and the law enforcement agents i.e. Police, ICPC, EFCC on the other hand.

Adequate Funding for Effective tax Administration and Enforcement

The tax authorities especially at the States and Local Government levels are faced with the challenge of being under-funded. Most States' Board of Internal Revenue except the Lagos Internal Revenue Service which is directly under the office of the Governor are poorly funded.¹⁰² This may be due largely to the fact that their funding is tied to the relevant State's Ministry of Finance. Hence, the SBIRs are at the wimps and caprices of the States' Ministry of Finance. Thus, for effective tax administration and enforcement SBIRs should be financially autonomous although the SBIRs could be under the supervision of the State Ministry of Finance. Also recommended is that funds meant for SBIRs should be appropriated by the relevant States Board of internal Revenue. Such funds should be earmarked and cannot be used other than for what has been budgeted for.

Better Remuneration/Improved Welfare

Tax Officials at the various level of tax administration should be well remunerated to curb corruption and also to motivate such tax officers to higher performance. There should be provision for welfare packages i.e. soft loans and compensation to bust officers' morale and to ensure improved service delivery.

Conducive Work Environment

It was found that most State Boards of Internal Revenue and Local Government Internal Revenue Committees lack conducive work environment.¹⁰³ There is the need for better work condition and environment to ensure improved service delivery. Taxpayers would be better attended and speedily too in a conducive work environment.

Automated Tax Collection System

As earlier discussed in Chapter 4, Federal Inland Revenue Service, has an automated collection system that tax collected daily by FIRS from taxpayers all over the federation are swept automatically, electronically, into the Central Bank of Nigeria through FIRS designated collecting banks. The tax authorities at the State and Local Government levels should take a cue from this by introducing automated system of collection so as to drive a modern tax authority. The manual system of tax collection is replete with cases of trapped or unremitted and delayed funds.¹⁰⁴

Method of Adjudication

An efficient tax administration and enforcement system should have in place proper machinery for disputes resolution. Also, effective alternative dispute resolution ADR machinery should be put in place for quick resolution of tax assessment disputes and enforcement of taxes.¹⁰⁵

¹⁰⁰ 'Building a Viable State: Deepening/Widening internally Generated Revenue' for Effective Capital Financing', a presentation by Chairman FIRS, at the Governors' Forum, Abuja on October 26, 2007.

¹⁰¹ 'Developing an Efficient Tax Administration to Fund Recurrent Budget', a presentation by Ms Ifueko Omoigui, Chairman FIRS at the Budget Retreat by the Bayelsa State Government, Port Harcourt, November 25, 2007.

¹⁰² Information Gathered from a study visit to the Benue and Edo States Boards of Internal Revenue Service on 13th May, 2009 and 20th June, 2022 respectively.

¹⁰³ D. Philips 'Nigerian Tax Reform in 2003 and Beyond', Report of the Study Group on the Nigerian Tax System, July, 2003.

¹⁰⁴ Chairman, FIRS 'Developing an Efficient tax Administration to Fund Recurrent Budget' a presentation at the Budget Retreat by Bayelsa State Government, Port Harcourt, Nov., 20

¹⁰⁵ Ibid.

Effective Tax Refund System

The Self-Assessment system allows the taxpayer to godhead and pays the amount of tax he has assessed to be outstanding.¹⁰⁶ Thus, there is the likelihood of complaints arising from the overpayment of taxes. In order to effectively deal with these complaints tax authorities at all levels should have in place an effective tax refund system. FIRS the tax organ at the Federal level has provided for tax refund in the FIRS Act, 2007¹⁰⁷

Introduction of Electronic Tax Clearance Certificate

In order to ameliorate the current hardship faced by taxpayers in obtaining Tax Clearance Certificates (TCC), an automated Tax Clearance system will be of great importance for an efficient tax administration, it should be automated like what is obtainable in Lagos State. This would in turn increase voluntary compliance and serve as a basis to enable government emphasize on the demand for TCC from prospective holders of public offices either by appointment or election.

Incentives to encourage Voluntary Compliance & Promoting Investment

Tax incentives can be described as incentives designed to encourage investments in certain preferred sectors of the economy and sometimes encourage voluntary compliance.¹⁰⁸ Under the various tax legislations there are provisions for incentives in order to encourage and attract local and foreign investors. These incentives can be classified into six various categories¹⁰⁹ namely Manufacturing, export Business, agriculture, petroleum and Gas industries; solid Minerals and individual. Another very important category of organizations that enjoy tax holidays/incentives in Nigeria are the Charitable Organizations, Churches and Non-Profit Organizations in accordance with the provisions of CITA.¹¹⁰ However, certain incentives end up as disincentives and thereby occasioning huge loss of revenue to Government. For instance, Charitable Organizations, Churches and Non-Profit Organizations are exempted from tax but there is no gain saying the fact that these bodies engage in multi-billion transactions such as publication and selling of books, building properties for rent, schools etc. and thereby making huge profits without paying taxes.¹¹¹ It is worthy to also note that tax incentives do not rank high among the factors considered by investors in making investment, there are other far more important factors such as macro stability and economic growth, provisions of adequate infrastructures, maintenance of law and order, good governance among other prevalent factors.¹¹² Thus there should be less emphasis on tax incentives granted by government with the sole purpose of promoting investment and voluntary compliance. In order to lend credence to the aforesaid, it is worthy to mention that tax incentives sometimes referred to as 'tax haven' has been said to be the single greatest contributing factor towards Africa's poverty.¹¹³ The reason for this is not farfetched, companies owe obligations not to the poor or to their Staffs coffers, but only to their shareholders, whose dividends are affected directly by the tax burden or incentives imposed on the company.¹¹⁴

Administrative Reforms

The main essence of administrative tax reform is to bring changes to tax policies, tax laws and tax administration for an efficient tax system. The need for reform of Unions Tax Laws reforms of CITA, Internal restructuring of FIRS, the need for National Tax policy and enforcement of FIRS Act. It is our further recommendation that there is need for periodic review of tax legislations, combatting corruption and fraud and elimination of multiple taxation in Nigeria. Other recommendations for administrative tax reform are; Method of Reducing Loss in Tax Revenue to Government, Sensitization Programs aimed at Educating Taxpayers, Periodic Review of Tax Legislations, Combating Corruption and Fraud, Elimination of Multiple Taxation and a shift away from Direct Taxation to indirect Taxation

¹⁰⁶ Section 53 of CITA.

¹⁰⁷ Section 23.

¹⁰⁸ L. Soyode & S.O. Kajola, *Taxation Principles and Practice in Nigeria*, Silicon Publishers, Ibadan, 1998.

¹⁰⁹ *Nigeria Tax Reform in 2003 and Beyond*, Op. Cit.

¹¹⁰ Section 23 of CITA.

¹¹¹ Rev. Makinde in criticizing the moves by Lagos State Internal Revenue Service to tax Churches in the Punch Newspaper of 10th May, 2007.

¹¹² *Nigeria Tax Reform in 2003 and Beyond*, Ibid.

¹¹³ Gauge, a quarterly publication of FIRS.

¹¹⁴ Ibid.