

## **IMPEDIMENTS TO EFFECTIVE IMPLEMENTATION OF TAX LAWS IN NIGERIA<sup>1</sup>**

### **Abstract**

*The essence of tax is to raise fund for government to use in providing the basic amenities needed to better the life of its citizens and also to meet the other needs of the government. Tax has also been used to encourage or discourage certain activities. Government all over the world, Nigeria not an exception has enacted laws aimed at meeting the essence of taxation. In countries with advanced tax system, the issue of implementation of tax laws is faced with little problem. However, in Nigeria the case is not so as there are legion of problems to effective implementation of tax laws. These impediments which hinder the effective implementation of tax laws in Nigeria shall be treated in this paper and in turn provide recommendations aimed at curbing these impediments.*

### **Introduction**

The payment of tax is a civic duty and an imposed contribution by government on her subjects to enable her finance or run public utilities and perform other social responsibilities. A Nation's tax system is often a reflection of its communal values and the values of those in power. In line with the aim of taxation, government at various levels in Nigeria has put in place various tax Laws aimed at achieving the purpose of taxation. They have equally established various administrative bodies and structures charged with administration and management of taxes. These bodies make tax assessments, collect taxes and prosecute tax offenders. These bodies established by government are to ensure effective implementation of the various tax Laws in Nigeria. Despite the above, there are legion of impediments to effective implementation of tax Laws in Nigeria. These impediments among others includes, corruption, lack of awareness, statutory and societal problems, lack of adequate data, administrative problems, lack of voluntary compliance, mismanagement of taxes collected, tax evasion and avoidance. This paper intends to make an in depth study of the impediments to effective implementation of tax Laws in Nigeria. The reseacher found out that these impediments listed above have really affected adversely the implementation of tax laws in Nigeria.

### **Definition of Terms**

#### **Tax**

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In general, tax can be defined as a levy or other type of a financial charge or fee imposed by state or central governments on legal entities or individuals. Local authorities like local governments, provincial governments, counties and municipal corporations also have the right to impose taxes. The rates, rules, and regulations of taxation differ from one country to another and they are complex in character. Tax is a principal source of revenue for a country's government.<sup>2</sup>

The Black's Law Dictionary defined the term as a monetary charge imposed by the government on persons, entities, transactions, or property to yield public revenue. Most broadly, the term embraces all government impositions on the person, property, privileges, occupation and enjoyment of the people and includes duties, imposts and excises.<sup>3</sup>

Lekan Soyode and Sunday O. kajola defined it as a compulsory exaction of money by a public authority for public purposes or taxation is a system of raising money for the purposes of government by means of contribution from individual person or corporate body.<sup>4</sup>

Justice Latham of the Australian Supreme Court has stated that:

A tax is a compulsory exaction of money by a public authority for public purposes, or taxation is raising money for the purposes of government by means of contributions from individual persons.<sup>5</sup>

Also Justice Roberys of the United States of America Supreme Court rightly opined in 1936 that:

A tax in the general understanding of the term, and as used in the constitution signifies an exaction for the support of government.

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<sup>2</sup> What is Tax? available at <http://finance.mapsofworld.com/tax/meaning.html> (accessed on February 10, 2015)

<sup>3</sup> Bryan A. Garner, **Black's Law Dictionary 9th ed**, Thomson West, United States of America, 2004, P. 1496

<sup>4</sup> Lekan Soyode and Sunday O. kajola ;**Taxation Principles and Practice in Nigeria**, Silicon Publishing Company, Ibadan, 2006, P.3, see also Kath Nightmgale, **Taxation Theory and Practice**, Pitman Publishing, United Kingdom, 1996.

<sup>5</sup> **Mathews v. Chicory Marketing Board** (Vict) (1938) 60 C.L.R., 263 at 276.

The word has never been thought to connote the expropriation of money from one group for the benefit of another.<sup>6</sup>

Tax have also been defined as compulsory monetary contribution to the state's revenue, assessed and imposed by a government on the activities, enjoyment, expenditure, income, occupation, privilege, property, etc., of individuals and organizations<sup>7</sup>

In **Ontario Private Campground v. Harvey**<sup>8</sup>, Justice Howden wrote:

*A tax is defined as an impost or levy by the legislature or other public body for a public purpose, enforced by law.*

The theory that underlies taxation is that charges are imposed to support the government in exchange for the general advantages and protection afforded by the government to the taxpayer and his or her property. The existence of government is a necessity that cannot continue without financial means to pay its expenses; therefore, the government has the right to compel all citizens and property within its limits to share its costs. The state and federal governments both have the power to impose taxes upon their citizens<sup>9</sup>.

From the above definitions tax is an involuntary fee levied on corporations or individuals that is enforced by a level of government in order to finance government activities.

### **Tax Law**

This is the body of rules under which the public authority has a claim on taxpayers, requiring them to transfer to the public authority part of their income or property. Tax law is concerned only with legal aspects of taxation, not its financial, economic or other aspects. Tax law falls within the domain of public law as distinguished from private law. International tax law is concerned with the problems arising when an individual or corporation operates and is taxed in several countries.

The powers to impose taxes are generally recognized as a right of government and are commonly

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<sup>6</sup> **United States v. Butter**, 297 U.S.I (1936) at 61.

<sup>7</sup> [www.businessdictionary.com/definition/tax.html](http://www.businessdictionary.com/definition/tax.html) (accessed on February 10, 2015)

<sup>8</sup> 146 DLR 4th 347 (Ontario, 1997)

<sup>9</sup> <http://legal-dictionary.thefreedictionary.com/taxation> (accessed on February 10, 2015)

found specified in the constitution. The limits of the rights of the public authority to impose taxes are, in democratic systems, set by the legislature. The fundamental requirement is that the rights of the tax administration and corresponding obligations of the taxpayer be specified in law. The implementation of tax laws is generally the province of the executive power.<sup>10</sup> A country's tax laws determine who should bear the tax burden, or who should pay tax<sup>11</sup>.

### **Why Tax**

Tax is one of the major sources of revenue to government. In countries with advanced tax system, the essence of tax is hardly debatable. The greater percentage of taxable adults pay their taxes voluntarily. Speaking with reference to American tax system M.T. Okorodudu observed in this pertinent manner:

...the most astonishing fact about the American tax system is the fantastic revenue it collects. They are collected without violence or bloodshed, with only some mild griping. This is a small miracle, it is possible because in our advanced society, business and individuals keep accounting records from which they can compute their tax bill... more importantly, it is possible because on the whole, people are willing to pay their taxes. Ours is a system of voluntary compliance, not assessment and enforcement by government. People know that the common cost of national defence, of educating our children, and of necessary public services have to be met. Generally, people respect the law and pay their taxes<sup>12</sup>

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<sup>10</sup> Jacob E. Safra, **The New Encyclopedia Britannica, Vol. 11, 15<sup>th</sup> edition**, Encyclopedia Britannica Inc; Chicago, P. 584.

<sup>11</sup> <http://finance.mapsofworld.com/tax/meaning.html> (accessed on February 10, 2015)

<sup>12</sup> M.T. Okorodudu, "Measures Against Tax Evasion and Avoidance: Some Equity Questions", being text of a paper presented at the 15th Annual Senior Staff Conference of the Federal Board of Inland Revenue, 1985.

In Nigeria, the attitude of the citizens towards their civic responsibility (i.e: payment of tax) does not come near the Americans. There is apathy.

Taxation serves a myriad of functions. The revenue generated from taxation sustains the economic and social needs of the nation. Infact, taxation serves multifarious ends, some of which have political, economic or social bearings. Governments have used tax to encourage or discourage some activities in the private sector, depending upon whether the policy of the government is towards encouraging or discouraging such activities.<sup>13</sup>

### **Tax Administration in Nigeria**

#### **Federal Inland Revenue Service (FIRS)**

The service came into existence by virtue of the Federal Inland Revenue Service (Establishment) Act.

#### **Establishment**

Section 1 of the FIRS Act provides as follows:-

1. There is established a body to be known as the Federal Inland Revenue Service (in this Act referred to as “the service”).

2. The service:

- (a) shall be a body corporate with perpetual succession and a common seal;
- (b) may sue or be sued in its corporate name; and
- (c) may acquire, hold or dispose of any property, movable or immovable, for the purpose of carrying out any of its functions under this Act.

3. The service shall have powers and duties as are conferred on it by this Act or by any other enactment or law on such matters on which the National Assembly have power to make law.

The objective of the service is to control and administer different taxes and laws specified in the first schedule or other laws made or to be made, from time to time, by the National Assembly or other regulation made thereunder by the Government of the Federation and to account for all taxes collected.<sup>14</sup>

#### **Composition of the Board**

Section 3 of the FIRS Act, dealt with the above and it provides as follows:

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<sup>13</sup> C.S. Ola, **Income Tax Law and Practice in Nigeria**, Heinemann Educational Books Plc, Ibadan, 1999, P.8.

<sup>14</sup> Section 2, FIRS Act.

1. There is established for the service a board to be known as the Federal Inland Revenue Service Board (in this Act referred to as “the Board) which shall have overall supervision of the service as specified under this Act.

2. The Board shall consist of:-

(a) The Executive Chairman of the service who shall be experienced in taxation as chairman of the service, (b) Six members with relevant qualifications and expertise who shall be appointed by the president to represent each of the six geo-political zones, (c) A representative of the Attorney-General of the federation, (d) The Governor of the Central Bank or his representative, (e) A representative of the Minister of Finance not below the rank of a Director, (f) The Chairman of the Revenue Mobilization, Allocation and Fiscal Commission or his representative, (g) The Group Managing Director of the Nigerian National Petroleum Corporation or his representative, (h) The Comptroller – General of the Nigeria Custom Service or his representative, (i) The Registrar – General of the Corporate Affairs Commission or his representative, and (j) The Chief Executive Officer of the National Planning Commission.

The powers and functions of the Board are as contained in section 7<sup>15</sup>, includes to provide the general policy guidelines relating to the function of the service;

#### **Functions of the Service**

Generally the function of the service as contained in section 8 of the FIRS Act is to administer the Act and to ensure its full implementation.

#### **States Board of Internal Revenue**

The various states of the federation have their own state Board of Internal Revenue charged with the responsibility of the administration of the taxes that falls within the jurisdiction of the states under the various tax laws and the Constitution.

#### **Establishment**

There is hereby established for each state, a Board to be known as the state Board of Internal Revenue (in this Act referred to as “the state Board”) whose operational arm shall be known as the State Internal Revenue (in this Act referred to as “the state service”)<sup>16</sup>.

#### **Composition of the Board**

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<sup>15</sup> FIRS Act.

<sup>16</sup> Section 87(1) Personal Income Tax Act.

The state Board shall comprise of:-

(a)the executive head of the state service as chairman, (b) the directors and Heads of Departments within the state service, (c)a Director from the State Ministry of Finance, (d) the Legal Adviser to the state service, (e)three other persons nominated by the Commissioner for Finance in the state and (f)the secretary of the state service.<sup>17</sup>

### **Functions of the Board**

The state Board shall be responsible for:- ensuring the effectiveness and optimum collection of all taxes and penalties due to the government under the relevant laws.<sup>18</sup>

**In Ikeja Hotels Plc V. L. S. B. I. R.**<sup>19</sup>, the Court of Appeal held that the Lagos State Board of Internal Revenue has the powers to collect all taxes and penalties due to the Lagos state Government under the relevant laws.

### **Local Government Revenue Committee**

This is established at the Local Government level and charged with the responsibility of the assessment and collection of all taxes due to the Local Government.

### **Establishment and Composition**

Section 90 of Personal Income Tax Act provides as follows:

1. There shall be established for each local government area of a state a committee to be known as the Local Government Revenue Committee (in this Act referred to as “the Revenue Committee”).
2. The Revenue Committee shall comprise:-
  - a) Supervisor for Finance as chairman, (b) Three local government councilors as members; and (c) Two other persons experienced in revenue matter to be nominated by the chairman of the local government on their personal merits.

### **Functions of the Committee**

The Revenue Committee is responsible for the assessment and collection of all taxes, fines and rates under its jurisdiction and shall account for all amounts so collected in a manner to be prescribed by the chairman of the local government.<sup>20</sup>

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<sup>17</sup> Section 87(2) (a) – (f) Personal Income Tax Act,Cap P.8 Laws of the Federation of Nigeria, 2004

<sup>18</sup> Section 88(1) (a) – (e) *Ibid*.

<sup>19</sup> (2005) 17 NWLR (Pt. 954) 343.

<sup>20</sup> Section 91(1), Personal Income Tax Act.

The Revenue Committee shall be autonomous of the local government treasury and shall be responsible for the day-to-day administration of the department which forms its operational arm.<sup>21</sup>

### **Joint Tax Board**

The Joint Tax Board was created by Section 27 of Income Tax Management Act<sup>22</sup>, to regulate the relationship between tax authorities at the state and Federal level and to act as an effective supervisory and advisory body on shared activities of state and Federal tax authorities.

### **Establishment and Composition of the Joint Tax Board**

There is hereby established a Board which shall be known as the Joint Tax Board (in this Act referred to as “the Board”).<sup>23</sup> The Board shall consist of the following members, that is:-

- (a) The chairman of the Federal Inland Revenue Service, (b) One member from each state,
- (c) The Federal Civil Service Commission shall appoint an officer who is experienced in income tax matters to be secretary to the Board. The Legal Adviser, Federal Board of Inland Revenue shall be in attendance at all meetings of the Board and shall serve thereat as adviser to the Board.<sup>24</sup>

### **Duties and Powers of the Joint Tax Board**

The duties of the Board includes to use its best endeavours to promote uniformity both in the application of this Act and in the incidence of tax on individuals throughout Nigeria..<sup>25</sup>

The Joint Tax Board in consonance with its duties has produced a uniform Personal Income Tax Act to eliminate the various states tax laws thereby promoting uniformity. In view of the varied processes being used by state in the implementation of the tax, the Joint Tax Board seems the only hope for standardization and uniformity.

**In Eti-Osa Local Government V. Jegede**<sup>26</sup>, the Court of Appeal per Dongban – Mensem J.C.A., observed as follows:

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<sup>21</sup> Section 91(2), *Ibid.*

<sup>22</sup> Now Section 86, Personal Income Tax Act.

<sup>23</sup> Section 86(1), *Ibid.*

<sup>24</sup> Section 86(2) Personal Income Tax Act.

<sup>25</sup> Section 86(9) Personal Income Tax Act.

<sup>26</sup> (2007) 10 NWLR (Pt. 1043) 537.



the Central Government has the controlling machinery. It is the orbit around which all the states of the federation are anchored. Distribution of the mass resources of the nation reposes with the Central Government which alone necessarily has the inherent power to determine and legislate as to what kind and quantum of taxes and levies should be imposed by each tier of Government. The other tiers of Government are however part of the body which makes the recommendation. The Joint Tax Board is the said body. To leave taxation at large at the whim and caprice of the different tiers of government would expose the entire citizenry to undue multiple and over lapping taxes and levies...

The establishment of a Joint Tax Board is therefore a good attempt at coordinating the types and nature of taxations allowable within the peculiar circumstances of each unit of the federation. It is therefore in furtherance of the federal nature of the 1999 constitution that all taxes chargeable be channeled through the Joint Tax Board...<sup>27</sup>

These institutions discussed above in carrying out their duties which is the administration of tax laws are faced with various problems which in one way or the other have affected their operations in achieving the aims of the various tax laws to the letter.

### **IMPEDIMENTS TO EFFECTIVE IMPLEMENTATION OF TAX LAWS IN NIGERIA.**

In a tax structure, there are two are two components – tax law and tax administration. The application of these two components raises certain matters which may be legal, economical, sociological, historical or political. These issues raised play an effective and fundamental role in shaping decision making by individuals, groups and companies. These matters are of several variants and sometimes make the tax system not as efficient and effective as expected.

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<sup>27</sup> (*Supra*) at P. 558 – 559.

Under this heading we shall discuss in details the impediments to effective implementation of tax laws in Nigeria, while efforts will be made to suggest ways of administering them in order to foster an effective and effective tax system. These impediments are as follows:

### **Corruption**

Corruption is prevalent in the administration of taxes in Nigeria. Evaders prefer to bribe officials rather than pay taxes. Tax assessors collude with taxpayer's particularly with regard to the personal income tax, or in some cases, in connection with the assessment. The multiple process of clearing imports is not only a source of administrative delay, but also an avenue for entrenching corruption<sup>28</sup>. As the Chartered Institute of Taxation of Nigeria noted, governments in Nigeria are perceived as a corrupt and selfish lot, to whom money should not ever be voluntarily given. Taxes paid are expected to end in private pockets<sup>29</sup>, not in public utilities. The use of tax consultants has equally compounded the issue of corruption in tax collection. They print different types of receipts, maintain different account with the sole aim of diverting the taxes collected to their private pockets.<sup>30</sup> This attitude has eroded tax consciousness on the part of Nigerians.

### **Lack of Awareness**

Lack of awareness of the tax laws is an impediment to effective implementation of tax laws in Nigeria. This is because, the awareness of the concept has not been so much canvassed. Symposia, workshops, seminars, conferences or any other public enlightenment programmes have not been organized to sensitize the public in respect of this area of law. There is gross ignorance on the part of the populace about the taxes payable by them to the state government. Even the few who know are not certain about how much they should pay or what the tax law says about the procedure for assessment and filing returns, their rights of objection or appeal against tax assessments.

### **Statutory Problems**

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<sup>28</sup> Ramon Oladimeji, Court remands Lebanese for N49m tax evasion, available at [www.sunnewsonline.com](http://www.sunnewsonline.com), (accessed on May 22, 2015)

<sup>29</sup> Chinonso Alozie, Imo Govt. moves against tax diversion, available at [www.vanguardngr.com](http://www.vanguardngr.com) (accessed on May 14, 2015)

<sup>30</sup> CITN, Nigerian Tax Guide Statutes, Lagos, 2002, P. 15. See also Geoffrey Okonkwo, Anambra Traders to pay N3,000 Tax, available at [www.sunnewsonline.com](http://www.sunnewsonline.com) (accessed on May 14, 2015)

Tax laws in Nigeria are complex and difficult for the common taxpayer to understand and some cases are problematic even for literate officials. In addition to lack of understanding, many taxpayers are unaware of the existence of certain taxes. Many of the supposed taxpayers understand nothing about the rules under which they are to pay or the range of deductible expenses and allowances available to them. As such, they have difficulty ascertaining and disclosing their taxable income. This difficulty is even worsened by the unpopular nature of tax payment and the reluctant attitude of some people to reading. This difficulty coupled with laziness of the tax officials, uncooperative taxpayers and the habit of quick-fix solutions, encourages the use of the best of judgment approach. This may be a manifestation of the poor tax education and weak fulfillment by tax authorities of their responsibilities with regard to public awareness. According to Faluso Fasoto<sup>31</sup>, despite the huge number of tax defaulters, there is no shortage of laws relating to tax, but making sense of them is another problem.

Many of the penalties for defaulters prescribed under the statutes are antiquated and the rates or fines which are too low and unrealistic have not been updated because of the long legislative process. There is need to put pressure on the National Assembly to amend the existing tax laws in the country in line with modern and best practices<sup>32</sup>.

### **Lack of Voluntary Compliance**

As already observed the implementation of tax laws in Nigeria has never been an easy task. Voluntary compliance is seriously lacking<sup>33</sup>. This problem which manifests itself in defaults, tax evasion and avoidance and delayed payment of taxes constitutes an endemic problem to effective implementation of tax laws. Faluso Fasoto, a chartered

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<sup>31</sup> Nigeria's taxing Problem, available at [www.news.bbc.co.uk](http://www.news.bbc.co.uk) (accessed on January 2, 2011), See also Christian Ochiama, "New Tax Regime: Tiger by the Tail?" Available at [www.sunnewsonline.com](http://www.sunnewsonline.com), (accessed on December 12, 2008).

<sup>32</sup> G. Enogholase, Edo Revenue Boss makes case for Tax Laws Amendment, available at [www.sunnewsonline.com](http://www.sunnewsonline.com) (accessed on February 10, 2015), Review of Tax Laws Critical for enhanced IGR, [www.sunnewsonline.com](http://www.sunnewsonline.com) (accessed on February 10, 2015)

<sup>33</sup> For instance the Chairman of Edo State Internal Revenue Service has disclosed that only 141,000 of the over four million people in the state pay their taxes. G. Enogholase, Only 141,000 People pay taxes in Edo – State IRS, available at [www.vanguardngr.com](http://www.vanguardngr.com) (accessed on May 10, 2015), Ifeanyi Onuba, We'll Invoke Relevant Tax Laws Against Defaulting Taxpayers – FIRS, available at [www.punchngr.com/tax/laws](http://www.punchngr.com/tax/laws), (accessed on July 11, 2013)

accountant and tax consultant recalled his experience as a child, growing up in a small village, the fear the people felt when tax collectors appeared stated: the householders will run away, because they don't have money... you grow up and hear the word tax and you associate it with oppression and cruelty.<sup>34</sup>

The scenario above clearly shows the perception and attitude of Nigerians towards adherence to their civic duty of payment of tax. A recurring problem with personal income tax in Nigeria is the non-compliance of employers to register their employees and to remit their taxes to relevant tax authorities.<sup>35</sup> The citizens comply with payment of their taxes in some cases only when they are forced to do so or when they need to get something from the government. For instance, those seeking to obtain certificate of occupancy are required to produce tax clearance, it is only then that you see them comply with tax payment. The then Minister of Finance, Mr. Olusegun Aganga stated that there is need to embark on massive taxpayer education in Nigeria, as the country does not have fully developed tax coverage or a voluntary compliance culture.<sup>36</sup>

### **Lack of Adequate Data**

Generally, in Nigeria data is not available where and when it is required, therefore it constitutes an impediment to effective implementation of tax laws. In a country where the number of inhabitants is unascertainable, it is almost impossible to have any data that could be used for any efficient system. A data bank is a requirement for an efficient tax system. Lack of data base of all taxable adults in the state has aided tax evasion and led to loss of revenue to government as many taxable adults are yet to be included in the tax paying bracket by giving them a unique tax identification number (U-TIN). Even where data is available, they are not put into proper use, for example,

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<sup>34</sup> "Nigeria's Taxing Problem", available at [www.news.bbc.co.uk](http://www.news.bbc.co.uk) (accessed on January 2, 2011). Anayo Okoli, "FIRS uncovers alleged ₦1 billion Tax Fraud by Aba Firm", **Vanguard**, Wednesday, June 23, 2010, P.12

<sup>35</sup> Nnamdi Duru, "FIRS Threatens to Publish Names of Tax Defaulters", **This Day**, Sunday, September 3, 2006, P. 35, Olufemi Afoyebe, Non-Remittance of taxes affecting govt. revenue, available at [www.punchngr.com/tax/laws](http://www.punchngr.com/tax/laws), (accessed on May 10, 2015), Lagos shuts 8 firms over non-remittance of 66.7M tax, available at [www.sunnewsonline.com](http://www.sunnewsonline.com) (accessed on February 09, 2014), Oyakhilome's TV Shut Over Tax

Evasion, available at [www.sunnewsonline.com](http://www.sunnewsonline.com), (accessed on March 27, 2015)

<sup>36</sup> Ifeanyi Onuba, "Bridging Tax-Compliance Gap", available at [www.nigerianbestforum.com/generaltopics](http://www.nigerianbestforum.com/generaltopics), (accessed on March 30, 2011).

information received from applications for tax clearance certificates are not collected and used as a basis for a permanent database and collating information about the applicant taxpayer.<sup>37</sup> In **Eti-Osa Local Government V. Rufus Jegede**<sup>38</sup>, the court stated that:

.... Taxation should be a tool of social engineering, of societal class, structural adjustment in the hands of a responsive and sensitive government can only be achieved in an economy where good records are kept.

### **Mismanagement of the Tax Collected by Government**

As tax collected were not been utilized for the purpose for which it was collected. This makes taxpayers not to give out their wealth for the nation and this constitutes an impediment to effective implementation of tax laws in Nigeria. Accordingly the failure of the three tiers of government to provide social amenities affects tax compliance. Apart from the problem of mismanagement of resources, more than 70 percent of the revenue is spent on recurrent operations<sup>39</sup>. Some state governments are having difficulties in paying salaries, not to mention funding development project<sup>40</sup>. Companies have to contend with the need to satisfy their corporate social responsibility goals, which can be narrowed down to providing amenities that otherwise should have been provided by government using tax revenue generated, whilst at the same time faced with harsh business environment.

The individual taxpayers struggle to get the basic necessities of life and at the same time are starved in the face with the demand for taxes. The citizens pay their tax yet government does not provide the basic amenities like water, security and electricity. When out of frustration they dig boreholes to have water the government will turn around to tax them on that. When they pay security levies, the security is not provided

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<sup>37</sup> Ahmed Sani, "Contentious Issues in Tax Administration and Policy in Nigeria. A State Governor's Perspective",

being a paper presented at the 1<sup>st</sup> National Retreat on Taxation, Organized by the Joint Tax Board, 22<sup>nd</sup> – 24<sup>th</sup>

August, 2005, P. 38.

<sup>38</sup> (*Supra*) at 558.

<sup>39</sup> Ayodele Odusola, Tax Policy Reforms in Nigeria, available at [www.rrojasdatabank.info/unurpo6](http://www.rrojasdatabank.info/unurpo6) (accessed on February 23, 2011), A.F. Odusola, "Internally Generated Revenue at the Local Government: Issues and Challenges", Paper Presented at the workshop on Revenue Generation at the State Government Level, University of Ibadan, October 2003.

<sup>40</sup> Gbenga Olarinoye, Dwindling Revenue: Parents to assist Osun in Tax Collection, available at [www.vanguardngr.com](http://www.vanguardngr.com), (accessed on May 05, 2015)

despite the numerous security agencies, yet they engage private security outfits and pay them. The issue of electricity is the worst . They engage private firms/individuals to evacuate their waste yet the government demand sanitation tax from them. In **Eti-Osa Local Government V. Rufus Jegede**<sup>41</sup>, the Court of Appeal, Per **Dongban-Mensem J.C.A.**, stated as follows:

...taxation should be a tool of social engineering, of societal class structural adjustment in the hands of a responsive and sensitive government. This method can however be effective only in an economy where good records are kept, where the government is truly, responsible and answerable for the welfare of the people. In a situation where the constitution of the Federal Republic of Nigeria renders basic social services non-justifiable (Chapter Two of the Constitution), the Government must be weary of over burdening the citizens with all manner of levies and taxes...

To many taxpayers, the fundamental principle of government has been defeated and the moral obligation to pay taxes for the salaries of government officials no longer exists. Bad governance is therefore a discentive to tax payments. When basic infrastructure in the form of street lights, good roads, potable water, schools and hospitals, etc are lacking, this discourages voluntary payment of tax.

Public support for tax programmes will be greatly improved if people know how the tax money collected in the past years has been spent. Experience has shown that the taxpayers would more readily pay their taxes if they could see some visible result of their taxes, no matter how small, but this is not the case with Nigeria, as the taxes are spent on white elephant projects, and the government is not accountable to the people.

### **Societal Problems**

Societal problems have also posed as impediment to effective implementation of tax laws in Nigeria. There are many vices in the society which have influenced the society negatively. In its basic form, taxation is simply a means of generating revenue for government. However, in developed Nations and economies, taxation is no longer viewed as merely an avenue for revenue generation by government. Rather it is a

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<sup>41</sup> (*Supra*) at 558 – 559.

means by which citizens contribute to a common purse for the provision of infrastructure, utilities, security and other needs by the government. It is viewed as an important component of the social contract between the government and the governed. Citizens therefore partner with their governments to raise revenue by means of taxation in order to provide funds, which will be utilized for the benefit of the entire citizenry. In Nigeria, there is absence of such a clear understanding of the philosophy behind taxation.

### **Administrative Problems**

Experience has shown that the institutional capacity to administer taxes effectively is woefully lacking in Nigeria, this constitutes an impediment to effective implementation of tax laws in Nigeria. The various tax authorities that are charged with the responsibility of administering the tax laws are faced with a lot of challenges. Tax administration and individual agencies suffer from limitations in manpower, money, tools and machinery to meet the ever increasing challenges and difficulties. Philips, considers the paucity of administrative capacity as a major impediment to the government in its attempts to raise revenue through taxation in Nigeria.<sup>42</sup> Inadequate funding is another problem facing the various tax authorities. In some state where 10% of collected revenue has been approved as cost of collection to the Board of Internal Revenue, the money is not readily released to the Board.<sup>43</sup>

The tax authorities do not properly keep records. There are cases where demand notes are sent for assessments that have either been paid for or remitted. Notices are addressed wrongly resulting in either loss or non-delivery leading to imposition of penalties and or court action.

The situation at the local government level is more precarious. The staff are not provided with regular training to keep them abreast of developments in tax related matters. This makes the administration of taxes in terms of total coverage and accurate assessment very weak. The result is loss of revenue by government.

### **Tax Evasion and Avoidance**

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<sup>42</sup> Philips A, *Nigeria's Fiscal Policy, 1998 – 2000*, Ibadan, Nigeria Institute for Social and Economic Research

Monograph Series, No.17.

<sup>43</sup> Uviomo Akpo, "The People As Government: Imperatives of Tax Payment", being a Paper Presented at the

1<sup>st</sup> Akwa Ibom State Revenue Summit, April 6 & 7, 2009, P. 12.

One of the greatest impediments facing the Nigerian tax system is the problem of tax evasion and avoidance. Tax evasion and avoidance, a problem which seemed to have defied solution, had bedeviled the Nigerian tax system right from colonial times. Tax evasion is usually defined to mean the failure to pay one's tax or the reduction of one's tax liability through illegal or fraudulent returns or failure to make a return or even failure to pay tax on time.<sup>44</sup> Tax evasion usually entails taxpayers deliberately misrepresenting or concealing the true state of their affairs to the tax authorities to reduce their tax liability and includes, in particular dishonest tax reporting (such as declaring less income, profits or gains they actually earned, or overstating deductions)<sup>45</sup>. Tax evasion is of serious concern for at least three reasons. First, it results in a loss of tax revenue<sup>46</sup>. Secondly, given that opportunities to evade taxes differ among taxpayers, tax evasion impairs the chances of realizing the distributional equity goals of taxation. Thirdly, if tax evasion becomes too wide spread and out of control, honest taxpayers may lose faith in tax administration and be tempted to join the ranks of tax evaders.<sup>47</sup>

Tax avoidance on the other hand, is the legal utilization of the tax regime to one's own advantage, to reduce the amount of tax that is payable by means that are within the law. In this way the taxpayer pays less tax than otherwise would have been payable<sup>48</sup>.

Tax avoidance is a phrase that has been frequently used in a three-cornered – fighting ring embracing as it were, the tax payer, the legislature and the executive, with the court as the umpire<sup>49</sup>. The taxpayer has always been the common target. To the taxpayer, tax avoidance is synonymous with tax planning which is a legitimate exercise of his legal right to arrange his legal relations to his business or property in such a way

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<sup>44</sup> I.A. Ayua, **The Nigerian Tax Law**, Spectrum Law Publishing, Ibadan, 1996, P. 245.

<sup>45</sup> "Tax Avoidance and Tax Evasion", available at [http://en.wikipedia.org/wiki/tax\\_avoidance\\_and\\_tax\\_evasion](http://en.wikipedia.org/wiki/tax_avoidance_and_tax_evasion) (accessed on December 12, 2010)

<sup>46</sup> Isaac Anumihe and Akin Alofetayan, FG loses N80bn to tax evading firms, available at [www.sunnewsonline.com](http://www.sunnewsonline.com), (accessed on March 27, 2015)

<sup>47</sup> M.T. Abdulrazaq, "Indices for Measurement of Tax Evasion; A Useful Tool for Nigeria", **MPJFIL**, Vol. 2 No. 3, 1998, P. 166, Spicer, New M.W. Approaches to the Problem of Tax Evasion, **B.T.R.** (1975), P. 152,

Evasion occurred when the authorities were not told of all facts relevant to assessment of tax.

<sup>48</sup> "Tax Avoidance and Tax Evasion", available at [http://en.wikipedia.org/wiki/tax\\_avoidance\\_and\\_tax\\_evasion](http://en.wikipedia.org/wiki/tax_avoidance_and_tax_evasion) (accessed on December 12, 2010)

<sup>49</sup> S.O. Fashokun "Assessment of Efforts Against Tax Avoidance and Evasion in Nigeria, the Legal View Points" ( 1976) 10, **Nig. LJ**, 13



as to prevent the revenue from putting the largest possible shovel into his stores.<sup>50</sup> In other words, tax avoidance means payment of less or zero tax in a legitimate manner.

### **Conclusion and Recommendations**

As seen in this paper the payments of tax from time immemorial have been bedeviled with some impediments. The citizens view it as a ploy by government to take away or reduce their income. The government on the other hand needs these taxes in order to carry out the act of governance and in doing that have enacted taxation laws. However, there are a lot of impediments to effective implementation of these laws. The present researcher have attempted in this paper to unravel these impediments militating against effective implementation of tax laws in Nigeria.

Taxation is veritable revenue generating tool, an important stabilization policy tool and a unique instrument for enhancing economic development. Although efforts have been made towards improvement of the tax system in the recent past, there is still room for improvement. We seem to be reforming slowly in a fast changing world that is becoming increasingly competitive with tax playing a major role. In order to make any meaningful progress, there is need to address the key issue militating against effective implementation of tax laws in Nigeria. Thus, the researcher proffered likely solutions to these impediments as follows:

**Reward for Voluntary Compliance:** Tax authorities should be encouraged to provide incentives and other rewards to taxpayers who comply with tax laws<sup>51</sup>. Tax authorities may also hold forum where such taxpayers are publicly recognized and honored. It is hoped that such gesture would elicit favorable response from taxpayers and result in higher voluntary compliance to payment of tax. In the same manner that rewards and incentives provided to compliant taxpayers, punitive measure should be taken against recalcitrant offenders and non-complaint taxpayers. In this regard, tax authorities shall explore all avenues in the laws and ensure that full weight of the law is brought to bear on such taxpayers.

**Training and Collaboration:** Tax authorities should take training very seriously and collaborate with other government agencies such as the Corporate Affairs Commission,

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<sup>50</sup> Per Lord Clyde in *Ayrshire Pullman Motor Services v. I.R.C.* (1929) 14 T.C. 754 at 763.

<sup>51</sup> Niyi Odebode and Ifeanyi Onuba, *FIRS considers bonus for voluntary taxpayers*, available at [www.punchng.com](http://www.punchng.com), (accessed on March 27, 2015), Chidi Nnadi, *Customs lauds Nigerian Breweries for prompt payment of taxes*, available at [www.sunnewsonline.com](http://www.sunnewsonline.com), (accessed on March 27, 2015)

Land Registry, Economic and Financial Crimes Commission etc to reduce the incidence of tax evasion and cultivate voluntary tax compliance culture.

**Let the Penalty fit the Crime: Another** area that should be revisited is that of penalties. Stiffer penalties should be imposed for tax offenders. Similarly, prosecution of defaulters should be geared up and publicized in the dailies. This would have its announcement effect and make people rush to the tax offices.

**Provision of Basic Amenities:** To attain high level compliance with the implementation of tax laws in Nigeria, government should respond effectively to the needs of the citizens. The present situation where bad governance is the order of the day should be discouraged. Serious infrastructural development which should be visible to the taxpaying public should be put in place to encourage voluntary tax payments. This entails massive construction and dualization of roads, provision of street lights, provision of portable water, provision of electricity, hospitals, good public transportation, security and well funded and progressive education system.

There is need to create a continuous value chain so that taxpayers can monitor the uses to which tax revenue has been put. Where taxpayers can see that tax revenue is used for their ultimate benefit it increases compliance rates, improves taxpayers confidences and creates a better relationship between tax authority and taxpayers.