



QUALITY EDUCATION FOR DEVELOPMENT

EDO UNIVERSITY LAW JOURNAL

VOL. 1, 2018

CONTRIBUTORS AND ARTICLES

Beyond Sentencing: An Assessment of the Theories of Punishment Under Nigerian Criminal Law <i>Omolade Oniyinde Ph.D, Preseley Efe Idahosa, Taiye Joshua Omidoyin</i>	1-14
An Analysis of Municipal and International Taxation of NIGERIA Entertainers and Sportsmen <i>E.A. Adesina, Olufemi Abifarin Ph.D, J.O. Olatoke Ph.D SAN and N.O.A. Ijaya,</i>	15-44
A Comparative Analysis of Control of Public Funds by the Legislature. <i>Banji Aderemi Ph.D, R. O. Moses-Oke and Funmilola Akeremi</i>	45-80
Examination of Corporate Best Practices in Multi-Generational Family Businesses in Nigeria and Trans-Generational Transfers <i>Ngozi Oluchukwu, Odiaka.</i>	81-110
Dissolution of Statutory Marriage in Nigeria; Always Remainder One <i>Osaghale D. M. Ph.D</i>	111-135
Doctrine of Priority of Estate and It's Application to Specific Statutory Land Transactions in Nigeria <i>Dr. Solomon O. Afolabi, Ph.D</i>	136-158
Sexual Harassment: A Commentary on the Position of the Law in Nigeria <i>Olanrewaju Aladeitan and Everate Ikoko</i>	159-174
A Critical Analysis of the Edo State Private Properties Protection Law 2017. <i>Oaihimire Idemudia Edetalehn</i>	125-188
A Critical Appraisal of the Merits and Demerits of Litigation AND Arbitration in Nigeria's Justice Delivery System. <i>Uwakwe Abugu^{Ph.D} & Ikechukwu Ogu Ph.D</i>	189-217
The Fulani Herdsmen as Terrorists Within Nigerian Law: An Exposition <i>N.O.A. Ijaiya Ph.D, E. A. Adesina & Olufemi Abifarin Ph.D.</i>	218-247
Appraisal of Nigeria Communication Policy: Legal and Political Permutations <i>Andrew Asan Ate Ph.D, Moses Ogunade.</i>	248-261
The Legal Framework for Tax Dispute Resolution <i>Idachaba Martins Ajogwu</i>	262-282
Legal Framework Governing Relationship Between Oil Industry and Host Communities in Nigeria: An Appraisal. <i>Florence U. Masajuwa Ph.D</i>	283-314
Governmental Intervention in Corporate Governance of Corporations, A Panacea to Corporate Failures <i>Obasi Maurice N. Ph.D</i>	315-330
Examination of the Legal Frame Work of Tax Incentives in Nigeria. <i>Abanikanda Happiness Wuraola AND Folarinde Ayobami</i>	331-349
Legal Environment for Privatization in Nigeria* <i>Shittu A Bello and Ayodeji Bello.</i>	350-365
Recognition and Enforcement of Arbitral Award: Football Arbitration in Perspective <i>Olowononi, Emmanuel Oluwafemi</i>	366-384
An Assessment of the Nigerian Pension Regime <i>Simon Imoisi Ph.D</i>	385-411

A PUBLICATION OF FACULTY OF LAW EDO UNIVERSITY IYAMHO, EDO STATE, NIGERIA

EDO UNIVERSITY LAW JOURNAL

This Journal may be cited as

EUL J

VOL 1, 2018

**A PUBLICATION OF THE FACULTY OF
LAW UNIVERSITY IYAMHO**

EDO STATE, NIGERIA

EDITORIAL BOARD

EDITOR-IN-CHIEF

F.U. Masajuwa PhD.

EDITORS

Professor A.O Ekpu
Olufemi Abifarin PhD.

EDITORIAL ADVISORY BOARD

Professor Joraimite George
Faculty of Law, University of Namibia, Windhoek.
Professor Adamu Ibrahim
Faculty of Law, Kampala International University, Uganda.
Professor Charity U. Emahviwe
Oba Erediawa College of Law, Igbinedion University, Okada.
Professor A.D. Badailki
Faculty of Law, Ambrose Alli University, Ekpoma.
Prof. Abebe Assefa
Faculty of Law, University of Gondar, Ethiopia
Professor Nathaniel Inegbodion
Faculty of Law, University of Benini.
Professor Ayo Atsenuwa
Faculty of Law University of Lagos.
Professor Dominic Assada
Faculty of Law, University of Jos.

FROM THE DESK OF THE EDITOR-IN-CHIEF

This is the first edition of this Journal by the faculty Law Edo University Iyamho and we are optimistic that it will be a continuous exercise so as to promote legal scholarship. We are grateful to God Almighty for bringing to reality the aspiration of the members of the faculty. We are equally grateful to the Vice Chancellor Engr. (Professor) Emmanuel O. Aluyor and his management team for the moral and financial support given to the faculty for the publication of this maiden edition.

We also want to appreciate the assistance and cooperation of the external assessors who sacrificed valuable time in vetting and editing the articles and for making meaningful contributions that enhance the quality of the journal.

Finally, we express our gratitude to all the contributors and members of editorial board whose efforts put together make this publication a reality.

Dr. F.U. Masajuwa
Ag Dean and Chairman
Editorial Board

AN ANALYSIS OF MUNICIPAL AND INTERNATIONAL TAXATION OF NIGERIA ENTERTAINERS AND SPORTSMEN

By

E.A. Adesina, Department of general studies Lagos state polytechnic, Ikorodu, Lagos. Olufemi Abifarin Ph.D College of Law Joseph Ayo Babalola University Ikeji- Arakeji, J.O. Olatoke Ph.D SAN Faculty of Law University of Ilorin and N.O.A Ijayã, Faculty of Law Unilorin, Ilorin

Abstract

This paper looks at the entertainment industry in Nigeria and its tax potentials. It also looks at the sport industry which is also a form of entertainment. The entertainment industry including Sport has become a money spinner for the participants and the government at the federal, state and local level should work-out a way to tap from this industry in form of tax that will eventually be used to develop infrastructure. Each participant in the industry is expected to have a tax identification number (TIN) so as to make it easy to assess and collect the tax. The paper concludes that if the tax potential of the industry is fully explored, Nigeria will not have problem of financing her budget. Both local and foreign loans will be minimised or out rightly avoided if we manage the tax from these sectors with administrative dexterity and transparency.

Keywords: *Taxation, entertainment, sportsmen assessment and collection.*

Introduction

It is obvious today that the mono-product economy of Nigeria is no longer feasible or sustainable. Nigeria needs to change from its hitherto position of total reliance on oil revenue. Most states in Nigeria today cannot pay salaries. Even the federal government is not spared in the scarcity of fund. The 2017 budget is a deficit budget just like its predecessor. The federal government is now thinking of borrowing money both locally and

from international financial institutions to finance the budget, leading to a situation where 60% of the budget is used to service debts.⁵²

There is also the issue of infrastructural decay in the power Sector, bad roads, no portable water and health centres. Poverty in the land has prevented Nigerian from patronising cultural and sport tourism.

All the tiers of government in Nigeria need money to deliver on their constitutionally assigned mandates. This means that the government must think outside the box by exploring other options in form of taxation. A widening of the tax base⁵³ promoting voluntary tax Compliance,⁵⁴ giving of tax amnesty⁵⁵ and operating a database of actors and actresses, our sportsmen and women both within and outside the Country with a view to assessing and accessing their Income for tax purposes is therefore imperative.⁵⁶

Under the various existing tax laws in Nigeria the entertainment and sport industry can contribute greatly to the development of the economy through the Companies Income Tax, Personal Income Tax, Value Added Tax, Capital Gains Tax and Stamp duty.⁵⁷

⁵² Olufemi Abifarin et al, Diversification of Nigerian economy: Exploring the non-oil sector and luxury tax options, *Abuad Law Journal* vol 1 No 4 (2017) David Ogah oil price slump: Exports canvas Tax option *The Guardian* 13 December 2015 p 49

⁵³ Luke Onyekakeyah States Finance crunch and diversification of the Economy *The Guardian* 8 December 2016 p 19.

⁵⁴ Olufemi Abifarin Tax Incentive as catalyst for voluntary tax compliance *EKSU L.J* vol. 6 (2015) p 195

⁵⁵ Olufemi Abifarin Tax Amnesty as Catalyst for Economic Development of Nigeria *Confluence Journal of Jurisprudence and National Law* vol. 7 No 1 (2014) P 12

⁵⁶ Oluseye Arowolo, Yomi Olugbenro and Patrick Nzeh Taxation of Entertainers and Sportsmen in Nigeria *The Guardian* 8 May 2017 p 35

⁵⁷ Section 3 of Personal Income Tax Act, section 1 of the Value Added Tax Act, Section 1 & 2 of Capital Gain Tax, and Section 23 of Stamp Duties Act

– especially given the further benefit of helping ameliorate the social causes of crime.²⁶

- b. It fails to appreciate the fact that a mere moral indignation can hardly prevent crime. It is quite possible that the criminal is as much a victim of circumstances as the victim himself might have been.

5.2 The Deterrence Theory

This philosophy emphasises that crime should be made less attractive by punishing crime, even severely, in order to make crime unattractive to others who may be criminally minded.²⁷ It is the use of punishment to prevent the offender from repeating his offense and to demonstrate to other potential offenders what will happen to them if they follow the wrongdoer's example.²⁸ Punishment is primarily deterrent when its object is to show the futility of crime and thereby teach a lesson to others.²⁹

The object of punishment according to this theory is to show that in the final analysis, crime is never profitable to the offender, and as Locke observed, to make crime "an ill-bargain to the offender."³⁰ By making it an ill-bargain to the offender, the world at large would learn that crime is a costly way of achieving an end.³¹

The idea behind deterrent punishment is that of preventing crime by the infliction of an exemplary sentence on the offender. By this, the state seeks to create fear in its members and thus deter

²⁶ See Golash Deirdre, *The Case Against Punishment* (New York: New York University Press, 2003), 155-160; and Hampton Jean, "Correcting Harms versus Righting Wrongs: The Goal of Retribution" in *UCLA Law Review*, 39, (1992), 1700-1;

²⁷ See Malemi, op.cit.256

²⁸ Joel Meyer, op. cit., 596.

²⁹ See http://shodhganga.inflibnet.ac.in/bitstream/10603/45012/9/09_chapter4.pdf (accessed 25 October, 2016)

³⁰ Ibid

³¹ Ibid

application of taxation laws to women and men in order to avoid tax discrimination against women folk.⁶³

Tax as a religious Obligation

In the New Testament, Jesus Christ approved of taxes as stated – give unto Caesar what is Caesar's⁶⁴ (Biblical principle). Christians and pastors are also enjoined to give everyone what you owe him. If you owe taxes, pay taxes, if revenue, then revenue, if respect, then respect, if honour, then honour.⁶⁵

Everyone ought to submit himself to the governing authorities for there is no authority except which God has established.⁶⁶ Government is therefore of God. This is also why you pay taxes, for the authorities are of God's servants who give their full time to governing.⁶⁷ Just as it is obligatory for a church member to pay tithe, so also it is obligatory for a pastor or church employee to pay tax.

Tithe is a moral and religious obligation in that there is no sanction by the church for not paying but tax is a legal obligation since the state has an enabling law and the law provides sanction for violators of tax law. The fact that all state governments in Nigeria have glossed over this matter for long does not divest from the state the power to collect the tax from the pastors and church employees or Imams and mosque employees, or shrine employees.

Any Pastor, Imam, church or mosque's employee who refuses to pay tax is a rebel.⁶⁸

⁶³ Article 13 (b) Protocol to the Africa Charter on Human and Peoples Rights, on the Rights of Women in Africa adopted in Maputo in 2002.

⁶⁴ Matthew 22: 17, Mark 12: 14 (Holy Bible)

⁶⁵ Romans 13: 7(Holy Bible)

⁶⁶ Romans 13: 1-3(Holy Bible)

⁶⁷ Romans 13: 6(Holy Bible)

⁶⁸ Romans 13: 2(Holy Bible)

Imams, Alfas, Uztas and Mosque Employees and Payment of Personal Income Tax

From the perspective of Islamic law, payment of taxes by those who have the means is an integral part of normal services to Allah (Ibadan). Tax is therefore one of the divine rights which regulates the relationship between Allah and the individual human being on the one hand and the individual's interests on the other hand.⁶⁹

While the Quran establishes zakat and other forms of taxes, the sunnah provides comprehensive formula for payment of taxes.⁷⁰ Similarly, the state may impose other taxes so as to cater for possible exigencies or even calamities. Both the Quran and the sunnah command Muslims to pay taxes and they prescribe divine punishment for every defaulter i.e. any person who has wealth and refuses to pay tax. That makes payment of taxes realistic and superior to other legal and institutional framework under other system of law, which has no divine sanction and are mostly characterized by false declaration of assets or even outright evasion of tax.⁷¹

It is important to note that both the Quran and the sunnah did not exempt clerics and mosque workers from payment of tax. Therefore as much as Jamaa or muslim umma as a body in a mosque are not required to pay tax, the individual muslim who has a means to livelihood is required to pay tax. He may be an Alfa, Uztas, Islamic teacher, Islamic preacher, Imam, etc. as long as he earns his living from the vocation, he is under religious and constitutional obligation to pay tax in Nigeria.⁷²

⁶⁹ Johnson H.A.S. The Fulani Empire of Sokoto, London OUP, 1967

⁷⁰ Doi AbdulRahman, Sharia: The Islamic Law, London, Rusel Press 1984, p. 604

⁷¹ Yakubu I.D. and Hassan Y.B., The Concept of Tax under Islamic Law in Olufemi Abifarin (ed.) Modern Trend in Tax Law, Administration and Practice in Nigeria, Essays in Honour of Otonba Oluola Adekanola, Oluwale Printing Co., Ilorin, p. 257.

⁷² Section 24 of the 1999 Constitution of Nigeria and Section 100 of PITA

Tax in entertainment Industry

Tax in the entertainment industry can come in various ways. In life performance of an artist either music or theatre, a gate fee is usually collected from person before you can enter into the hall of event. The total collection from the gate fee after deducting from it some incidental expenses, the profit is subject to tax as Income tax. There may also be spraying of money on the musician. Such sprayed money also constitute income to the musician either as an individual or his group which may be an incorporated group then the tax to be levied her shall be Companies Income Tax. A report says that the Nigerian film Industry is second largest in the world contributing 1.4% of GOP or \$7.2b to the economy in 2014 and to grow to \$8b in 2019.⁷³ Nkem Owohs Osofia in London film online generated \$9m (229). How much tax came out from these sources into the government coffer?

The artist ether as a musician or theatre practitioner and also as a corporate body has staff who could be cast, crew, actor or actresses who are paid either, salaries, allowance or honorarium as case may be. These are all subject to Personal Income Tax. But the problems of these taxes are: do we have register of artists in Nigeria? Do we also have diary of their performances and records or CDs?

The artists produce their works in video, films, cinemas and people buy. Value added tax comes in through sales of the products. There are also signed in fees or engagement agreement or contract that attract stamp duty and where property like event centres, halls and studios are acquired through purchase, transfer, assignment and sales, then payment of stamp duty and capital

⁷³ Eluka Sunday Nigeria film industry Contributes to National Economy www.peopledaily.ng.com/author/naroto accessed on 13th July 2017 Adejoke Oyewumi Towards a Sustainable Development of Nigeria entertainment Industry in the Digital Age: The Role of Copyright law and Administration www.nials.Nigeria.org accessed on 13 July 2017 (229) Joseph Jar Kur Intellectual Property Law and Entrepreneurship in Nigeria: principles and practice Aboki publishers Abuja 2015 p 23

gained tax may be necessary. Some artists are engaged as sport ambassadors promoters and advertisers of products and programmes. Taxes are to be paid on Income from these activities. While the Stadium used as avenues of the sporting activities are also adored with postal and adverts which are paid for by clients, such income attracts Income tax. The advertisers also pay tax. There is a vicious cycle of Income or wealth creation.

Tax in Sport Sector

In the sport sector, there are professional footballers, basketball players, etc. who earned their living from sport. They are to pay their personal income tax on their salaries and allowances. They will also pay tax on transfer fees, from one club side to another. They also generate income from Souvenirs, Sportsmen are also used as advertisers of products and programmes and they earn fantastic pay and they are to pay taxes on these pays. The government should have a register of our sportsmen and women anywhere they are in the globe so as to take taxes from them. The private sector should take over the management and operation of the sport sector in Nigeria so as to make it what it should be and then generate the much needed income for the economy.⁷⁴ It is common knowledge that sportsmen and women in Europe evade taxes. Some of them who were caught in the act has been convicted and punished.⁷⁵ Nigeria Tax authorities should be alert and learn from European experience.

⁷⁴ Jummy Chijioke, Olufemi Abifarin & E.A Adesina Diversification of Nigerian Economy: Exploring non-Oil Sector and Luxury Tax options-ABUAD Law Journal Vol 1 No 4 (2016) p84

⁷⁵ Besan Fabamisse Curbing Illicit money flows and the use of International Tax Havens and Corporate Structures to avoid Taxation in Nigeria ABUAD Journal of public and International law vol. No1 (2015) p55, see also Lionel Messi Tax Fraud case [www.woodllp.com>articles>pdf](http://www.woodllp.com/articles>pdf) accessed on 8-7-2017

Modus Operandi for entertainment Tax collection (municipal)

There are certain procedures employed by the relevant year of assessment, in accordance with the provisions of the tax laws and regulations which include writing a demand notice on the taxpayers to file their annual returns, allowing for objection to the assessment, if any, amendment of the assessment where necessary, appeals, then collection and administration of those taxes so collected. There are also laid down procedures for the enforcement of delinquent taxes when voluntary compliance proved difficult which include penalty, civil and criminal litigation, disdain certificate, etc. those procedures will not bar the authority from taking advantage of the other procedure if it becomes necessary and expedient.⁷⁶

a. Filing of Annual Returns:

Section 41 (1) of the Personal Income Tax (Amendment) Act⁷⁷ requires any taxation person to file a return of income with the tax authority of the state in which lie is deemed to be resident. While section 41(1) of the Companies Income Tax Act⁷⁸ requires every company including company granted exemption to file a return with the Service. Where the taxpayer fails to file a return as prescribed by laws the tax authorities are empowered to make its own assessment to its best judgment⁷⁹.

It was held in the case of **FBIR v. Azigbo. Brothers Ltd**⁸⁰ that the company having failed to deliver its return, the assessment made by the tax authority to its best judgment is valid. It was also held in the case of **Marina Nominies Ltd v. FBIR**⁸¹

⁷⁶ John DC and Abdulkarim I, Legal Evaluation of Income Tax Enforcement in Nigeria ABU CLJ vol 7 No. 1 p 91

⁷⁷ Section 41 (1) of Personal Income Tax Act Cap P 80 Laws of the Federation 2004 (PITA)

⁷⁸ Section 41 (1) of Companies Income Tax Act cap C21 Laws of the Federation 2004 (CITA)

⁷⁹ Sections 53 (2) PITA and 47 (2) of CITA

⁸⁰ 1963 2 ALL NLR 198

⁸¹ 1986 2NWLR (Pt 20) 48

where the company did not file its return that the assessment is valid.

b. Assessment of Returns

This refers to an evaluation of the amount to which a tax payer is liable to pay however; notice of assessment is a condition precedent to, liability to pay tax⁸².

It was held in the case of **Okupe v. FBIR**⁸³ that; non-service of this statutory notice is a breach of the rights of taxpayer. From the decision in that case therefore, where notice is not served on the taxpayer, it will be a good ground for him to challenge the assessment. It was held in the case of **Linwood Blackstone et al v. United States of America**⁸⁴ that, the general rule is that no tax lien arises until the IRS makes demand for payment. Without a valid demand, there can be no tax lien the IRS cannot levy against the taxpayer's property...this court concludes that the appropriate sanction against the IRS for its failure to comply with the notice and requirement is to take away its awesome non-judicial collection powers.

c. Objections and Appeals

The combine provisions of paragraph 13⁸⁵ Section 57(1)⁸⁶ and section 51(1)⁸⁷ allows any taxable person who is aggrieved by any assessment, demand notice, any action or decision of the service within 30 days from the date oil which all order or decision which is being appealed against is made to the relevant appellant body or tribunal.

However, it seems the tax authorities in abuse of their powers denies the taxpayers such rights of appeal or causes unnecessary

⁸² Section 57 PITA

⁸³ 2010 2TLRN 20

⁸⁴ 778 F. Supp 224 (D.Md 1991)

⁸⁵ Paragraph 13 fifa Schedule to the FIRS (Establishment) Act 2007

⁸⁶ PITA Cap P 8 LFN 2004

⁸⁷ CITA Cap (2) LFN 2004

delays on issuing NORA. It was held in the case of **Okupe v. FBIR**⁸⁸ thus.

"The legislature of this country wisely entrusts to the Respondents (FBIR) the duty to operate the tax laws of the country but in doing so, the legislature provides safeguards from arbitrary of the liberty of the taxpayer and in particular safeguards from arbitrary and capricious assessment and/or assessments which are not made bonafide or which are perverse. Which every way one looks at the matter, an assessment like the present one in which defiance of the mandatory provisions of the PITA, denies to the taxpayer his statutory rights of objection and as if that was not enough demonstrates clear and unequivocally to him that any objection may attempt to make against such assessment has already been refused cannot stand and an order of certain must issue to quash such assessment."

It was further held in the case of **Oando Supple and Trading Ltd v. FIRS**⁸⁹ thus.

"Where a taxpayer files a notice of objection to FIRS, the latter, if they do not agree with the taxpayer's objection any material particular must issue NORA within a reasonable time. We must suggest 90 days. The Tribunal can treed FIRS failure to issue NORA within reasonable time or at all as a "demand decision"...desirable as there may be NORA as part of FIRS internal complaint handling procedure is now optional from the point of view of the taxpayer of course when the

⁸⁸ 2010 2TLRN 20

⁸⁹ 2011 4 TLRN 128-129

taxpayer complains, FIRS must treat the complaint fairly, justly and speedily."

From the above decision it is clear that wherever there is a delay in issuing NORA or denial of right of objection or appeal an aggrieved taxpayer can sue for enforcement and setting aside the assessment or any act or decision of the service or tribunal. However, where no valid objection or appeal has been lodge within the prescribed time the assessment shall be final and conclusive, and the taxpayers cannot later complain against it nor can any court set it aside.

In the case of **Federal Board of Internal Revenue v. Owena MOTELS Limited**⁹⁰, the Federal High Court setting in Akure held that on the service of the notices of assessments on the Defendant, for the period of 1993-1998, without any objection by the defendant, it meant that the sums thereon stated became notice of assessment on the defendant. Judgement was accordingly entered in favour of the Federal Inland Revenue Service based on the preponderance of evidence before the Court. For years there has been a battle between the defaulting taxpayers and the relevant tax officials in respect of enforcement of delinquent taxes. Taxpayers always seek to find ways or means to throw the burden of income taxation off their shoulders, thereby refusing to comply with the provisions of the relevant tax laws. There are set down procedures and penalties, civil and criminal litigations, disdain of defaulting taxpayers' property, use of tax clearance certificate, etc. for effective enforcement of such delinquent taxes in the Nigerian tax laws. It was held in the case of **A - D Sam Nig. Ltd. V. Lagos State IRS**⁹¹ that:

"Where a taxable person fails and refuses to make the necessary tax payment, sanctions are prescribed in the relevant tax laws, which include, but are not limited to the power to disdain..."

d. Enforcement by Disdain:

Disdain or Distress was defined as the seizure of someone's property in order to obtain payment or satisfaction of a claim, as a pledge for performance of a duty or in reparation of injury.⁹² It is an act or process whereby a person seizes the personal property of another in satisfaction of a claim.

Section 34 of FIRS⁹³ and 104 of the PITA⁹⁴ empowered the FBIR and FBIR to levy distress against the property of any defaulting taxpayer to enforce the payment of the delinquent tax⁹⁵. However, Sub-Sections (2) and (3) of Section 34 of the FIRS Act provides for procedure that must be followed before distraint can be valid. Under the Act, there has to be a warrant of distraint as contained in the 4th schedule of the Act, the warrant must contain the name of the defaulting taxpayers, the amount of tax to be levied by distress, the arrears of tax, the place of business, and, it has to be duly dated and signed by the relevant authority. In the case of *Illinois v. Krull*⁹⁶ it was held that the warrant must describe with particularity the place to be search, the things to be seized and be supported by oath or affirmation of the officer requesting its issuance.

Furthermore, Section 33(1) of the Act⁹⁷ provides that power to distraint cannot be effective unless an assessment has become final and conclusive. Apart from that condition, a demand notice to pay must be served upon the taxable person. If those conditions were not met, then there would be no power to levy distress. Where the tax authority levies a distress without due compliance with the above conditions then the taxpayers shall be

⁹² Dominic Asada Corporate Tax Delinquencies: Analysis, Laws, Cases and Recommendations for Sanitized Regime in Topical Issues on Nigeria Tax Law JAA Agbonika (ed)

⁹³ No 13 of 2007

⁹⁴ PITA Cap P 8 LFN 2004

⁹⁵ Adedokun K.A. Enforcement and Recovery of Income Tax in Nigeria Lagos 2010 p 4

⁹⁶ 480 US 340 (1987)

⁹⁷ No 13 of 2007

at liberty to contest the act of the taxing authority. It is provided in the tax laws of this writer that that should not. Be enough on the taxpayer, notifying him on the need to pay his tax.

Sometimes the relevant tax authorities abuses their power of distraint be levying same before the expiration of the time provided in the demand notice. It was held in the case of *L.O.C. Indus. Inc. v. Unity States*⁹⁸ that any distraint made before the expiration of time provided in the demand notice was invalid. Sometimes also the relevant tax authorities abuse their power by levying distress without warrant or even forcefully removing the taxpayer's property without due compliance with the relevant provisions of the tax laws. This may amount to trespass and violation of the taxpayer's constitutional rights. It was held in the case *G.M. leasing Corp v. United States*⁹⁹ that an entry without warrant by the service onto private property of a person in which that person has a reasonable expectation of privacy for the purpose of seizing property to satisfy a tax liability is a violation of the person's rights. Therefore permission is required.

Section 33(4), (5) and (6) of the FIRS Act¹⁰⁰ and Section 104 (5) and (6) of PIT(A)A¹⁰¹ empowers the relevant tax authorities to sale the property distrained after 14 days and at the expiration of the time contained in the warrant and deduct the amount due in respect of the tax and the costs and charges that are incidental to the process of distraint and the sale. The balance, if any, shall be paid to the taxpayers upon demand being made by him or on his behalf within one year of the date of the sale. This provision which requires the taxpayers to demand for payment of the balance within one year is not contained in the PIT(A)A. However, the PIT(A)A provides that the balance be paid to the

⁹⁸ 444 F. Supp. (M.D. Tenn. 1976)

⁹⁹ 439 U.S. 338 (1977)

¹⁰⁰ No 13 of 2007, cap F.L.F.N. 2004, op. cit

¹⁰¹ No 31 of 2011, cap. P8, L.F.N.2004, op.cit

owner of the distrained property, or where he cannot be traced, to the appropriate Court, within 30 days¹⁰². It seems there is a mix up of conflicting provisions above and by the provisions of Section 68(2) of FIRS Act¹⁰³ if provisions of any other law, including the enactment in the first schedule and inconsistent with the first provisions of that other laws shall to the extent of the inconsistency be void. This is a great lacuna in the laws. That notwithstanding, there are procedure that must be followed before the sale can be effective.

In the old case of **Cummings v. Holt**¹⁰⁴ it was held that the sale of distrained property will be illegal unless the taxing authority levying the distress strictly complied with all the requirements of the law with respects to notice and sale. It was further held in the case of **Jones v. Flowers**¹⁰⁵ that the tax authority must take reasonable steps to ensure that the taxpayer receives actual notice of the sale. Therefore, where there is non-compliance with the above procedures, the taxpayer he may sue the tax authority to invalidate the sale or where the purchaser has taken possession he may join him in the suit. However, it was held in the case of **Chester Motors v. Koledo**¹⁰⁶ that so long as these purposes are met, substantial compliance rather than exact compliance, with the notice requirements will be sufficient.

It has been observed that even though there are provisions in the relevant tax laws that the balance should be refunded to the taxpayer, the tax authorities occasionally do not observe those provisions, they, either in ignorance of the law or because corruption have eroded their minds, retain the balance mostly converting same to their personal pockets.

¹⁰² Sub-section (6) of Section 104. Ibid

¹⁰³ No. 13 of 2007, cap F.L.N. 2004. Op.cit

¹⁰⁴ (1883) 56 vt. 384

¹⁰⁵ (2006) 545 U.S.

¹⁰⁶ (1986) 148 vt. 357

In such cases, it was held in the case of **Interplay v. Ukraine**¹⁰⁷ that delaying funds is an abuse of the right of peaceful enjoyment of possession. As such a taxpayer can seek redress for a refund of the balance of the proceeds of sale. It was held in **E.C. Term of years Trust v. United States**¹⁰⁸ that a third party cannot seek redress through a refund claim, but can only seek a remedy in a wrongful distraint, search and service or sale suit.

Sub-section (6) of section 33 of the FIRS Act provides that the sale of any immovable property is not allowed unless the relevant tax authority obtained an order of a High Court.

However, it seems the relevant taxpayer's property without complying with this provision, thereby selling the taxpayer's property without obtaining an order from the High Court mandating them to proceed with the sale. Whenever this happens the taxpayer can challenge the sale and seek for a remedy.

c. Enforcement by Search and Seizure:

This refers to the methods used by the relevant tax authorities where are satisfied that there is reasonable grounds for suspecting that an offence involving any form of total or partial non-disclosure of information or any irregularity or an offence in connection with or in relation to tax has been committed and is of the opinion that evidence of the offence or irregularity is to be found in the premises, or that evidence of the offence or irregularity is to be found in the premises, the registered office or any other office or place of management of trade, vocation, profession or business or in the residence of the principal officer, factor, agent or representative of the individuals, the relevant tax authority is authorized if necessary, by force to conduct a search as

¹⁰⁷ (2007) ECT 11 R 803/002

¹⁰⁸ (2007) 550 U.S. 429

such¹⁰⁹. This is provided under sections 53(1) of the PIT(A)A¹¹⁰ and to 64 of the CITA¹¹¹. Power to effect search and seizure has also been provided for under Section 29, 30, 31 and 36 of the FIRS Act¹¹².

From the combine effect of the above section, there must be a warrant and the occupier of the premises to be searched must be consented. A search must also be conducted by the same gender. Section 36(4) of the Act¹¹³ provides that "*no person shall be bodily searched under this section except by a person who is of the same gender as the person to be bodily searched.*" Thus, where the provisions are breached, it can be the basis for all action for assault against the erring tax official. It was held in the case of **Illinois v. Krull**¹¹⁴ that the warrant must be describe with particularity the place to be searched, the persons or things to be seized and be supported by oath or affirmation of the officer requesting its issuance, and the Warrant must be served on the person in possession.¹¹⁵

Despite the above conditions precedents for a valid search and seizure it seems the relevant tax authorities without warrant duly executed and without compliance with the provision of the law, makes illegal entries and illegal searches of the taxpayers premises and thereby unlawfully obtaining confidential information and or documents, in violation of the taxpayer's fundamental rights to privacy. In such instances, a taxpayer can maintain action against such tax authorities for a legal remedy. It was also held in the case of **Stephens Equipment Co., Inc.**

¹⁰⁹ Adedokun, K.A. op.cit p.85

¹¹⁰ Section 53 (1) of the PIT(A). Op.cit

¹¹¹ Section 64 of the CITA, op.cit

¹¹² Section 29, 30 & 31 of the FIRS Act, op.cit

¹¹³ Ibid

¹¹⁴ (1987) 480 U.S. 340

¹¹⁵ See the cases of **FIRS v. NNPC** (2012) 6 TLRN 1 and **G.M. Leasing Corp. v. United States**, op.cit

Debtor¹¹⁶ that, "the role of District Court in issuing an order for the seizure of property in satisfaction of tax indebtedness is substantially similar to the Court's role in issuing criminal search warrant". The Court further held that "in order to substantiate such an order the IRS must present the Court with validation." As such, a relevant tax official wishing to search and seize a defaulting taxpayer's property must apply for an order to search the taxpayer's premises. Not only that he has to supply the court with reasonable grounds that will convince the court to grant him that order, otherwise application will be refused.

f. Enforcement through Monetary Penalty

The Nigerian income tax laws make adequate provisions for monetary penalties and or terms of imprisonment in lieu of fines against taxpayers who engaged in committing of tax offences. Some of the offences include failure to register within the stipulated time which attracts a penalty of N10,000.00 for the first time and N5, 000.00 for each subsequent month of default, non-remittance of tax attracts the penalty of a sum equal to 5% per annum plus interest at a commercial rate of the tax remittance, rendering of false returns attracts a fine twice the amount underpaid or a conviction; while failure to file returns attracts N5,000.00 per month. There is also a penalty for failure to notify change of address, to collect tax, to remit the deducted taxes of employees to the relevant authorities to make attributions, etc.

On the side of the tax authorities themselves, the FIRS Act¹¹⁷ provides for offences and penalties on the commission of some offences by the authorized and unauthorized persons. The offences includes a demand for any taxpayer an amount in excess of the authorized assessment of tax, withholding any amount by a tax official for his own use, rendering a false return of the amount of tax collected or received by a tax official impersonation, etc. Payment of penalties may not exonerate a defaulter from criminal

¹¹⁶ 44 BR 676 (D.C. 1985)

¹¹⁷ Sections 44, 45, 46, 47, 48 & 49 of FIRS Act, 2007

prosecution. It was held in the case of **FRN v. Kingsley Ikpe**¹¹⁸ that in serious corporate offences that go beyond regulatory matters, the directing minds of the corporate entity are to be identified and made to serve prison terms while the company as an entity is fined.

Non-compliance with the penalty provisions by the tax officials will warrant their proceedings being at the instance of defaulting taxpayers.

In the case of **Nigerian Breweries Plc. V. Lagos State IRS**¹¹⁹ the Respondents imposed penalty on the Applicants through an ordinary letter indicating revision of the Appellants' tax liability, it was held that a penalty Imposed under Section 76(3) of the PITA Shall not be deemed to be part of the tax paid for the purpose of claiming relief under any provision of the Act.

It seems the tax authorities, either in ignorance of the relevant provisions of the law or that they know but only because they are corrupt used the power conferred on them arbitrarily against the taxpayers, them by not observing the ingredients contained in the provisions of those laws. This arbitrary use of power must be curtailed.

g. Enforcement by Litigation

There are provisions in the Nigerian tax laws that empowered the relevant tax authorities in file a civil or criminal action against a taxpayer who commit any of the itemize offences contained in the relevant tax laws. On conviction the defaulting taxpayers or tax officials may be subjected to various lines and or terms of imprisonment¹²⁰.

The FIRS Act¹²¹ empowers the service to sue and recover (roan any defaulting taxpayer any amount that is due for payment which

¹¹⁸ (2002) 5 NWLR (Pt. 759) 1

¹¹⁹ (2009) 1 QCCL vol. 2, p. 155, 192

¹²⁰ Ayua, I. A. op.cit

¹²¹ Sections 1 (1) (b), 34 & §7 of the FIRS Act. Op cit.

was not paid, or prosecute any taxpayer or tax official who violates any of the provisions of any relevant tax law.) Section 34(1) of the Act provides.

*"Without prejudice to any provision of this Act or any other law listed in the first schedule to this Act, any amount due by way of tax shall constitute a debt due to the service and may be recovered by a civil action brought by the service"*¹²²

These sections give the service a power to file a civil action against any defaulting taxpayer to enforce the payment of the overdue tax. Section 47 of the Act¹²³ specifically provides;

*"The service shall have power to employ its own legal officer who shall have powers to prosecute any of the offences under this Act subjects to the powers of the Attorney General of the Federation"*¹²⁴.

The Supreme Court in the case of **Unipetrol Nigeria Plc. V Edo State Board of Internal Revenue**¹²⁵ held that the phrase "sue and be sued" is wide enough to include civil and criminal actions". This means that the service can use its staff in the legal department to prosecute tax offences, but that power is subjected to the power of the Attorney General. This has created a great controversy and robust literature in academic circle¹²⁶, and a number of case reviews¹²⁷, in line with decision of the Supreme Court in Unipetrol's case¹²⁸, the relevant tax authorities can prosecute case, both civilly and criminally to enforce the payment

¹²² Ibid

¹²³ Ibid

¹²⁴ Ibid

¹²⁵ (2006) CTR 28

¹²⁶ Nwadiaro, F. The Criminal Procedural of Southern States of Nigeria: 2nd Edition, MIJ Publisher, Lagos. 1987. Pp. 368-370

¹²⁷ Ajayi K. revisiting Police Power to Prosecute: A critique of FRN v. George Osahan & 7 Ors, the Appellant Review, vol.L.No 1 2009. 67: Abiola. S. The Power to Prosecute Tax offences: A Critique of Unipetrol Nigeria Plc. V. Edo State board of Internal Revenue. NIALS Journal of Criminal Law and Justice vol. 1. 201. Of 2012

¹²⁸ (2006) CLR 28, op cit

of delinquent taxes. However, despite the statutory and judicial authorities conferred on the service to prosecute criminal offences, the service whether of states or of the Federal Government rather prefer to the civil suits to recover delinquent taxes, even where the cases exhibits sonic criminal elements¹²⁹. In the case of **FBIR v. West African Pictures Co. Ltd**¹³⁰, where the Respondents, by their acts, clearly commit offences against tax laws, it was held that;

"it could be seen from the evidence that non-chalant attitude of the defendant in matters of taxation and the levity which they had all along treated notices served on them under the law until they found that proceedings were findings an escape valve for their acts of irresponsibility and wanton disregard of continued authority. But since the amount was being claimed as a debt due to the Federal Government Defendants were liable for the amounts and penalties stated on the demand..."

However, despite the ample provisions to prosecute tax offences and to file civil suits to recover delinquent taxes, the disputes through litigation and, the tax Courts and tribunals are very slow which causes delay in justice delivery. Another sad but true issue is the practice of tax officials and auditors requesting bribes from tax payer. Because of the above challenges many tax payers opt for arbitration rather than defending their rights through litigation. This attitude has been challenged by the Federal High Court in the case of **FIRS v. N.N.P.C.**¹³¹ where it was held that tax disputes are not arbitral in Nigeria. Where the service decides to adopt litigation as a means of enforcing the

¹²⁹ **FBIR v. Blue Penican Casino Co. Ltd.** (unrep) suit No. FRC/PH/2/76

¹³⁰ (unrep) suit No. FRC/L/8/73

¹³¹ (2012) 6 TLRN 1

payment of delinquent taxes, they sometimes use it arbitrarily and in excess of jurisdiction.

It was recently held in the case of **Jim Harrison Hotels Ltd. V. Sabon Gari Local Government Area**¹³² that the taxes sought to impose by the Local Government were in excess of its jurisdiction, as they are taxes within the federal and states jurisdiction.

It was held in the case **Halliburton West African Ltd. V. FBIR**¹³³ that though the object of a taxing statute is to raise revenue for the government, it is however not the intention of the law maker that a person should be taxed for the same money that is paid to its Nigerian affiliate.

It has also been challenged in the case of the **Licensed Telecommunications Operators of Nigeria & Ors v. Lagos State Government & Ors**¹³⁴ where he defendants challenged some sections of the Lagos laws¹³⁵ as being imposing multiple taxes. Lots of cases were held to be imposing multiple taxes on the tax payer¹³⁶.

It is common principle that the literal interpretation of the provisions of the tax law shall be adopted. The Court of Appeal in the case of **Phoenix Motors Ltd. V. NPFMB**¹³⁷ held that if a statute is revenue based on revenue oriented, the provisions thereof must be construed literally.

Therefore, flowing from plethora of decisions in tax cases, tax statutes are construed strictly due to the expropriatory nature of taxes. In the olden case of **Brandy Syndicate v. IRS**¹³⁸, it was held that in a taxing Act, one has to look merely at what is clearly

(unrep) Suit No. KDH/137/2011 (the judgement was delivered on the 21st March, 2013)

(2006) 7 CLRN 138

(unrep) Suit No. FHC/LCS/517/06

The Lagos state Infrastructure, Maintenance and Regulatory Agency Law 2004

A G Lagos State v. Eko Hotels Ltd. & FBIR (2009) 1 TLRN 198; Lagos State Board of Internal Revenue v. Nigerian Bottling Ltd. & Manufacturers Association of Nigeria (2009) 1 TLRN 294;

Mama Cans restaurant Ltd v. FBIR and AG Lagos State (2010) TLRN

(1993) 1 NWLR (pt. 272) 718

(1921) 1 B 64

said. There is no room for intendment, there is no room for equity about tax, there is no presumption as to tax, nothing is to be read in, nothing is to be implied, and one has to look fairly at the language used.

However, it seems in Nigerian court in the case of **Shell Petroleum Development Company v. FBIR**¹³⁹ has derogated to the principle and applied the doctrine of equity. That decision has been criticized by Abdurrazaq M.T.¹⁴⁰ where he said, "though it was sympathetic to consider the losses by the applicants, it must be noted that the learned justices invocation of the doctrine of equity no doubt derogated from the well-established principles that there is no equity in tax as postulated by Lord Blackburn in **Coltess Iron Co.**"

h. Enforcement by Tax Clearance Certificate:

Tax clearance certificate is a written confirmation from revenue authorities that person's tax affairs are in order at the date of issue of certificate. In some instances, a certificate may be issued to a customer who has tax arrears provided such arrears are covered by an instalment that has been agreed by revenue. The best description on what a tax clearance Certificate is can be found in the statutory provision of Section 101(1) of the Companies Income Tax Act¹⁴¹, as amended, which provides as follows:-

"Whenever the Board is of the opinion that tax assessed on profits or income of a person has been fully paid or that no tax is due on such profits or income, it shall issue a tax clearance certificate to the person within two weeks of the demand for such certificate by that person, or, if not, give reasons for the denial."

¹³⁹ (1996) 8 NWLR (pt. 446) 256

¹⁴⁰ Ibid

¹⁴¹ Cap C21. 1 F.N. 2004

A tax clearance certificate must disclose with respect to the last three preceding years of assessment, of the mentioned tax payer, the total profits or chargeable income of the taxpayer, the tax payable, the tax actually paid and the tax amount outstanding for payment and alternatively, a statement that no tax is due for payment.

It is mandatory statutory requirement that all departments of government and commercial banks must demand for the tax Clearance Certificate, for the last three preceding years, of any person with whom they intend to have any dealing in the areas of applications for government loans, contracts and other businesses, registration of motor vehicles, applications for firearms license, foreign exchange transactions or the remittance of funds outside Nigeria, applications for certificate of occupancy of land, building plans, transfer of legal title to land, applications for plot of land, export or import licenses, pools or gaming licenses, distributorship, registration of a limited liability company or a business name, allocation of market stalls, etc.¹⁴²

A contentious question with regard to tax assessments and tax clearance is whether they are by themselves final and conclusive tax documents? In the case of **Alhaji Audu Bado v. Commissioner of Revenue**¹⁴³ the Supreme Court held that a Tax Assessment Certificate is sufficient and conclusive evidence of the tax amount due for payment provided that no contradictory evidence is produced by the taxpayer to displace the figures in the Tax Assessment Certificate.

Modus Operandi of Taxing Entertainers (international)

It is trite that around the world, entertainers and sportsmen are some of the highest paid individuals. Their sources of income are vast, ranging from performance and appearance fees to endorsement deals, royalties from image rights, tournament

¹⁴² Section 101(2) & 101(4) of Companies Income Tax Act as amended (1993) (14) SC (reprint) 57

participation fees, etc. These incomes are often earned in multiple jurisdictions, which can potentially make accounting for appropriate taxes complicated. It is thus no surprise that many advanced economies have special tax regimes for such individuals, both resident and non-resident, to ensure that no potential tax revenue is permitted to escape assessment and collection.¹⁴⁴

Income generated by individual entertainers and sportsmen in Nigeria can be categorised broadly as follows:¹⁴⁵

- Income earned in Nigeria by residents entertainers and sportsmen e.g. fees earned for local performances
- Income derived from other jurisdictions by residents e.g. fees earned for international performances
- Income derived from Nigeria by non-residents e.g. fees earned by visiting international performers in Nigeria

Nigeria does not have a special tax regime for entertainers and sportsmen. Except as may be applicable under tax treaties, the same tax regime applicable to other individuals applies to entertainers and sportsmen.¹⁴⁶

Thus, an author, sportsman, playwright, musician, artist etc. that is resident in Nigeria would be liable to tax in Nigeria, on his worldwide income. Such tax would be assessed, collected and enforced by the relevant State Internal Revenue Service (SIRS) where the individual is deemed resident. Also, rules applicable to all individuals regarding exemption, reliefs and allowances apply. For example, exemption will apply where income is earned abroad and brought into Nigeria through approved channels of foreign currencies and paid into a local domiciliary account.

¹⁴⁴ Joseph A. Arogundade *Nigerian Income Tax and Its International Dimension Spectrum Books Ltd Lagos 2005* p 406 MAC Dike *International Taxation Tax practice series No 17 (2003)* Ibid Balogun *Taxation of Expatriates Tax practice series No.25 (2003)*

¹⁴⁵ Oluseye Arowolo, Yomi Olagbenro and Patrick Nzeh op cit

¹⁴⁶ Ibid

It may be tempting to assume that this is straight forward. What then is the position with the non-resident author, sportsman, playwright, musician, and artist etc. earning income from Nigeria? For example, could the relevant (SIRS) have charged?

- Asa, the France-based Nigerian singer, to tax on the income derived from recent life performances in Nigeria? :or
- Chimamanda Ngozi Adichi, the US-based Nigeria author, to tax on; income earned in Nigeria? :or
- Beyoncé to tax on the earnings from her musical performance in Nigeria in 2006?

Conversely, what about cash or kind prizes won on the reality shows by Nigerian or non-resident participants' example, *Quilder Ultimate Search*, *Idols Nigeria/West Africa*, and *Big Brother Nigeria/West Africa*? Is there scope for taxing this winning?

This brings to mind the just concluded *Big Brother Nigeria* (BBN), reality game show that was shot in South Africa (SA) with over 26 million votes counted from viewers and a grand prize of 25 million Naira plus a sport utility vehicle. Despite the excitement and euphoria that surrounded the winner of the grand prize, the relevant questions remain – will the relevant SIRS seek to tax winnings arising from the game show? If no, this is a big loss for the economy.

Specifically, would the BBNaija prize-winner be required to pay tax on the coveted prize? Is there any possibility that South Africa Revenue Service (SIRS) would seek to assert any right to tax the BBNaija winner in SA? This is against the backdrop that South Africa tax laws require source withholding of tax, at the rate of 15%, for income earned from a sporting or entertainment activity that is carried out in SA by a non-resident person.¹⁴⁷

In considering the tax consequence for the BBNaija winners, it may be relevant to note that Nigeria has a double tax treaty (DTT) with South Africa.¹⁴⁸ Based on the general knowledge, the prize winners of BBNaija are understood to be tax resident in Nigeria. This implies that they should be liable to tax on the world wide income.

Again, based on publicly shared information, it appears BBNaija prize-winners were paid in naira with the cash prize received in Nigeria (and not SA). If this is the case, the exemption provided by PITA foreign-sourced income brought into Nigeria in foreign currency through government approved channels may not be applicable.

Thus, while the potential for SA to seek to subject the same prize money to tax exit, the provision of Article 17 of DTT between Nigeria and SA provides guidelines on the jurisdiction on the taxing rights.¹⁴⁹ Specifically, this article provides that the income derived by resident of either Nigeria or SA as an entertainer, such as theatre, motion, picture, radio or television artist, or a musician, or as a sport person from his personal activity exercised in either country, may be taxed in that country where such activities are exercised.

The definitive word being "may" implies that while SA, based on its domestic tax laws, can subject the prize money to tax in SA, Nigeria reserves the right to tax the income based on residence principle. Clearly, this may lead to double taxation for the winner. However, we expect the provision of the DTT on elimination of double taxation to kick in. This means that any tax the winners pay in SA will be available as credit against tax due in Nigeria, in line with the provision of Article 22 elimination of double taxation.¹⁵⁰

¹⁴⁸ Ibid

¹⁴⁹ Joseph A. Arogundade op cit

¹⁵⁰ Ibid

This position would appear to illustrate the potential tax consequence for Nigerian tax resident entertainers who earn income outside the shores of Nigeria. However, the situation with foreign entertainers etc. who earn income from Nigeria by way of personal activities exercised in Nigeria is far from resolved. Income derived in Nigeria from such personal activities by non-residents appears to be escaping assessment and collection, and when this leakage is aggregated could be significant. PITA may therefore require a further amendment to take the issue of taxability of non-resident entertainers and sportsmen beyond the realm of conjecture or speculation.¹⁵¹

Good enough, Nigeria has signed Double Taxation Treaties with most Countries where our sportsmen and artists or entertainers do perform to earn Income. ...Nigeria has concluded treaties with UK (1988), France (1991), Netherlands (1994), Canada (1993), Belgium (1990), Romania (1993), and Pakistan (1990). Others are the Philippines, Czech and Slovaks Republics, South Africa, Sweden, China and Italy.¹⁵²

Government measure to beef up tax yields New National Tax Policy

The formulation of a New National Tax policy which is in progress is aimed at widening the tax base of government and put in place a more effective tax administration in order to plug the loopholes that has hitherto been the bane of Nigerian tax system.

Voluntary Assets and Income Declaration Scheme (VAIDS)

On 29 June 2017, the Acting President, Prof. Yemi Osinbajo, SAN formally launched the Voluntary Assets and Income Declaration Scheme (VAIDS). The Scheme will commence on 1 July 2017 for a period of 9 months.

VAIDS is an initiative designed to encourage voluntary disclosure of previously undisclosed assets and income for the purpose of payment of all outstanding tax liabilities. The Scheme would be implemented by the Federal Inland Revenue Service (FIRS) in collaboration with all 36 State Inland Revenue Service and the FCT IRS.

Objectives

The main objective of the scheme is to increase the number of taxpayers in the tax net and raise revenue. Specifically, to:

- Increase Nigeria's tax to GDP ratio from the current 6% to between 10% and 15%.
- Broaden the national tax base.
- Curb non-compliance with existing tax laws.
- Discourage illicit financial flows and tax evasion.

Overview of the Scheme

Framework: The legal basis for the Scheme is an Executive Order signed into law by the Acting President and a Memorandum of Understanding signed between the FIRS and the State Inland Revenue Services.

Incentives: Taxpayers who make full and honest declarations will enjoy waiver of interest and penalty, immunity from prosecution, confidentiality, exemption from tax audits for the periods covered and flexible payment of tax due.

Scope and applicable taxes: The Scheme is applicable to all persons (individuals, companies, executors, trustees, partnerships etc.) liable to tax in Nigeria. Taxes covered include Companies Income Tax, Personal Income Tax, Capital Gains Tax, Value Added Tax, Stamp Duties, Tertiary Education Tax and NITDA levy.

Non declaration: Taxpayers who fail to participate in the Scheme will be investigated and if found culpable will be subject to criminal prosecution. A 'name and shame' list of tax evaders will be published.

Other matters: There will be sensitisation for professionals and taxpayers in general. About 7,500 Community Tax Liaison Officers (CTLO) are being recruited and trained for this purpose. Effective July 2017, every Thursday will be declared as 'Tax Thursday' to focus on tax matters.

As a fall-back option, government would rely on various international conventions and multilateral agreements to obtain information required for prosecution of defaulting taxpayers or those who make false declarations.

An international forensic and asset tracing company has been engaged to support this process.

Given the state of the economy in view of the huge fall in oil revenue, ballooning budget deficit and rising debt servicing cost, it is not surprising that government is taking a drastic measure to change the country's tax narratives.

We encourage taxpayers to embrace this opportunity to correct any areas of non-compliance with their tax obligations and hold government accountable for effective utilisation of revenue collected.

Concluding Remarks

The government should strive to get a database of our entertainers and sportsmen and women with a view to giving them Tax Identification Number (TIN). The government should also monitor their activities, performances and shows with a view to taxing their Incomes as at when due in order to avoid tax evasion, fraud or misinformation.

The government should also cooperate and collaborate effectively with those countries Nigeria has Double Taxation Treaty with other countries where Nigeria entertainers and sportsmen and women operate which the country does not have Double Taxation Treaty with yet.

The Federal Inland Revenue Service should also cooperate and collaborate with State Inland Revenue Boards or Services in

this respect as the FIRS is the proper authority to assist States to implement these treaties in a beneficial manner to both the States and the Federal government.

Both the States and Federal tax authorities' staff should be trained and retrained to manage the tax from these sectors with dexterity, and transparency and to generate competition on voluntary tax compliance by the sector players' incentives and national honours or awards can be created from them.