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Administration of Personal Income Tax in Nigeria: An Appraisal

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Abstract:

A tax administration is the whole organizational set-up established for the management of a tax system. But while the broad objectives of a good tax system is aimed at guaranteeing a long-term fiscal soundness of the policies and programmes of the government, the purpose of tax administration is to fully implement the tax system by ensuring that tax payers comply with the provisions of tax laws and that the funds derived from taxation are paid into the government's treasury.

By virtue of Section 106 A(1) PITA as amended by Section 30 PITAA, the Minister may, on the recommendation of the Joint Tax Board, make regulation for giving effect to the provisions of the Act.

Furthermore, the National Assembly may, by subsection 2, upon a proposal by the President, impose, increase, reduce, withdraw or cancel any rate of tax, duty or fee chargeable under Section 40 and Second Schedule of this Act and in accordance with Section 59(2) of the 1999 Constitution.

1. Introduction

The history of mankind has been associated with taxation. It can be traced to as early as the time of the Roman Empire. "And it came to pass in those days, that there went out a decree from Caesar Augustus, that all the world should be taxed."¹ And it was. In fact, ever since Caesar's decree, the world has been rendering unto Caesar what is Caesar's and unto God what is God's in compliance with the directive of Jesus.² In olden days, taxes were more in kind than cash. This accounts for why the descendants of Noah had to tax themselves to build a city and a tower.³

Taxation has also been associated with many historical developments relating to religion, support of war, welfare of state, etc. For instance, the revolt of Iceni of 1884,⁴ where the army was used by the Romans to make the locals pay taxes as a result of which many lost their lives or the Aba Women's Riot of 1929 in Eastern Nigeria, where women went on strike for being asked to pay tax. The demand of King John (of England) for 'stage' (an early form of taxation) advanced the crisis of 1215 which led to John's submission⁵ and the issue of Magna Carta.⁶ In the seventeenth century, the kings' need for money from taxation, resulted in the recall of the English Parliament and was a factor that led to a civil war which later culminated in the execution of Charles.⁷

The importance of taxation as one of the causes of the French and American Revolutions is also well known.⁸ Both revolutions were borne out of dire economic conditions. The American revolution had roots in the pressure placed on them by Britain which had been economically dependent on the colonies that it continued to tax. This infuriated the colonies and built a basis for their revolt. When France was unable to pay off its national debts, it chose to impose more taxes on trade goods to make up the deficit. This resulted in classic images of hungry, poverty-stricken French peasants while wealthy nobles were not obliged to pay taxes. While the colonies were not opposed to taxation itself, they were vexed by lack of reasonable basis for the imposition.

2. Conceptual Clarifications

It is necessary to define "Income Tax" right from the onset. The Nigerian statutes do not provide a comprehensive or exhaustive definition of income tax. Recourse must, therefore, be had to decided cases, particularly those of the courts of England from where

¹ St. Luke 2: 1 – 5

² Luke 20: 25

³ Genesis 12: 3 – 4. Also see 1 Kings 4: 7 – 28

⁴ The Rebellion of the Iceni, available at www.schoolhistory.org.uk/iceni.htm

⁵ History of tax resistance, available at https://en.m.wikipedia.org/.../History_of_tax_...

⁶ Ibid.

⁷ See James, S. et al (eds.), *The Economics of Taxation*, (Oxford: Philip Allan Publishers Ltd., 1978), p. 1

⁸ Marie Antoinette. *America and France Revolutionary Twins?* www.pbs.org/.../revolution/america_france_...

Nigeria inherited her present tax system. In the case of *Attorney-General v. London County Council*,⁹ Lord Macnaghten attempted the definition when he said;

- Income Tax, if I may be pardoned for saying so, is a tax on income. It is not meant to be a tax on anything else.

Also, in *Whitney v. C.I.R.*,¹⁰ Lord Wrenbury endeavoured to define income in the following words;

As regards the word “income” it means such income as is within the Act taxable...

According to the Oxford English Dictionary;¹¹

- Tax is a compulsory contribution to the support of government levied on persons, property, income, commodities, transactions, etc. at a fixed rate mostly proportionate to the amount on which the contribution is levied.

But to an economist it is any leakage from the circular flow of income into the public sector, excepting loan transactions and direct payments for publicly produced goods and services.¹²

Income Taxes, after all, are the dues that we pay for the privileges of membership in an organized society.¹³ Although the phrase “income tax” has not been given any precise definition by both Nigerian and English Legislation, it has been referred to as the transfer of resources from the private to the public sector in order to accomplish some of the nation’s economic and social goals.¹⁴

In sum, taxation is the demand made by the government of a country for a compulsory payment of money by its citizens in order to defray the cost of its activities.¹⁵ Though not exhaustive, this definition underlines the original, and still the primary purpose of personal income tax, which is to raise revenue from the incomes of persons. The meaning of income, therefore, is what a man earns for his living.¹⁶

3. Aim and Objectives of Taxation

The word “aim” used in this paper connotes the definition of the purpose for which the revenue authorities exist and collect taxes. Usually such a definition is found in the legislation administered by revenue authorities consisting of such functions as to assess, collect and account for the tax so collected with respect to all legally liable persons.¹⁷

The term “objectives” as used here means the specific revenue targets to be attained within a specified period of time. In advanced countries of the world these targets normally culminate into budget estimates for a fiscal year. The ultimate aim of any efficient Revenue Authority, therefore, is to execute its programmes diligently so as to be able to collect current assessments and arrears fully at the end of each financial year.

3.1. Assessment

One obvious but important duty of any tax authority is tax assessment. The first step in this direction is the estimation of the total tax population through analysis of all available demographic statistics. This helps in determining one dimension of the organization’s task and establishing a control system for performance evaluation. The salient point to note is that increase in tax population is directly proportional to the natural expansion of the whole population. But until the Revenue Authority ascertains the size of a tax population, it is pretty difficult to evaluate its performance in the area of assessment for any fiscal year.

3.2. Collection

The second sequential purpose of a tax organization is to collect the tax assessed. This means the actual collection during a particular fiscal year of the highest possible proportion of the tax assessed for that year.

3.3. Accountability

Accounting for the taxes collected is the third aim or objective of a tax organization. The functions of accounting are two-fold; where tax payments are to be made to the Revenue Division directly by taxpayers, the Revenue Officials will undertake the acceptance of the tax money, issue tax receipts, transmit the money to the government coffers and reconcile their accounts with the government treasury. However, where tax is paid by the tax payers directly to the government treasury or bank account, accounting is carried out by recording of the details of payment and final reconciliation of accounts with the treasury. This type of accounting system if adopted will certainly enhance tax administration in this nation.

The main purpose of taxation as already stressed is to raise revenue to defray the cost of government activities. Though this was the original objective, since 1940 much water has flown under the bridge and taxes as a whole have become an important instrument for

⁹ (1900) 4 TC 265 at p. 295

¹⁰ (1925)10 TC 133

¹¹ www.oxforddictionaries.com/definition

¹² Allan, A; *Theory of Taxation*, (London: Macmillan, 1971), p. 24

¹³ Roosevelt, F. D. in a speech at Worcester, Mass. October 21, 1936, quoted by Simon James in *The Economics of Taxation* (op cit), p. 6

¹⁴ Agyei, A. K. *Principles of Personal Income Taxation in Nigeria*, (Ibadan: University Press, 1983), p. 2

¹⁵ See Philips, A.: *Nigerian Journal of Economics and social studies*, Vol. 10 (No. 3), 1968, p. 321

¹⁶ Ibid.

¹⁷ S. 4 of the Personal Income Tax Law, Cap. 91 of the Lagos State; S. 3 of the Income Tax Law (Western Nigeria), 1957; S. 3 of the Northern Nigeria Personal Income Tax Law 1962; and S. 3 of the Finance Law (Eastern Nigeria) 1962, provide that the Revenue Departments were responsible for the assessment and collection of, and accounting for the taxes of all taxable persons.

economic and social policy engineering. Nigeria in particular has witnessed a long list of taxes like Personal Income Tax, Companies Income Tax, Capital Gains Tax, Capital Transfer Tax, Petroleum Profit Tax, Value Added Tax, Sales Tax, and Entertainment Tax among others, and has used them to produce effects that are unrelated or partly related, to the need for revenue. Thus, customs duty (an indirect tax) has been imposed on various items at various times with the object of protecting home industries, as well as influencing balance of payments.

Tax policy provides a mechanism for influencing consumer demand and for providing incentives for production, investment and savings. It is, therefore, a key factor for promoting the government's overall economic and social objectives. Nowadays, taxation is employed to achieve economic growth, fight depression, inflation and deflation, achieve equitable distribution of income and wealth, allocate resources in a socially desirable manner, discourage consumption of certain goods, encourage and protect new industries within the country and to ensure that the balance of payments of the country is in a healthy position.¹⁸

In short, taxation could be used by government to accomplish the following objectives:¹⁹

- (a) Restraining or curtailing consumption and thus transferring resources from consumption to investment;
- (b) Increasing the incentive to save and invest;
- (c) Transferring resources from the hands of the public to the hands of the state to make possible public investment;
- (d) Modifying the pattern of investments; and
- (e) Mitigating economic inequalities.

In Nigeria, there has been a general lack of appreciation of the aims and objectives of the governmental organizations responsible for tax and this has contributed immensely to the weakness of tax administration and management.

3.4. Management by Objectives (MBO)

In recent years the concept of Management By Objectives (MBOs) has been developed in industry and commerce.²⁰ In relation to a particular business enterprise the concept involves the full appreciation of the ultimate purpose of the enterprise, its capabilities in the widest sense, the objectives which must be attained if it is to achieve its purpose, the programmes of work which must be undertaken for the attainment of these objectives, and the control systems for evaluating the results of the programmes.²¹ It is a management model that aims to improve performance of an organization by clearly defining objectives that are agreed to by both management and employees. According to the theory, having a say in goal setting and action plans should ensure better participation and commitment among employees as well as alignment of objectives across the organization.²²

A key tenet of MBO is the establishment of a management information system to measure actual performance and achievements against the defined objectives. The major benefits of MBO are that, it improves employee motivation and commitment and ensures better communication between management and employees. It often, however, unduly emphasizes the setting of goals to attain objectives rather than working on a systemic plan to do so.

It is the view of this paper that this concept be applied by revenue authorities in this country for the specific purpose of improving tax administration.

Summarizing from the foregoing, therefore, the following benefits²³ are derivable from management by objectives (MBOs) to administration in a tax organization.

- (a) reviewing regularly and systematically the aim of the organization to tax, each fiscal year, every individual liable to tax, and the concomitant functions to be performed for that purpose;
- (b) examining the precise objective and contribution made to the total task of every territorial unit, branch, section or individual of the organization, including the most senior administrative personnel;
- (c) establishing priorities of activity and assigning responsibility for action according to measured abilities of personnel;
- (d) determining and setting up standards of services as acceptable to the government and the public; and
- (e) maintaining a self-critical attitude and aliveness to the never-ending need to optimize the net amount of money which passes into the government's coffer as revenue.²⁴

4. Historical Outline of Personal Income Tax in Nigeria

A critical analysis of the history of Personal Income Tax in Nigeria could be summarized as follows:

4.1. Pre-Colonial Era

The genesis of Personal Income Tax in Nigeria can be traced to pre-colonial era (i.e. before 1800), the time when Northern Nigeria introduced direct taxation under the autocratic leadership of Fulani Emirs. In other words, taxation existed in the territory now called Northern States, centuries before the advent of British colonial administration. In his compendious work,²⁵ Lord Hailey observed,

¹⁸ Orewa, G.O., *Taxation in West Africa*, Oxford University Press (OUP)

¹⁹ Agbonika, J.A.A., *Problems of Personal Income Tax in Nigeria*. Ababa Press Ltd, Ibadan 2012, pp. 17 – 19

²⁰ www.investopedia.com/.../management-by-objectives-...

²¹ Whittam, R.H. (op cit), P. 128

²² Peter Drucker "The Practice of Management" 1954

²³ Ibid., p. 133

²⁴ This is in line with the view expressed by Adam Smith in 1776 that "every tax ought to be so contrived to take out of pockets of the people as little as possible over and above what it brings into the public treasury of the State."

- Nigeria, and more particularly Northern Nigeria, has a special place in the history of the evolution of direct taxation on Africans.

Islam, by enjoining the devout to give a portion of their income for charitable purposes, provided a religious basis for taxation in Northern Nigeria. The core of the system was *zakat*, the Islamic tithe, levied on Muslims for charitable, religious and educational purposes. Thus, when eventually Lord Lugard later arrived in Northern Nigeria, he found a well-organized fiscal system operating “schedular” income taxes.

The religious sanction for *zakat* levy was further stretched to cover other impositions on Muslims, while vigorous efforts were made to enforce corresponding levies on ‘non-believers’. Since an emir then arrogated to himself both religious and secular headship, the whole system achieved the desired result.²⁶

Apart from *zakat*, other forms of taxes, namely, Kurdin kasa (agricultural tax), shukka –shukka (plantation tax), jangali (cattle tax), kharat (community tax), etc. were also paid. Special taxes were further levied on fishermen, hunters, blacksmiths, dyers and weavers, while certain products like date palm, tobacco, liquor, sugar cane and onions were all made subject to special taxes. There was also Gado (death duty) which passed the estate of a deceased to the Emir of the area where no recognized heir existed. The highly organized and efficient administration of the Northern Emirs facilitated both the imposition and collection of the taxes.²⁷

In the southern part of the country, the system of taxation was less developed and less organized. The rulers relied mainly on tolls, tributes and arbitrary levies for their revenues. In Yoruba land, a rent called *ishakole* and a head tax called *owo ori* were payable. There were also a system of annual levies, special contributions at festivals, fees and presents. However, the major defects in all these systems of taxation lay in the multiplicity of different levies, irregularity of imposition, arbitrary assessments and the practice of ‘firming out’ to tax consultants, the collection of taxes.²⁸

One important point to note is that in both Northern and Southern parts of the country, taxes were paid in kind before the emergence of the colonial regime. Such taxes took the form of rendering free services like clearing of bush, digging of pit toilets and wells, construction of markets and roads for the benefit of the community as a whole. Failure to render such services was visited with seizure of property which could be reclaimed on payment of money.

This foregoing shows that right from time immemorial, taxes have been found necessary for provision of basic governmental services, particularly in the field of education, public health and transport which are imperative for the growth of the remainder of the economy. They can also bring about a higher rate of capital formation in production facilities whether undertaken in the governmental or private sectors.²⁹

4.2. The Colonial Era (1900-1960)

When the British came, they made use of well-organized tax system that existed in Northern Nigeria. The first major assignment undertaken by Lord Lugard, who was then the British High Commissioner in Nigeria, was taxation reform.³⁰ In his view there was urgent need for reform to make the taxes more intelligible to tax payers and collectors, to make them more equitable and to make fiscal administration more efficient.

All the various traditional taxes were consolidated under the Land Revenue Proclamation Law of 1904.³¹ There were no such laws in Southern Nigeria until after the amalgamation of the Northern and Southern Protectorates in 1914. Thus, by 1917, the Native Revenue Ordinance enacted for the North was extended to Southern Nigeria.

The system of ‘lump sum assessment’ was improved upon while assessments made on villages were based on wealth and ability to pay. The proceeds of the general tax and cattle tax “Jangali” were divided between the British and the Native Administration. The Local Authorities were given 50% while the Central Government took 50%.

Lord Lugard was so impressed with what he saw in the North to the extent that he did not want to effect substantial change in his tax reform. Thus, in his Land Revenue Ordinance, No. 4 of 1904, he announced that its object was:

- to retain the ancient forms of taxation known to the people and sanctioned by tradition; to utilize the existing machinery while simplifying the mode of collection which in the past lent itself to great abuses and was extremely wasteful; to introduce as far as possible some uniformity and equality of taxation in the different provinces, to preserve the old jurisdictions as far as possible, and finally to maintain the individuality of the country.³²

²⁵ *An African Survey*, (London: OUP, 1957), p. 662, Also see Johnstone, H.A.S. (1967) *The Fulani Empire of Sokoto*. Oxford University Press, Ely Honx, p. 9

²⁶ Whittam, R. H., *Ife Essays in Administration*, 1975, p. 11

²⁷ See Rabi, S.A., *Personal Income Tax in Nigeria: Procedures and Problems* (Lagos: OUP, 1981), p. 15

²⁸ *Ibid.*, p. 16

²⁹ Due, J. F., *Taxation and Economic Development in Tropical Africa*, (Cambridge, Mass.: West Publishing, 1963), p. 144

³⁰ Smith, M.G., (1976) *Gazetteer of Zaria Province*.

³¹ Ola, C.S., *Income Tax Law and Practice in Nigeria* (1999), Dalag Prints and Pak Ltd, Ibadan pp. 1 - 10

³² Quoted by Professor R.H. Whittam, *Ife Essays in Administration* (op. cit.), p. 114. Although it should be noted that, it was not until 1939 that income tax was specifically introduced for the first time on company profits accruing in, derived from or brought into Nigeria. The enabling Law then was the Companies Income Tax Ordinance, 1939.

In retaining the ancient forms of taxation, while “simplifying the mode of collection”, Lugard consolidated the schedular income taxes into a single general tax, called *haraji*. And by 1918 the modus operandi of the tax system in Northern Nigeria was employed in other parts of the country.³³

Despite much debate and hesitation, Personal Income Tax Law became functional in the defunct Eastern Region in 1927. Its introduction later sparked off disturbances which metamorphosed into the Aba Tax Riot in 1929.³⁴ The crises witnessed the destruction of property and loss of lives.

4.3. Period of Unification (1940 – 1958)

In 1940, there were two major tax legislation called the Direct Taxation Ordinance which repealed the previous Ordinances.³⁵ The Direct Taxation Ordinance No. 4 of 1940 applied to all Nigerians except those in the township of Lagos. It provided for the assessment of income of persons and of communities. It also applied to the assessment of cattle tax and expatriates. The other was the Income Tax Ordinance No. 3 of 1940 which applied to expatriates and Nigerians living in Lagos.

In 1943, a more comprehensive Income Tax Ordinance was passed.³⁶ This repealed that of 1940 and was operational in the country for a long time. It extended its operation to Europeans all over the country and natives living in Lagos.

With the introduction of federalism in 1954, responsibility for assessment and collection of Personal Income Tax devolved on the Regional Governments. This position was retained up to Nigeria’s attainment of independence in 1960 when Nigeria had its own Constitution.³⁷ Section 70 of the 1960 Constitution gave concurrent power to parliament to make laws for Nigeria in relation to personal income tax.

4.4. Post-Colonial Period

The year 1961 marked a turning point in the history of tax system in Nigeria. That year saw the enactment of the Income Tax Management Act (ITMA). This Act provided for the definition of taxable income, the basis of charge, the list of allowable deductions, including the treatment of dividends.

The main objectives of the Income Tax Management Act (ITMA) 1961 was to assist in the administration of tax laws in the country so as to avoid internal double taxation of incomes by both the federal and state governments. But it governed only taxation of individuals. Save few amendments to take care of military interventions, ITMA still remained the principal law governing Personal Income Tax in Nigeria until 1993 when the Personal Income Tax Decree of 1993 was promulgated. In 2004 when the Nigerian Statutes were compiled, this Act was adopted as the Personal Income Tax Act, 2004. The 1993 PITA was amended in 1997, 1998³⁸ and 2011³⁹ to reflect fiscal policies of tax administration and deductions allowed. There is now the Federal Inland Revenue Service (Establishment) Act⁴⁰ which has among other things given autonomy to the Federal Inland Revenue Service and also enhance uniform administration and enforcement of tax.

5. Administration of Personal Income Tax in Nigeria

5.1. Taxing powers

It is pertinent to commence this discussion with an attempt to define the phrase taxing powers.

Tax power is the power to impose or levy tax. It is a power inherent in sovereignty and unlimited in the absence of constitutional restrictions but subject in its exercise to the discretion of the authorities in whom it is reposed...⁴¹

The appropriate arm of sovereign, reposed with the power of imposing taxes is the legislature. It is the legislative arm of government that enact laws imposing taxes and tax legislation. In other word, unless the legislature makes a law on the payment of a particular tax, such tax should not be due for payment by the taxpayer or even be demanded by government.⁴²

In discussing the appropriate taxing powers as it relates to the various tiers of government, we shall limit ourselves to the provision of the 1999 Constitution at the expense of a voyage into successive change of patterns by successive constitutions and military administrations.

It is worthy of mention that the military setting was an anomaly and the ideal distribution of powers in a federation is vide the Constitution and in Nigeria, the 1999 Constitution is the principal point of reference.

Section 4(2) of the 1999 Constitution provides that;

³³ Ibid.

³⁴ 1929 Aba Women Riot: 80 Years of Distorted History, www.nairaland.com/.../1929-aba-women-riot-...

³⁵ Ola, C.S., op. cit.

³⁶ Income Tax Ordinance No. 29 of 1943

³⁷ 1960 Constitution of the Federal Republic of Nigeria.

³⁸ Decree numbers 18, 19 and 21 of 1998.

³⁹ Personal Income Tax Amendment Act 2011. This did not only change the tax table but also tried to consolidate reliefs to be enjoyed by individuals. It however failed to delete section 33 of the principal legislation dealing with reliefs and deductions. It could have the misconceived effect of granting double relief first under the principal legislation and then under the 2011 amendment.

⁴⁰ Federal Inland Revenue Service (Establishment) Act, 2007.

⁴¹ Kehinde F. *Modern Practice Journal of Finance and Investment Law*, (op.cit) p. 269.

⁴² Ibid.

- The National assembly shall have power to make laws for the peace, order and good government of the federation or any part thereof with respect to any matter included in the exclusive legislative list set out in part I of the second schedule to this constitution.

This power is to be exercised to the exclusion of the Houses of Assembly of States.⁴³

In addition to power to legislate on matters in the exclusive legislative list to the exclusion of the State House of Assembly, the National Assembly also exercises power to legislate on any matter in the concurrent legislative list set out in the first column of part II of the Second Schedule to the Constitution.⁴⁴

However, any law made by a State House of Assembly which is in conflict with the law made by the National Assembly shall to the extent of such conflict or inconsistency, be void.⁴⁵

On the other hand, the House of Assembly of a State shall have powers to make laws for the peace, order and good government of the State or any part thereof with respect to matters outside the exclusive legislative list but included in the concurrent legislative list set out in the first column of part II of the Second Schedule to the Constitution.⁴⁶

5.2. Distribution of Taxing Power

5.2.1. Federal Taxing Powers

The items under the exclusive legislative list expressly relating to taxation are as follows:

- Item 16 – Customs and excise duties
- Item 25 – Export duties
- Item 58 – Stamp duties
- Item 59 – Taxation of incomes, Profits and Capital Gains, except as otherwise prescribed by the Constitution. In respect of these taxes listed above, the federal legislature has exclusive powers to legislate on them.

5.2.2. State Taxing Powers

The states have not been conferred with taxing powers directly or positively. The state taxing powers could therefore, be impliedly derived from the general provision conferring legislative powers on states (i.e. Section 4(7) already stated).

Flowing from Section 4(7) aforesaid, the state governments have plenary powers to make laws on any subject matter that is not on the exclusive legislative list. That is what is referred to as “the Residual List.” In respect of matters in the concurrent legislative list, the inconsistency rule stated in section 4(5) of the Constitution quoted earlier restricts states from legislating on matters contained therein where the Federal Government has covered the field. To this end, the Personal Income Tax Act and Federal Inland Revenue (Establishment) Act, 2007 are Federal Laws and no State Laws shall have superiority over them.

5.2.3. Local Government Taxing Powers

The view held by a majority of people is that section 2(2) of the 1999 Constitution excludes Local Governments from partaking in legislative power.

The section provides that “Nigeria shall be a Federation consisting of States and a Federal Capital Territory.”

This implies that Nigerian Federalism is a contract between the Federal Government and States.

The States are however, mandated to confer on the local government (by legislation) some functions in addition to those specified under the Fourth schedule to the Constitution.

The functions conferred must be by legislation and must be matters within the residual list which states have powers to legislate on.

It is also noteworthy that items 9 and 10 of the Concurrent Legislative List do not directly vest the Local Government Councils with the power to collect taxes.

Rather, a state government must first enact appropriate enabling law which will determine the taxable persons, assessment procedure, and method of collection, recovery and penalty for tax delinquency after which the Local Government Councils must exercise their powers within the limits so prescribed by the state enabling law. It therefore shows that the local governments have no powers to directly impose taxes.

5.3. Delegation of Powers to Collect

The Constitution however, provides for delegation of powers of collection by the National Assembly to States and from States Houses of Assembly to Local Governments respectively.

Item D7 of the concurrent Legislative List provides that –

In the exercise of its powers to impose any tax or duty on –

- a) Capital Gains, incomes or Profits of persons other than companies; and
- b) Documents or transactions, by way of stamp duties.

⁴³ Section 4(3) 1999 Constitution.

⁴⁴ Ibid, Section 4(4) (a).

⁴⁵ Ibid, Section 4(5).

⁴⁶ Ibid, 4(7)

- The National Assembly may, subject to such conditions as it may prescribe, provide that the collection of any tax or duty or the administration of the law imposing it shall be carried out by the government of a State or other authority of a State.

Item D9 of the Concurrent Legislative List also provides that –

- A House of Assembly may subject to such conditions as it may prescribe, make provisions for the collection of any tax, fee or rate or for the administration of the law providing for such collection by a Local Government Council.

Having advertence to the provision above, can one say that the states have been conferred with powers to impose tax or that the local governments have been conferred with powers to impose tax?

Attention will be focused on item D7 which provides for delegation of powers to collect taxes by the National Assembly on States.

While commenting on this question, Professor Fubura⁴⁷ was of the view that items D7 and 8 merely empower the Federal Government to delegate to the State Governments the exercise of an executive function of the collection of the taxes specified therein.

It does not envisage the delegation of any form of concurrent legislative function to the State. The express wordings of the 1979 constitution — demonstrate clearly that only the Federal Government can legislate with regards to the imposition, levy, collection and administration of any tax or duty envisaged under D7 and D8, and all that the State Governments are assigned thereby, are the responsibilities for the collection and administration of any tax or duty so imposed by an Act or Decree of the Federal government.

Furthermore, Abiola Sanni⁴⁸ has further rationalized the mere delegated power of “collection” conferred by item D7 of the 1999 Constitution on States.

In his argument, he used the provisions of sections 2(2) of the P.I.T.A. and section 4(2) of the Stamp Duties Act to clear the erroneous view held by some people on item D7. For purpose of clarity the analysis would be summarized hereunder.

Sections 2(2) of PITA and 4(2) of Stamp Duties Act were made pursuant to item D7 of the 1999 constitution which is identical with item D7 of the 1979 constitution.

The said section 2(2), PITA provides that:

- In the case of an individual other than an itinerant worker and persons covered under paragraph (b) of subsection (1) of this section, tax for any year of assessment may be IMPOSED only by the state in which the individual is deemed to be resident for that year under the provisions of the first schedule and in the case of persons referred to in subsection (1)(b) of this section, tax shall be IMPOSED by the Federal Board of Inland Revenue.

Section 4(2) of the Stamp Duties Act, on the other hand provides that –

- The State Government shall collect duties in respect of instruments executed between persons or individuals at such rates to be IMPOSED or charged as may be agreed with the Federal Government.⁴⁹

A cursory reading of the provisions reproduced above especially with reference to the word “Imposed”, would suggest that State Governments have the power to impose personal income tax and Stamp duties; However, if the entire provisions of section 2(2) of the PITA and S. 4(2) of the Stamp Duties Act are read together, it will become clear that the object is to identify the relevant tax authority in respect of the income of a taxable person and not to create undue conflict of jurisdiction between the administrative authorities of two or more states over the same income.⁵⁰

This contention is made clearer when the last line of section 2(2) PITA is isolated. The line reads:

→ tax shall be imposed by the Federal Board of Inland Revenue.

Note that with the establishment of the Federal Inland Revenue Service under Section 1 FIRS Act, the FBIR no longer exists. The Personal Income Tax (Amendment) Act (PITAA) 2011 ought to have taken care of this change of name.

Since the F.I.R.S. is a tax authority, not bestowed with the power of imposing tax but with the administration of federal taxes, it is obvious that the F.I.R.S. would not have been contemplated by the drafters of the P.I.T.A. as having powers to impose taxes as it is being misconstrued by some people.

The submission of Sanni⁵¹ that the word “impose” was used rather carelessly in section 2 of the P.I.T.A and should be amended immediately seems to have been taken care of by S. 2(a) PITAA which substitute the word “impose” in the marginal note with the word “collect”.

The nature of delegated powers has been so enmeshed in confusion and controversy that the delineation of taxing powers is no longer clear.

Consequently, since the coming into effect of the 1979 constitution (which is in *pari materia* with the 1999 constitution as far as taxing powers are concerned) states have been imposing taxes arbitrarily whether they possessed such powers or not, relying on the delegated power as justification.

The consequences of these were multiple taxation, double taxation and persistent litigation suffered by tax payers and even the authorities themselves. These problems led to the enactment (promulgation) of Decree No. 21 of 1998 by the then Military government to clearly streamline the taxes to be collected by each tier of government.

⁴⁷ Fubura, M.T. Analysis of State Taxing Powers, in Akanle, O. (ed) Tax Law and Administration NIALS, quoted in Abdulrazaq, M.T. (ed) C.I.T.N. Nigerian Tax Guide and Statutes, 1st edition. P. 654.

⁴⁸ Abiola S. Division of Taxing Powers, in Abdulrazaq M.T. (ed) C.I.T.N. Nigerian Tax Guide (Lagos: 2002) P. 654-656.

⁴⁹ Emphasis in the above provisions are Mine

⁵⁰ Abiola Sanni (Loc. Cit)

⁵¹ Ibid.

5.4. Taxing Authorities

Having discussed the taxing power of the Federal and state governments, we shall now look at the various taxing authorities.

Taxing authorities are those bodies that are reposed with the power of administration and collection of the various taxes. These authorities differ from one tier of government to another.

While the Federal Government or the National Assembly has a preponderance of taxing powers; the administration and collection of these taxes is usually delegated to state and state agencies.

The power to collect taxes is spread through the three tiers of Government; however, such taxes collected are usually remitted to the central government through the Federation Account.

Under this sub-head, we shall first discuss the various statutorily recognized authorities or bodies reposed with the administration and collection of taxes and categorize them according to the various tiers of government.

5.5. The Federal Tax Authority

5.5.1. The Federal Inland Revenue Service (FIRS)

This body was established by the Federal Inland Revenue (Establishment) Act, No. 13 of 2007, and is by section 3 vested with the power to do all such things as may be deemed necessary and expedient for the assessment and collection of taxes due to the Federal Government.

By virtue of section 2, 25 and 68 FIRS Act as well as the First Schedule to the Act, the FIRS is charged with the administration of Federal Tax Statutes such as Personal Income Tax Act (PITA), Companies Income Tax Act (CITA), Withholding Tax Act, VAT, etc.

This body is autonomous as a statutory body and is not placed under any parastatal supervision. It operates like the Central Bank of Nigeria (CBN) and the Securities and Exchange Commission (SEC). It can therefore sue and be sued and is vested with the power to prosecute anyone who offends any provision of the Act.

The FIRS replaces the Federal Board of Inland Revenue (FBIR) virtue of section 62(2), FIRS (Est.) Act which has repealed part 1 of the Companies and Income Tax Act.

Most literature on the Federal Board of Inland Revenue attribute its creation to the Companies Income Tax Act CAP 60, L.F.N 2004 (CITA Amendment 2007).

However, section 1 of the Act which purportedly created the body states thus:

- There shall continue to be a board of which the official name shall be the Federal Board of Inland Revenue. Whose operational arm shall be called ... Federal Inland Revenue Service ...

The phrase "There shall continue to be" connotes the ratification of a pre-existing body.

However, a perusal of the previous tax legislation, (including the ITMA) shows that the taxes were not administered by a body known as the Federal Board of Inland Revenue (FBIR). The source is therefore unclear. This confusion has been removed by the FIRS (Est.) Act, 2007 which states in section 3(1) as follows;

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

The Federal Board of Inland Revenue (FBIR) has by this repeal, now lost its name to FIRS, which is now the umbrella authority for tax administration for all forms of tax legislation as all of them adopt the body as created by CITA 2004 (as amended).

All other auxiliary administering bodies created by the said CITA and other tax legislation have the Chairman of the Federal Inland Revenue Service (FIRS) as the chairman of these bodies.

For instance, under CITA, the Technical Committee established under section 2 has the Chairman of the FIRS as its chairman, while the Joint Tax Board established under section 86 of the Personal Income Tax Act also has the chairman of the FIRS as its chairman. Similarly, section 7 of the Value Added Tax Act reposes the management of the tax on the FIRS, while the Value Added Tax Technical Committee established under section 21 of the VAT Act also has the chairman of the FIRS as its chairman. Also, by virtue of section 43 of the Capital Gains Tax Act and the only schedule to the CGTA which adopts the administrative provisions of CITA, the FIRS is equally the administering authority. By the combined effect of section 2 and 3 of the Petroleum Profit Tax Act, the administration of the PPT is also reposed on the FIRS, and finally, the Education Tax too is administered by the said Board.

The Federal Inland Revenue Service (FIRS) is divided into 3 levels of management namely; the headquarters, the zonal coordinators and the Area Tax Offices and local VAT offices.⁵²

The power, duties and all other administrative positions of the Board are contained under sections 1-7 of the CITA 2004 (as amended). This Act by section 3 is charged with the administration of Federal Tax Statutes such as the Personal Income Tax Act (PITA), the Companies Income Tax Act (CITA), VAT Act, etc.

5.5.1.1. Functions and Membership

Section 3(1), FIRS (Establishment) Act lists its functions as follows;

- To provide the general policy guidelines relating to the functions of the service.
- To manage and superintend the policies of the service on matters relating to the administration of revenue assessment, collection and accounting system.

⁵² For details on these bodies, see FIRS Annual Report, 1996 p. 8.

- (c) Review and approve the strategic plans of the service.
- (d) Employ and determine the terms and conditions of the service, which shall include disciplinary measures of employees of the service.
- (e) Stipulate remuneration, allowances, benefits and pensions of staff and employees in consultation with the national salaries, income and wages commission.

It is important to note that this body is now autonomous like the CBN and can sue and be sued in its own name.

By virtue of section 3(2) of the Act, the Service shall consist of the following;

- (a) The Executive Chairman of the Service who shall be experienced in taxation as chairman of the service to be appointed by the President and subject to the confirmation of the Senate;
- (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 of Nigeria 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 who shall be any of the Commissioners representing the 36 States of the Federation;
- (g) The Group Managing Director of the Nigerian National Petroleum Corporation or his representative who shall not be below the rank of a Group Executive Director of the Corporation or its equivalent;
- (h) The Comptroller-General of the Nigeria Custom Service or his representative not below the rank of Deputy Comptroller-General;
- (i) The Registrar-General of the Corporate Affairs Commission or his representative not below the rank of a Director;
- (j) The Chief Executive Officer of the National Planning Commission or his representative not below the rank of a Director.

5.5.2. The Joint Tax Board

The Joint Tax Board was created by section 86 (1) of the Personal Income Tax Act 1993.

The Board helps to coordinate the various aspects of taxation between all the states of the federation as well as promote uniformity in the rates and other indices relating to personal income tax in Nigeria.

Section 3(1) of the 1999 constitution recognizes 36 states and the Federal Capital Territory under Section 3(6) and each state has its own Board of Internal Revenue created pursuant to Section 87 of the Personal Income Tax Act⁵³ with their respective methods of tax administration.

The Joint Tax Board Acts as the unifying body for tax administration amongst these states so as to avoid cases of conflicts or double taxation.

The Board consists of the chairman who shall be the chairman of the F.B.I.R. now F.I.R.S.,⁵⁴ one member from each state who shall be a person knowledgeable in tax matters, a representative from the Federal Civil Service Commission who shall also be experienced in tax matters, a secretary who shall not be a member of the board and a legal adviser.⁵⁵

The functions of the Board are *inter alia* as follows:

- a. To advise the of federal government in respect of double taxation relief arrangement concluded or under consideration with anyother country and in respect of rates of capital allowances and other taxation matters,
- b. Promote uniformity in the application of the Act and in the incidence of tax on individuals throughout the country, and
- c. Impose its decision on matters of procedure and interpretation of the Act so as to establish uniform standard on procedure.⁵⁶

In view of the very important function of harmonizing the application of the Act and the incidence of tax on individuals throughout the country, it is suggested that the membership of the Board should be expanded to include all Chairmen of the various State Boards of Internal Revenue, who are at the helm of administration of taxes in their respective states.

6. The State Tax Authorities

i. The State Board of Internal Revenue (SIRS)

The State Board of Internal Revenue was created by Section 87 (1) of the Personal Income Tax Act while its operational arm is the State Internal Revenue Service (SIRS). The Board shall consist of:

- a. The Chairman of the State Internal Revenue Service as Chairman of the State Board who shall be experienced in matters of taxation and to be a member of relevant recognized professional body appointed by the State Governor subject to confirmation of the State Assembly;
- b. Directors from within or outside the State Service;
- c. A director from the State Ministry of Finance;
- d. The Legal adviser to the State Service;

⁵³ PITA 1993 (as amended).

⁵⁴ The FBIR is repealed pursuant to Section 62(1) and (2) FIRS Act 2007 while FIRS is established as a replacement pursuant to Section 1 FIRS Act.

⁵⁵ Section 86(2) (3) (4) & (8) PITA.

⁵⁶ Section 86 (9) PITA.

- e. Three other persons appointed by the State Governor on their merit, one each representing a Senatorial District in the State; and
- f. The Secretary of the State Service who shall be an ex officio member.

The functions of the board include:⁵⁷

- a. Ensuring the effectiveness and optimum collection of all taxes and penalties due to the government under the relevant laws,
- b. Doing all things as may be deemed necessary and expedient for the assessment and collection of the tax and shall account for all amount so collected,
- c. Making recommendations where appropriate to the joint tax board on tax policy, tax reform, tax legislation, tax treaties and exemptions as may be required from time to time.
- d. Controlling the management of the State Inland Revenue Service on matters of policy, subject to the provision of the law setting up the service.
- e. Appointing, promoting, transferring and imposing discipline on employees of the state service.

Any five members of the State Board of whom one shall be the chairman or a director shall constitute a quorum.

The Act has created two committees to ensure administrative efficiency. These committees are:⁵⁸

- a. The Technical Committee of the State Board, and
- b. The Joint State Revenue Committee

ii. The Technical Committee of the State Board

The technical committee of the State Board comprises of the chairman as Board Chairman, directors within the State Service, legal adviser and secretary to the Board.

The functions of the Technical Committee of the State Board include:

1. The power to co-opt additional staff from within the service in the discharge of its duties.
2. Consider all matters that require professional and technical expertise and make recommendation to the state board.
3. Advise the State Board on all its powers and duties specifically mentioned in section 87 of the Act.
4. Attend to such other matters as may from time to time be referred to it by the board.

iii. The Joint State Revenue Committee

This committee was created by section 92 of the Personal Income Tax Act. The functions of the committee are stated under **section 93** as follows:

- a) implement decision of the joint tax board
- b) advise the joint tax board of the state and local government on revenue matters
- c) harmonize tax administration in the state
- d) enlighten members of the public generally on state and local government revenue matters; and
- e) Carry out such other functions as may be assigned to it by the Joint Tax Board.

This committee shall comprise of the chairman of the States Revenue Service as chairman.

A representative of the Bureau on Local Government Affairs not below the rank of a director,

It is interesting to know that the administration of Personal Income Tax in states is vested on the State Boards of Internal Revenue.⁵⁹

The Federal Inland Revenue Service (F.I.R.S.) is not the appropriate tax authority in respect to Personal Income Tax except where – The relevant tax authority cannot determine residence under section 108 of the Act or in respect of the following persons:

- Persons employed in the Nigerian Army, the Nigerian Navy, the Air force, and the Nigerian Police force other than in a civilian capacity, officers of the Nigerian foreign service, every resident of the Federal Capital Territory, Abuja, and a person resident outside Nigeria who derives income or profit from Nigeria.⁶⁰

Apart from this category of persons, the State Boards of Internal Revenue are exclusively saddled with the administration of P.I.T.A.

The position above further brings to fore the knotty issue as to which legislature possesses the taxing powers in respect of Personal Income and whether Personal Income Tax is a State or Federal Tax. Personal Income Tax Act, haven been enacted pursuant to powers conferred on the National Assembly to make laws on matters on the exclusive legislative list is a federal statute. The National Assembly could, in the exercise of its power, delegate the administration of tax to the state or any of its agencies. This accounts for the delegation of the right of assessment and collection to all the states of the federation.

The question that comes to mind is whether the SBIR and all other state and local government tax agencies created by **Section 86 to 92** of the Act⁶¹ are state or federal agencies.

If they were State agencies, they would have been created by state legislation of the State Assembly. Conversely, if the S.B.I.R./S.I.R.S. are federal bodies, does it mean that the S.I.R.S. is an appendage or branch of the F.I.R.S. or were they created for the

⁵⁷ Section 88(1) PITA 2004.

⁵⁸ Sections 89 and 90 PITA.

⁵⁹ Section 88 PITA.

⁶⁰ Section 108(1) (f) and Section 2(1) (b).

⁶¹ PITA 1993 (as amended).

States? The Act does not say so, and there is no indication that the S.I.R.S. is an appendage of the F.I.R.S. It therefore becomes unclear, whether the S.B.I.R./S.I.R. S are state or federal bodies.

Secondly, there is no statutory provision on the formula for the remittance of the income tax so collected by the S.I.R.S. to the F.I.R.S. If there is any such formula, it is administrative rather than statutory. It is suggested that a statutory formula should be created to avoid confusion.

Thirdly, the multiplicity of committees and bodies under PITA further confirms our submission that the P.I.T.A. is very complex and expensive to administer.

These committees and Boards shall sit from time to time at the expense of Government Revenue, thereby enlarging the cost of administration.

In addition, a critical examination of the State Board and its technical committee reveal that the composition is basically the same and therefore, unnecessary duplication of roles and expenses.

6.1. Ownership of Funds Collected by States

The next issue for consideration is what happens to the funds collected by state governments through the State Boards of Internal Revenue under the Personal Income Tax Regime.⁶² The Personal Income Tax Act being a federal legislation delegates collection to states. Where does the money so collected go to? Can states use the money without authorization of their Principal (i.e. federal government)? There are two major positions on the above controversy. The first group is of the view of that the federal government being the initiator of the PITA through section 4 of the Constitution owns the money collected under PITA by the states and can, at best, give state governments a percentage of the collection as remuneration pending division of money from the Federation Account.⁶³ The second group says that PITA is residence-based and belongs to collecting states even though they were acting as delegates of the federal government. To resolve the controversy, there is need to consider the clear provisions of the Constitution and the Personal Income Tax Act. There seem to be two separate consolidated revenue funds one being for the federation and the other for the states.⁶⁴ Section 80(1) of the 1999 Constitution provides that:

- All revenues or other moneys raised or received by the Federation (not being revenues or other moneys payable under this Constitution or any Act of the National Assembly into any other public fund of the Federation established for a specific purpose) shall be paid into and form one Consolidated Revenue Fund of the Federation.

While Section 120(1) of the Constitution provides that:

- All revenues or other moneys raised or received by a State (not being revenues or other moneys payable under this Constitution or any Law of a House of Assembly into any other public fund of the State established for a specific purpose) shall be paid into and form one Consolidated Revenue Fund of the State.

It can be seen from the two provisions above that the Constitution creates two special accounts for money or funds made and earned by the federal and state governments. While section 80(1) is with respect to the federal government, Section 120(1) applies to revenue made by the state government. This Consolidated Revenue Fund is different from the Federation Account⁶⁵ and State Joint Local Government Account.⁶⁶ The Federation Account is a special account which all revenues collected by the Government of the Federation are paid into, except the proceeds from the personal income tax collected by the Federal Inland Revenue Service. The State Joint Local Government Account on the other hand is a special account which all allocations to the local government councils of the State from the Federation Account and from the Government of the State are paid into (i.e. excluding the proceeds or revenue internally generated by the state).

Whereas funds in the Consolidated Revenue Fund of the Federation exclusively belongs to the Federation and is administered by the National Assembly to meet the administrative and other needs of the Federal Government and its Agencies as they deem fit,⁶⁷ funds in Consolidated Revenue Fund of the States belong to the State and is similarly utilized by the State, under the exclusive appropriation of the State House of Assembly, to meet its needs.⁶⁸

Save for taxes collected from personnel of the Armed Forces, Nigeria Police, Ministry or Department of Government charged with foreign affairs and the residents of FCT which by operation of *Sections 80 and 162 of the Constitution* go into the Consolidated Revenue Fund of the Federation and by implication belongs to the Federal Government, the rest enter the 'Federation Account'⁶⁹ en route to its final destination which is the Consolidated Revenue Fund of the States. Section 163 of the Constitution was apt when it stated:

- Where under an Act of the National Assembly, a tax or duty is imposed in respect of any of the items listed in item D part II of the Second Schedule to this Constitution (i.e. to say incomes or profits from persons other than companies/personal income tax, etc.) the net proceeds of such tax shall be distributed amongst states on the bases of derivation and accordingly—

⁶² Agbonika, J.A.M., and Agbonika, J.A.A., "Fiscal Federalism and the Challenges of Administration of Personal Income Tax in Nigeria" in *Topical Issues on Nigerian Tax Laws and Related Areas* ed Agbonika J.A.A., Ababa Press Ltd, 2015 pp. 409 – 435.

⁶³ Section 162 of the 1999 Constitution of the Federal Republic of Nigeria.

⁶⁴ Sections 80(1) and 120(1) of the 1999 Constitution of the Federal Republic of Nigeria.

⁶⁵ Section 162(1) of the 1999 Constitution of the Federal Republic of Nigeria.

⁶⁶ Section 162(6), *ibid*.

⁶⁷ See sections 80-87 of the Constitution.

⁶⁸ See sections 120-127 of the Constitution.

⁶⁹ Section 162 of the Constitution of the Federal Republic of Nigeria.

- a. where such tax or duty is collected by the Government of a State or other authority of the State, the net proceeds shall be treated as part of the consolidated revenue fund of that state.
- b. where such tax or duty is collected by the Government of the Federation or other authority of the Federation, there shall be paid to each state at such time the National Assembly may prescribe a sum equal to the proportion of the net proceeds of such tax or duty that are derived from the state.

Therefore, it can be seen that the federal government is not a beneficiary of the personal income tax collected by the state Government. This is due to the combined provisions of sections 80(1), 120(1) and 163 of the 1999 Constitution which direct that the personal income tax collected by the state government be paid into the Consolidated Revenue Fund of the state and used for the benefit of the State.⁷⁰

6.2. Distribution of State Generated Revenue

With respect to the means of distribution of the revenue generated or collected by the State Board of Internal Revenue under the Personal Income Tax Regime, section 163 of the 1999 Constitution clearly spells out how the proceeds of the income tax would be distributed. By section 163 of the Constitution, the net proceeds of such tax or duty collected shall be distributed among the states on the basis of derivation. The Supreme Court in *Attorney-General of the Federation V. Attorney-General of Abia State & Ors (No. 2)*⁷¹ has interpreted this to mean that whatever net revenue is collected from any state by the government of the federation must be paid back to that state. The said section states aptly that:

- Where under an Act of the National Assembly, tax or duty is imposed in respect of any of the matters specified in item D of Part II of the Second Schedule to this Constitution, the net proceeds of such tax or duty shall be distributed among the States on the basis of derivation...

Net proceed is the whole amount collected as PIT minus the collection cost. This was made clear by Section 165 of the Constitution which enjoins the state to pay to the federation an amount equal to such part of the expenditure incurred by the federation for the purpose of collection of taxes or duty which are wholly or partly payable to the states pursuant to the provision of the Constitution.

The rate of this collection cost is put at 5% by virtue of the proviso to section 88(1)(b) of the Personal Income Tax Act.

Furthermore, where a tax or duty is collected by the government of a state or other authority of the state, the net proceeds shall be treated as part of the Consolidated Revenue Fund of that state for the purposes of distribution of the net proceeds.⁷² But where such tax or duty is collected by the Government of the Federation or other authority of the Federation, there shall be paid to each State at such times as the National Assembly may prescribe a sum equal to the proportion of the net proceeds of such tax or duty that are derived from that State.⁷³

Another basis of derivation as envisaged under the proviso to Section 162(2) states the basis or benchmark for the derivation principle of resource allocation in Nigeria. The proviso states that the principle of derivation shall be constantly reflected in any approved formula as being not less than *thirteen per cent* of the revenue accruing to the Federation Account directly from any natural resources. A remarkable feature of post-independence fiscal commissions was the strengthening of the position of the federal government vis-à-vis the regions or states and local governments in the allocation system. The provisions under the 1999 Constitution⁷⁴ on revenue allocation between the federal and state governments as well as the local government councils is enshrined in Section 162-168 and in Items A and D of part II of the second schedule. The principles of derivation came up as a provision in Section 162(2) of the Constitution. It is only to be reflected in any approved formula as not being less than 13% of the revenue accruing to the Federation Account directly from any natural resources. Currently, the sharing formula that allocates resources from the Federation Account among the three tiers of government is 48.5 percent to the federal government, 24 percent to the state governments, 20 percent to the local governments and 7.5 percent is distributed between derivation fund for oil and mineral producing areas, a stabilization fund, an ecological fund and the Federal Capital Territory (FCT).⁷⁵ After due consultations with all stakeholders on issues of revenue distribution, consequent amendment was made by Mr. President on the Executive Order on Allocation of Revenue.⁷⁶ This new allocation formula increased resources to the tiers of Government. The new formula with effect from that, stands as follows:

- i. Federal Government 52.68% (F/A)
- ii. State Governments 26.72% (F/A)
- iii. Local Government Councils 20.60% (F/A)

Derivation (started in January, 2000 and it replaced the 1% M.R. Derivation and 3% M.R to OMPADEC).⁷⁷

⁷⁰ See Section 120(2) which provides that “No moneys shall be withdrawn from the Consolidated Revenue Fund of the State except to meet expenditure that is charged upon the Fund by this Constitution or where the issue of those moneys has been authorized by an Appropriation Law, Supplementary Appropriation Law or Law passed in pursuance of section 121 of this Constitution.”

⁷¹ (2002) 6 NWLR (Pt. 764) 542.

⁷² Section 163(a)

⁷³ Section 163(b)

⁷⁴ Constitution of the Federal Republic of Nigeria.

⁷⁵ Stuti, K., “Fiscal Federalism and Service Delivery in Nigeria: The Role of States and Local Governments” prepared for the Nigeria PER Steering Committee, on July 24, 2001. Online (Last Visited on 9th February, 2014)

⁷⁶ Now referred to as the “Modification Order 2002”, issued in July, 2002.

⁷⁷ Agbonika, J.A.A. *Problem of Personal Income Tax in Nigeria* (Ibadan; Ababa Press, 2012) pp. 399-400.

The above provisions of sections 162 & 163 of the Constitution clearly show that the fundamental issue of revenue generation vis-a-vis taxation requires a concerted collaborative effort of the three tiers of government: federal, state and local. In any event it is trite that at least 90% of the revenue of the three tiers of Government in question is derived from one single source—oil. It was therefore not surprising that, under Chapter VI Part 1 (sections 162 - 168) of the 1999 Constitution, provisions have been made for public revenue regarding (i) distributable pool account; (ii) allocation of revenues; (iii) federal grants; and others.

In view of the findings above, the following recommendations are made:

- (1) The constitution should be amended by adjusting the provisions of item 59 on the exclusive legislative list. The income, subject to federal jurisdiction should be specified and we suggest that companies and Petroleum Income should form the basis of federal taxation while income of persons arising from the practice of trade, profession and small scale business should be taken to Part II of the second schedule to the 1999 constitution. (i.e. the concurrent legislative list).
- (2) Alternatively, we suggest that the 1999 constitution be amended (especially item 59 of the 2nd schedule) to bring it in conformity with the lists created under the various schedules to the “Taxes and Levies (Approved List of Collection) Decree 1998”. This would lay to rest the persistent question of which tier has the constitutional power to levy one tax or the other. This reform shall also solve the problem of acceptable distribution formulae, between the Federal, State and Local Government.
- (3) It is also suggested that the Technical Committee of the State Board and the Joint State Revenue Committee created under Section 90 and 92 respectively, be repealed in order to avoid proliferation of bodies with the same composition but different functions. This would reduce administrative cost and unnecessary complexity.
- (4) It is also recommended that Personal Income Tax should be made a state tax (except in relation to persons identified by Section 2 (1) of the P.I.T.A.).
- (5) Finally, a Taxes Management Board should be enacted to clearly define administering bodies for each tax, their composition, functions and powers, and their relationship with each other.

7. Local Government Tax Authorities

Prior to 1996 when an amendment to the Personal Income Tax Decree (now Act) was made by the then military government, the Local Governments had no statutorily recognized tax authorities. Their respective revenue departments were the only bodies responsible for collection of taxes, rates and levies. However, the local government Revenue committee was created under the Personal Income Tax Act,

(i) The Local Government Revenue Committee. This committee is created under section 90 of the PITA. Its membership comprises of:

- a. The supervisor of finance as chairman
- b. Three local government councilors as members
- c. Two members experienced in revenue matters to be nominated by the Chairman of the local government on their personal merit.

The function of the local government committee is to assess and collect all taxes, fines and rates under its jurisdiction and account for the amount so collected in a manner to be prescribed by the Chairman of the Local government. The committee is to be autonomous of the Local Government Treasury.⁷⁸

It is not however, clear whether the Chairman of the Local government (who is to determine the manner in which the committee shall account for the taxes collected) is the Executive (administrative) Chairman of the Local Government or the Chairman of the Local Government Revenue Committee created under Section 90 of the Act.

If the Act contemplated the Executive Chairman, then the question of the committee being autonomous does not arise.

This is because; Local Government Chairmen treat their internally generated Revenue (I.G.R.) as their personal estate.

On the other hand, if the Act contemplated the Chairman of the Local Government Revenue Committee, then the question would be whether these committees are in fact autonomous of the local Government Treasury as provided by the Act.

It is submitted respectfully that from our investigation, they are not.

While we suggest that the subsection be amended so as to clearly specify the “Chairman” contemplated under it, we are also of the view that levies and taxes collected by the local government (exception of company taxes) should be removed completely from the list of revenue accruable to the Federal Government and the provisions of the constitution be accordingly amended to remove Personal Income tax from the exclusive legislative list.

The Provisions of Section 90 and 92 in our view are meant to divest the local government of authority over tax proceeds. This does not seem to be in consonance with fiscal autonomy inherent in federalism.

The administrative bodies listed above were created to aid tax recovery and general administration throughout the 3 tiers of government however; it is still not clear whether they are federal or state bodies.

The reasons for this confusion are not far-fetched; the constitution reposes the power of taxation on the federal government with the states merely recognized as accessories in the collection/recovery of these taxes. Secondly the enactments that created these bodies are federal enactments as opposed to state legislation.

These indices manifestly testify to the fact that the federal government unjustly dominates tax revenue to the detriment of the states. This negates the principle of federalism.

⁷⁸ Section 91 of PITA.

8. Effect of Taxes and Levies (Approved List of Collection) Decree No. 22 of 1998

The Decree has five Sections and a Schedule which is divided into 3 parts, showing taxes collectable by the Federal, States and Local governments respectively.

For the purpose of clarity, see the comprehensive list below:

8.1. Taxes to be collected by the Federal Government

1. Companies' income tax.
2. Withholding tax on companies, residents of the Federal Capital Territory, Abuja and non-resident individuals.
3. Petroleum profits tax.
4. Value added tax.
5. Education tax.
6. Capital gains tax on residents of the Federal Capital Territory, Abuja, bodies corporate and non- resident individuals.
7. Stamp duties on bodies corporate and residents of the Federal Capital Territory, Abuja.
8. Personal income tax in respect of –
 - (a) Members of the armed forces of the Federation.
 - (b) Members of the Nigeria Police Force;
 - (c) Residents of the Federal Capital Territory, Abuja; and
 - (d) Staff of the Ministry of Foreign Affairs and non-resident individuals.

8.2. Taxes and Levies to be collected by the State Government

1. Personal income tax in respect of-
 - (a) Pay –As-You –Earn (PAYE); and
 - (b) Direct taxation (self-assessment).
2. Withholding tax (individuals only).
3. Capital gains tax (individual only).
4. Stamp duties on instruments executed by individuals
5. Pools betting and lotteries, gaming and casino taxes.
6. Road taxes.
7. Business premises registration fee in respect of –
 - (a) urban areas as defined by each State, maximum of –
 - i. ₦10,000 for registration; and
 - ii. ₦5,000 per annum for renewal of registration; and
 - (b) rural areas –
 - i. ₦2,000 for registration; and
 - ii. ₦1, 000 per annum for renewal of registration.
8. Development levy (individuals only) not more than ₦100 per annum on all taxable individuals.
9. Naming of Street registration fees in the State Capital.
10. Right of occupancy fees on lands owned by the State Government in urban areas of the State.
11. Market taxes and levies where State finance is involved.

8.3. Taxes and levies to be collected by the Local Government

1. Shops and, kiosks rates.
2. Tenement rates.
3. On and off liquor license fees.
4. Slaughter slab fees.
5. Marriage, birth and death registration fees.
6. Naming of street registration fee, excluding any street in the state capital.
7. Right of Occupancy fees on lands in rural areas, excluding any those collectable by the Federal and State Government.
8. Market taxes and levies excluding any market where State finance is involved.
9. Motor Park levies.
10. Domestic animal license fee.
11. Bicycle, truck, canoe, wheelbarrow and cart fees, other than a mechanically propelled truck.
12. Cattle tax payable by cattle farmers only.
13. Merriment and road closure levy.
14. Radio and television license fees (other than radio and television transmitter).
15. Vehicle radio license fees (to be imposed by the local government of the state in which the car is registered).
16. Wrong parking charges.
17. Public convenience, sewage and refuse disposal fees.
18. Customary burial ground permit fees.

19. Religious places establishment permit fees.

20. Signboard and advertisement permit fees.

This Decree is now an Act of the National Assembly by virtue of statutory adaptation and therefore has binding effect.

However, when critically viewed in terms of the constitutionality of this piece of legislation, one wonders whether it has some validity.

Section 1(1) of the Act States as follows –

- Notwithstanding anything contained in the Constitution of the Federal Republic of Nigeria 1979, as amended, or in any other enactment or law, the Federal Government, State Government and Local Government shall be responsible for collecting the taxes and levies listed in Part I, Part II and Part III of the schedule of this Act, respectively.

This in effect excludes the provision of the Constitution generally and particularly relating to provisions relating to taxing powers.

It is submitted respectfully that, this is a product of military dictatorship and has no validity under our constitutional order. Section 1(1) of the Constitution declares that the constitution is supreme and renders any law that is inconsistent with its provisions null and void to the extent of such inconsistency.

The Act is obviously void to that extent and its provision inapplicable. It is hereby recommended that the Act as consolidated under chapter T.2 of the laws of the Federation of Nigeria 2004 be repealed.

It is further submitted that the delineation of taxes to be collected by each tier of government as contained in the schedule to the Act would go a long way in abating conflicts in the imposition and collection of taxes by the 3 tiers of government and should therefore be given constitutional expression instead of the amorphous constitutional order in existence at the moment. It is however noted that there are over 40 taxes and levies under this structure some of which seem as overlap thereby creating room for multiplicity of taxes. This overburdens the taxpayer and is counter-productive while the Federal and some State government have tried to stay within the limits of taxes and levies assigned to them; Local governments have been notorious for imposing several other levies outside the Law. The major source of revenue in Nigeria derives from oil profits. According to the study Group⁷⁹ nearly 70 percent of tax revenue in Nigeria emanates from Petroleum Profit tax. It commented further that since the Federal Government collects this in addition to other taxes, it means that the Federal Government alone collects about 97% of overall government revenue thereby leaving the state & Local Governments to collect the remaining 3%. This concentration of revenue at the Federal tier is a violation of the principles of Federalism which abhors over concentration of fiscal powers at the center. The arrangements under S. 1 of the Decree cannot validly operate under our constitutional regime which makes the constitution supreme. However, because of the confusion surrounding the appropriation of taxing powers among these tiers of government, there is no unanimity on tax administration in the 36 states. While some states maintain the status quo that was obtained during the military regime, others have adjusted in conformity with the provision of the constitution. It is hereby suggested that the constitution should be amended to specify the taxes to be levied and collected by each tier of government rather than giving the Federal Government overbearing powers of levying taxes while the other tiers maintain an unfancied position of collectors for the Federation Account.

It is also suggested that in the exercise of amending the constitution in respect of taxation, the federal government should relinquish some of its tax powers to the states in order to maintain financial balance in conformity with federalism and also enhance accountability in tax administration.

There has been a preponderance of the above opinion over the years as the federal government's monopoly of taxes is viewed as being responsible for exercise of pressure at the center.

The federal government alone collects 99 percent of tax revenue in Nigeria and his concentration also violates the principle of federalism which abhors over-concentration of fiscal powers at the center. The federal government is therefore expected to exercise less influence in state matters relating to taxation in tandem with the principle of fiscal decentralization.⁸⁰

The recommendation above in respect of amending the constitution in line with Taxes and Levies (Approved List of Collection) Decree, 1998 could salvage this situation.

9. Legality and otherwise of Tax Consultants

The mere mention of the phrase "tax consultant" to some people is reminiscent of the days of military dictatorship.

The use of arbitrary force by some State Military Administrators in the collection of taxes via the use of brutal force by military personnel was erroneously couched 'The use of tax consultants'. Before delving into the scope of this subject, it is pertinent at the inception to know the meaning of a consultant and consequently 'Tax Consultant.

9.1. Who is a Consultant?

The Black's law Dictionary does not specifically define the word 'consultant' yet it proffers a definition of the word "consultation" as "the act of asking the advice or opinion of someone (such as a lawyer).⁸¹ The Oxford Essential Thesaurus⁸² on its part defines the word 'consultant' to mean " confer, debate, refer seek information or advice from a person book, watch etc., refer to a person for advice, or opinion etc. ,while the word "consultant" is defined as " Person providing Professional advice, specialist or adviser". Webster's

⁷⁹ NTR, op cit p. 11.

⁸⁰ See Business Day (op.cit.)

⁸¹ Blacks Law Dictionary, 9th Edition P. 335.

⁸² The Oxford Essential Thesaurus. Edited by Alan Spooner. Oxford University Press, P. 81.

Dictionary of the English Language⁸³ so defines the word 'consult' to similarly mean "To seek advice from, to seek information from, to find out etc.", while it defines a 'consultant' is defined on the same page as "Person who gives expert or professional advice. What can be gleaned from the totality of the above definition is that consultation has to do with seeking advice while a consultant is a person who offers such advice in a professional capacity.

There is nothing in the definition of the word 'consultant' that suggests an overt exertion of his skill or professional competence, rather a consultant proffers professional advice on his field of expertise to his client who may or may not use such advice. It is against this background that one faults the appellation 'Tax Consultant' under the military era in the fashion it operated, as an erroneous appellation.

Be that as it may, the private Tax Collectors (referred to then, as tax consultants) beyond the giving of advice did collect tax but most depressingly, they employed repulsive and unorthodox means of collecting such taxes even to the detriment of decent tax administration.

This repugnant practice gained currency during the hay days of Abacha dictatorship⁸⁴ and was a subject of recurring intellectual, legal and economic commentary and condemnation.

As a matter of fact, even the military apologist abhorred the brutality with which the private tax collector terrorized the citizenry by forcefully collecting taxes and sealing businesses in various states. For instance, the then Minister of Finance, Chief Anthony Ani remarked that such reckless abuse of the provision of the law by the use of tax consultants in our tax laws was illegal and must be stopped forthwith as the practice appeared an assault to decent taxation.⁸⁵

Before enquiring into the legality or other wise of the use of tax consultants (so called) In the execution of the primary functions of the various tax authorities, suffice it to state that the use of tax consultants in itself is not illegal, as tax consultants could be used positively by the tax authorities and even the tax payers to get advice on tax matters under section 12(4) FIRS Act.

The tax authorities may use them to provide technical expertise on some areas of taxation or encourage government to train and equip its personnel in such technical areas.

On the other hand, Tax consultants could be engaged by Taxpayers to give them expert advice on assessment of tax or when there is a dispute as to computation or assessment and eventually litigation.⁸⁶

The question here is the legality of extending the latitude of tax consultation into the sphere of tax collection.

To justify the operation of collectors operating in the guise of Tax Consultants, the military in 1993 amended the Personal Income Tax Decree (Now Act) by introducing Section 85B Now S.88(3) PITA which provides that:

The State Board of Internal Revenue, subject to some exemptions notice in the Gazette or in writing authorizes any person to;

- (a) Perform or exercise on behalf of the State board, any function, duty or power conferred on the State Board; and
- (b) Receive any notice or other document to be given or delivered to or in consequence of this Decree or any subsidiary legislation made under it.

The function duties or power conferred on the State Board by PITA 1993 include:

- (a) Ensuring the effectiveness and optimum collection of all taxes and penalties due to Government under the relevant laws;
- (b) Doing all such things that may be deemed necessary and expedient for the assessment and collection of tax.

States therefore relied on the above provision to concede the substantive executive function of collecting tax to tax consultants who employ various illegal and unlawful means to collect taxes from taxable persons. Though the practice was mainly prevalent under the military regime, it is still being practiced in some places, even under this present democratic dispensation, some states e.g. Lagos have retained this practice.

Each state government, including the Federal Capital has sole jurisdiction⁸⁷ to impose personal income tax on individual's resident, or deemed to be resident in its territory. PITA, therefore, does not seek to encroach upon the right of each government to decide upon the level of taxation of those individuals that fall within its jurisdiction.⁸⁸

With the current legislation, it is now illegal to engage tax consultants for the purpose of tax collection.⁸⁹ Although Section 2(2) of the Taxes & Levies Approved List makes it illegal to mount road blocks for the purpose of tax collection, it is a common occurrence in all parts of the federation and yet they have not been prosecuted. Section 3 makes it an offence to levy or collect tax or mount any road block in contravention of Section 2.

10. Objections and Appeals under Personal Income Tax Act

Where a person is dissatisfied with an assessment made by the relevant tax authority as to his liability to personal income tax, he may apply to the relevant tax authority by notice of objection, to review and revise the assessment.

⁸³ The New Websters Dictionary of the English Language, International Edition. P. 210

⁸⁴ Major General Sani Abacha was the former Military Head of State in Nigeria.

⁸⁵ Guardian 5th December 1995 P. 13

⁸⁶ Section 12(4) FIRS Act.

⁸⁷ Ibid., S. 5

⁸⁸ See Willoughby, P.G.; *A Guide to Income Tax and Capital Gains Tax in Nigeria*, pp. 1-3

⁸⁹ Section 1 of the Taxes and Levies (Approved List for Collection) Act 1998 No. 21; Section 12(4) FIRS Act, 2007. S. 1 places the duty of tax collection squarely on the Federal, State and Local governments in respect of matters listed by the Act.

The application shall be made within 30 days of the service of the notice of assessment and shall specify the grounds upon which the objection is based.⁹⁰

The relevant tax authority may upon the receipt of the objection require the person objecting to furnish such particulars and produce books of account that the relevant tax authority may deem necessary, and may also summon any person which it believes may have relevant information concerning the tax liability of the person objecting, to attend and testify on oath or otherwise.⁹¹

Where the person objecting agrees with the relevant tax authority on the reassessed sum, the assessment shall be amended accordingly and notice of the tax chargeable shall be served on the person.⁹² On the other hand, where the applicant refuses to agree with the relevant tax authority on the reassessment, the relevant authority shall give notice of refusal to amend the assessment as desired by the applicant and may revise the assessment to such amount as the relevant tax authority may determine according to the best of its judgment.⁹³

Similarly, an employee subject to tax deduction under the PAYE provided under section 81 of the Act is also availed the opportunity of objecting to his assessment.⁹⁴

Where an applicant fails to agree with the relevant tax authority on the reassessment but is accordingly assessed by the relevant tax authority on the best of its knowledge as stated above, the applicant may appeal 30 days after the date of service of notice of refusal of the relevant tax authority to amend the statement as desired.⁹⁵

Sections 61 to 67 PITA relating to form of appeal have been deleted by S. 15 PITAA. By virtue of this, the Tax Appeal Tribunal created by S. 59(1) FIRS Act is vested with authority to enforce tax. Its jurisdiction, powers and authority are conferred by the fifth Schedule to the Act.

The notice of appeal to be given to the relevant tax authority shall be in the form prescribed under **section 61 (9)** of the FIRS Act;⁹⁶ and addressed to the secretary of the appeal commissioners established under **section 63** of the Tax Appeal Establishment Order, 2009, for the purposes of hearing such appeal.

The secretary of the Appeal Commissioners shall upon the receipt of such notice deliver same to the relevant tax authority and the appeal shall then be listed for hearing by the secretary, pursuant to Order 111 Rules 1 to 5 of the TAT Procedure Rules, 2010.

Note however that the relevant tax authority may agree with the appellant while his appeal is pending by giving notice in writing to the secretary of the body of appeal commissioners and such an appeal shall be deemed to be discontinued.

Under the previous system of appeal, there were two sets of commissioners, namely; the body of Appeal commissioners and the commissioners of the Value Added Tax Tribunal. These have now been replaced by a single Tax Appeal Tribunal created pursuant to Section 59 of the FIRS Act.

10.1. Tax Appeal Tribunal (TAT)

TAT is to exercise the jurisdiction, powers and authority conferred on it by the 5th Schedule to the FIRS (E) Act, 2007.

It shall have power to settle disputes arising from the following taxes;

- i. Companies Income,
- ii. Petroleum Income Tax,
- iii. Personal Income Tax,
- iv. Value Added Tax,
- v. Capital Gains Tax,
- vi. Any other Law contained in or specified in the 1st Schedule to the Act or other laws made from time to time by the National Assembly.

A person aggrieved by an assessment or the Service may appeal to the Tribunal if aggrieved by the non-compliance with the tax laws. An appeal before TAT shall be held in public. Once the judgment is registered in the Federal High Court, with the Chief Registrar, it is as effective as the judgment of the Federal High Court when it is on issues of facts.

Appeals from the decision of the Tribunal shall lie to the Federal High Court on issues of law and then to the Court of Appeal.

10.2. Composition of the Tribunal

A tribunal shall consist of five members called 'Tax Appeal Commissioners' to be appointed by the Minister of Finance.⁹⁷

A chairman for each zone who must be a lawyer with at least 15 years' experience on tax matters shall be appointed to preside over the sittings of the tribunal but in his absence another commissioner may be nominated to preside.⁹⁸

The quorum at any sitting of the Tribunal shall be three members.⁹⁹

⁹⁰ Section 58 (1) PITA (As amended).

⁹¹ Section 58 (2) PITA

⁹² Section 58 (3) PITA

⁹³ See the proviso to subsection (3) above.

⁹⁴ Section 53 (a) PITA

⁹⁵ Section 60 PITA

⁹⁶ Pursuant to the powers given under Section 61, the following were made; The Tax Appeal Tribunal (Establishment) Order, 2009 and the Tax Appeal Tribunal (Procedure) Rules, 2010.

⁹⁷ Paragraph 2 (1) Fifth Schedule to the FIRS (Est.) Act, 2007.

⁹⁸ Paragraph 2 (2 & 3) *ibid.*

A Tax Appeal Commissioner shall hold office for a term of three years, renewable for another term of three years only.¹⁰⁰

10.3. Structure of Tax Appeal Tribunal

Pursuant to Section 1 the Tax Appeal Tribunal (Establishment) Order, 2009 eight zones of the TAT were created for the six geographical zones of Nigeria as well as Lagos and Abuja. To this end, there are eight zones altogether located as follows:

- North East sitting in Bauchi
- North \West sitting in Kaduna
- North Central sitting in Jos
- South West sitting in Ibadan
- South East sitting in Enugu
- South South sitting in Benin
- Abuja sitting in Abuja, and
- Lagos sitting in Lagos

Each of the zones has five Commissioners consisting of retired judges, lawyers, Professors, tax experts, and Chartered Accountants.

There are forty (40) commissioners in all, eight of whom are chairmen.

The Secretary to the Tribunal for each of the zones shall be appointed by the Minister of Finance.¹⁰¹

10.4. Functions of Secretary to the Tribunal¹⁰²

The Secretary, shall, subject to the control of the TAT be responsible for keeping records of the proceedings of the tribunals.

(a) be the head of the secretariat and responsible for:

- (i) the day-to-day administration; and
- (ii) the direction and control of all other employees of the Tribunal.

For the purpose of administrative efficiency, the office of the coordinating secretary has been credited as the central coordinating office to coordinate the secretarial activities of the zones.¹⁰³

All the zonal secretaries are responsible to the coordinating secretary for their general administration.

10.5. Jurisdiction of TAT:¹⁰⁴

The Tribunal has only civil but no criminal jurisdiction. Conferment of both civil and criminal jurisdictions on the Tribunal would have strengthened it and further enhanced the cause of Justice, more so that most tax disputes have both civil and criminal flavors.

It is our humble opinion that lack of conferment of criminal jurisdiction on the Tax Appeal Tribunal (TAT) by the Act is not appropriate since some of the tax defaults are necessarily crimes or tainted with illegality and must be treated one way or the other. For example, cases of tax evasion or where parties are found to have indulged in some illegal terms of settlement to defraud tax authorities.

In view of the fact that the Chairman of the Tax Appeal Tribunal is an experienced legal practitioner and there is other sound, seasoned and competent legal practitioners and Accountants who are members of the Tribunal, there is no justifiable reason why criminal jurisdiction should not have been conferred on the Tribunal.

10.6. Appeals from Decisions of the Service

A person aggrieved by an assessment or demand notice made upon him by the Service may appeal to the Tribunal within 30 days from the date of service of the notice.

The Service also has the right to appeal to the Tribunal if aggrieved by the non-compliance of the taxpayer.¹⁰⁵

All appeals before the Tax Appeal Tribunal shall be held in public.¹⁰⁶

In view of the provisions of section 68 FIRS of (Establishment) Act, the envisaged conflict between the positions of Section 63(6) PITA 1993 which requires hearing in camera by the Body of Appeal Commissioners and this provision is completely resolved.

Section 68(2) of the FIRS (Estab) Act, 2007 states that:

- If the provisions of any other law, including the enactments in the First Schedule are inconsistent with the provisions of this Act, the provisions of this Act shall prevail and the provisions of that other law shall to the extent of the inconsistency be void. The onus of proving that the assessment complained of is excessive shall be on the applicant.¹⁰⁷

⁹⁹ Paragraph 2 (4) *ibid*.

¹⁰⁰ Paragraph 4 Fifth Schedule to the FIRS (Est.) Act, 2007.

¹⁰¹ Paragraph 2 (1) Fifth schedule to the FIRS (Estab) Act. 2007, also section 3 Tax Appeal Tribunal (Establishment) Order 2009.

¹⁰² Paragraph 9 (1a & 1b) Fifth schedule to the FIRS (Estab) Act. 2007

¹⁰³ Paragraph 10 Fifth Schedule, *ibid*.

¹⁰⁴ Paragraph 12 Fifth schedule to the FIRS (Estab) Act. 2007

¹⁰⁵ Paragraph 14 (1 & 2) Fifth schedule to the FIRS (Estab) Act, 2007

¹⁰⁶ Paragraph 15 (5) Fifth schedule to the FIRS (Estab) Act, 2007

¹⁰⁷ Paragraph 15 (6) Fifth schedule to the FIRS (Estab) Act, 2007

An award of judgment of the Tribunal shall be enforced as if it were a judgment of the Federal High Court upon registration of a copy of such award or judgment with the Chief Registrar of the High Court by the party seeking to enforce the award or judgment.¹⁰⁸ Notwithstanding that an appeal is pending, tax shall be paid in accordance with the decision of the Tribunal within one month of notification of the amount of the tax payable.¹⁰⁹

Appeal against the decision of the Tribunal on point of law lies to the Federal High Court.¹¹⁰ While that on facts lie to the Court of Appeal.

An appellant may either appear in person or may authorize one or more legal practitioners to represent him before the Tribunal.¹¹¹

The provisions of any statute of limitation shall not apply to any appeal brought before the Tribunal.¹¹²

The Tribunal may make rules regulating its procedures.¹¹³ To this end the TAT Rules 2010 were made by the Minister of Finance in line with paragraphs 20 and 21 of the 5th Schedule to the FIRS (Estab) Act.

10.7. Powers of the Tribunal

The Tribunal shall have powers to:

- a. Summon and enforce the attendance of any person and examine him on oath.
- b. Require the discovery and production of documents.
- c. Receive evidence on affidavits
- d. Call for the examination of witnesses or documents:
- e. Review its decisions;
- f. Dismiss an application for default or deciding matters *ex parte*;
- g. Set aside any order or dismissal of any application for default or any order passed by it *ex parte*; and
- h. Do anything which in the opinion of the Tribunal is incidental or ancillary to its functions.¹¹⁴

In order to perform these functions, the Tribunal shall be deemed to be a civil court for all purposes¹¹⁵ and each party to an appeal shall bear its own cost.¹¹⁶

An appeal against the decision of the Federal High Court at the instance of either party shall lie to the Court of Appeal.¹¹⁷

In view of the provision of section 251 of the 1999 constitution, all matters listed thereunder are subject to the exclusive jurisdiction of the Federal High Court. Accordingly, paragraphs (a) and (b) reads as follows:

... the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters.

- a. Relating to the revenue of the government of the federation in which the said government or any organ thereof or a person suing or being sued on behalf of the said government is a party.
- b. Connected with or pertaining to the taxation of companies and other bodies established or carrying on business in Nigeria and all other person is subject to federal taxation.

We have already established in our discussion on taxation powers that it is the federal government that has powers to legislate on taxes.

Though the administration of such taxes may be jointly carried out by the state and federal bodies created under the tax laws, part of the proceeds of such taxes – especially personal income tax goes to the federal government.

Such matters would therefore come within the exclusive jurisdiction of the Federal High Court.¹¹⁸ Secondly, **paragraph (b)** also makes taxation of income subject to the exclusive jurisdiction of the Federal High Court.

Suffice it to say that section 1 of the 1999 constitution of the Federal Republic of Nigeria declares its supremacy over any authority in Nigeria; furthermore, sub-section (3) of the section provides that where any other law, is inconsistent with the provision of the constitution, the constitution shall prevail and that other law shall to the extent of its inconsistency be avoid.

The totality of the above constitutional provisions set out above leaves no one in doubt that section 65 of the PITA is inconsistent with the provision of the 1999 constitution discussed above. Consequently, any appeal to High court of the state shall be objected to on the ground of lack of jurisdiction.

It is therefore, my humble suggestion that “High Court” under section 65 should be substituted with “Federal High Court” in conformity with the constitution.

¹⁰⁸ Paragraph 16 (2) Fifth schedule to the FIRS (Estab) Act, 2007

¹⁰⁹ Paragraph 16 (3) Fifth schedule to the FIRS (Estab) Act, 2007

¹¹⁰ Paragraph 17 (1) Fifth schedule to the FIRS (Estab) Act, 2007

¹¹¹ Paragraph 18 (1) Fifth schedule to the FIRS (Estab) Act, 2007

¹¹² Paragraph 19 Fifth schedule to the FIRS (Estab) Act, 2007

¹¹³ Paragraph 20 (1) Fifth schedule to the FIRS (Estab) Act, 2007

¹¹⁴ Paragraph 20 (2) Fifth schedule to the FIRS (Estab) Act, 2007

¹¹⁵ Paragraph 20 (3) Fifth schedule to the FIRS (Estab) Act, 2007

¹¹⁶ Paragraph 22 Fifth schedule to the FIRS (Estab) Act, 2007

¹¹⁷ Paragraph 23 Fifth schedule to the FIRS (Estab) Act. 2007

¹¹⁸ NEPA V Edegenro Unreported suit No. CA/A/66/97

Be that as it may, whether we concede that an appeal against the decision of the body of appeal commissioners shall lie before the State High Court or Federal High Court as the case may be, a party dissatisfied with the decision of the High Court (or Federal High Court) may further appeal to the Court of Appeal and subsequently, before the Supreme Court.

An in depth evaluation of the provisions of the P.I.T.A relating to appeals and objections reveal the following findings:

(i) Section 58 (4) of the Act makes provision for objection to tax by an employee subject to PAYE.¹¹⁹

Unfortunately, there is no provision for a Refund Account, which shall accommodate the funds needed for such returns. Accordingly, many of such refund cases are not properly taken care of. The practice under PITA was that such sums are credited to the taxpayer/claimant's future liability.

11. Problems of Personal Income Tax Administration in Nigeria

In a country like Nigeria where voluntary compliance appears lacking, the administration of Personal Income Tax is bedeviled with a legion of problems, including, but not limited to the following:

11.1. Tax Evasion

Tax evasion occurs when a person deliberately escapes from payment of tax due from him in any fiscal year.¹²⁰

Throughout the history of mankind, taxation has been one of the means by which a society pays for the provision of social amenities and services. Some of these include roads, water supply, hospitals, education and security forces to mention but a few. One would naturally expect that people should pay for these benefits. But on the contrary, the Nigerian experience is that the citizens want good pipe-borne water, nylon-tarred roads, excellent police protection, good education, modern and well-equipped hospitals – all free of charge. To them 'manna' must come from heaven,¹²¹ and the state must play the role of 'Father-Christmas'.¹²² This is a negatives attitude towards their civic responsibilities. Bhatia defines tax evasion as an illegal way of avoiding tax liability.¹²³

Nigerians take delight in indulging in tax evasion of varying degrees. Those who are self-employed, namely the business class, traders, artisans and the professionals are the most wanting in this national malaise. When this group pays tax at all, the assessments are irritatingly below what they should pay. More often than not, this group makes false declarations about their incomes and assets. Engineers become technicians, lawyers become lawyers' clerks, and architects become draughtsmen, while importers and exporters (most of whom are the exploiters of the masses and ruiners of the national economy) become petty traders. Even Landlords would claim to be tenants. Thus, tax evasion is one of the most difficult problems facing the administration of taxes in this country. The prevalence of this social vice could be attributed partly to the defective organization of tax administration and partly to the attitudes of the tax-payers.

Apart from under-declaring their incomes and assets, Nigerian taxpayers evade taxes through refusal to keep proper records, moving from one place to another during assessment, false registration of business by way of attributing them to wives and servants. Whereas the P.A.Y.E. person has lesser chances of evasion in Nigeria, it is a common-place to see well-to-do self-employed individuals rushing to pay taxes to Local Government Councils in order to evade paying higher taxes to the State Board of Internal Revenue in urban areas. It is gratifying, however, to note that the P.A.Y.E. system has been found to be more satisfactory among the working class whose taxes are collected at source by their employers.

Other ingenious devices of some self-employed persons include, returning of unclaimed tax assessment forms, making false declarations and employing qualified accountants to show that they run their businesses at a loss. Some self-employed individuals at times refuse to disclose their personal identities such as names and addresses. They also use fictitious names as distributors to obtain essential commodities from wholesalers. There is also a deliberate or willful failure to keep records of sales and purchases for inspection when required to do so by tax officials. Dubious means are also employed to win contracts without disclosing their true values.

The present division of taxing powers between the federal and state governments also compounds the problems of tax administration. Under the present structure, a limited liability company pays income tax not to the State but to the Federal Government. That being the case, it has become a standard practice among some businessmen to convert their businesses to limited liability companies with the

¹¹⁹ See also Section 83 of the Act.

¹²⁰ The differences between tax evasion and tax avoidance is that in the case of the latter (avoidance), the business has been so arranged as to deceive the Revenue Authority into under-assessing, or exempting the owner from taxation on income accruing there from. In the case of the former (tax evasion), even though the business is not organized to attract less or no tax, the owner accepts liability under the existing tax structure he nevertheless under-declare his income or even after being properly assessed he ignores the payment of tax due from him.

¹²¹ Exodus 16:15 record this as a kind of bread that fell from heaven for the children of Israel all the year long and was sufficient for everyone's need while they journeyed from Elim through the desert into the promised land. It also signifies physical, heavenly reward or eternal life.

¹²² <https://en.m.wikipedia.org/.../Father-Christmas-...>; defines Father Christmas as a Christmas gift bringer. The story originated from the Bishop of Turkey, St. Nicholas whose father died leaving him a lot of wealth while he was still very young. He dropped three bags of gold through the open window of a poor man to save his daughter. He is regarded as a patron saint of children and gives them gifts at Christmas. He is usually depicted as an old man with white beard and grey hair and wears red attire.

¹²³ Bhatia, H.L., Public Finance. 5th Edition, London. Oxford University Press, 1980 p. 4

sole aim of evading state taxes upon the realization that it is much easier to evade federal taxes since the federal tax officials are few and thinly spread all over the country.

11.2. Tax Avoidance

Tax avoidance is a device whereby a man arranges his business in such a way as to attract less tax under the existing tax rates. To qualify as avoidance, the arrangement must be legally done to take advantage of legally provided reliefs or incentives. Where it is based on a blatant lie or make belief, then it is not an avoidance but an evasion. For instance, a man may convert his one-man business into a partnership in which those of his children who are minors (and, therefore, not taxable) are made partners. Single young men and women suddenly become married with no fewer than four children even if they married only six months ago or are not married at all. The names of parents are resurrected and claims made on their behalf as dependent relatives.

Some astute avoiders, in an attempt to conceal the size and identity of their businesses, take to enterprises which need no permanent premises. Examples of such enterprises include the running of commercial vehicles, Keke Napep or Okada riders. In big towns and cities where taxis ply daily far away from their owners' premises, tax avoidance on incomes realized from their commercial operations is on a scandalous scale. 2011 PITA Amendment has now tried to reduce all these over saturated reliefs by creating a consolidated relief of ₦200,000. The intention may be to dispense with all the other reliefs, since it provides that after deduction of that relief, the remaining money should be dealt with under the tax table in schedule 6.¹²⁴ In the face of its failure to delete S. 33 of the principal Act, a recalcitrant tax payer may still choose to use the section to get further relief. Although that is not the intention of the legislators, the rule of construction is quite instructive that a document will be construed *contra proferentem* against a maker who drafts with ambiguity. Where a person takes advantage of the reliefs, exemptions or loopholes created by the Act to reduce his tax liability, he is said to have avoided tax. This is tax planning and is not a crime. Where he tells lies or creates a fictitious situation to achieve such an end, he is evading tax and commits a crime.

As an anti-avoidance measure, section 17 PITA provides that,

- Where a tax authority is of the opinion that any transaction which reduces or would reduce the amount of any tax payable is artificial or fictitious, the tax authority may disregard the dispositions or direct that such adjustment shall be made as respects the income of an individual, an executor or a trustee as the tax authority considers appropriate so as to counteract the reduction of liability to tax affected, reduction or which would otherwise be affected by the transaction.

Transactions between related persons or persons who are controlled by another are deemed to be artificial or fictitious under S. 17(3)(b) PITA.

11.3. Corruption

The efficacy of any tax system is not just a matter of tax laws, but depends on the efficiency and integrity of tax administration. In many states of the Federation the low revenue yield is due to failure to enforce tax provisions on account of poor or deliberate action of Revenue staff. No system of tax laws, however carefully conceived, is water-proof. A tax administration consisting of persons of high integrity is an asset for obtaining maximum revenue, and exploiting fully the taxation potential of this nation.

On many occasions tax officials and their agents have been found guilty of embezzlement, and /or misappropriation of funds. The morale and efficiency of the revenue department must be seen to be 'above board.'¹²⁵

There are also some 'civil servant-businessmen' who evade taxes. These are the highly placed civil servants by profession but engage in commercial activities like haulage transportation, contracts and general trading. They use their official position to evade tax and in some cases avoid it completely.

Some tax officials are equally guilty of aiding and abetting. They are in the habit of making low assessments of the income of certain individuals who are ready to bribe them with money or do it to gratify friends, relatives or even bosses. Thus, the dishonesty and corruption which have infiltrated the whole of the civil service in Nigeria has brought to bear deficiency in the country's tax system. Sometimes the bulk of corruption stops at the table of employers who deduct under a pay as you earn system and fail to remit to the relevant tax authority. Sometimes the amounts unremitted can run into billions of naira.

11.4. Lack of Proper Legal Frame-work

Since tax is an imposition by law, if the legal framework is defective, perfection can hardly be achieved in its collection. Collection of taxes, to a great extent, relies on courts of law which normally adjudicate between tax authorities and tax-payers. Where there are many loopholes in taxing statutes, too much energy and money will be dissipated in litigation on interpretation of ambiguous clauses in the taxing statutes instead of collection. There is a need for constant review of tax laws. The gap between 1961 ITMA and 1993 PITA as well as the PITA amendment of 2011 is too long for review of financial matters. Where gaps are noticed, machinery should be set in place to rectify it through the relevant amendment. For example, five years have passed since the amendment of 2011 and yet the amount of consolidated allowance remains unsettled. While the Schedule to the Act says it is ₦200,000 plus 20% of gross

¹²⁴ S. 5 PITAA amends S. 33(1) as follows; (1) There shall be allowed a consolidation relief allowance of ₦200,000 subject to a minimum of 1% of gross income whichever is higher plus 20 percent of the gross income and the balance shall be taxable in accordance with the income table in the sixth schedule to this Act.

¹²⁵ For a detailed discussion on the advantages of improving the morale of revenue officials, see Farioletti, M., *Problems of Tax Administration in Latin America*, (New York: John Hopkins Press), 1965, p. 112

income,¹²⁶ section 5 which amends S. 33 says it is 200,000 or 1% of gross income whichever is higher,¹²⁷ plus 20 percent of gross income.

It is also still unclear whether the tax payer is only entitled to enjoy only the consolidated relief or can still use the reliefs provided by S. 33 PITA since the section has not been deleted as it relates to other reliefs. Another area of conflict is the position of the Tax Appeal Tribunal created by S. 59 FIRS Act and the Federal High Court a creation of S. 251 of the Constitution of the Federal Republic of Nigeria. A move for a Constitutional amendment to properly incorporate the TAT whether as a first instance ADR mechanism or a Tribunal before going to the Federal High Court would solve the situation.

11.5. Dichotomy in Taxes

The present dichotomy between the Federal and State Governments in tax administration encourages tax evasion. As earlier stated, it has now become fashionable for business tycoons to convert their personal firms to limited liability companies, not with the intention of gaining the benefits of corporate personality but with a view to evading payment of taxes. This situation has been aggravated by the fact that the federal machinery for collecting company taxes are seen to be very inefficient. The staff are too few to cope with the volume of work.

The dichotomy further reveals fiscal issues about who keeps what is recovered or collected as taxes, since PITA is a federal tax but collected on residence basis by states of residence, there is a question as to whether the tax so collected is retained and used by the collecting state or paid into the federation account pursuant to S. 162 of the Constitution of the Federal Republic of Nigeria.¹²⁸

11.6. Illiteracy

Another problem of tax administration is the absence of large literate population in Nigeria which hinders effective collection of taxes.¹²⁹ Administrative compliance by the illiterate masses who constitute the majority of tax-payers is very low. This illiteracy which generates low level of compliance often brings about lack of understanding of the importance of taxation. In effect, the widespread illiteracy in the country among tax-payers more often than not results in frequent failure to abide by instructions from tax authorities about tax collection. Although e-tax is a novel idea to illiterates, it could be a frustrating development.

11.7. Lack of Qualified Personnel

If the goals and objectives of increase in revenue generation for the country are to be achieved, both the federal and state governments must place greater emphasis on tax staff development. Raising of correct assessment, and prompt collection of tax arising therefrom, to a great extent, depends, among other things, on the quality and efficiency of the state of Revenue Departments.

At present, there is acute shortage of qualified and well trained personnel in the Revenue Offices throughout the Federation. Collections are always delayed resulting in huge arrears of uncollected taxes. Other consequences of staff shortage are late awareness of assessment forms, assessment notices, demand notices and other correspondences emanating from Revenue Divisions which are unduly delayed before they are dispatched. This further results in apathy on the part of the tax-payers in submitting their completed returns or paying their taxes.¹³⁰ Many Revenue Authorities do not have full-time instructors and therefore, newly employed staff are thrown on the job without any formal training, thereby giving rise in commission of errors and loss of revenue to the government. With proper arrangement, the Chartered Institute of Taxation of Nigeria (CITN) could be called upon to fill in this gap by providing the requisite training or advice. Although tax consultants have now been rendered illegal for collection by Section 2 of the Taxes and Levies Approved List for Collection 1998 as well as S. 12(4) FIRS Act, 2007, they can be called upon to render advice where necessary.

11.8. Population Mobility

As a result of rapid development in urban areas to the detriment of rural areas, urban cities like Abuja and Lagos are now becoming centres of attraction for rural dwellers. This type of exodus constitutes a great obstacle to assessment and collection of taxes. Some tax-payers are even in the habit of frequently changing their residential addresses, and in the circumstances make it difficult for tax officers to identify their residences and/or offices thereby creating room for tax evasion. Terrorism and militancy of the recent past manifesting in the North Eastern Nigeria and the Niger Delta have caused a lot of people to change their residence from those areas thereby making it difficult or even impossible to collect their taxes thereby causing loss to Nigeria.

11.9. Lack of Co-operation from Tax-payers

Many tax-payers are hostile to tax collectors. In fact, tax collectors are often regarded as enemies. Letters and Forms from Tax Departments are treated with disregard and many of the tax-payers especially in rural area are not willing to visit tax offices for

¹²⁶ Sixth Schedule to PITAA as reflected by S. 34 PITAA says, a consolidated relief allowance shall be granted on a flat rate of ₦200,000, plus 20 percent of gross income.

¹²⁷ New Section 33 as amended by Section 5 PITAA.

¹²⁸ This has been answered in our earlier discussion of ownership of funds collected by States.

¹²⁹ Ibrahim Yusuf. The Impact of Tax Management on Literacy Development in Kano State. Available online at www.academia.edu/The_impact_of_tax_management...

¹³⁰ Rabi, S. A; *Personal Income Tax in Nigeria* (Supra), p. 45

relevant information on taxes. Arrangements for installment payments fail on several occasions while some cheques issued for payment are sometimes dishonored for lack of sufficient fund in the tax-payer's account.

11.10. Government Expenditure Programme

The benefit to be derived by the people from the tax collected is another important factor. People in many towns and villages tend to evade taxes because they feel that the taxes they pay are not used for their interests since essential amenities are almost absent. People experience inadequacy of water supply and electricity, total lack of drugs in government hospitals, including bad and ineffectively maintained roads. Because tax-payers are very sensitive they tend to pay taxes on "*quid pro quo*" basis, usually relating the taxes they pay to the social benefits and amenities they receive.

It is very immoral to see that while communities who pay taxes have no drinking water, the ruling class or those in political positions go on to acquire new estates, fleet of cars and aeroplanes.

11.11. Lack of Strict Adherence to Canons of Taxation

Even though it is difficult to state with any degree of conviction the general principles underlying a country's system of taxation in that they are the outcome of numerous decisions taken in the context of varying circumstances over a period of time, Nigeria does not strictly adhere to some of the well-known canons of taxation. One of these canons or principles is that the burden of taxation should be spread as fairly as possible having regard to ability to pay, a criterion which should take account of family circumstances as well as of wealth. In this country, individuals such as peasant farmers in low income bracket who ironically enjoy least government amenities pay more taxes on the average than the well-to-do businessmen in urban centres. Town dwellers more often than not evade taxes.

On fairness of taxation, the British Royal Commission had this to say;¹³¹

- The effective rate of tax upon the income of the individual tax-payer, is that, the amount of tax he pays divided by his total income, increases as the income increases. By this means the burden of tax is so distributed that the owner of the larger income contributes a larger proportion of it in tax than the owner of the smaller income. If taxation becomes wholly confiscatory, it would sap incentive, offer temptation to avoidance and evasion and remove a fruitful source of private saving.

11.12. Complex Tax System

Tax should be simple to understand. Adam Smith put the principle thus:

- The tax which each individual is bound to pay ought to be certain and not arbitrary. The form of payment, the manner of payment, the quantity to be paid all should be clear and plain to the contributor and every other person.¹³²

In Nigeria, taxes are complicated and many. For example, poll tax, development, cattle tax, purchase tax, investment tax, etc. are all levied at one and the same time without enough publicity. The Taxes and Levies Approved List for Collection lists so many taxes some of which seem to collide.

11.13. Involvement of Local Government Councils

One major defect of the personal income tax system in Nigeria is the involvement of local government councils whose staff in most cases are untrained and, therefore, not competent in tax administration. About 80% of the taxable population who come under the poll or community tax fall within the jurisdiction of local authorities. Defective assessment and inefficient collection machinery at the local government level is one of the principal causes of under-assessment and poor collection performance. Only about three – fifths (3/5) of the taxes assessed are actually collected.¹³³ Another strange type of levy collected by these people is the vehicle or road tax which they compel travelers to pay as many times as they use roads in that area. Sometimes nails are fixed on the road to prevent passage until the money is paid. No receipt or sticker is issued for this and so a person is liable to pay again if he has cause to return through the same route. This is obviously an extortion.

12. Contributions of Personal Income Tax to the Nigerian Economy

The primary economic goal of any country particularly developing nations is a substantial increase in its economic growth so that a high level of per capital income could be attained within the shortest possible time.

The criteria for the attainment of this goal include provision of additional government services, especially in the field of education, public health and transport which invariably will generate growth in other sectors.

Government normally raises funds for execution of social projects internally through borrowing or aid, creation of money, raising of loan domestically through the use of treasury bills, taxation, and private savings. Of all these sources, taxation is considered as the best primary mechanism for raising revenue. In advanced countries more than 50% of their revenue is derived from this source. Over reliance on oil prevails in Nigeria. Now that the oil price is dwindling, there is a call to begin to diversify and look at other areas that were hitherto ignored such as taxation.

¹³¹ See the Second Report of the Royal Commission, England, on the Taxation of Profits and Income, 1954.

¹³² Ibid

¹³³ Adedeji, A., *The Nigeria Federal Finance*, (Ibadan: OUP, 1965), p. 112

13. Conclusion

Personal Income Tax makes people to be cognizant of their civic responsibility towards government. It serves as the most important mechanism for removal of inequality among individual citizens through redistribution of wealth. It also serves as a means of giving incentive to people, especially subsistence farmers to participate actively in the commercial sector by selling large portion of their produce or hiring their services instead of relying entirely on subsistence farming. Taxing statutes in Nigeria give agriculture more exemptions from taxation in order to boost food production.

Taxation being a compulsory levy by public authority on its citizens, is one of the most volatile subjects in governance both in the developing and developed nations especially since nothing is received directly in return.

According to most commentators, the Nigerian tax system favours the federal government, which controls the buoyant tax components while the lower tiers have jurisdiction over the less profitable ones.

It must be noted that whereas it is the exclusive preserve of the federal government to legislate on imposition of taxes including Personal Income Tax,¹³⁴ same cannot be said of collection of taxes where by an Act of the National Assembly a state has been empowered to collect or administer such taxes, e.g., personal Income Tax. The processes and modalities for such collections fall within concurrent legislative powers of both the state and the federal government.¹³⁵ Suffice it to say that the States have not only been empowered to collect and administer personal income tax but also to own and utilize same. This is in contradistinction with VAT where states are mere 'agent-collectors' collecting and remitting all to the federal government through the Federal Inland Revenue Service.¹³⁶

There are two separate Consolidated Revenue Funds: that of the federation and one for the states under sections 80(1) and 120(1) of the constitution, respectively. Whereas funds in Consolidated Revenue Fund of the Federation exclusively belong to the federation and is administered by the National Assembly to meet the administrative and other needs of the federal government and its agencies as they deem fit by virtue of sections 80-87 of the Constitution, funds in the Consolidated Revenue Fund of the state belongs to the state and is similarly utilized by the state, under the exclusive appropriation of the State House of Assembly, to meet its needs under sections 120-127 of the Constitution.

In the light of the above, it is clear that the intention of the Constitution was to create a division in the administration and collection of taxes between the federal and state governments. Therefore, this division must be respected and stakeholders ought to work together to improve the revenue generating potentials of the government as well as encourage tax compliance from the citizenry and residents of respective states.

Although personal income tax is still a primary instrument for transferring funds from individuals to government for developmental purposes, it constitutes an insignificant percentage of revenues of the States of the Federation.

Personal Income Tax can serve as an instrument of economic, social and political development if properly harnessed. However, because of the inherent problems of administration in terms of assessment, collection, and accountability, the contribution of personal income tax to the Gross Domestic Product (GDP) has been very insignificant. It is hoped, however, that the incorporation and application of the foregoing recommendations into the tax system in Nigeria would go a long way in making personal income tax realize its primary objectives of achieving egalitarianism, increase in local production, promotion of employment opportunities and inculcation of civil responsibilities among the patriotic citizens of Nigeria.

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- vi. Ibid.
- vii. See James, S. et al (eds.), *The Economics of Taxation*, (Oxford: Philip Allan Publishers Ltd., 1978), p. 1
- viii. Marie Antoinette. America and France Revolutionary Twins? www.pbs.org/.../revolution/america_france_...
- ix. (1900) 4 TC 265 at p. 295
- x. (1925)10 TC 133
- xi. www.oxforddictionaries.com/definition
- xii. Allan, A; *Theory of Taxation*, (London: Macmillan, 1971), p. 24
- xiii. Roosevelt, F. D. in a speech at Worcester, Mass. October 21, 1936, quoted by Simon James in *The Economics of Taxation* (op cit), p. 6
- xiv. Agyei, A. K. *Principles of Personal Income Taxation in Nigeria*, (Ibadan: University Press, 1983), p. 2
- xv. See Philips, A.: *Nigerian Journal of Economics and social studies*, Vol. 10 (No. 3), 1968, p. 321
- xvi. Ibid.
- xvii. S. 4 of the Personal Income Tax Law, Cap. 91 of the Lagos State; S. 3 of the Income Tax Law (Western Nigeria), 1957; S. 3 of the Northern Nigeria Personal Income Tax Law 1962; and S. 3 of the Finance Law (Eastern Nigeria) 1962, provide that

¹³⁴ See item 59 of the exclusive legislative list, part I of the Second Schedule to the Constitution of the Federal Republic of Nigeria

¹³⁵ See item 7 of the concurrent legislative list, part II of the Second Schedule to the Constitution of the Federal Republic of Nigeria.

¹³⁶ See section 13 of the Value Added Tax Act.

the Revenue Departments were responsible for the assessment and collection of, and accounting for the taxes of all taxable persons.

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- xix. Agbonika, J.A.A., *Problems of Personal Income Tax in Nigeria*. Ababa Press Ltd, Ibadan 2012, pp. 17 – 19
- xx. www.investopedia.com/.../management-by-objectives-...
- xxi. Whittam, R.H. (op cit), P. 128
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- xxiii. Ibid., p. 133
- xxiv. This is in line with the view expressed by Adam Smith in 1776 that “every tax ought to be so contrived to take out of pockets of the people as little as possible over and above what it brings into the public treasury of the State.”
- xxv. *An African Survey*, (London: OUP, 1957), p. 662, Also see Johnstone, H.A.S. (1967) *The Fulani Empire of Sokoto*. Oxford University Press, Ely Honx, p. 9
- xxvi. Whittam, R. H., *Ife Essays in Administration*, 1975, p. 11
- xxvii. See Rabi, S.A., *Personal Income Tax in Nigeria: Procedures and Problems* (Lagos: OUP, 1981), p. 15
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- xxxiii. Ibid.
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- xxxix. *Personal Income Tax Amendment Act 2011*. This did not only change the tax table but also tried to consolidate reliefs to be enjoyed by individuals. It however failed to delete section 33 of the principal legislation dealing with reliefs and deductions. It could have the misconceived effect of granting double relief first under the principal legislation and then under the 2011 amendment.
 - xl. *Federal Inland Revenue Service (Establishment) Act, 2007*.
 - xli. Kehinde F. *Modern Practice Journal of Finance and Investment Law*, (op.cit) p. 269.
 - xlii. Ibid.
 - xliii. Section 4(3) 1999 Constitution.
 - xliv. Ibid, Section 4(4) (a).
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 - xlvii. Fubura, M.T. *Analysis of State Taxing Powers*, in Akanle, O. (ed) *Tax Law and Administration NIALS*, quoted in Abdulrazaq, M.T. (ed) *C.I.T.N. Nigerian Tax Guide and Statutes*, 1st edition. P. 654.
 - xlviii. Abiola S. *Division of Taxing Powers*, in Abdulrazaq M.T. (ed) *C.I.T.N. Nigerian Tax Guide* (Lagos: 2002) P. 654-656.
 - xlix. Emphasis in the above provisions are Mine
 - l. Abiola Sanni (Loc. Cit)
 - li. Ibid.
 - lii. For details on these bodies, see *FIRS Annual Report, 1996* p. 8.
 - liii. PITA 1993 (as amended).
 - liv. The FBIR is repealed pursuant to Section 62(1) and (2) FIRS Act 2007 while FIRS is established as a replacement pursuant to Section 1 FIRS Act.
 - lv. Section 86(2) (3) (4) & (8) PITA.
 - lvi. Section 86 (9) PITA.
 - lvii. Section 88(1) PITA 2004.
 - lviii. Sections 89 and 90 PITA.
 - lix. Section 88 PITA.
 - lx. Section 108(1) (f) and Section 2(1) (b).
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 - lxii. Agbonika, J.A.M., and Agbonika, J.A.A., “Fiscal Federalism and the Challenges of Administration of Personal Income Tax in Nigeria” in *Topical Issues on Nigerian Tax Laws and Related Areas* ed Agbonika J.A.A., Ababa Press Ltd, 2015 pp. 409 – 435.
 - lxiii. Section 162 of the 1999 Constitution of the Federal Republic of Nigeria.
 - lxiv. Sections 80(1) and 120(1) of the 1999 Constitution of the Federal Republic of Nigeria.

- lxv. Section 162(1) of the 1999 Constitution of the Federal Republic of Nigeria.
- lxvi. Section 162(6), *ibid.*
- lxvii. See sections 80-87 of the Constitution.
- lxviii. See sections 120-127 of the Constitution.
- lix. Section 162 of the Constitution of the Federal Republic of Nigeria.
- lxx. See Section 120(2) which provides that “No moneys shall be withdrawn from the Consolidated Revenue Fund of the State except to meet expenditure that is charged upon the Fund by this Constitution or where the issue of those moneys has been authorized by an Appropriation Law, Supplementary Appropriation Law or Law passed in pursuance of section 121 of this Constitution.”
- lxxi. (2002) 6 NWLR (Pt. 764) 542.
- lxxii. Section 163(a)
- lxxiii. Section 163(b)
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- lxxxi. *Blacks Law Dictionary*, 9th Edition P. 335.
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- lxxxiii. *The New Websters Dictionary of the English Language, International Edition*. P. 210
- lxxxiv. Major General Sani Abacha was the former Military Head of State in Nigeria.
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- lxxxix. Section 1 of the Taxes and Levies (Approved List for Collection) Act 1998 No. 21; Section 12(4) FIRS Act, 2007. S. 1 places the duty of tax collection squarely on the Federal, State and Local governments in respect of matters listed by the Act.
- xc. Section 58 (1) PITA (As amended).
- xc. Section 58 (2) PITA
- xcii. Section 58 (3) PITA
- xciii. See the proviso to subsection (3) above.
- xciv. Section 53 (a) PITA
- xcv. Section 60 PITA
- xcvi. Pursuant to the powers given under Section 61, the following were made; The Tax Appeal Tribunal (Establishment) Order, 2009 and the Tax Appeal Tribunal (Procedure) Rules, 2010.
- xcvii. Paragraph 2 (1) Fifth Schedule to the FIRS (Est.) Act, 2007.
- xcviii. Paragraph 2 (2 & 3) *ibid.*
- xcix. Paragraph 2 (4) *ibid.*
- c. Paragraph 4 Fifth Schedule to the FIRS (Est.) Act, 2007.
- ci. Paragraph 2 (1) Fifth schedule to the FIRS (Estab) Act. 2007, also section 3 Tax Appeal Tribunal (Establishment) Order 2009.
- cii. Paragraph 9 (1a & 1b) Fifth schedule to the FIRS (Estab) Act. 2007
- ciii. Paragraph 10 Fifth Schedule, *ibid.*
- civ. Paragraph 12 Fifth schedule to the FIRS (Estab) Act. 2007
- cv. Paragraph 14 (1 & 2) Fifth schedule to the FIRS (Estab) Act, 2007
- cvi. Paragraph 15 (5) Fifth schedule to the FIRS (Estab) Act, 2007
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- cix. Paragraph 16 (3) Fifth schedule to the FIRS (Estab) Act, 2007
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- cxiii. Paragraph 20 (1) Fifth schedule to the FIRS (Estab) Act, 2007
- cxiv. Paragraph 20 (2) Fifth schedule to the FIRS (Estab) Act, 2007
- cxv. Paragraph 20 (3) Fifth schedule to the FIRS (Estab) Act, 2007
- cxvi. Paragraph 22 Fifth schedule to the FIRS (Estab) Act, 2007
- cxvii. Paragraph 23 Fifth schedule to the FIRS (Estab) Act. 2007

- cxviii. NEPA V Edegbenro Unreported suit No. CA/A/66/97
- cxix. See also Section 83 of the Act.
- cxx. The differences between tax evasion and tax avoidance is that in the case of the latter (avoidance), the business has been so arranged as to deceive the Revenue Authority into under-assessing, or exempting the owner from taxation on income accruing there from. In the case of the former (tax evasion), even though the business is not organized to attract less or no tax, the owner accepts liability under the existing tax structure he nevertheless under-declare his income or even after being properly assessed he ignores the payment of tax due from him.
- cxxi. Exodus 16:15 record this as a kind of bread that fell from heaven for the children of Israel all the year long and was sufficient for everyone's need while they journeyed from Elim through the desert into the promised land. It also signifies physical, heavenly reward or eternal life.
- cxxii. <https://en.m.wikipedia.org/.../Father-Christmas-...>; defines Father Christmas as a Christmas gift bringer. The story originated from the Bishop of Turkey, St. Nicholas whose father died leaving him a lot of wealth while he was still very young. He dropped three bags of gold through the open window of a poor man to save his daughter. He is regarded as a patron saint of children and gives them gifts at Christmas. He is usually depicted as an old man with white beard and grey hair and wears red attire.
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- cxxiv. S. 5 PITAA amends S. 33(1) as follows; (1) There shall be allowed a consolidation relief allowance of N200,000 subject to a minimum of 1% of gross income whichever is higher plus 20 percent of the gross income and the balance shall be taxable in accordance with the income table in the sixth schedule to this Act.
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- cxxxi. See the Second Report of the Royal Commission, England, on the Taxation of Profits and Income, 1954.
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- cxxxi. See item 59 of the exclusive legislative list, part I of the Second Schedule to the Constitution of the Federal Republic of Nigeria
- cxxxi. See item 7 of the concurrent legislative list, part II of the Second Schedule to the Constitution of the Federal Republic of Nigeria.
- cxxxi. See section 13 of the Value Added Tax Act.