

PERSONAL AND PARTNERS INCOME TAX IN NIGERIA: A LEGAL APPRAISAL*

Abstract

Personal Income tax is the tax imposed on the income of individuals, communities and families. The tax is governed by Personal Income Tax Act; it provides for the assessment, collection and administration of the tax. Both the individuals, communities, families and trustee are liable to personal income tax. The word 'personal' does not limit the tax to the income of the individual. Communities, Families and Trustees, where applicable, are also required to pay tax. Taxation of partners is also governed by the Personal Income Tax Act. Under PITA, partners are taxed as individuals with chargeable incomes derived from the partnership business and other sources. They are also taxed according to their profit shares from partnership income. The paper seeks to appraise the administration of personal and partners income tax in Nigeria in order to unearth the administrative challenges. This paper adopts doctrinal methodology. Recourse was made to the study of textbooks, journals, and statutes and internet material. It is found that lots of legal and social issues affect the administration of personal income tax. There is need to engage all the stakeholders in the administration of personal income tax in order to entrench an improved tax system.

Keywords: Income Tax, Personal. Partners, Nigeria, Appraisal

1. Introduction

Personal Income tax is the tax imposed on the income of individuals, communities and families. The tax is governed by Personal Income Tax Act¹ which provides for the assessment, collection and administration of the tax. Both the individuals, communities, families and trustee are liable to personal income tax. The word 'personal' does not limit the tax to the income of the individual. Communities, Families and Trustees, where applicable, are also required to pay tax. Taxation of partners is also governed by the Personal Income Tax Act. Under PITA, partners are taxed as individuals with chargeable incomes derived from the partnership business and other sources. They are taxed according to their profit shares from partnership income. To determine partners' tax liabilities, the partners first compute the partnership income and then distribute it to the partners according to the articles of partnership. The partners deduct allowances and reliefs. Afterward, the balance is taxed under PITA.

Three major methods exist for the collection of personal income tax. These individuals may or may not be in any formal sector. The methods include: Direct tax collection, Pay as you Earn (PAYE) and Withholding tax. Direct collection is used where tax collection involves the informal sector like the private professionals, traders, artisans etc. PAYE is a system where an employer is statutorily required to withhold the appropriate tax of the individual employee and remit to the tax authority.² Withholding tax is deduction of tax at source where payment becomes due and payable by a person and later remitted to the relevant tax authority.³ The tax is withheld and deducted from income due to the recipient. Personal income tax of individuals are payable to the State Internal Revenue Service where the said individuals are resident, except the taxes of the Military and Para Military Personnel and the residents of the Federal Capital Territory which are payable to Federal Inland Revenue Service.⁴ The Personal Income Tax Act has further been amended by Finance Act of 2020. The principal Act and the corresponding amendments are discussed interchangeably.

The administration of personal income tax is cabined by lots of challenges which has affected the anticipated revenue drive from the income tax. The paper discussed the legal regime of personal income tax; administrative bodies of the income tax and the challenges in the administration.

2. Legal Regime of Personal Income Tax

Imposition

Section 1 of the Personal Income Tax Act⁵ provides that: 'There is hereby imposed a tax on the income: a) Of individuals, communities and families; and b) Arising or due to a trustee or estate, which shall be determined

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¹ Cap P8 Laws of the Federation of Nigeria (LFN), as amended, 2011, (hereinafter referred to as PITA).

² See section 81 of PITA and section of PAYE regulations

³ See section 72 and 73 of PITA (as amended) 2011.

⁴ See section 2 of PITA (as amended) 2011.

⁵ As amended, 2011

under and be subject to the provisions of this Act.’ Income tax is payable on anything that can be described as an income. There is nowhere in the Act where the definition of income has been given though the various sources of income that are chargeable are stated.⁶

A person on whom tax is to be collected

Section 2 (1) (a)⁷ provides that tax shall be payable for each year of assessment on the total income of as determined from the Table set out in the sixth schedule of the Act as follows:

- (a) every individual other than persons covered under paragraph (b) of this subsection or corporation sole or body of individuals deemed to be resident for that year in the relevant State under the provisions of this Act and;
- (b) The following other persons, that is:
 - i) Persons employed in the Nigerian Army, the Nigerian Navy, the Nigerian Air Force, the Nigerian Police Force other than in a civilian capacity,
 - ii) Officers of the Nigerian Foreign Service,
 - iii) Every resident of the Federal Capital Territory, Abuja, and,
 - iv) A person resident outside Nigeria who derives income or profit from Nigeria.

An individual, other than itinerant workers, can only be assessed to income tax if he is deemed to be resident in a state for the year of assessment.⁸ The content of the Sixth Schedule is set out as follows:

(1) A consolidated relief allowance shall be granted on income at a flat rate of N200,000 plus 20 per cent of gross income.

(2) *Tax Exempt:* The following deductions are tax exempt-

- (a) National Housing Fund Contribution
- (b) National Health Insurance Scheme
- (c) Life Assurance Premium
- (d) National Pension Scheme
- (e) Gratuities

(3) After the relief allowance and exemptions had been granted in accordance with paragraphs 1 and 2 of this Schedule, the balance of income shall be taxed as specified in the following tax table: Tax Income Rates Graduated Tax rates with consolidated allowance of N200, 000 + 20 per cent of Gross Income, subject to a minimum tax of 1 per cent of Gross Income whichever is higher.

1. First N300,000 @ 7 per cent
2. Next N300,000 @ 11 per cent
3. Next N500,000 @ 15 per cent
4. Next N500,000 @ 19 per cent
5. Next N1,600,000 @ 21 per cent
6. Above N3, 200,000 @ 24 per cent

Residence

The residence factor is very important in determining whether or not an individual is liable to income tax in a particular state. Unfortunately, the term ‘residence’ or ‘resident’ is not defined anywhere in the PITA. However, this omission is not peculiar to this Nigerian tax enactment like PITA, the Canadian Income Tax Act did not define the term ‘residence’ or ‘resident’. It was the Supreme Court of Canada that filled this legislative hiatus in *Thomson v. Minister of National Revenue*⁹ when it defined ‘residence’ to be ‘...a matter of the degree to which a person in mind and fact settles into or maintains or centralizes his ordinary mode of living with its accessories in social relations, interests and conveniences at or in the place in question. It may be limited in time from the outset or it may be indefinite or so far as it is thought of, unlimited.’ The above definition is consistent with the common law rule for determining an individual’s residence, which is based on a person’s link or connection with a country. Thus, once the link or connection is strong, the courts, generally, consider the nexus sufficient enough to hold the individual a resident of that country.¹⁰ However, the sufficiency of a connecting factor or nexus depends entirely on the facts and circumstance of each individual case. This type of residence is generally described as ‘factual residence.’ The most important factor considered in determining factual residence is

⁶ The Act however defined income to include any amount deemed to be income under this Act. It is rather an enumeration than definition of income. See section 3(2)(b) of PITA

⁷ PITA Cap. P8 LFN 2004, as amended.

⁸ See 2 (2) of the Principal Act that has been amended by inserting a new sub-section (section 1A) which provides that notwithstanding anything in the Principal Act, the relevant tax authority shall have power to collect tax under the Act from itinerant workers. In other words, the residence rule now applies to itinerant workers. See section 2(b) of Personal Income Tax (Amendment) Act, 2011.

⁹ (1946) SCR 209, 225

¹⁰ See *Weymyss v Weymyss’s Trustees* (1921) Sess. Cas. 30

whether or not the person leaving a tax jurisdiction maintains residential ties with the said jurisdiction,¹¹ In this connection, it has to be noted that certain residential ties are considered very significant in establishing ‘factual residence.’ Some of these ties are: maintaining a dwelling place, spouse or common-law partner, and or dependents in the said jurisdiction, The PITA only defines two phrases relevant to the term, ‘residence.’ They are ‘place of residence’ and ‘principal place of residence.’ The term ‘place of residence’ is used to describe the residence status of a taxpayer who has only one place of residence while ‘principal place of residence’ is used to determine the residence status of a taxpayer who claims or has more than one place of residence. ‘Deemed residence’ could be inferred from a harmonious and community interpretation of sub-paragraphs 10 (1) (a) (ii) and paragraph 3 to the First Schedule to the PITA; paragraph 4 (3) of the second schedule to the PITA; and paragraph 6 (2) of the Third Schedule to the PITA. From these provisions, it could be deduced that a person is deemed to be resident in Nigeria for a year of assessment if s/he is in Nigeria for a period(s) amounting to 183 days or more in any twelve-month period commencing in the calendar year and ending either in the same year or the following year. This is the 183- day rule, traditionally, employed for determining ‘deemed residence.’¹² In the case of *G.N Everitt v FBIR BAC*¹³ It was held that where an individual performs certain services in Nigeria and derives income from the performance of such services, the individual will be subjected to Nigerian tax irrespective of the fact that the individual does not reside in Nigeria.

Itinerant Worker

In the case of an itinerant worker, the tax here shall be imposed for any year by the tax authority of a territory in which the itinerant worker is found during that year. Such taxpayer is entitled to credit against the tax payable for any tax already paid by him to any other tax authority for the same year.¹⁴ If any tax assessed on an itinerant worker is unpaid by the time the itinerant worker leaves that territory the tax assessed shall remain in abeyance during his absence from that territory. If he has paid tax in another tax territory, before returning to the first tax territory, credit shall be given for the tax paid in the second territory against the unpaid tax in the first territory subject to the maximum of the unpaid amount in the first territory.¹⁵

Income Chargeable

Under S.3 (1) of PITA¹⁶, tax is payable, for each year of assessment on the aggregate amounts each of which is the income of every taxable person for’ the year from a source inside or outside Nigeria including, without restricting the generality, of the foregoing; The various sources of income on which tax is payable in section 3(1) are as follows:

- a) Gains or profits from any trade, business profession or vocation;
- b) any salary, wage, fee, allowances or other than gain or profit from employment including compensations, bonuses, premiums, benefits or other perquisites allowed, given or granted by any person to any temporary or permanent employee other than so much of any sums as or expenses incurred by him in the performance of his duties, and from which it is not intended that the employee should make any profit or gain.¹⁷

Income exempted

The Act¹⁸ provides that items under the Third Schedule to the Act are exempted from tax. Item 2 and 3 of the third schedule of PITA concerning the emolument of the president, vice president and governors have been deleted by the amendment Act of 2011. What it means is that both the President and the Governors and their respective Deputies are liable to pay tax.¹⁹

Other incomes exempted include:

- 1) The emoluments payable from United Kingdom funds to members of visiting or other forces and to persons in the permanent service of the United Kingdom Government in Nigeria in respect of their offices under the United Kingdom Government and the emoluments payable to members of any civilian component, and the income of

¹¹*Thomson v. Minister of National Revenue (supra)*.

¹²*Ecodrill Nigeria Limited V Akwa Ibom Board of Internal Revenue* (2014) LCN/7305(CA)

¹³3TLRN (2010) p. 158.

¹⁴See section 2(3) of PITA as amended.

¹⁵ *Ibid*

¹⁶Cap P8 LFN, 2004 as amended

¹⁷See section 3 (1) of the amendment Act, 2011 which deleted the old paragraph (b) and inserted a new paragraph. The amendment Act has simplified the confusion and difficulty associated with the previous paragraph. Section 2(c) of PITA (as amended) has also amended sub-section (g) of the Principal Act by inserting the word benefits in kinds immediately after the word ‘allowances’

¹⁸See section 19 of PITA, 2004 (as amended).

¹⁹See section 33 of Personal Income Tax (Amendment) Act for more amendments to the Third Schedule of PITA, LFN, 2004.

any authorised service organisations, accompanying the visiting forces: Provided that this exemption shall not apply to any individual who is a citizen of Nigeria or who ordinarily resides in Nigeria²⁰.

- 2) All consular fees received on behalf of a foreign State, or by a consular officer or employee of the State of his own account, and all income of such officer or employee, other than income in respect of any trade, business, profession or vocation carried on by an officer or employee or in respect of any other employment exercised by him with Nigeria: Provided that this exemption shall not apply where the employee is engaged on domestic duties or where the officer or employee ordinarily resides in Nigeria and is not also a national of the foreign State.²¹
- 3) The Income of a cooperative society registered under the Nigerian Cooperative Society Act, not being income from any trade or business carried on by the society other than the cooperative activities solely carried out for and with its members or form any share or other interest possessed by that society in a trade or business in Nigeria or elsewhere carried on by some other person or authority.²²

Deduction allowed

Certain expenditures are deductible when computing tax liability. The Act provides that: for the purpose of ascertaining the income or loss of an individual for any period from any source chargeable with tax under this Act there shall be deducted all out going and expenses, or any part thereof, wholly, exclusively, necessarily and reasonably incurred during that period and ultimately borne by that individual in the production of the income.²³ However, except where otherwise stated in the Act, no deduction shall be allowed in respect of

- (a) domestic or private expense;
- (b) capital withdrawn from a trade, business, profession or vocation and any expenditure of a capital nature;
- (c) any loss or expense recoverable under an insurance or contract of indemnity;
- (d) rent of or cost of repairs to any premises or part of premises not incurred for the purpose of producing the income;
- (e) taxes on income or profits levied in Nigeria or elsewhere except as provided in section 13 of this Act ;
- (f) any payment to a pension, provident, savings or widows' and orphans' society, fund or scheme, except as permitted by paragraphs (f) and (g) of subsection (1) of section 20 of this Act ;
- (g) the depreciation of any asset;
- (h) any sum reserved out of profits, except as permitted by paragraph (e) of subsection (1) of section 20 of this Act or as may be estimated by the relevant tax authority , pending determination of the amount, to represent the amount of any expense deductible under the provisions of that section the liability for which was irrevocably incurred during the period for which the income is being ascertained;
- (i) any expenses of any description incurred within or outside Nigeria for the purpose of earning management fees unless prior approval of an agreement giving rise to such management fees has been obtained from the Minister;
- (j) any expense whatsoever incurred within or outside Nigeria as management fees under any agreement entered into after the commencement of this paragraph except to the extent as the Minister may allow.

Where the total income of a chargeable person is determine; all income exempted have been excluded and deductions allowable have been made, the remaining income shall be ascertained as chargeable income.²⁴ By virtue of the Sixth Schedule to the Act, deductions for National Housing Fund Contribution, National Health Insurance Scheme, Life Assurance, Premium, National Pension Scheme and Gratuities are all allowable deductions. Where the income is chargeable solely by reason of it being brought into or received in Nigeria, nothing in this section shall confer a right to any deduction from the amount of that income so brought into or received in Nigeria²⁵

²⁰ Item 4 of the Third Schedule of PITA.

²¹ Item 5 of the Third Schedule

²² See paragraph 22 of the 3rd Schedule to the Personal Income Tax Act, 2004. See also the case of *UNIBEN V ESBIR* (2019) 43TLRN where the court re-echoed the fact that the income of a registered cooperative society earned in course of its cooperative activities is exempted from tax while the income it earned from any other trade or business carried on by the said registered society outside its activities as a cooperative society is taxable.

²³ See section 20 of PITA, LFN, 2004.

²⁴ See section 32 of PITA, LFN, 2004.

²⁵ See section 20(2) PITA, LFN, 2004.

Personal Relief for Children and Dependants

There shall be allowed a consolidation relief allowance of N200, 000.00 subject to a minimum of 1 per cent of gross income whichever is higher plus 20 per cent of the gross income and the balance shall be taxable in accordance with the income table in the Sixth Schedule to this Act.²⁶

3. Taxation of Partnership

A partner is liable to pay tax in the State the partner was resident during the assessment year.²⁷ Partners are taxed on a preceding year basis; a partner is to file tax returns within 90 days of the end of the fiscal year, that is, by 31 March.²⁸ Under tax laws, partnerships are viewed as a combination of two or more sole traders, and partnership income to be distributed between the partners is determined using principles applicable to sole traders.²⁹ The Partners are assessed in their individual names, based on the share of partnership profits allocated to them.³⁰ Because partnerships are based on profit and loss sharing, all income received by a partner are viewed as the partners share of the partnership profit or loss. A partner's income from the partnership is calculated as the sum of any remuneration; interest on capital; cost of leave or recreation passages to or from Nigeria charged to the Partnership account in respect of that partner; and share of the income left after deducting the 3 items above from the partnership income.³¹ In other words, the income of a partner derived from the partnership is calculated by summing up:

1. Salary or commission paid to the partner;
2. Interest on capital invested in the partnership by the partner;
3. Leave or recreational passages enjoyed by the partner and charged to the partnership account; and
4. Share of profit or losses of the partner.³²

To determine share of profits accruable to a partner, the net profit or loss of the partnership must be adjusted. An Adjustment is made by adding back to the net profit or loss all disallowable expenses and unreported taxable income under PITA while deducting from the net profit or loss all reported non-taxable incomes and allowable expenses under PITA. The adjusted profit or loss of the partnership is then split between the partners according to the agreed ratio. All expenses disallowed under PITA from being deducted when calculating the net profit are disallowable expenses. They are: domestic or private expenses; capital withdrawn; loss recoverable under insurance; rent or cost of repair of premises not used in producing income; taxes on income or profits levied in Nigeria or elsewhere (with exception); payment to pension, provident, savings, widows, or orphan's fund not approved by the Joint Tax Board (JTB); depreciation; sum reserved out of profits (except bad and doubtful debts that have become due and payable; expenses incurred to earn management fee without Minister's approval of the agreement; and expenses incurred as management fee without the Minister's approval of the agreement.³³ All incomes chargeable to tax under PITA are taxable incomes, some of which may not have been reported in calculating the net profit. They are; gain or profits from the business; gain, profit or premium arising from business property; interest, dividend, or discount; charge or annuity; any other profit, gain, or payment to the business.³⁴ Non-taxable incomes of the partnership may have been reported in calculating the partnership income. They include; profit on disposal of a fixed asset; profit on disposal of an investment; and income received to cover a disallowed expense.³⁵ Although partners and not partnerships are taxed in Nigeria, taxing partners cannot be achieved without identifying the income the partnership brings to the table.³⁶ Understanding the nature and terms of the partnership is key to determining the tax liability of partners. Once the partnership

²⁶See section 5 of PITA as amended, 2011. Notwithstanding the provision of section 5 of the Amendment Act, the principal Act is still riddled with complex and provisions that doesn't meet the contemporary issues of income tax. Consequently, the Finance Act of 2019 deleted section 4 5, 6 of section 33 of the Principal Act²⁶ while Section 29 of the Finance Act, 2020 amended the Section 33 by: substituting for subsections (2) and (3), new subsections '(2)' and '(3)' which provides thus: For the purposes of this Section, 'gross income' means income from all sources less all non-taxable income, income on which no further tax is payable, tax-exempt items listed in paragraph (2) of the Sixth Schedule and all allowable business expenses and capital allowance.

²⁷ Section 2(2) and 1st Schedule of PITA.

²⁸ PwC, 'Nigeria Tax Data Card 2015', <http://www.pwc.com/ng/en/publications/tax-data-card-2015.html> (accessed 26 Feb. 2023).

²⁹ Seyi Ojo, *Fundamental Principles of Nigerian Tax*, 2nd ed., Sagribra Tax Publications 2009, 425.

³⁰ Federal Inland Revenue Service, 'Information Circular No. 2006/06', Feb. 2006.

³¹ Section 8, PITA.

³² Seyi Ojo, *Fundamental Principles of Nigerian Tax*, 2nd ed., Sagribra Tax Publications 2009, 425.

³³ Section 21 PITA.

³⁴ Section 3 PITA.

³⁵ Seyi Ojo, *Fundamental Principles of Nigerian Tax*, 2nd ed., Sagribra Tax Publications 2009, 390.

³⁶ Ololade Olukowi, *Taxation of Partners and Partnerships in Nigeria*, available at <https://ssrn.com/abstract=2965515>, accessed on 7th January, 2023.

income is recognized and shared between the partners, income taxes can be determined on the partner's total income for the assessment year.³⁷

Determining a partner's tax liability

The partner's total income from the partnership is added to the partner's income from other sources to arrive at the partner's total income. The partner's total income is then treated with the reliefs available under PITA³⁸. They are:

1. Consolidated relief allowance: This is the addition of the higher of N200,000 or 1% of partner's gross income plus 20% of gross income.
2. National Housing Fund contribution
3. National Health Insurance Scheme
4. Life Assurance Premium
5. National Pension Scheme
6. Gratuities
7. Child allowance: This is 'N2, 500 for each child up to a maximum of four children, provided that none is above 16 years or married. However, a relief can be granted for a child over 16 years if the child is in a recognised school, under artisanship or learning a trade.'³⁹
8. Dependent Relative allowance: This is 'N2,000 for each dependent relative up to a maximum of two relatives who are widowed or infirm'.⁴⁰

After deducting all applicable reliefs and allowances, the income left is the chargeable income of the partner. The chargeable income is taxed using the tax rates in the 6th schedule of PITA, thus:

- 1st N300,000 at 7%
- Next N300,000 at 11%
- Next N500,000 at 15%
- Next N500,000 at 19%
- Next N1,600,000 at 21%
- Above N3,200,000 at 24%

Once the tax rates are applied, a partner's tax liability for the year is determined.

Where a partner's does not have a chargeable income or the tax payable is less than 1% of the partner's total income, the partner's tax liability for that assessment yet would be a minimum tax of 1% of the partner's total income.

4. Administrative Bodies in Personal Income Tax

States Board of Internal Revenue Services

State Boards of Internal Revenue were established for every state by virtue of section 85(1) of the Personal Income Tax Act.⁴¹ Section 87 of the Act provides that:

There is hereby established for each State, a Board to be known as the State Board of Internal Revenue (in this Act referred to as 'the State Board') whose operational arm shall be known as the State Internal Revenue Service (in this Act referred to as 'the State Service).

Composition – the board of internal revenue for each state and the *FCT*, Abuja consists of:

- (a) the chief executive of the state internal revenue service as chairman;
- (b) directors and heads of department within *SIRS*;
- (c) a director from the state ministry of finance;
- (d) the legal adviser to the *SIRS*
- (e) three other persons nominated by the commissioner for finance on their personal merit; and
- (f) a secretary (an ex-officio member) who shall be an employee of the *SIRS*. Any five members of the state board of internal revenue, of whom one shall be the chairman or a director, shall constitute a quorum.

Functions of the State Board of Inland Revenue

The state board of internal revenue has the following responsibilities:

³⁷ *Ibid*

³⁸ Sections 33 of PITA.

³⁹ PwC, 'Nigeria Tax Data Card 2015', www.pwc.com/ng/en/publications/tax-data-card-2015.html (accessed 26 Feb. 2017); Section 33(4b).

⁴⁰ *Ibid*

⁴¹ Cap P8, LFN, 2004

- (a) Ensure the effectiveness and optimum collection of all taxes and levies due to the government, under the relevant laws;
- (b) Undertake such things as may be deemed necessary and expedient for the assessment and collection of taxes and shall account for all monies so collected in a manner to be prescribed by the commissioner of finance;
- (c) Make recommendations, where appropriate, to the Joint Tax Board on tax policy, tax reforms, tax registration, tax treaties and exemptions as may be required from time to time;
- (d) Control the management of the *SIRS* on matters of policy, subject to the provisions of the law setting up the *SIRS*.
- (e) Appoint, promote, transfer and impose discipline on employees of the *SIRS*.

Delegation of Functions

The *SBIR* may, by notice in the gazette or in writing, authorise any person to:

- (a) perform or exercise on behalf of the board, any function, duty or power conferred on the board; and
- (b) receive any notice or other documents to be given or delivered to it or in consequence to this act or any subsidiary legislation made under it.

However, the *SBIR* shall not delegate any power conferred on it under some specific sections of *PITA*⁴² to any person. This is sequel to the abuse of tax administration experienced in some states during the military era in Nigeria. In order to assist the *SBIR* in the performance of its duties, section 89 of *PITA* also provides for the establishment of a 'sub-committee of the' The technical committee is to comprise the following officials:

- (a) The chairman of the *SBIR* as chairman;
- (b) The directors within *SIRS*;
- (c) The legal adviser to the *SIRS*; and
- (d) The secretary of the *SBIR*.

The committee is expected to carry out the following functions.

- (a) Exercise the powers of co-opting additional staff from within the *SIRS* in the discharge of its duties;
- (b) Treat all matters that require professional and technical expertise and make recommendations to the *SBIR*;
- (c) Advise the *SBIR* on all its powers and duties; and
- (d) Attend to such other matters as may, from time to time, be referred to it by the board.

Joint Tax Board

The Joint Tax Board has over the years continued to contribute to the advancement of the tax administration in Nigeria, especially in the area of harmonization of Personal Income Tax administration throughout Nigeria.

Establishment of the Board

The Board is established by section 86 (1) of the Personal Income Tax Act cap. P8 LFN 2004.

Membership of the Board

1. The Executive Chairman of the Federal Inland Revenue Service as the Chairman of the Joint Tax Board;
2. One member from each State being a person experienced in income Tax Matters nominated by the State;
3. Co-opted as members are, the representative of the following bodies:
 - o Federal Road Safety Commission (FRSC);
 - o Revenue Mobilization Allocation and Fiscal Commission (RMAFC);
 - o Federal Capital Territory Administration;
 - o Federal Ministry of Finance; and
 - o Federal Inland Revenue Service
4. A Secretary, being a person experience in income Tax Matter appointed by the Federal Civil Service Commission.
5. A Legal Adviser who is also the Legal Adviser to the FIRS

Functions of the Board

The Board meets on quarterly basis to appraise the performance of the members and to deliberate on Tax issues of National Importance to develop new strategies to carry out its factions which include:

1. Advising all tiers of Government on tax Matters, so as to evolve an efficient tax administration system in the Country;
2. Resolving areas of conflict on Tax Jurisdiction among Member State.
3. Using its best endeavors to promote uniformity in both application of the Tax Laws and in the incidence of tax on individual throughout the Country.

⁴² See section 2, 6, 7, *ibid*

4. Imposing its decision on matters of procedure and interpretation on Income Tax matters on member State.

Activities of the Board

Apart from the quarterly general meetings and committee meetings, the Board also organizes retreat for members. The retreat is used as an avenue to discuss other vital issues that cannot be accommodated during the normal meetings. All members of the Board are mandated to attend the Boards meetings and other activities. Representation all the time is not encouraged.

Joint Tax Board Committees

It should be noted that the Board operates through committees and these committees report to the Board accordingly. Members are assigned to these committees and at present each to a minimum of two committees. Members are expected to be actively involved in the activities of these committees and be always ready to contribute meaningfully.

Local Government Revenue Committee

This committee was established by the provisions of section 90 of *PITA*. It states that each local government in Nigeria should have Local Government Revenue Committees (LGRCs).

Composition of LGRCs

The Committee shall consist of:

- (a) the supervisory councillor for finance as chairman
- (b) three local government councillors as members; and
- (c) two other persons experienced in revenue matters to be nominated by the chairman of the local government on their personal merits.

Functions of LGRCs

The Committee shall be responsible for the assessment and collection of all taxes, fines and rates under its jurisdiction and shall account for all monies so collected in a manner to be prescribed by the chairman of the local government. The revenue committee shall be autonomous of the local government treasury department and shall be responsible for the day – to – day administration of the department which forms its operational arm.⁴³

5. Challenges in the Administration of Personal and Partners Income Tax in Nigeria

Multiplicity of Taxes: This is a major problem with the Nigerian Tax Regime as this makes tax assessment and collection very difficult. It should be noted that a good tax policy sets out the fundamental objectives of a country's tax system and prescribes some guidelines that would shape government policy actions. In Nigeria, this multiplicity of taxes at times leads to confusion in the mind of the individual taxpayer who is often at a loss as to the one to pay and the ones not to pay and the tax authority to pay them to. Sometimes, a company that should normally pay taxes to the Federal Inland Revenue Service is requested by the State Government and the Local Government Council to pay all manners of taxes and even Companies Income Taxes disguised under different name, to them. This is wrong. Again, if a tax payer lives in Asaba, Delta State he is supposed to pay his Personal Income Taxes to the Delta State Government because he is resident there⁴⁴. If he happens to buy landed property in Awka, the Anambra State Government with normally insist that he should pay another Personal Income Tax at Awka again, before he can be issued with the Certificate of Occupancy for the land he has purchased. This is not only wrong, it is also unconstitutional⁴⁵. It is more rampant in the states where the Governors give the tax authorities and consultants/contractors target sum they are expected to have collected from taxpayer in the state at the end of every accounting year. In South East Nigeria, we have a peculiar problem. In our separate communities all manners of developmental projects are initiated and carried out by town, unions and village meetings. These projects include road construction, erosion control, construction of gutters, water through boreholes, schools, security by way of vigilante services and rural electrification to mention a few. The funding of these projects are done through contributions, levies, compulsory and voluntary donations from the indigenes and residents of these communities. With respect, these sources of funding constitute in themselves taxes. The natural implication of the foregoing is that the citizens and residents in the south eastern part of Nigeria are subjected to various types of taxes. This is not the case in the western and

⁴³ It should be noted that all the institutions have powers in the extant laws establishing them to prosecute tax offences and penalties which can also be exercised in collaboration with Nigerian Police force.

⁴⁴ Section 2, *PITA*

⁴⁵ Paragraph 7 & 8, Concurrent Legislative List, Constitution of the Federal Republic of Nigeria, 1999

northern parts of the country where projects are generally executed by government with Government funds in pursuance of its social services and infrastructural delivery to the citizens.

High Level of Tax Evasion and Avoidance: There is a high level of avoidance and evasion of tax in Nigeria. This poses serious problems in the assessment and collection of taxes. This situation inhibits the growth of internally generated revenue in the country⁴⁶ In the South East Nigeria, most people especially traders do not pay taxes. In most of these states constituting the Igbo nation, the methods of collection of these taxes are so disorganized. Governors end up resorting to the use of task forces to collect these taxes from traders, businessman and unincorporated organizations. This situation is made more difficult by the lack of adequate and comprehensive records and data of tax payers within the area. Other parts of Nigeria have similar challenges. It is only when these tax avoiders and evaders come to request something from the Government, like certificate of occupancy that government will insist on collecting these taxes from them in an arbitrary manner and without reference to actual incomes of persons or organizations. It is only civil servant that actually pay correct taxes as and when due in Nigeria, through the Pay As You Earn (PAYE) System.

Administrative Challenges: This is a drawback in the Nigerian Tax Regime as experience has shown that the institutional capacity to administer taxes effectively is woefully lacking in the system, Nigeria lacks the capacity to assess the correctness and reasonableness of the returns submitted by taxpayers, including costs and staffing, skills pay scales, and other funding, and computer and information technology (IT) infrastructure⁴⁷. The tax authorities have to train and re-train their workers so that they can be acquainted with modern systems of information Technology for optimum performance. The authorities have to up- date their data so that they can have all relevant information about the taxpayers. This will enable, them to quantify the tax liability of every taxpayer. Similarly, the whole tax system needs overhauling as the, staff needs to be constantly educated on new approaches and new methods of tax assessment and collection. In South Africa^ taxpayers' returns are submitted and assessed online and taxes can even be paid on line⁴⁸. Weak and incapacitated tax administration machinery, manual tax system and 'unwieldy operational procedures are other trailing factors listed as key disincentives to effective tax system in Nigeria and the Igbo nation in particular. Lagos State has advanced in the check of tax evasion and avoidance⁴⁹. The Anambra State Board of Internet Revenue has tremendously improved its operations especially as regards the collection and assemblage of data and information technology.

Compliance Challenges: In Nigeria, the major problem with the tax regime is that there is no data of who should pay tax and who should not. This has created a fertile ground for tax evasion especially in the private sector. This has also created a conducive environment for tax avoidance and tax evasion to thrive in Nigeria. It is my opinion that if taxpayers have a feel of what their money is used for, it will encourage the taxpayers to comply more 'willingly'. The direct assessment tax is a very difficult tax to collect. In this form of tax, professional and private individuals are expected to present themselves and their assets for verification and assessment. But they hardly come up for this⁵⁰. Accordingly, there should be an enumeration of all taxable adults in the public and private sector (organized and informal) so as to capture details of all the taxable persons in a database. This will make for a more meaningful tax collection and enforcement. Similarly, a recurring problem with Personal Income Tax in Nigeria is the non-compliance of employers to register their employees and to remit PAYE withholding taxes to relevant authorities. In order to curb this inadequacy the National Assembly amended the Personal Income Tax Act to make non-compliant employers liable to penalties of up to N5, 000 as well as liable for the payment of all tax arrears and 10 percent penalty and interest at the prevailing bank rate⁵¹. In the same vein, this petty penalty does not discourage tax evasion since the penalty for being caught in most cases is lower than the cost for non-compliance.

Lack of Equality: Tax assessment in Nigeria especially personal income tax always fails for lack of equitability. Despite the fact that the self-employed individuals and professionals in Nigeria outnumbered paid workers and they earn much more than the formal sector employees, they pay far less taxes than the formal sector. These self-employed persons in most cases do not pay their taxes and when they pay it, they do so because they need the Tax Clearance Certificate to process something with the Government. The bulk of revenue from personal income tax is therefore paid by employees whose taxes are deducted at source. Most self-

⁴⁶ Mansur Muhtar-Finance Minister 'Tax Appeal Tribunal: A Move to Engender Confidence in the Nigeria's Tax System'. Nigerian Punch Newspaper on the web, www.punch.nig.com, (accessed August, 7th 2010)

⁴⁷ Mansur Mulitar CIT

⁴⁸ *Ibid*

⁴⁹ Abubakar Yusuf Mamud, 'Tax Policy in Nigeria', www.buzzle.com (accessed July 2nd, 2010)

⁵⁰ Olajide & Associates, 'Nigerians do not Declare their Incomes for Tax Assessment', *Financial Standard*, October 31, 2005

⁵¹ Section 74, 78 and 81 PITA.

employed persons do not even forward their returns for tax assessment and if the revenue authorities assess their income based on the best of judgment assessment, it may not necessarily be within their accruable income. Most times, this best of judgment form of assessment is either far below the tax liability of the tax payer or far above it⁵².

Lack of Basic Social Amenities and infrastructures: Governments in Nigeria have increasingly found it difficult to provide basic social amenities for the benefit of the citizens and residents of Nigeria. The whole essence of payment of these taxes by the tax payers is that these amenities would be provided. These amenities include roads, electricity, and good drinking water etc. The non-provision of these amenities seriously discourages the tax payer from the continued payment of taxes to the Government. It gives rise to some energetic and pragmatic communities to start taxing themselves to provide these essential social amenities and infrastructures thereby even defeating the moral burden of need for payment of taxes to government. This is because it gives rise to the argument that; 'if I provided these amenities myself why should I pay tax to Government?'

6. Conclusion and Recommendations

The law provides that all tax payers should be taxed according to the income they receive. No taxing authority should tax any taxpayer above his income. Taxpayers are encouraged to keep accounts of their incomes and expenditures through the taxing period. They should also keep all relevant documents. With these documents, they can proactively resist being taxed arbitrarily by contesting the tax assessments made on them. Taxpayers are encouraged to arrange and tidy up their tax returns and papers to enable them challenge arbitrary assessment of tax on them. Taxpayers are encouraged to adopt the self-assessment methods and not to even wait for the assessment by the appropriate taxing authorities. Self-assessment can be presented physically or online to the Appropriate Taxing Authority. When this is done, the taxing authorities will know that they are conscious of their incomes and rights related thereto. This practice will discourage the taxing authorities from deploying the best of judgment assessment and/or administrative assessment to assess taxpayers. Individual taxpayers should prepare staff PAYEE accounts; and also prepare account for withholding tax.

Furthermore, the states and local government authorities in Nigeria should take steps to ascertain the residents of the state and all the necessary data that would enable them properly impose the appropriate taxes on them as against the arbitrary and random methods of tax imposition and collection erstwhile adopted by the taxing authorities. The states should make an attempt to capture every one resident in the state in state data base for ease of reference and taxation. The state and local government in the state, nation are encouraged to reappraise their methods of tax collection to be in consonance with modern best practices. The governors and local government authorities should provide basic infrastructure that would make life worth living and that would justify the taxes they collect from the people they govern. The state governments should address the issue of double and multiple tax collection. They are urged to reconcile the taxes they presently collect with the provisions of the 1999 Constitution and the Taxes and Levies (Approved List for Collection) Act. By doing this, they will reduce or even completely remove a number of illegal taxes charged and collected by them. This will in turn reduce tax burden on the citizen and encourage the tax payers to pay legitimate taxes. Our elder statesmen and traditional rulers have a role to play in this issue of taxation and governance. They should meet with the authority, from time to time to remind them of the proper goals to seek. They should do this as a body, and not individually, since many of them go cap in hand to the authority.

⁵² Section 30 and 65 of the Companies Income Tax Act, Cap C. 21 Laws of the Federation, 2004 (hereinafter called CITA).