

EXAMINATION OF THE LEGAL PROVISIONS FOR COMBATING TAX AVOIDANCE AND EVASION IN NIGERIA\*

**Abstract**

Revenue generation through taxation is an essential ingredient for sustainable development globally. Indeed, taxation is a very potent tool for economic growth and development across the globe. However, the productivity of the Nigeria tax system is low, and the major impediment to revenue generation in the country has been found to be the menace of tax resistance which manifests through the twin monsters called tax avoidance and evasion. This titled Examination of the Legal Provisions for Combating Tax Avoidance and Evasion in Nigerian' has found that divergent factors account for tax resistance in Nigeria. These include lack of a comprehensive and reliable database of taxpayers, the effect of technological development which has made it possible for businesses to be conducted through the internet, the regime of the multiplicity of taxes in the country, lack of will to enforce tax laws, and the dearth of infrastructural and social facilities provided out of generated tax revenue. Added to the above findings is the fact that the institutional framework in the country is weak and almost lacks powers to effectively check tax abuses, and the Nigeria Courts have in most high profile tax abuse cases exhibited an unwillingness to check incidences of tax evasion. Tax resistance has also been found in this article to have impacted negatively on the economy through substantial loss of government revenue thereby frustrating government developmental programmes. Consequently, deliberate legislative efforts have been made to curb the incidence of tax resistance in the economy. The efficacy of these legislative attempts, though well-intended have not shown the potentials of the desired result. The work finally recommended an amendment of the Taxes and Levies Approved Act to reduce the number of taxes, development of reliable data of taxpayers in the country, amendment of tax laws establishing tax administration bodies, efficient enforcement of tax laws, and provision of infrastructure and social services from tax revenue to enable taxpayers to see the justification for paying tax, as strategies for the way forward.

**Keywords:** Taxation, Tax avoidance, Tax evasion, Nigeria

**Introduction**

Globally, effective revenue mobilization is bedeviled by the twin monsters called tax avoidance and evasion. In Nigeria, the menace of tax evasion has become widespread that it attracted the comments of Sosanya<sup>1</sup> who submitted that 'tax evading has become the favourite crime of the Nigerian, so popular that it makes armed robbery seem like a minority interest and that it has become so widespread that they now exist as cash economy of vast proportions over which the tax-man has no control and which is growing at several times the rate of the national economy.' The effect of the above antecedent on the economy is an enormous loss of government revenue making it impossible for the government to effectively perform its obligations to the citizens. An analysis of the Internally Generated Revenue (IGR)<sup>2</sup> ratio revealed that twenty-one states in Nigeria were below the 25 percent mark, with Yobe, Kebbi, and Taraba as the most dependent states on the Federal Government support in the year 2018. The review of the Nigerian National Tax Policy in 2017 was in recognition of the fact that the Nigerian tax system had been unable to achieve its objectives as evident in the significantly low tax to Gross Domestic Product (GDP) ratio which had persisted. In a country of 180 million people, only 214 individuals pay tax in excess of ₦20 million annually with multinational companies evading tax. This was the lamentation of the former Executive Chairman of the Federal Inland Revenue Service (FIRS), Mr. Babatunde Fowler<sup>3</sup> who stated that 'underpayment of tax via the use of tax havens and other evasion strategies has not been helpful to Nigeria. This practice has been principally perpetrated by multinational companies and high net worth individuals. Nigeria has the lowest non-oil tax to GDP at 60%...' This article, therefore, shall critically look at the legal framework for combating tax avoidance and tax evasion, and its effect on the Nigerian economy.

2. Concept of Taxation Examined

There is no universal definition of the term 'Tax'. It has been variously defined over the years. However, the conventional definitions, when considered generally, gave comprehensive meaning of the term. According to the Oxford Dictionary, the word 'Tax' refers to, 'a compulsory contribution to the support of government levied on persons, property, income, commodities, transactions, etc., now at a fixed rate mostly proportionate to the amount on which the contribution is levied.'<sup>4</sup> This definition of the term 'Tax' is deficient because it gives an elusive meaning and did not provide the purpose of taxation. In Mathews vs. Chicory Marketing Board, it was held that a tax is, 'A compulsory exertion of money by a public authority for public purposes, or taxation is raising money for the purpose

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<sup>1</sup> O.S. Sosanya, 'Taxation Reform in Nigeria' NNA (1981) at p. 7.

<sup>2</sup> Business Day Newspaper, Monday, 20<sup>th</sup> May, 2019 Vol. 15 No. 313, p. 2.

<sup>3</sup> Available at <<https://vanguardngr.com>> 2017/03. Accessed on 06 January 2024.

<sup>4</sup> A.S. Hornby, Oxford Advanced Learner's Dictionary, Seventh Edition, Sally Wehmeier et al (eds.), Oxford University Press, Oxford, 2005, p. 151642

of government by means of contribution of individual persons.<sup>5</sup> According to John, 'Tax can be defined as a mandatory contribution to the support of states and governments of a nation or country.'<sup>6</sup> Adesola defined tax as, 'A compulsory levy which a government imposes on its citizen to enable it obtain there required revenue to finance its activities'.<sup>7</sup> Abdulrazaq, on the other hand, defined tax as, 'An enforced contribution of money, extracted pursuant to legislative authority'.<sup>8</sup> The Institute of Chartered Accountants of Nigeria and the Chartered Institute of Taxation of Nigeria viewed tax as 'an enforced contribution of money, enacted pursuant to legislative authority'. The word 'tax' has been defined in the Black's Law Dictionary as 'a monetary charge imposed by the government on people, entities, transactions or property to yield public revenue.'<sup>9</sup> It has been defined in the Webster's Dictionary as 'a charge imposed by governmental authority upon property, individuals or transactions to raise money for public purposes.'<sup>10</sup> Another writer defined taxation as, 'a compulsory levy imposed on a subject or upon his property by the government having authority over him or the property.'<sup>11</sup>

This study viewed taxation, in line with the provisions of the Nigerian tax laws, as, 'a statutory imposition of certain charge on persons, whether legal or artificial, on their transactions or property by the taxing authority on behalf of the relevant government, as revenue accruing to that government for public purposes'.<sup>12</sup> From the above definitions of the term 'Tax', one could infer that, tax, by its nature, is 'a compulsory levy imposed on individual taxpayer by a government, state or any taxing authority, for economic development of that country, state or nation'.<sup>13</sup> Examination of various definitions provided above shows that most definitions contained some common fundamental characteristics, i.e. coercion or element of compulsion, levied by government or any legal authority, backed by law and for public use, whether direct or indirect.<sup>14</sup> This refers to a situation where the taxpayer arranges the financial affairs in a way that would make him pay the least possible amount of tax without infringing the legal rules. It is a term used to denote those various devices which have been adopted with the aim of saving tax and thus sheltering the taxpayer's income from greater liability which would have been otherwise incurred.<sup>15</sup>

### **3. Conceptualising Tax Avoidance and Tax Evasion**

This refers to an outright, dishonest action whereby the taxpayer endeavors to reduce his tax liability through the use of illegal means. According to Farayola tax evasion is the fraudulent, dishonest, intentional distortion or concealment of fact and figures with the intention of avoiding the payment of or reducing the amount of tax otherwise payable.<sup>16</sup> It can also refer to any intentional, illegal reduction of tax payment, which usually takes the form of underreporting income, sales or wealth, or overstating deductions,<sup>17</sup> including failure to file appropriate tax returns. Tax avoidance arises in a situation where the tax payer arranges his financial affairs in a way that would make him pay the least possible amount of tax without infringing the legal rules.<sup>18</sup> In short, it is a term used to denote those various devices which have been sheltering the tax payer's income from greater liability which would have been otherwise incurred.<sup>19</sup> Adinkrah described tax avoidance as follows: the taxpayers knowing tax law, decides not to be caught by it arranges the business in such a manner as to escape tax liability partially or entirely. It is a lawful trick or manipulation to evade the payment of tax.<sup>20</sup> The meaning of tax avoidance is vividly captured in the case involving *Ayasire Pullman Motors*

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<sup>5</sup> (1838) 60 C.L.R. 260, p. 276

<sup>6</sup> D. C. John, *Assessment of the Effectiveness of Legal Provisions Relating to Civil and Criminal Sanctions under the Nigerian Income Tax Laws*, an Ph. D dissertation (unpub.) submitted to Postgraduate School, A.B.U. Zaria for the Award of Doctor of Philosophy in Law, 2009, p. 8

<sup>7</sup> S.M. Adesola, *Tax Law and Administration in Nigeria: An Introduction*, Obafemi Awolowo University Press Limited, Ile-Ife. See also Asada, D. *The Administration of Personal Income Tax in Nigeria Some Problem Areas*, retrieved from <http://dspace.unijos.edu.ng>, 1998.

<sup>8</sup> A. Abdulrazaq, *Nigeria Tax Guides and Studies (ED)*, the Chartered Institute of Taxation of Nigeria, Lagos, 2002.

<sup>9</sup> B. Garner, *Black's Law Dictionary*, 8th Edition, Thompson West, New York, 2004, p. 1496

<sup>10</sup> Ibid.

<sup>11</sup> M. A. Musa, *An Appraisal of Income Tax Enforcement Procedures under the Nigerian Tax System*, Thesis, (Unpublished) Ahmadu Bello, Zaria. May 2014.

<sup>12</sup> E.F. Oluwakayode, & K.K. Arogundade, Problems and Prospects of Using Consultants in Tax Administration in Nigeria: A Retrospective Focus on Lagos State, Nigeria, in: *Journal of Management Society*, vol. 1 (3), Faculty of Management Sciences, University of Ado Ekiti, Nigeria, 2011, pp. 22-2944

<sup>13</sup> O. Akanle, the Government, The Constitution and the Taxpayer, in: Ajemo, O. and Akanle, O (eds), *Tax Law and Tax Administration*, NIALS, Lagos, 1991, p. 1

<sup>14</sup> Ibid.

<sup>15</sup> B. Kaibel, *Personal Income Tax in Nigeria*. (Owerri, Springfield Publishers, 2001)

<sup>16</sup> O. Farayola, *Guide to Nigeria Taxes*. (Lagos: All Crown Nigerian Ltd, 2000)

<sup>17</sup> S. Friedrich & B. Valeir and R. Monika, Individual behavior in the cash/shadow economy in Australia: Facts, empirical findings and some mysteries, *Economics working papers 2001-07*, Department of Economics, (Johannes kepler University Linz, Austria, 2001)

<sup>18</sup> B. Kiabel, *Personal Income Tax in Nigeria*. (Owerri, Springfield Publishers, 2001)

<sup>19</sup> Ibid.

<sup>20</sup> K. Adinkrah, *A New Tax Source for Development in Ghana and Nigeria. It Effects on Peasants*, Journal of Private and Property Law, 2004)

*Services and David M. Rijchin v Commissioner of Inland Revenue* in 1982 when the Lord President, Lord Clyde held that:

No man in this country is under the smallest obligation moral or otherwise so to arrange his legal relations to his business or to his property as to enable the Inland Revenue to put the largest possible shovel into his stores. The Inland Revenue is not slow and quiet rightly to take every advantage, which is open to it under the taxing statutes for the purpose of depleting the taxpayer's pocket. And the taxpayer is in like manner entitled to be astute to prevent so far as the honestly can the depletion of his means by the revenue.<sup>21</sup>

Thus, it is clear that the tax avoidance is legal or at least not illegal since one is mostly, probably using the tax laws to limit his tax liability under the same laws. Examples of tax avoidance include reducing one's income by submitting claims for expenses in earning the income; increasing the number of one child; taking additional life assurance policy. Tax avoidance is thus considered to be a matter of being sensible.<sup>22</sup> While the tax law regards tax avoidance as legitimate game, tax evasion is seen as immoral and illegal. No doubt, tax evasion and avoidance had robbed the Nigeria government of substantial tax revenue. Tax evasion as an intentional effort by people, corporate bodies, trust and other institutions to illicitly refuse to pay their tax and reporting true and fair value of their earnings by a means of evading.<sup>23</sup> Tax evasion is characterized as an intentional wrongful attitude, or as a behaviour involving a direct violation of tax laws, norms and ethics regarding citizenry obligation to escape the payment of tax. The intentional underreporting of income, as well as over-claiming of a tax deduction, is an obvious example of tax evasion.<sup>24</sup> Tax evasion as an intentional and conscious practice of not revealing full taxable income.<sup>25</sup> It is a violation of tax laws in which the tax rate due by a taxable person is unpaid after the minimum required period.<sup>26</sup>

Tax evasion is clear evidence in a situation where taxpayers are reducing, making or proclaiming false statement about their liabilities on the revenue tax through exploiting ineffectiveness in the tax laws and regulations. Tax evasion typically involves taxpayers consciously misrepresenting or hiding the true position of their affairs to the relevant tax authorities to ease their tax burden. However, tax evasion can be classified as fully evasion or partial evasion.<sup>27</sup> Partial evasion occurs when individual or corporate entity understated its earnings for the purpose of tax and declares low income. While fully evasion occurs when the person or corporate entity qualifies to pay tax but fails to register with tax authorities to enroll in the tax system. This act comprises, in specific, fraudulent tax reporting like declaring less earnings and overstressing deductions. In the face of law, tax evasion is a crime and subject to execution by way of fine, imprisonment or even both in many countries of the world. Tax evasion is representing illegal practices by taxpayer to escape his civic responsibility enforce by the law and generally accepted by the society or nation. Due to this situation, the taxable income and other tax activities are being concealed, the amount or sources of income are misrepresented and the reductions, reliefs or exemptions are intentionally overstated.<sup>28</sup> However, often tax evasion may occur mostly in an informal economy where activities of businesses and other trade transactions take place in an informal manner which eases the evasion. This may happen when business is not registered with tax authorities and hence, in most cases, are operating in remote areas moving from one location to another freely. Tax evasion as an intentional, illegal and unacceptable behaviour or activities involving a direct violation of tax law to evade the disbursement of tax,<sup>29</sup> Tax evasion is illegal and violation of tax laws, whereas tax avoidance is a legal way of decreasing tax burden. Both the two are not acceptable but the latter is less serious to the former by eroding the revenue generation use for financing public expenditure latter.<sup>30</sup> Tax evasion is an outright dishonest action whereby the tax payer endeavours to reduce his tax liability through the use of illegal means.<sup>31</sup> Tax evasion is the fraudulent, dishonest, intentional distortion or concealment of facts and figures with the intention of avoiding the payment of or reducing the amount of tax otherwise payable. Tax evasion is accomplished by deliberate act of omission or commission which in them constitutes criminal acts under the tax laws.<sup>32</sup> These acts of omission or commission might include failure to pay tax e.g. withholding tax; failure to submit returns; omission or misstatement of items from returns; claiming relief (in Personal Income Tax) for example of children that do not exist; understating income; documenting fictitious transaction;

<sup>21</sup> N. Solo, 'Tax Evasion Problems in Nigeria. A Critique'. *The Nigeria Accountant* 40 (2) April and June, 2007)

<sup>22</sup> B. Faseun, *Nigeria Taxation: An Approach*. (Egbe Kogi, Bhoti International Publishing Ltd., 2000)

<sup>23</sup> O. Edwin *Good Tax Planning and Tax Avoidance as Legal Options to the Illegality of Tax Evasion*. A Paper delivered at the Tax Awareness Forum for the Public Sector and Organized, 2007)

<sup>24</sup> J. F. Adebisi, and D.O. Gbegi, *Effect of Tax Avoidance and Tax Evasion on Personal Income*, Ibadan: (Special Publisher, 2013)

<sup>25</sup> L. Soyode, and S.O. Kajola, *Taxation: Principles and Practice in Nigeria*: 1st Edit. (Silicon, Ibadan, 2006)

<sup>26</sup> O.T. Fagbemi., M.O. Uadiale and O. A. Noah: The Ethics of Tax Evasion: Perceptual Evidence from Nigeria. *European Journal of Social Sciences* – 2010 17 (3) 360-371

<sup>27</sup> A.S. Fakile and F. F. Adegbe, Company Income Tax and Nigeria Economic Development: *European Journal of Social Sciences* 2 (6) 326-330, 2011)

<sup>28</sup> C. Chiumya, 'Counteracting Tax Evasion in Malawi: An Analysis of the Methods and a Quest for Improvement', *Munich Personal RePEc Archive*. 1 – 42, 2006).

<sup>29</sup> G. Richardson, The Relationship between Culture and Tax Evasion Across Countries: Additional Evidence and Extensions. *Journal of International Accounting, Auditing and Taxation*, 17: 67–78, 2008).

<sup>30</sup> S. Kim, Does Political Intention Affect Tax Evasion? *Journal of Policy Modelling*, 30, 401–415, 2008).

<sup>31</sup> M. Okorodudu 'Analysis of Federal and State Taxing Powers' in Ajomo M.A, (eds) *Tax Law and Tax Administration in Nigeria*, Lagos: Nigerian Institute of Advanced Legal Studies

<sup>32</sup> F. Grown, *Guide to Nigeria taxes*. (Lagos: All Crown Nigerian Ltd, 2007).

overstating expenses; and failure to answer queries.<sup>33</sup> The most common form of tax evasion in Nigeria is through failure to render tax to the Relevant Tax Authority. A tax evader may be charged to court for criminal offences with the consequent fines, penalties and at times imprisonment being levied on him for evading tax.<sup>34</sup> To buttress the above assertion, Sosanya (2001) has this to say:

Tax evading has become the favourite crime of Nigerians, so popular that it takes armed robbery seems like minority interest. It has become so widespread that there now exists a cash economy of vast proportions over which the taxman has no control and which is growing at several times the rate of the national economy.

#### **4. Causes of Tax Avoidance and Evasion in Nigeria**

Tax avoidance and evasion have adverse effect on government revenue. Tax avoidance generates investment distortion in the form of the purchase of assets exempted from tax or under-valued for tax purposes. Avoidance takes the form of investment in arts collection, emigration of persons and capital.<sup>35</sup> And as observed by Toby, the tax payer indulges in evasion by resorting to various practices. These, practices erode moral values and build up inflationary pressures.<sup>36</sup> This point can be buttressed with the fact that because of the evasion of tax individual and companies has a lot of money at their disposal. Companies declare higher dividends and individuals have a high take home profit. This will increase the quantity of money in circulation but without a corresponding increase in the goods and services.<sup>37</sup> This then build up what is known as inflationary trends where large money chases few goods.

According to Fjeldstad, he says tax evasion has had a variety of fiscal effects and there are at least three reasons responsible for this, in the first place, revenue losses from noncompliance and corruption become significant at a time of substantial budget deficit.<sup>38</sup> Second, horizontal and vertical equity suffer because the effective tax rates faced by individuals' may differ because of different opportunities for tax evasion.<sup>39</sup> Again, Shome stressed that, an important adverse effect of tax evasion is perhaps on equity.<sup>40</sup> There is horizontal and vertical inequity where in both forms of inequity, the higher-taxed person pays for the lower-taxed person since, had there been no tax evasion; the tax rates would have been lower under the premise of revenue neutrality. Third, there is a growing concern about the expanding underground economic activities, and how these activities affect economic policies.<sup>41</sup> Acts of corruption by tax collectors often play a role in promoting or sustaining underground economic activities and in facilitating tax evasion.<sup>42</sup> Tax evasion and fiscal corruption thus contribute to undermining the legitimacy of government. Furthermore, citizens' disrespect for the tax laws may expand disrespect for other laws. Toby acknowledged that, tax evasion has undoubtedly affected adversely the government revenue generation capability and the economy as a whole and observed that, the taxpayer indulges in evasion by resorting to various practices.<sup>43</sup> These practices erode moral values and build up inflationary pressures. This point can be buttressed with the fact that because of the evasion of tax, individuals and companies have a lot of money at their disposal. Companies declare higher dividends and individuals have a high take home profit. This increases the quantity of money in circulation but without a corresponding increase in the goods and services. This then build up what is known as inflationary trends where large money chases few goods. Russo, reported that, in Italy, one of the effects of tax evasion is loss of revenue to the government.<sup>44</sup> Marion and Muehlegger added that, lack of compliance with tax laws are likely to alter the distortionary costs of raising a given level of government revenue and may affect the distributional consequences of a given tax policy. In addition to, resources spent evading taxes represent a deadweight loss to the economy.<sup>45</sup>

Another effect of tax evasion is discussed by Matsaganis and Flevotomou that, tax evasion raises significant issues from the point of view of efficiency.<sup>46</sup> Shome added that tax evasion distorts economic efficiency. In sectors that are less subject to the administrator's scrutiny as in the informal economy, there will be more investment.<sup>47</sup> Inefficiency leads to lower revenue intake for government, its functional capacity, efficiency and effectiveness suffer because of tax evasion. Capacity suffers due to lower availability of resources. Efficiency declines since important functions may have to be given less priority than others. It is noted that, effectiveness declines as compliant taxpayers realize that government is unable or

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<sup>33</sup> F. Grown, *Guide to Nigeria taxes*. (Lagos: All Crown Nigerian Ltd, 2007).

<sup>34</sup> F. Larry. *Tax Planning*, Lagos tax. *The CITN Newsletter*, Vol No 1, 2014).

<sup>35</sup> J. F. Adebisi, & D.O. Gbegi, *Effect of Tax Avoidance and Tax Evasion on Personal Income*, Zaria, AZ Publisher, 2013)

<sup>36</sup> R. Toby, *The Theory and Practice of Income Tax*. (Macmillan Press Ltd. 1983).

<sup>37</sup> *Ibid*.

<sup>38</sup> O. Fjeldstad, *Tax Evasion and Corruption in Local Government in Tanzania: Alternative Economic Approaches*, 1996)

<sup>39</sup> J. Alm, & J. Martinez-Vazquez, *Societal Institutions and Tax Evasion in Developing and Transitional Countries*, A Paper Prepared for Public Finance in Developing and Transition Countries: A Conference in Honour of Richard Bird International Studies Program Andrew Young School of Policy Studies, Georgia State University, (2001)

<sup>40</sup> P.A. Shome, Premier on Tax Evasion; IMF, 2008 *Staff Paper* 40(4) 807-828

<sup>41</sup> *Ibid*.

<sup>42</sup> *Ibid*.

<sup>43</sup> *Ibid*.

<sup>44</sup> O. Edwin, (2007), Good Tax Planning and Tax Avoidance as Legal Options to the Illegality of Tax Evasion. A Paper delivered at the Tax Awareness Forum for the Public Sector and Organized

<sup>45</sup> *Ibid*.

<sup>46</sup> M. Matsaganis and M. Flevotomou, Distribution implication of Tax Evasion in Greece. Hellenic Observatory Papers on Greece and Southeast Europe, *Gree SE Paper* No 31, 2010.

<sup>47</sup> *Ibid*.

unwilling to take corrective action, and, therefore, feel increasingly comfortable in joining the rest in the act of tax avoidance and evasion.

### 5. Legislative Provisions for Curbing Tax Avoidance and Evasion in Nigeria

In view of the dangers posed to the economy, legislative efforts have been purposefully made to curb the menace of tax avoidance and evasion. It has been suggested by Christensen<sup>48</sup> that the major step to reversing the general trend towards corporate tax avoidance and evasion would be the adoption into tax laws of what is commonly called General Anti-Avoidance Principles (GAAP). These provide tax authorities with the power to consider whether the main purpose, or one of the main purposes, of any transaction, is the avoidance or reduction of tax liability and, this being the case, to allow the authorities to assess the person who has undertaken such, to additional tax in order to counteract the avoidance or reduction of liability that they sought to achieve. The Nigerian tax laws, therefore, contain elaborate General and Specific Anti-Avoidance Provisions. This conforms to the principles set out in Article 9 of the OECD and the United Nations Model Tax conventions.

In Nigeria, the Personal Income Tax Act<sup>49</sup>, the Federal Inland Revenue Service (Establishment) Act<sup>50</sup>, the Companies Income Tax Act<sup>51</sup>, and the Petroleum Profits Tax Act<sup>52</sup> have made elaborate provisions generally referred to as General Anti-Avoidance provisions. Section 22(2) of CITA provides that:

Transactions between persons one of whom either has control over the other, in case of individuals, who are related to each other or between persons both of whom are controlled by some other persons, shall be deemed to be artificial or fictions if in the opinion of the (FIRS) those transactions have not been made on terms which might fairly have been expected to have been made by persons engaged in the same or similar activities dealing with one another at arm's length.

Similar provisions are found in the other tax laws. These general provisions have the potential of checking transfer pricing abuse. Transfer pricing is not illegal in itself, what is illegal and abusive is transfer mispricing. That is the deliberate mispricing of goods, services, and intangible assets transferred between related enterprises as a means of minimizing or avoiding tax liability. This general anti-avoidance provision has been confirmed as appropriate in checking tax abuses in the case of *M/S DIT (International) Mumbai v. M/S Morgan Stanley & Co. Inc.*<sup>53</sup> These provisions are designed to check what is known as Transfer pricing abuse. Transfer pricing is a process where goods and services are exchanged within a single multinational corporation. Usually, such transactions are not at arm's length. According to an estimate prepared in the late 1990s, 60 percent of trade transactions into or out of Africa are mispriced through abusive transfer pricing and re-invoicing, 11 percent, resulting in a capital flight component of 7 percent of African trade, totaling US\$10 to 11 billion annually in 1999 prices.<sup>54</sup> In a bid to avoid such economic distortion, the current Organisation for Economic Corporation and Development (OECD) international guidelines are based on arm's length principle that transfer price should be the same as if the two companies involved were indeed two independent, not part of the same corporate structure and that goods sold to subsidiaries should be sold with world price as subsidiaries are just like any other partner. This position has been accepted and applied in Nigeria through the amendment of the Companies Income Tax Act by introducing a new Section 29(g) of the Finance Act, 2019. The said Section 29(g) which is, to the effect that 'any expense whatsoever incurred within or outside Nigeria involving related parties as defined under the Transfer Pricing Regulation, shall not be deductible in Nigeria except to the extent that it is consistent with Transfer Pricing Regulation. In the case of *Brasoil Services Co. v. FIRS*<sup>55</sup>, the Tax Appeal Tribunal, Lagos Zone stated that the purpose of the Arm's Length doctrine is to rid frequent artificiality in related party transactions and inject rationality of commercial transaction between unrelated parties. It is therefore hoped that the introduction of the arm's length rule in our laws will check transfer pricing abuse by multinationals. Another General Anti-Avoidance provision is Section 31(1) – (3) of the Federal Inland Revenue (Service) Act<sup>56</sup> provides that the Federal Inland Revenue Service can appoint by notice in writing any person as an agent of who is in possession of any money belonging to a taxpayer for purpose of paying tax owed by a taxpayer.

The Personal Income Tax Act<sup>57</sup>, the Companies Income Tax Act<sup>58</sup>, the Petroleum Profits Tax Act<sup>59</sup>, and the Federal Inland Revenue Service (Establishment) Act<sup>60</sup> have also made elaborate provisions aimed at curbing the menace of tax avoidance and evasion in Nigeria. The tax authorities are vested with powers to distrain a defaulting taxpayer's goods or other chattels,

<sup>48</sup>J. Christensen, 'Tax Avoidance, Tax Competition and Globalisation: Making Tax Justice a Focus for Global Activism'. In *More Taxes: Promoting Strategies for Global Taxation* (2005) ATTAC Cr. Finland p. 67.

<sup>49</sup> Cap. P8 LFN, 2004 (as amended in 2011).

<sup>50</sup> Section 31(1) of the FIRS (Establishment) Act, 2007.

<sup>51</sup> Cap. C21 LFN, 2004.

<sup>52</sup> Cap. P13 LFN, 2004.

<sup>53</sup> (2014) 13 TLRN 116 at 124.

<sup>54</sup> S. Vill-Pekka *ibid*, p. 101.

<sup>55</sup> (2014) TLRN 116 at 123.

<sup>56</sup> (n151).

<sup>57</sup> Cap. P8 LFN, 2004 (as amended by Act No. 20, 2011).

<sup>58</sup> Cap. C21 LFN, 2004.

<sup>59</sup> Cap. P13 LFN, 2004.

<sup>60</sup> Federal Inland Revenue Service (Establishment) Act, 2007.

bonds, or other securities and land or premises and sell anything so distrained in order to recover the amount of tax owed<sup>61</sup>, and power to raise an additional assessment.<sup>62</sup> The problem, however, is that some of these radical anti-avoidance and evasion provisions in our tax laws have the potentials to infringe on the taxpayers' rights as provided under the Constitution of the Federal Republic of Nigeria and some rights arising out of contractual relationships. Taxing statutory provisions in the light of the foregoing is the subject of the ensuing discussion. These anti-avoidance and evasion provisions and how they infringe on the rights of the taxpayers form the subject of the ensuing discussion.

#### **Power to Distrain and Sale Goods of a Defaulting Taxpayer**

The Federal Inland Revenue Service (Establishment) Act<sup>63</sup> empowers the Federal Inland Revenue Service to distrain defaulting taxpayers' goods or other chattels, bonds or other securities and land or premises and sells anything so distrained in order to recover the amount tax owed. Similarly, the Personal Income Tax Act<sup>64</sup> provides for the power of the tax authority to distrain the property of a taxpayer where a final assessment has been made and served on the taxpayer and he has defaulted in payment. Specifically, Section 104(1) provides that for the purposes of enforcing payment of tax due, the relevant tax authority has the powers to:

- (a) Distrain the taxpayer by his goods, other chattels, bonds, or other securities; or
- (a) Distrain upon any land, premises, or places in respect of which the taxpayer is the owner and, subject to the following provisions of this section, recover the amount of tax due by the sale of anything so distrained.

Section 29 of the Personal Income Tax (Amendment) Act 2011 amends Section 104 of the Personal Income Tax in the following terms: Without prejudice to any other power conferred on the relevant tax authority to the enforcement of payment of tax due from a taxable person that has been properly served with an assessment which has become final and conclusive and demand, notice has been served upon the person in accordance with the provisions of this part of the Act or has been served upon the person, then, if payment of tax is not made within the time specified by the demand notice, the relevant tax authority may, in the prescribed form, for the purpose of enforcing payment of tax due to distrain the taxpayer by his goods, other chattels, bond or other securities; or distrain upon land, premises, or places in respect of the taxpayer is the owner and, subject to the provision of this section, recover the amount tax due by the sale of anything so distrained. For the purpose of levying any distress under this section, an officer duly authorized by the relevant tax authority shall apply to a judge of a High Court, under oath for the issue of a warrant under this section. The judge may, on an application made ex-parte, authorize such an officer referred to in sub-section 3 of this section, in writing to execute any warrant of distress and, if necessary, break open any building or place in the daytime to levy such distress and he may call to his assistance any police officer and it shall be the duty of any police officer when so required to aid and assist in the execution of any warrant of distress and in levying the distress.

The distress taken pursuant to this section may, at the cost of the owner, be kept for 14 days, at the end of which time, if the amount due in respect of tax and the cost and charge incidental to the distress are not paid, the same may be sold. The foregoing provisions received judicial approval in the case of *I-D Sam Nig. Ltd. v. Lagos State Internal Revenue Service*<sup>65</sup>, where the Lagos State High Court stated that where a taxable person fails and or refuses to make the necessary tax payments, sanctions are prescribed in the relevant tax laws, which include, but are not limited to the power to distrain. The court therefore held that there is no doubt that the claimant has the right to distrain for non-payment of tax including for unremitted deductions in respect of PAYE and withholding tax on directors' fees, commissions, and so on. The court further affirmed the conditions laid down by Section 104 for the sale of distrained goods in the following words that, 'things distrained may be kept at the cost of the taxable person if all outstandings are not paid, the goods may be sold.'<sup>66</sup> In *Edo State Board of Internal Revenue v. Okomu Oil Palm Company Plc*<sup>67</sup>, the Court of Appeal held that an order of distraining for non-payment of tax deemed final and conclusive is a final judgment capable of enforcement through garnishee proceedings. Section 104(2) of the Personal Income Tax however provides that an application to distrain a defaulting taxpayers' property is by motion *ex parte*. The implication is that the person whose property is to be distrained is not given an opportunity to be heard. This position is against the principle of *Audi Alteram Partem*, which reiterates and affirms the principle enshrined in the constitution that all parties must be heard for proper determination of his case. In *Adebayo Ogundoyin v. David Adeyemi*<sup>68</sup>, the Supreme Court held on the nature of fair hearing that, 'Each party to a dispute before a court of law or any tribunal must be given fair hearing not only to allow each other state his own case in court or before a tribunal but also to give each party notice of the date of hearing and place of hearing which is the principle of *Audi Alteram Partem*. The principle arises from the rule of natural justice. Consequently, the Supreme Court has held that once there is a breach of the right of fair hearing, the whole proceedings in the course of which the breach occurred and the decision arrived at by the court becomes a nullity.'<sup>69</sup>

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<sup>61</sup> Section 33(1) *Ibid*.

<sup>62</sup> Section 34(2) *Ibid*.

<sup>63</sup> Section 33(1).

<sup>64</sup> Section 104 *Ibid*.

<sup>65</sup> (2011)5 TLRN 41 at 50.

<sup>66</sup> See *I-D Sam Nig. Ltd. v. Lagos State Internal Revenue Service* (supra) at 51.

<sup>67</sup> (2018) 36 TLRN 60 at 63.

<sup>68</sup> (2001) 13 NWLR (pt. 730) 403.

<sup>69</sup> *Ismeel Ahmed v. Ahmed* (2013) 56 (pt. 1) NSCQR at 58, as per S.M. Chukwuma-Eneh, JSC.

### **Power to Seal up Premises**

The tax authority is also vested with the powers to seal up business premises where a tax avoidance or evasion scheme is suspected. However, where a tax authority has no power or seals a taxpayer's property without regard to the relevant tax law and regulations, the taxpayer can recover damages under the Fundamental Rights Enforcement procedure.<sup>70</sup> The next issue whether or not it will amount to double jeopardy if the taxpayers are found liable or convicted for violation of tax laws when the tax authority has also sealed up their factory. The Constitution of the Federal Republic of Nigeria, 1999<sup>71</sup> guarantees freedom from double jeopardy. In the words of the Constitution: 'No person who shows that he has been tried by any court of competent jurisdiction or tribunal for a criminal offence and either convicted or acquitted shall again be tried for that offence or for a criminal offence having the same ingredients as that offence save upon the order of a superior court'. In *Edo State Board of Internal Revenue v. Niki Manufacturing Company Ltd*<sup>72</sup>, the court answered the issue of whether it will amount to double jeopardy if the taxpayers are found liable or convicted for violation of tax laws when the tax authority has also sealed up their factory in the negative. In the words of the court: '...Section 104(3) of the Personal Income Tax Act does not, and cannot by any stretch of imagination amount to an acquittal by a court of law. I entirely agree with complainants' counsel that the rule of double jeopardy cannot avail the defendants'. In terms of efficacy in checking tax avoidance and evasion schemes, it is hereby submitted that the power to seal premises of a defaulting taxpayer can effectively serve as deterrence since that taxpayer stands the risk of losing his income as long as the default continues and his business premises remain sealed.

### **Power to Access all Lands, Buildings, and Documents for the Purpose of Collecting Tax**

Another anti-avoidance and evasion legislative enactment is that provided under Section 29(1) of the Federal Inland Revenue Service (Establishment) Act<sup>73</sup> and Section 29(3) of the Personal Income Tax (Amendment) Act.<sup>74</sup> These provisions permit an authorized officer of the Federal Inland Revenue Service to have access to all lands, buildings, places, books, and documents in custody or under the control of a public officer, institution, or any person at all reasonable times for the purpose of inspecting the books or documents including those stored or maintained in computers or on digital, magnetic, optical or electronic media and any property for the purpose of collecting tax. This provision represents a radical modern trend in checking incidences of tax avoidance and evasion and is intended to eliminate the tendency to conceal information regarding the taxpayers' chargeable income. This is particularly in view of the fact that some businesses keep more than one account. While the real account is kept for business purposes, an artificial account with low income is maintained for tax purposes. With this power, the tax authorities can have access to the taxpayer's accurate income and accordingly charge the same to tax. Ierkwagh and Shima<sup>75</sup> have however argued that though effective in checking tax avoidance and evasion schemes, the foregoing powers of the FIRS represent an infraction on the right of the taxpayers to privacy under Section 37 of the Constitution as Nigerian citizens. They have also shown that Section 28 of the Federal Inland Revenue Service (Establishment) Act which has placed an obligation on banks or any person carrying on banking business in Nigeria to prepare and send to the service on demand quarterly returns of bank account holders is an effective check against both individual and corporate tax avoidance and evasion, the provision has the potential to serve as a disincentive to banking habit and encourage unconventional and uneconomically viable methods of safekeeping like the use of overhead water tanks at home or soakaways.<sup>76</sup> Despite the above submissions, the advantages of the provision outweigh the disadvantages and therefore call for more effective enforcement to check the menace of tax avoidance and evasion.

### **Use of Tax Identification (TIN) and Unique Identification Number (U-TIN)**

Section 8(a) of the Federal Inland Revenue Service (Establishment) Act<sup>77</sup> introduced the use of the Taxpayer's Identification Number (TIN) and the undertaking of the Unique Tax Identification Number (U-TIN). The Taxpayer's Identification Number (TIN) is a number unique to all corporate and individual taxpayers. It is a unique-digit sequential number generated electronically as part of the registration process of tax and assigned to a taxpayer company, enterprise, or individual for identification. The use of TIN became mandatory from 1<sup>st</sup> January 2008 for all taxpayers dealing with the Federal Inland Revenue Service.<sup>78</sup> The recent Finance Act<sup>79</sup> also made it mandatory with effect from March 2020 for owners of business account with the Banks to register for and obtain TIN. The mandatory use of the TIN by taxpayers has the advantage of providing a database for taxpayers in the country and therefore reducing the incidence of tax avoidance and evasion. The Companies Income Tax Act and the Personal Income Tax Act have been amended by the Finance Act to solidify the use of the Tax Identification Number as a tool for checking tax avoidance and evasion in Nigeria. Through amendment by the Finance Act, a new Section 10(1) of the Finance Act has now made it mandatory for every company to have a Tax

<sup>70</sup> See *Panalpina v. Lagos State Board of Internal Revenue & 2 Ors* (2013) 10 TLRN 174.

<sup>71</sup> Section 36(a).

<sup>72</sup> (2018) 34 TLRN 1 at 26.

<sup>73</sup> FIRS (Establishment) Act Ibid.

<sup>74</sup> The Personal Income Tax (Amendment) Act, 2011.

<sup>75</sup> K. Ierkwagh & V.K. Shima, 'Legislative Efforts at Curbing Tax Avoidance and Evasion in Nigeria: A Legal Infraction' *ABUAD Private and Business Law Journal* Vol. 2 No. 1, 2018, pp. 77-79.

<sup>76</sup> K. Ierkwagh & V.K. Shima Ibid.

<sup>77</sup> (n151).

<sup>78</sup> G.T. Akinleye, F.O. Olaoye & A.A. Ogunmakin 'Effect of Tax Identification Number on revenue generation in Southwest Nigeria' Academic journal (*Journal of Accounting and Taxation*) Vol. 11(9), pp. 170-177, October-December 2019 Article Number: 87EC4C462393 ISSN 2141-6664 <<http://www.academicjournals.org/JAT>> available on <<https://academicjournals.org/journal/JAT/article-full-text-pdf/87EC4C462393>>. Accessed on 5<sup>th</sup> January, 2024

<sup>79</sup> (2019).

Identification Number displaced by the company on all business transactions with other companies and individuals and on every document, statement, returns, audited account and correspondence with revenue authorities, including the Federal Inland Revenue Service, ministries and all government agencies. A new Section 10(2) of the Companies Income Tax Act has also been introduced by the amendments in the Finance Act. This section has made provision for the supply of Tax Identification Number as a precondition for opening a bank account by companies, and that in the event of an already existing account, TIN be supplied within three months of the passage of the Act as a precondition for the continued operation of their bank accounts. The Finance Act has also substantially amended the Personal Income Tax Act in that regard through the introduction of Section 28(1) which requires a TIN for opening and operation of an individual business account with the bank. It must be noted, however, that while the efficacy of the amendments of the Companies Income Tax Act is not in doubt, it is doubtfully whether the introduction of the mandatory use of the TIN in personal business accounts with small volumes of businesses and therefore smaller amounts of finance may be effective. This is in view of the non-banking habits of Nigerians and the non-availability of banking services in rural areas where small businesses are predominant.

### **Expansion of the Tax Base**

Another amendment of the Companies Income Tax Act by the Finance Act aimed at checking tax evasion the amendment to Section 77 of the Companies Income Tax Act. Section 5(a) of the Finance Act which amends the said section provides for a 2% of bonus and 1% bonus for medium-size and any other company respectively where the company pays its tax 90 days before the required date. Section 5(b) of the Act on the other hand provides for payment of penalties in event of late payment of tax by a company. Since late payment of tax is an aspect of tax evasion, these amendments are meant to encourage prompt payment of tax by companies in Nigeria. Section 2(1) of the Finance Act has also amended Section 2 of the Value Added Tax Act by expanding the tax base of the Value Added Tax to include goods and services supplied abroad by a person physically present in Nigeria and supply to a foreign country of goods and services that originate from Nigeria. This, it is hoped will expand the tax net, check the loopholes which occasion revenue linkages, and positively impact revenue generation in the country. An indigenous internet solution, TaxPro Max was deployed by the Federal Inland Revenue Service in June, 2021 for seamless registration, filing, tax remittances to ease tax compliance as well as curb incidences of tax avoidance and evasion. The e-solution captures the non-filing and payment and imposes accrued interest and penalties at payment or filing of overdue returns without human interference.

### **6. Use of Tax Amnesty to Check Tax Avoidance and Evasion**

Tax amnesty is also a useful weapon in the hands of the government to encourage voluntary tax compliance and to curb tax evasion. Tax amnesty has been defined as waiver or reduction and sometimes removal of penalties in back taxes to encourage defaulting taxpayers to pay what they owe within a specified window.<sup>80</sup> With a tax amnesty scheme, taxpayers are given an opportunity to regularize their tax affairs with relevant tax authorities, by self-checking previously unpaid/underpaid taxes and in exchange, taxpayers may be rewarded with a waiver of accumulated interest and penalties, as well as immunity from prosecution.<sup>81</sup> According to Agbonika<sup>82</sup>, the objective for tax amnesty is to forgive or negotiate the tax liabilities of individual and corporate taxpayers in line with laid down statutes.

In recent times, the Nigerian government has found that an amnesty is a potential tool for combating money laundering and tax evasion schemes. In the year 2016, the Federal Inland Revenue Service (FIRS) through a public notice, introduced a 45-day tax amnesty window to taxpayers, covering 2013 to 2015 financial years. The 45-day window was open between 5<sup>th</sup> October 2016 and 24<sup>th</sup> November 2016 and participants enjoyed a waiver of accumulated interest and penalties on unpaid taxes. The Federal Government also introduced a tax amnesty program, the Voluntary Assets, and Income Declaration Scheme (VAIDS) in 2017 which covered the preceding six financial years (2011-2016) and ran between 1<sup>st</sup> July 2017 and 30<sup>th</sup> June 2018. In 2018, subsequent to the successful completion of VAIDS and Nigeria's signing of the Common Reporting Standard Multilateral Competent Authority Agreement for Automatic Exchange of Information (AEOI) with other countries, the Federal Government introduced the Voluntary Offshore Assets Regularization Scheme (VOARS) tax amnesty for taxpayers and have been stated to include the following:<sup>83</sup> The opportunity to regularize their tax status (with respect to offshore assets and income) for a period of up to 30 preceding years; payment waiver of all interest and penalties on declared and regularized assets; immunity from tax audit from declared assets and grant of an Offshore Assets Regularization Compliance Certificate from the Federal Government on declared assets; ability to freely use/invest the assets, subject to continuous payment of taxes to the Federal Government. On the success or otherwise of the regime of tax amnesty, Agbonika<sup>84</sup> made a global comparative analysis on the potential of the success of a regime of the tax amnesty in checking money laundering and tax evasion and showed that if properly administered, it can effectively be used in both developed and developing economies to achieve significant strides. She however identified a strong enforcement mechanism as an important ingredient for the success of the tax amnesty program. In Nigeria, the Voluntary Assets and Income Declaration Scheme (VAIDS) has been shown to have led to a significant increase in tax revenue, expansion of tax net, and increased voluntary compliance with tax obligations.<sup>85</sup> However, enforcement mechanisms need to be improved for the sustainability

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<sup>80</sup> Available at <[www2delottle.com/ng/eng/pages/tax/articles/amnesty-for-tax-defaulters](http://www2delottle.com/ng/eng/pages/tax/articles/amnesty-for-tax-defaulters)>. Accessed 22 January 2024.

<sup>81</sup> Available at <<https://ar.sc.comcorp-en.content.does.nigeria-tax...pdf>>, p. 1. Accessed 4 January 2024.

<sup>82</sup> A.A.J. Agbonika, 'Tax Amnesty for Delinquent Taxpayers: A Cliché in Nigeria'. *European Centre for Research Training and Development UK*. Vol. 3 No. 3, pp. 105-120, June, 2015, p. 2.

<sup>83</sup> (n157).

<sup>84</sup> (n158) pp. 109-112.

<sup>85</sup> Available at <<https://av.sc.com.corp.on>> p. 1. 22 January 2024.



of the gains of the tax amnesty program in the country. In all, the provisions in our tax laws have the capacity of checking tax avoidance and evasion schemes, though they violate the fundamental rights of the taxpayers such as the right to privacy, own property, and right to a fair hearing.

## **7. Conclusion and Recommendations**

This article has examined the menace of tax avoidance and evasion in Nigeria and found that the menace is caused by the regime of the multiplicity of taxes in the country, failure of government to account for tax revenue collected, loopholes in tax laws, lack of data on taxpayers, the emergence of e-commerce business transactions and lack of honest enforcement of tax laws. In terms of effects, the article has revealed that tax avoidance and evasion result in substantial loss of government revenue. The legislative, judicial, and institutional efforts at curbing the occurrence of tax avoidance and evasion in the country have not been very effective. Consequently, recommendations have been made based on the findings in this article towards ensuring more efficiency in tax administration thereby curbing the menace of tax avoidance and evasion in Nigeria. The following are the recommendation to cope tax avoidance and tax evasion in Nigeria.

*Amendment of the Taxes and Levies Approved Act to Reduce the Number of Taxes:* A study by the Nigerian Economic Summit Group revealed that there are over eighty different taxes which are imposed on businesses, and out of these, about 40 are approved for all tiers of government.<sup>86</sup> However, the Taxes and Levies Approved Act<sup>87</sup> shows that the Nigerian tax system comprises at least thirty-nine taxes, levies, and fees, including eight Federal, eleven State, and twenty Local Governments. Whichever source may be more reliable, the fact remains that the Nigerian tax system is flooded with a multiplicity of taxes, a situation not conducive for business growth. This encourages tax avoidance and evasion. The Taxes and Levies Act must therefore be reviewed to reduce the number of taxes on businesses. This will create certainty and confidence in the taxpayer as to the number of taxes he is under obligation to pay. Through this, the tendency to avoid or evade tax will be curtailed.

*Review of the Tax Laws in respect of Exempted Bodies:* The wide range of exempted bodies under tax laws provide or increase opportunities for tax avoidance and evasion. There is, therefore, a need for such provisions to be reviewed to reduce these exemptions to the barest minimum. Sections 19 of the Companies Income Tax Act and 19 of the Personal Income Tax Act are relevant sections to be considered under the proposed review. It is only then that most of the incomes concealed as exempted incomes can no longer find a hiding place.

*Provision of Adequate and Reliable Data of Taxpayers in the Country:* Apart from taxpayers in the formal sectors of the economy, there is no adequate database of the self-employed. Though the introduction of the Tax Identification Number has the capacity to minimize this problem, its efficacy is limited by the fact that the tax system still uses the analogue system of tax collection. There is therefore the need to migrate from the analogue to the electronic collection where each taxpayer would have a Biometric Identification Number instead of the Tax Identification Number recently introduced. The biometric system will ensure that taxes like the Value Added Tax will be remitted instantly into the electronic treasury at the point of purchase. This has the capacity to make the tax system more efficient and the job of the tax avoider and evader more difficult.

*Amendment of Tax Laws Establishing Tax Administrative Bodies:* The powers of the Federal Inland Revenue Service and the States Boards of Internal Revenue exhibit obvious conflicts. For instance, by Sections 2, 25, and 68(1) of the Federal Inland Revenue (Establishment) Act, 2007 all functions previously performed by the States Inland Revenue Service in respect of the administration of the Personal Income Tax have been completely taken over by the Federal Inland Revenue Service. This has the capacity to frustrate smooth and effective tax administration. Again, the Federal Inland Revenue Service lacks the expertise to prosecute offenders while the Tax Appeal Tribunal is not a court and lacks the powers of a Court. The Federal Inland Service (Establishment) Act must therefore be amended to accommodate a prosecution department that will have the expertise to prosecute offenders. Similarly, the Tax Appeal Tribunal must also be armed with the powers of a Court to effectively check the menace of avoidance and evasion.

*Efficient Enforcement of Tax Laws:* Tax officials must exhibit the will to enforce tax laws. In this regard, while tax evaders are sued to enforce or recover tax owed, they must also be prosecuted to serve as a deterrent to potential evaders.

*Provision of Infrastructure from Tax Revenue:* The government must be seen to be accountable and provide infrastructures in communities where they are lacking. Only then will the taxpayers feel as benefiting from the tax already paid and therefore be morally bound to perform their civil obligation.

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<sup>86</sup> M. Oluba (n40).

<sup>87</sup> Taxes and Levies Act (as amended in 2015).