

AN EVALUATION OF THE STATUS OF COMPLIANCE OF TAX AUTHORITIES TO THE CONSTITUTIONAL RIGHTS OF TAXPAYERS*

Abstract

Tax payers have rights to property, fair hearing and many more rights. The global trends in tax administration and dispute resolution tilt to unquestionable recognition of these rights. In Nigeria, the Federal Inland Revenue Service (Establishment) Act, (FIRSEA), 2007, established the Tax Appeal Tribunal. However, what remains unsettled is whether, having regard to apparent defects in the provisions of the establishing legislation, the current Tax Appeal Tribunal has lived up to expectation in resolving tax disputes and protecting the taxpayers' rights in Nigeria. This work has done a critical evaluation of tax adjudication in Nigeria and its impacts on the rights of tax payers. Our finding revealed that the provisions of sections 21 and 31 of the Act and sections 8 and 17(1) of the 5th Schedule to the FIRSEA have inbuilt hardship affecting the taxpayers rights as well as their propensity to pay tax. Consequently, it is recommended that these sections should be amended to enhance confidence of the taxpayers in the tax dispute adjudication system in Nigeria and bring tax dispute resolution mechanism to the same footing with the global standard, in terms of fairness and equity.

Keywords: Taxpayers, Human Rights, Fair hearing, Tax Appeal Tribunal, Adjudication.

1. Introduction

Constitutionally, Nigeria is a federation. A consequence of this is the division of power, including taxing power between the different tiers of government. Part I, Second Schedule to the Constitution of the Federal Republic of Nigeria 1999 (as amended), spells out taxes which are the exclusive preserve of the Federal Government¹ and administered by the Federal Inland Revenue Service (FIRS) which was established pursuant to the Federal Inland Revenue Service (Establishment) Act 2007 (FIRSEA). Specifically, section 25 (1) FIRSEA provides the basis of the relationship between FIRS and taxpayers. This relationship would ordinarily entail a symbiotic relationship where, in exchange for the obedience to the law and taxing authority by the taxpayers, the taxing authority would respect the rights of the taxpayers. The modern evolution of taxpayers' rights is succinctly captured in the writing of Hatice Yortsever,² where he stated 'development in the world about the protection of taxpayers and taxpayers' rights is stated to have undergone three stages, namely, protection of taxpayers, expansion of tax base and establishment of taxpayers' rights'. A reverse is the case in Nigeria. The country's tax administration and adjudication has long had challenges in tax dispute resolution, especially as it relates to the taxpayers' rights.

Currently in Nigeria, the Federal High Court seems to have the exclusive jurisdiction adjudicate on tax relating to the Federal Government. However, due to the log of other works created for the Federal High Court by the Constitution, the necessity to transfer certain matters like taxation to other adjudicatory bodies arose. For this reason, Tax Appeal Tribunal (TAT) was established, pursuant to section 59 of the Federal Inland Revenue Services Establishment Act, 2007. The Tribunal replaced the Body of Appeal Commissioners and Value Added Tax Tribunals. But then, the jurisdiction of the Tax Appeal Tribunals is still unsettled. Under the FIRSA, a tax payer aggrieved by obnoxious assessment may file an objection to the assessment. The tax authority may amend or refused to amend the assessment. Where the relevant tax authority refuses to amend the assessment, the authority will then issue a Notice of Refusal to Amend. This may make the aggrieved party to file an appeal before the Tax Appeal Tribunal. But then, as we revealed in succeeding segments of this work, the law here seems to accord more importance to the interest of tax authority than the rights of the taxpayers.

2. Statement of the Problem

The major factor that affects the rights of the taxpayers in the whole processes of tax dispute adjudication stems from the provisions of the law and the relationship between the tax administrator and the taxpayers. This relationship is characterised by the latter being vested with an array of powers, which effectively makes the tax authority superior to the taxpayer. Most of the provisions of Federal Inland Revenue Service (Establishment) Act 2007 are completely at variance with the provisions of Chapter IV of the 1999 Constitution.

3. Conceptual Clarifications

Taxation

Most people mistake meaning of 'tax' and 'taxation' to be same and one thing. But then, there exists a difference between the two. While taxation is the act of imposing taxes and the act of being taxed, tax is the money paid to the sovereign.³ The fact remains that both terms share a relationship of legal deprivation of citizens' property. Therefore, for the purpose of this work, the two terms will, in deserving cases, be used interchangeably to refer to the same notion.

Taxation as a concept has been variously defined by writers over the years. The Federal Inland Revenue Service Act, 2007 defined tax to '...include any duty, levy or revenue accruable to the government in full or in part under this Act, the laws listed in the First Schedule to this Act or any other enactment or law'⁴ Garner understands tax as the enforced proportional contributions from persons and property, levied by the State by virtue of its sovereignty, for the support of Government and for the provision of all public needs.⁵ According to the Oxford Dictionary, the word 'Tax' means a compulsory contribution to the support of government, levied on persons, property,

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¹ This work will focus of this categories of taxes.

² Hatice Yortsever, 'Anatomy of Taxpayers' Right: Case Study of Turkey', *Pakistan Journal of Social Science*, [2010], 5, 17.

³ A M Sani, 'An Appraisal of the Legal Framework for Taxation in Nigeria', *Journal of Law, Policy and Globalization*, [2015], 34, 83.

⁴ Federal Inland Revenue Service Act, Cap F 35, LFN, 2010. The laws referred to include but not limited to (i) Companies Income Tax Act Cap C21 LFN, 2010, (ii) Petroleum Profit Tax Act, Cap P13, LFN, 2010, (iii) Personal Income Tax Act, Cap C P8, LFN, 2010, (iv) Capital Gains Tax Act, Cap C1, LFN, 2010, (v) Value Added Tax Act, Cap V1, LFN, 2010, (vi) Stamp Duty Act, Cap. Cap S8 LFN 2010, (vii) Taxes and Levy (Approval List for Collection) Act, Cap T2 LFN 2010, etc.

⁵ A B Garner Ed. *Black's Law Dictionary*, (8th Edn., Eagan Minnesota: the West Group, 2004), 4560.

income, commodities, transactions, etc, now at a fixed rate mostly proportionate to the amount on which the contribution is levied.⁶ In *U.S. v Butler*,⁷ Justice Roberts held that 'a tax in the general understanding of the term and as used in the Constitution signifies an exaction for the purpose of government. The word has never been thought to connote the expropriation of money from one group for the benefit of another.' Adesola defines tax as, 'A compulsory levy which a government imposes on its citizen to enable it obtain the required revenue to finance its activities.'⁸ From the foregoing it could be inferred that taxes are building blocks of civilization of any nation. They pay for public goods such as the cost of governance administration. These public goods are of immense benefit to all the people whether or not each person has paid their tax. In the United States of America's case of *Nichole v Ames*,⁹ it was held that 'tax is the one great power upon which the whole national fabric is based. It is as necessary to the existence and prosperity of a nation as is, the air he breathes to the natural man. It is not only the power to destroy; it is also the power to keep alive.' According to Azubuike, 'tax is a major player in every society of the world. It is an opportunity for the government to collect additional revenue needed to discharge its pressing obligations.'¹⁰ To Uzonwanne, it is simply a levy imposed by the government on the income, wealth and capital gains of individuals and businesses, on spending goods and services, and on properties. She continued that taxation involves compulsion; the taxpayers are required to make payment regardless of their feelings or willingness.¹¹ In support of this, Aderinto and Abdullahi posit that once the tax has been levied, no individual has the choice of paying or not paying unless, of course, doing it illegally like tax evasion.¹² Perhaps, the most reliable definition of tax was given by Hugh Dalton who defined tax as 'a compulsory contribution imposed by a public authority, irrespective of the exact amount of services rendered to the taxpayer in return, and not imposed as a penalty for any legal offence'.¹³

Analytically, while some of the definitions tend to leave out the purpose of taxation, there are common terms in each of the definitions which are significant, and help to explain the object defined. First, a tax is 'compulsory'. In this regard, the Organization for Economic Cooperation and Development (OECD) defined tax as 'compulsory unrequited payments to general government'.¹⁴ This does not mean that all tax revenue is paid unwillingly, but merely that the will of the payer is legally immaterial.¹⁵ It therefore appears that, the conception of voluntary taxation is not true taxation, which is plainly the fact. Secondly, the term 'wealth' has to be understood in a wider sense, to include 'services' as well as 'commodities'. In that token, military service or forced labour for, say, repairing roads is taxation quite as much as payment of money or goods. Thirdly, all taxation is imposed on 'persons'. This necessarily flows from the circumstance that the payment of taxation is a duty, and persons only can be liable to duties. This should not be taken to mean that the proposition is apparently inconsistent with the division of taxes into 'personal' and 'real', and also with the taxation of commodities so often mentioned. There is, however, no opposition between the different uses. The term 'real taxation' refers to the 'object' of taxation. The owner or ultimate bearer is the 'subject' of the tax, and he is a person. Taxation of commodities falls on the consumers or other persons connected with the taxed articles, and a similar analysis will apply to other forms of taxation. The truth, though often forgotten, always holds well that a tax must ultimately be paid by someone. Some writers see taxation as 'a give and take arrangement whereby the taxpayers pays taxes in return for services. Thus, Ola gave detailed analysis of taxation in the following manner: 'Income tax is one of the major sources of revenue of all government in Nigeria and is a factor to be reckoned with in both state and local government budget. The taxes collected come back to the tax payer in form of social amenities.'¹⁶ However, Mokry, posit that having regard to taxation principles, i.e. the performance principle, equivalence principle and causality principle (causing a given phenomenon), it may be observed that fees and contributions are based on the equivalence principle and causality principle, while taxes are based on the performance principle of a given entity in regard to the conduct of economic activity. The performance principle relies on the fact that the individual citizen is, in accordance with regulations, taxed according to monetary income, profit, assets, consumption or other economic indicators, without any account taken of the extent to which his activities have made use of public outputs.¹⁷

Human Rights

The notion of human rights in general-as moral principles by which we can judge the legal acts of state-has its roots in the Greek notion that there is a transcendental standard of justice by which we measure the justness of laws and states.¹⁸ According to James Griffin, 'human rights have been proliferating at such a suspect rate because we all want to cash in on the power of the language of rights.'¹⁹ It is true that there seems to be something especially morally weighty about human rights, but we agree with Griffin that 'it is a great mistake to think that, because we see rights as especially important in morality, we must make everything especially important in morality into a human right.'²⁰ The current myriad of problematic human rights within international legislation is almost completely unenforceable, and postulating too many human rights strains the possibility of holding states accountable for not observing human rights. It follows that if human rights are to be efficacious, this counterproductive proliferation of human rights needs to be restricted to a set of lucidly defined human rights that are both enforceable and morally justified. As pointed out by Bantekas and Oette, a lot of people and groups use human rights in a loose way to mean rights available to every person because they are human.²¹ As loosely as that understanding

⁶ A S Hornby, *Oxford Advanced Learner's Dictionary*, (7th Edn., Oxford: Oxford University Press, 2005), 1516.

⁷ (2279) U.S. I (1936), 61.

⁸ M S Adesola, *Tax Law and Administration in Nigeria: An Introduction*, (Ile-Ife: Obafemi Owolowo University Press Limited, 1998), 44.

⁹ 173 U.S. 509 (1899), 515.

¹⁰ J U B Azubuike, 'Challenges of Tax Authorities, Tax Payers in the Management of Tax Reform Process', *Journal of Nigeria accountant*, [2009], 42(2), 38.

¹¹ M C Uzonwanne, 'The Indispensable Role of Taxation for State Development in Nigeria', *International Journal of Economics and Research*, [2015], 52.

¹² A Aderinton and S H Abdullahi, *Comprehensive Certificate Economics*, (3rd Ed., Ibadan: University Press Plc., 2007), 142.

¹³ H Dalton, *Principles of Public Finance*, (8th Ed., London: Routledge and Keganpalu Ltd, 1964), 17.

¹⁴ K C Messere, and J P Owens, 'International Comparisons of Tax Levels: Pitfalls and Insights', (1985), 94, <http://www.oecd.org/tax/public-finance/35589632.pdf>. accessed on 11th February, 2022.

¹⁵ A Aderinton and S H Abdullahi, *Op. Cit*, 142.

¹⁶ C S Ola, *Income Tax Law and Practice* (London: Macmillan Publishers, 1985), 27.

¹⁷ I V Mokry, 'Taxes, Taxation and the Tax System', *BIATEC*, [2006], 24, 17.

¹⁸ J Gordon, 'The Concept of Human Rights: The History and Meaning of its Politicization', *Brooklyn Journal of International Law*, [1998], 23(3), 701.

¹⁹ J Griffin, *On Human Rights*, (New York: Oxford University Press Inc., 2008), 199.

²⁰ *Ibid*.

²¹ I Bantekas and L Oette, *International Human Rights Law and Practice*, (2nd edn., London: Cambridge University Press, 2016), 17.

might be, it actually reflects on the essence of the two words that make up term. Human simply means everyone on earth. Rights refers to privileges that one compulsorily deserves. Rights are usually legally enforceable in character and application. Human rights are therefore privileges and opportunities which a person is entitled to by the simple virtue of the fact that they are human beings. Donnelly agreed with the above proposition and posited that human rights means 'literally the rights that one has because they are humans.'²²

Human rights apply in two main dimensions, namely: entitlements based on specific values or principles; and legally enforceable entitlements.²³ The underlying notion behind it, is that it is necessarily available to a person because they are human beings. However, it is not every legal right that applies in the perspective of human rights. Legal right is a right created or recognized by law. Its breach is usually remediable by monetary damages. It is also a right historically recognized by common law courts and so would include equitable rights. Legal rights can further be described as the capacity of asserting a legally recognized claim against one with a correlative duty to act. These rights are not only enjoyed by human beings, but also by corporate bodies. Human rights can be an integral part of legal rights and legal rights go far beyond human rights and encompass other units of rights.

4. Dialectics of Tax Dispute Resolution and the Rights of Tax Payers in Nigeria

The horizon of human rights is clearly undefined. As stated by the court in *Ogugu & Ors v. The State*²⁴ 'novel cases of human rights claims may arise in difficult situations and upon strange facts'. It is for this reason that agitations have been intensified for the rights of tax payers across the world. According to Olugbenro, one of the hallmarks of a good tax system is certainty.²⁵ Consequently, a good tax system should unequivocally set out the tax obligations of all stakeholders and consequences of non-compliance, as well as a clear framework for tax administration. An effective mechanism for tax dispute resolution is also one of the features of a good tax system, where rights of taxpayers and the interest of the tax authorities are guaranteed. Therefore, the target of this work is to see how the existence and operations of tax authorities uphold/contravene the constitutionally guaranteed rights of the taxpayers, whether natural or juristic persons. Agitation for the rights of taxpayers is a new step in Nigeria. The need arose out of the hardship witnessed by taxpayers in the last few decades. But then, the proposition that taxpayers have rights akin to human rights as a result of their 'personhood' is easy to accept with regard to natural taxpayers. This is because their rights in the circumstances flow from the fact that, as natural persons, they have rights which the CFRN recognizes and guarantees. However, the acceptance of the position with regard to juristic taxpayers seems difficult.²⁶ The basis of possible difficulty is the fact that human rights pertain to natural persons. Nevertheless, it should be noted that under the Interpretation Act, reference to 'person' includes reference to 'anybody of persons, corporate or incorporate.'²⁷ Secondly, incorporation, which is analogous to birth, vests juristic persons with personhood. Third, a plethora of authorities have affirmed the common law rule that once a company is registered with the agency of government seized with such power, it becomes a legal personality separate and distinct from its members and amongst other things, possesses the capacity to own property, sue and be sued in its registered name,²⁸ and in like manner, possesses rights akin to that of natural persons. Davies underscores this when he states that 'the fundamental attribute of corporate personality is that the company is a legal entity distinct from its members. Hence, it is capable of enjoying rights..., which are not the same as those enjoyed or borne by its members'.²⁹ Thus, incorporation in addition to vesting both personhood and tax burden (in that order) on corporate entities,³⁰ is also the basis for enjoyment of rights with regard to juristic entities. Furthermore, there is no justification for the denial of such recognition. Lee emphasizes this point when she state that '... despite the irritation which many people feel at the prospect of incorporation being 'hijacked' by the rich and powerful to protect their interests against progressive action by the state "human rights protection should not be denied to companies".³¹ Hence, in *Alhaji Mohammed Bello & others v. Inspector General of Police & others*³² it was held that where there has been a breach of a right that falls under sections 43 and 44 of the CFRN, an action for redress can be brought by a non-natural person under the Fundamental Rights Enforcement Procedure Rules (FREPR), 2009. Also, in *Concord Press Nigeria Limited v Attorney-General of the Federation & others*,³³ and *Punch Nigeria Limited and another v Attorney General of the Federation & other*³⁴ the respective courts upheld the claim of the respective applicants (non-natural persons who were into the business of newspaper publication) that the closure of their business premises violated their right to freedom of expression under the CFRN.

Notably, a review of the decision in *Okupe v. FBIR*³⁵ and a selection of the powers of FIRS pursuant to provisions of the Federal Inland Revenue Service (Establishment) Act 2007 (FIRSEA) will throw lights to the fact that taxpayers have rights akin to human rights. The summary of the case is that the applicant/appellant brought an application for an order of *certiorari* to quash additional notices of assessment and corresponding notices of refusal to amend, prepared on the same date without recourse to the provisions of the law by or on behalf of the Federal Board of Inland Revenue (FBIR). At the High Court, the application was refused and this led to the appeal

²² J Donnelly, *Universal Human Rights in Theory and Practice*, (3rd Edn., New York: Cornell University Press, 2013), 27.

²³ O Nweke, 'Understanding Human Rights', 2020, <https://www.researchgate.net/publication/342946672>, accessed on 17th February, 2022.

²⁴ [1994] 9 NWLR (Pt. 366), 1.

²⁵ Yomi Olugbenro, 'What is the Fate of the Tax Appeal Tribunal', <http://www.mondaq.com/Nigeria/x/322466/tax+authorities/what+is+The+Fate+Of+The+Tax+Appeal+Tribunal>, accessed on 11th February, 2019.

²⁶ This conclusion was reached after discussions with Federal Inland Revenue Service (FIRS) staff from June to December 2013.

²⁷ See Section 18 (1) of the Interpretation Act Cap I 23 LFN 2010.

²⁸ The origin of this rule can be traced back to the decision in *Salomon v Salomon & Co. Ltd.*, (1897) AC 22, HL. Nigerian cases which have affirmed this rule includes *Marina Nominees v FBIR* [1986] 2 NWLR 48 where the court held that an agent incorporated for any purpose by another individual, is a separate legal entity which must fulfil its obligation under the law. But then compare the cases of *Agbonmagbe Bank Lid v General Manager. GB Ollivait Lid. & another* (1961) All NLR 116; *Shimt v Z.ig* (1941) 16 NLR 70; *UFO Associates Ltd. v FIRS & 4 others* NRLR 1 (2013) 148 where the respective courts struck out the suits on the ground that one of the parties was a non-juristic persons and *Njemanze v. Shell BP Port Harcourt* (1966) 1 All NLR 8 where the suit was struck out on the ground that the defendant was sued in the wrong name.

²⁹ P L Davies, *Principles of Modern Company Law*, (8th Edn., London: Sweet & Maxwell, 2008), 33.

³⁰ In *Marina Nominees v FBIR* (*supra*) the Court held that as a result of incorporation, plaintiff was liable to a tax burden distinct and separate from that of its members, promoters or incorporators.

³¹ N Lee, 'The Effects of Human Rights Act of 1998 on Taxation Policy and Administration', *Journal of Tax Research*, [2004], 2(2), 162.

³² (Unreported: suit no. FCT/HC/OV/940 delivered on 4 July 2013).

³³ [1994] FHCLR (Pt.144).

³⁴ [1998] 1 HRLRA 433.

³⁵ [2010] 2 TLRN 128.

up to the Supreme Court. At the Supreme Court, it was argued by the appellant that the simultaneous preparation and service of the notices denied the taxpayer its right pursuant to section 34 of the Personal Income Tax (Lagos) Act 1961 (repealed).³⁶ In its judgment, the Court held that:

In the present case, the respondents demonstrated by their action that they are unwilling to give the appellant any such period ...to make any objection and also that even if he was to make any objection it had certainly been refused by the respondents. Surely, this is fundamental breach of, at least, the provisions of sections 31, 33, 34, 36 and 41 of the Personal Income Tax (Lagos) Act to say the least, and we are satisfied that the action of the respondents in this case flatly contravenes and offends the pre-emptory and mandatory provisions of section 31 of the Act.... Whichever way one looks at the matter, an assessment like the present one which, in defiance of the mandatory provisions of the Personal Income Tax (Lagos) Act [sic], denies to the taxpayer his statutory rights of objection and, as if that was not enough, demonstrates clearly and unequivocally to him that any objection he may attempt to make against such assessment has already been refused, cannot be otherwise than perverse. We cannot allow such assessment to stand and an order of *certiorari* must issue to quash such assessment.

Pursuant to the law, there ought to have been a 30-days waiting period on the part of the tax authority after the service of the notices of additional assessment.³⁷ Within this period, the taxpayer has the opportunity of challenging the additional assessments in writing. After the 30 days, the tax authority considers the objection of the taxpayer and reply the taxpayer. The reply is usually by the service of a revised assessment or notice of refusal to amend (NORA). However, this was not the case in *Okupe*. The notices of additional assessment and NORA were prepared and served simultaneously. This is a denial of the taxpayers' right to fair hearing in Nigeria and the Court rights upturned the decision of the tax authority.

In Nigeria currently, the Tax Appeal Tribunal established pursuant to section 59 of the Federal Inland Revenue Service (Establishment) Act, 2007, is the body or tribunal recognized by law to adjudicate over disputes arising from the enforcement of the above laws. The Appeal Tribunal is constituted by not more than five persons, none of whom must be a public servant. This body is charged with the duty of hearing and determining appeals from any company and other body or persons subject to taxation who are aggrieved by a tax assessment. They may confirm, reduce, increase or annul the assessment complained of or make such order thereon as they seem or deem fit. The Tax Appeal Tribunal Establishment Act makes some provisions that inherently violate the rights of the tax payers. For example, paragraph 8 of 5th Schedule to the Federal Inland Revenue Service (Establishment) Act³⁸ provides thus:

The question as to the validity of the appointment of any person as a Tax Appeal Commissioner shall not be the cause of litigation in any court or Tribunal and no act or proceedings before the Tribunal shall be called into question in any manner on the ground merely of any defects in the constitution of the Tribunal.

The implication of this provision is somewhat fatal and an affront to the provision of section 36 (1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). The question is how does a litigant or an appellant check against the constitution of the members of the Tribunal where a member of the Appeal Tribunal has a direct or indirect interest in any company appearing as a litigant? Hence, it will be safe to say that this provision not only contravenes section 36(1)³⁹ but also the supremacy clause of the Constitution as provided in section 1(1) and (3)⁴⁰ of the Constitution of the Federal Republic of Nigeria. It denies the litigants the legal rights to enforce their constitutional right to fair hearing in deserving cases. Perhaps, the objective of the provision said paragraph 8 is to circumvent situation of intentional attacks targeted at the personalities of the Commissioners rather than the substance of the dispute, since it will be unfair for litigants to question the action of the Minister in the appointment of Tribunal members in court. The necessary implication is that the clause will certainly protect any defect that may arise as to the constitution of the Tribunal. Hence, even where there is a gross violation of the provision of the Act which deals with the sitting of members of the Tribunal, or such constitution of the Tribunal raises the issue of bias, or it is utterly in violation of the tax payer's constitutional right, the tax payer is estopped from challenging the jurisdiction of the Tribunal either before the Tribunal or before a regular court of law.

With respect to right of appeal, section 56 (2) of Companies Income Tax Act⁴¹, provides that any award or judgment of the Tax Appeal Tribunal cannot be appealed against by the aggrieved or dissatisfied litigants to the Federal High Court except and only if the amount is more than N400.00. By section 11 of the FIRS Act, Companies Income Tax Act is one of the laws the Tribunal has power adjudicate on any dispute or controversies arising from their application. The implication of this provision is that the right of appeal, which is one of the constitutional rights, has equally been denied the litigants. This provision occasions injustice upon litigants who have genuine cause for appeal. In another vein, where the Tax Appeal Tribunal refused an appellants application to appeal out of time, the litigants has no right to make similar application for extension of time to appeal. This certainly violates the litigant's constitutional right to ventilate his grievance to the fullest. Again, paragraph 16(3) of 5th Schedule to the FIRS Act provides that notwithstanding that an appeal is pending, tax shall be paid in accordance with the decision of the Tribunal within one month of notification of the amount of the Tax payable in pursuance of sub-paragraph (1) of this paragraphs. Thus, it makes any appeal arising therefrom a near impossibility since there is no right for stay of execution pending the determination of further appeal. This is another infraction on the rights of the tax payers.

³⁶ This provision is on all fours with the provisions of section 58(1) PITA.

³⁷ See also paragraph 13(2) of the First Schedule to the FIRS Act, 2007.

³⁸ No. 13 of 2007.

³⁹ Section 36(1) of the 1999 Constitution provides thus: 'In the determination of his civil rights and obligation, including any question or determination by or against any government or authority, a person shall be entitled to fair hearing within a reasonable time by a court or other Tribunal established by law and constituted in such a manner as to secure its independence and impartiality.' (Emphasis supplied).

⁴⁰ Section 1(1) of the 1999 Constitution provide thus: This Constitution is supreme and its provisions shall have binding force on all authorities and person throughout the Federal Republic of Nigeria. Then Section 1 (3) equally provides that any law made by any authority of which its provision is contrary to any provisions of the 1999 constitution shall be void to the extent of its inconsistency.

⁴¹ Companies Income Tax Act. Cap. C21 LFN 2010.

Another grave issue demanding the attention of the stakeholders in tax law, constitutional law, human rights and judicial activism is whether appeals to the Federal High Court from the Tax Appeal Tribunal should indeed continue to be limited to points of law alone as provided for in paragraph 17(1) of the 5th Schedule to the Act. For avoidance of doubt, paragraph 20(3) of the 5th Schedule to the Act, provides that any proceeding before the Tribunal shall be deemed as a judicial proceeding and the Tribunal shall be regarded as civil court for all purposes. Under sub-paragraph 2 of the same paragraph the Tribunal shall have the power to summon and examine any person on oath, require the production of documents, receive evidence on affidavit, call for the examination of witnesses or documents, etc. a conglomeration of all these produces fact before the Tribunal. Being that the Tribunals are composed of human beings, they could be prone to human errors in respect of factual evidence, and an aggrieved party should be allowed to appeal to the Federal High Court on grounds of the factual errors. To do otherwise, means to limit the chances of the appellant to ventilate his grievances which is against their constitutional rights.

Apart from the above anomalies, some other provisions of the Federal Inland Revenue Service (Establishment) Act, 2007, are in clear contradiction to Chapter IV of the Constitution. For instance, section 42 of the Constitution provides for rights to property in Nigeria. However, the intents of section 23 of the FIRSEA, which empowers FIRS to make tax refund as well as established the refund process, seems to erode the enjoyment of this right to property by tax payers. Also, pursuant to Section 61 of the Act, FIRS can issue what is called information circular, which is usually referred to “Refund Circular”, to acquaint stakeholders with the policy on the refund process. In practice, FIRS hides under this section 23 of the Act to hold the property (money) of the taxpayer at her whim and caprice against the right of the taxpayer as provided for in section 43 of the CFRN. This is because, the time frame between the determination and the actual payment of refund occasioned by the procedural steps before the refund is undetermined. Even where the refund arises out of negligence attributable to the FIRS, it is still not hopeful that the taxpayer will get back his money anytime soon, and this goes without compensation. In *Interplay v Ukraine*,⁴² the European Court held that delaying VAT refunds is an abuse of the right to peaceful enjoyment of possession. Again, section 31 of the Act vests on FIRS the power to substitute money in custody of an agent of a taxable person, for the tax due and remaining unpaid by such person. Section 31(1) empowers the FIRS to appoint any person as an agent of such taxable person. Thus, pursuant to this section, the FIRS can appoint a bank as agents of taxpayers and requests that they settle the tax liability of the latter from any money which is in their custody as the taxpayer’s banker. And once appointed, the agent is expected to discharge the tax debt from the money in its custody without any consideration or reservation in order to avoid liability on their part. The ugly situation here is that, that section does not place any limit on the portion or proportion of money that can be so used. It therefore follows that the agent can, on the strength of a request by FIRS, release or transfer the entirety of the taxpayer’s money in its custody to FIRS in the name of payment of tax due. Therefore, where the entire fortune of a taxpayer is in the custody of the bank as deposit and same is used by a bank to set off a tax debt pursuant to Section 31 of the FIRSEA, it is tantamount to a deliberation seizure of means of livelihood of the taxpayer. It is submitted that invoking the section amounts to an infraction on the right to life of taxpayers. With regard to a juristic taxpayer, the consequence is similar. This is because, by section 409 (d) of the Companies and Allied Matters Act,⁴³ a company is liable to be wound up as a result of its inability to pay its debts. Furthermore, the said provision does have recourse to the taxpayer before exercising this outrageous power of substitution with. It effectively makes FIRS judge/adjudicator in its own case. This is against the constitutional rights to fair hearing guaranteed under section 36 of the CFRN.⁴⁴

5. Conclusion

It is safe to conclude that taxpayers’ rights are not adequately protected in Nigeria. The process of tax adjudication in Nigeria is prone to abuse of these rights. Since the taxpayers contribute to the nation building, their rights and interest should be protected by the law. In this respect, we recommend amendment of section 17(1) of the 5th Schedule to The FIRSEA, to allow the tax payers unfettered access to appeal the decision of the tribunal. Section 8 of the 5th Schedule to the FIRS Act, ousting the power of the court to entertain any question as to any illegality in the constitution and composition of the Tax Appeal Tribunal is unconstitutional. The said section is also against the principles of natural justice and fair hearing. Hence, the section should be amended to allow the parties to question the composition of the Tribunal in cases where such composition will breed miscarriage of justice. Amendment of these sections mention above will certainly enhance confidence of the taxpayers in the tax dispute adjudication system in Nigeria and bring tax dispute resolution mechanism to the same footing with the global standard, in terms of fairness and equity, and give the taxpayer the assurance of justice as to the ventilation of their objection, and increase their propensity to comply with tax laws and payment of taxes.

⁴² ECTHR Judgment of Jan 9, 2007 Application No. 803/002.

⁴³ Cap. C20 LFN 2010

⁴⁴ See *Olufeagba v Abdur-Raheem* (2010) All FWLR (Pt. 512), 1033, 1042; *Uwazurike v Attorney-General of the Federation* (2009) All FWLR (Pt. 489) 549, 553; *Alakija v Medical Disciplinary Council* (1957) 4 FSC 38, 39.