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THE CHARTERED INSTITUTE OF TAXATION OF NIGERIA

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PROCEEDINGS OF THE 5TH ANNUAL INTERNATIONAL ACADEMIC CONFERENCE OF THE CHARTERED INSTITUTE OF TAXATION OF NIGERIA

THEME: TAXATION AND SOCIO-ECONOMIC DEVELOPMENT IN CHALLENGING PERIOD

15TH - 16TH AUGUST, 2022

EDITED BY:

**Prof. Suleiman Aruwa
Prof. Godwin Emmanuel Oyedokun
Ayodeji Adeyemi**

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TIME	EVENTS
Monday, August, 15, 2022: 3:15pm	Syndicate Session I
Zoom ID: Will be sent to virtual participants only.	
SESSION CHAIRS	Theme: Tax Law, Policy and Reforms (Sub themes 1, 2, 4, 6, 8, 21 & 22 1. TAXATION AND SOCIO-ECONOMIC DEVELOPMENT: EXAMINING THE LINK (A STUDY OF THE NIGERIA STATE) 2. TAX REVENUE AND ECONOMIC PROGRESS OF AFRICA 3. DETERMINANTS OF TAX REVENUE: MACROECONOMIC PERSPECTIVES 4. FISCAL POLICY, EXCHANGE RATE AND ECONOMIC GROWTH IN NIGERIA 5. IMPACT OF NON-OIL TAX REVENUE ON ECONOMIC GROWTH IN NIGERIA (2001-2021) 6. MODERATING EFFECT OF CORRUPTION ON THE RELATIONSHIP BETWEEN TAX REVENUE AND ECONOMIC PERFORMANCE IN NIGERIA 7. FISCAL POLICY AND ECONOMIC GROWTH IN sub-SAHARA AFRICA 8. LEGAL FRAMEWORK AND LEGISLATIVE EFFORTS ON FOREIGN DIRECT INVESTMENT AS A PANACEA TO ECONOMIC GROWTH IN NIGERIA 9. TAX INCENTIVES AND BUSINESS GROWTH: THE AFRICAN PERSPECTIVE 10. ARE THE EXTANT LAWS INADEQUATE IN CURBING TAX EVASION IN NIGERIA? 11. REMITTANCE INFLOWS INTO SUBSAHARA AFRICA: MACROECONOMIC FACTORS EXPLANATIONS 12. INTERACTIVE EFFECT OF EXCHANGE RATE FLUCTUATION AND TAX STRUCTURE ON SUSTAINABLE BUSINESS PERFORMANCE IN NIGERIA
Prof. Kabiru Isa Dandago	
Prof. Rufus Ishola Akintoye	
Dr. Babatunde Adebola Dorcas	



TIME	EVENTS
Monday, August, 15, 2022: 3:15pm	Syndicate Session 2
Zoom ID: Will be sent to virtual participants only.	
SESSION CHAIRS	Theme: Tax Administration, Reporting and Compliance (Sub themes 3, 5, 7, 9, 13, 15, 19 & 24)
Prof. Eugene Okoye Nwadiakor	1. AN EXAMINATION OF THE DISPUTE RESOLUTION MECHANISMS UNDER DOUBLE TAX TREATIES FOR RESOLVING INTERNATIONAL TAX DISPUTES
Prof. Salawu Rafiu Oyesola	2. EFFECT OF TAX OFFENCES ON PERSONAL INCOME TAX ADMINISTRATION.
Prof. Rufus Ishola Akintoye	3. EXAMINING INCIDENCES OF TAX DISPUTES AND RESOLUTION WITHIN THE NIGERIAN TAX SYSTEM
Dr. Soyemi Kenny Adedapo	4. THE IMPLICATION OF TAX AUDIT AND INVESTIGATION ON REVENUE GENERATION
	5. IMPACT OF TAX AUDIT ON TAX COMPLIANCE IN NIGERIA
	6. TAX ADMINISTRATION AND INSECURITY: IMPACT ASSESSMENT OF ZAMFARA STATE TAX REVENUE GENERATION
	7. TAX PLANNING AND BUSINESS SUSTAINABILITY
	8. DIGITALIZATION OF TAX ADMINISTRATION AND PERFORMANCE OF KWARA STATE INTERNAL REVENUE SERVICE
	9. ELECTRONIC FILING OF TAX RETURN AND TAX COMPLIANCE BEHAVIOUR IN KWARA STATE, NIGERIA.
	10. INFORMATION COMMUNICATION TECHNOLOGY AND REVENUE GENERATION IN EDO STATE: ANY PROGRESS THUS FAR?
	11. TAX ADMINISTRATIVE STRATEGY AND SMALL AND MEDIUM ENTERPRISES (SMES) PERFORMANCE IN KWARA STATE



12. THE CHALLENGES OF PERSONAL INCOME TAX ON
PERSONAL INCOME EARNERS. A CASE OF UNILEVER OJO,
LAGOS NIGERIA

13. TAX SYSTEM, BEHAVIOUR, JUSTICE, AND VOLUNTARY
COMPLIANCE CULTURE IN NIGERIA

14. PUBLIC DEBT AND FISCAL BALANCE IN NIGERIA:
EVIDENCE FROM ASYMMETRIC COINTEGRATION

TIME	EVENTS
Tuesday, August 16, 2022: 10:00am Syndicate Session 3	
Zoom ID: Will be sent to virtual participants only.	
SESSION CHAIRS	Theme: Corporate Governance, Social Contract and Environmental Impacts (Sub themes 10, 11, 14, 16 & 25)
Prof. Prof. Kabiru Isa Dandago	1. DOES AUDITOR INDUSTRY KNOWLEDGE AND TENURE AFFECT TAX AVOIDANCE? EVIDENCE FROM DEPOSIT MONEY BANKS (DMBS) IN NIGERIA
Prof. Suleman A.S. Aruwa	2. THE RELATIONSHIP BETWEEN BOARD SIZE AND TAX COMPLIANCE IN LISTED INDUSTRIAL GOODS FIRMS IN NIGERIA
Prof. Anyaduba John Obiora	3. BOARD ATTRIBUTES AND CORPORATE TAX BEHAVIOUR: EVIDENCE FROM LISTED FIRMS IN NIGERIA
Prof. Rufus Ishola Akinloye	4. EFFECT OF DEFERRED TAX ON THE VALUE OF SELECTED LISTED COMPANIES IN NIGERIA
	5. DETERMINANTS OF ENVIRONMENTAL REPORTING QUALITY OF LISTED FIRMS IN NIGERIA
	6. IMPACT OF GOVERNANCE MECHANISM ON CORPORATE TAX PLANNING OF LISTED CONSUMER FIRMS IN NIGERIA
	7. FIRMS ATTRIBUTES AND VALUE OF LISTED FIRMS IN NIGERIA: THE MEDIATING EFFECT OF TAX AGGRESSIVENESS.
	8. 21 ST CENTURY CORPORATE INCOME TAXATION AND THE THEORY OF SOCIAL CONTRACT IN PERSPECTIVE

	9. POOLED EFFECT OF AUDIT QUALITY ON BOARD DYNAMISM AND FINANCIAL REPORTING QUALITY OF COMMERCIAL BANKS IN NIGERIA 10. A SYSTEM ANALYSIS OF THE RELATIONSHIPS BETWEEN OWNERSHIP STRUCTURE, CORPORATE GOVERNANCE AND EARNINGS QUALITY OF LISTED NON-FINANCIAL FIRMS IN NIGERIA
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TIME	EVENTS
Tuesday, August 16, 2022: 11:30am Syndicate Session 4 Zoom ID: Will be sent to virtual participants only.	
SESSION CHAIRS Prof. Godwin Emmanuel Oyedokun Dr. Nwodobie Barine Michael Prof. Paul Aondona Angahar	Theme: Financial Reporting, IFRS and Tax Accounting (Sub themes 12, 17, 18, 20, 23 & 26) 1. TAX SHELTERING AND EARNINGS MANAGEMENT: EVIDENCE FROM NON FINANCIAL LISTED FIRMS IN NIGERIA 2. MULTINATIONAL CORPORATIONS, TRANSFER PRICING AND TAX IMPLICATIONS IN NIGERIA 3. FINANCIAL REPORTING AND TAX ISSUES: THE AFRICAN PERSPECTIVE 4. AN EXAMINATION OF THE DISPUTE RESOLUTION MECHANISMS UNDER TAX TREATIES FOR RESOLVING INTERNATIONAL TAX DISPUTES 5. INTERNATIONAL TAX DISPUTES AND CONFLICT RESOLUTION: AN UPDATE 6. A LEGAL ANALYSIS OF THE TAX IMPLICATIONS OF THE MONEY LAUNDERING (PROHIBITION) ACT, 2022. 7. IMPACT OF HUMAN CAPITAL RESOURCES OF SUPREME AUDIT INSTITUTION ON FINANCIAL ACCOUNTABILITY IN NIGERIAN PUBLIC SECTOR 8. INTERNAL AUDIT RE ENGINEERING AND PERFORMANCE OF GOVERNMENT ENTITIES IN NIGERIA

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EXAMINING INCIDENCES OF TAX DISPUTES AND RESOLUTION WITHIN THE NIGERIAN TAX SYSTEM

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Abstract

The Nigerian tax system is bedeviled by series of challenges which have negatively affected the smooth administration of taxes, leading to a systemic failure in the collection and administration of tax. Taxable persons are not readily willing to pay taxes while tax authorities are also not well equipped in the performance of their onerous duties and responsibilities. And in a bid to ensure that taxes are collected as at when due, disputes arise requiring resolution within the available legal framework. This Paper, therefore, examined incidences of tax disputes with a view to proffering appropriate dispute resolution mechanisms in the Nigerian tax regime. In achieving the set aim of this study, the objectives of the Paper were to evaluate the roles of the relevant tax authorities at federal, state and local government levels; assess the various types of tax, identify the incidences of tax disputes and their resolution. The study is library-based with consideration of relevant tax statutes and judicial precedents in both their hard and online data bases. The study found that the causes of tax disputes in Nigeria include divergence in the interpretation of Tax Laws by tax authorities and tax payers; inability of taxpayers to keep records; inconsistencies in audits/tax investigations occasioned by a tax payer's filings and arbitrary use of statutory powers by tax authorities; among others. It concluded that there is no synergy between the tax payers and the tax authorities. Recommendations included that the various avenues for resolution of tax disputes by taxable person and tax authorities should be explored; the appropriate dispute resolution mechanism should be applied and employed for the relevant tax dispute; and public enlightenment programmes should also be embarked upon to ensure cooperation between the tax payers and tax authorities.

1. INTRODUCTION

Tax is a compulsory levy backed by law imposed by government on income, transaction, goods, services and property of an individual, partnership, executor, trustee and a body corporate. It is different from other forms of payment to government. Taxation is the life wire of every nation and the level of development of any nation most times depend on the amount of revenue generated through taxation. Taxation is, therefore, one among other means of revenue generation of any government to meet the needs of the government and citizens.

According to Black's Law Dictionary, ²taxes are monetary charges imposed by the government on person, entities, transaction, or property by virtue of its sovereignty to yield public revenue for the support of government and for all public needs. In a dynamic language, they are levies imposed by the government or any of the recognised authorities of a state on the property, goods services and people living in a given state for the purpose of generating revenue to defray the expenses incurred by the government or authority on behalf of the people.³

With the foregoing elucidation, taxation connotes the process or method of determining the amount of tax payable by individuals, groups or organizations on goods, services or properties and the methods of collecting these taxes and accounting to the state as stipulated by law.

The impact of tax cannot be overemphasised. It is a source to think of in both the state and federal government budgets. The taxes collected can be enjoyed by the taxpayers in the form of social amenities provided by the government. Taxes are imposed to serve the following purposes: revenue generation, macro-economic stability and environmental conservation.

Taxes are established by laws in Nigeria. Such tax must have been passed into law through enactment of relevant statutes (Acts of the National Assembly, Laws made by the States Houses of Assembly and By-laws, among others). Tax law establishes the administrative body and specifies its tax jurisdiction. Tax structure in Nigeria is tailored towards Nigerian governance hierarchy (Federal, State and Local Governments). The Federal Inland Revenue Service (FIRS) is the body responsible for the administration of taxes that are due to the federal government. The various state boards of internal revenue administer taxes that are due to the state governments while the local government revenue committees administer taxes that are due to local governments. However, joint tax board advises and harmonises double taxation, and proposes amendments.

² B. Garner, *Black's Law Dictionary*, (8th ed. Minnesota: West Publishing Co, 2009) p.1497.

³ Olugbenga S. Obatola, *The Rudiments of Nigeria Taxation* (ASCO Publishers, Lagos, 2013) pp.1-2.

II. TAX LAWS

There are various tax laws in Nigeria, and some of them are:

- (i) Companies Income Tax Act, *Cap. C21 Volume 3, LFN 2004* (as amended)
- (ii) Education Tax Act, *CAP. E 4 Volume 17 LFN 2004* (Replaced with Tertiary Education Trust Fund (Establishment, etc.) Act, 2011.
- (iii) Petroleum Profit Tax Act, *Cap. P13 Volume 13 LFN 2004* (as amended)
- (iv) Personal Income Tax Act, *Cap. P8, Volume 13 LFN 2004* (as amended).
- (v) Value Added Tax Act, *Cap. V1 Volume 15 LFN 2004* (as amended)
- (vi) Stamp Duty Act, *CAP. S8 LFN 2004* (as amended)
- (vii) Capital Gains Tax Act, *Cap C1 Volume 2 LFN 2004* (as amended)
- (viii) National Information Technology Agency Act, *CAP NI56 LFN 2004* (as amended)
- (ix) Custom and Excise Management Act, *Cap C 45 LFN, 2004* (as amended)
- (x) Casino Taxation Act, *CAP. C3 LFN 2004*
- (xi) Income Tax (Authorized Communications) Act, *CAP. I 4 LFN 2004*
- (xii) Industrial Development (Income Tax Relief) Act, *CAP. I 7 Volume 7 LFN 2004*
- (xiii) Federal Inland Revenue Service (Establishment Act) *CAP. F 36 2007*
- (xiv) Taxes and Levies (Approved List for Collection) Act, *CAP T2 LFN 2004* (as amended)
- (xv) Nigerian Export Processing Zones Authority Act; 1992 Decree No. 63 (contains tax laws applicable to Export Processing Zone in Nigeria)
- (xvi) Finance Act 2019.

III. TAXING AUTHORITIES UNDER THE NIGERIAN LAW

Taxing Authority means any authority in any jurisdiction in which any issuer is recognised or is otherwise resident for tax purposes or any jurisdiction from or through which payment is made.

A good law is important to a good tax system. A good administration (and enforcement) is important to the attainment of the overall good of the system. Taxing Authorities can also be described as bodies designated for the administration of taxes. They involve in practical interpretations and application of the tax laws. They are usually government agencies at various levels. Unlike the practice in the United Kingdom, where responsibility for administration of tax is entrusted to the Board of Inland Revenue, in Nigeria at the federal level, it is the Federal Inland Revenue Service (FIRS), while the State Internal Revenue Service, and the Local



Government Revenue Authority are for states and local governments respectively. The Joint Tax Board (JTB) is the umbrella body for all tax authorities in Nigeria. The joint state revenue committee implements the decisions of JTB at the state levels.

The bodies charged with the administration of tax in Nigeria are the Federal, the State and Local Governments. The tax authorities of these tiers of government derive their formation from the federal laws which include:

Federal Inland Revenue Service (FIRS)

The Service was established by the Federal Inland Revenue Service (Establishment) Act⁴. The Service administers Companies Income Tax Act, Value Added Tax Act, Capital Gain Tax Act, Petroleum Profit Tax Act, Stamp Duty Act, Personal Income Tax Act and Taxes and Levies (Approved List for Collection) Act, among other tax statutes. The FIRS is the body that has the responsibility of assessing all revenue accrued to the federal government.

State Board of Internal Revenue (SBIR)

The State Board of Internal Revenue was established by section 87 of the Personal Income Tax Act as amended. The state government is in charge of personal income tax of individuals such as employees, sole traders, and partnership. They also collect capital gains tax (individuals).

The administrative organization of the state revenue department is basically the same throughout the country except for slight variations in designations and devolution of responsibility. The head of the revenue department is called Director or Chairman of Board of Internal Revenue and he is assisted in the execution of his duty by the deputy directors, chief inspector of taxes, principal inspector of taxes, senior inspector of taxes, principal executive officers, senior executive officers and other tax officials of lower ranks. States internal revenue collection is not solely limited to personal income tax, but includes those revenues accruing to and collectible by the state internal revenue departments.

Local Government Revenue Committee

The Committee was established by section 90 (1) of the Personal Income Tax Act as amended. Local governments collect taxes on market stalls, cattle fees, naming of streets, among others. However, some category of people such as personnel of the armed forces, Navy, Police and residents of Federal Capital Territory, Abuja pay their taxes to the Federal Inland Revenue

⁴ Federal Inland Revenue Service (Establishment) Act, 2007, section 1.

Service (FIRS) because they do not have a principal place of residence. This also applies to the offices of foreign affairs.

In each Local Government area of a state, there is established a state tax committee known as the Local Government Revenue Committee comprising the Supervisor for Finance as the Chairman, three local government Councilors as members and two other persons experienced in revenue matters to be nominated by the Chairman of the local government on their personal merit. The committee is responsible for the assessment and collection of all taxes, fines and rates collectible by the local government and shall account for all amounts so collected in a manner prescribed by the Chairman.

The Tax Appeal Commissioners

Under Section 59 of the Federal Inland Revenue Service (Establishment) Act, a Tax Appeal Tribunal is established with the power to settle disputes arising from the operations of the Act and other Acts established under the First Schedule to the Act. The Minister of Finance may specify the number of zones, matters and places in relation to which the tribunal may exercise jurisdiction. The Tribunal is constituted by five members to be appointed by the Minister and these are referred to as the Tax Appeal Commissioners. A person shall not be appointed as a Tax Appeal Commissioner unless he is knowledgeable about laws, regulations, norms, practices and operations of taxation in Nigeria.

The body is charged with the duty of hearing and determining appeals from any company which may be aggrieved by an assessment made on it and has failed to agree with the Board of Inland Revenue. The body may confirm, reduce, increase or annul the assessment complained of or make such order thereon as it deems fit.

The Appeal Commissioners at the hearing must admit all lawful evidence whether oral or documentary adduced by the Appellant company or the Board. In addition, the Board may make use of or produce in evidence any return correspondence, accounts, plans, statement or other documents to which it has had or may have lawful access for the purpose of taxation.

An award of judgment by the Tribunal shall be enforceable as if it were a judgment of the Federal High Court. In the event of any dissatisfaction of the body's ruling, either of the parties can appeal to the Federal High Court.

Joint Tax Board

The Joint Tax Board is established by section 86 of the Personal Income Tax Act and consists of the Chairman and one member from each state. The joint tax board is concerned with the

administration of income tax generally. In particular, it coordinates the various aspects of taxation as between states as well as promoting uniformity in personal taxation. It also advises the federal government on request in respect of double taxation arrangements with any other country and in respect of rates of capital allowances as well as on matters connected with the introduction of amendments to the Income Tax Act.

IV. TYPES OF TAXES IN NIGERIA

Direct and Indirect Taxes

A direct tax is one which is demanded from the very person(s) who it is intended or desired should pay it. It includes those taxes, which are assessed upon the property, person, business, income and so on of those who are to pay them. Examples of direct taxation include: Personal Income Tax, Capital Gains Tax and Companies Income Tax.

Indirect taxes, on the other hand, are those which are demanded from one person in the expectation and intention that he shall indemnify himself at the expense of another. In other words, indirect taxes are those which are imposed on commodities before they reach the consumer and are paid by those upon whom they ultimately fall, not as taxes but as part of the market price of the commodity. Examples of indirect taxation are Value Added Tax (VAT), stamp duty, excise duty, customs duty and sales or purchase tax.

It is noteworthy that indirect taxes may affect the cost of living as such taxes are borne by the consumer of such goods. A good example was the failed attempt by the federal government of jacking the VAT rate to 10%.

V. TAX DISPUTES

Virtually in every human endeavour, disputes arise and taxation is not immune from this. Tax disputes cannot be totally eradicated in any tax jurisdiction. One of the features of a tax is that it is a compulsory payment imposed by law which is not necessarily linked to a direct benefit in return to the tax payer.

Tax Disputes means disputes arising between the taxpayer and the tax administrator over a decision on the approval of an inspection report or any other similar decision on the basis of which the tax is calculated anew and the taxpayer is instructed to pay it. It may also arise over a decision made by a tax administrator to refuse the refund (offsetting) of a tax overpayment (tax difference).

There is a common maxim that says "no one pays tax with a smile" and it is based on this assumption that no one willingly pays to any tax authorities on a continuous basis. Tax disputes are as certain as tax payments and the manner of resolution of the disputes is a major factor in the revenue base of any Country (irrespective of the tier of government) and also for purposes of driving investments.

Tax disputes in Nigeria are primarily resolved by the courts and the Tax Appeal Tribunal. The Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the Taxes and Levies (Approved List for Collection) Act provide for the assessment and collection of taxes by the federal, states and local governments. The jurisdiction of the courts over tax disputes derives from whether the taxes are federal, state or local government taxes. Jurisdiction over taxes administered at both the federal and state levels, such as stamp duties, is determined by the legal personality of the taxpayer and for individuals, their place of residence.

Tax disputes are invariably and legally circumscribed as conflict between tax payers and tax administrators or officers regarding tax calculation, payment or recovery as well as regarding penalties for non-compliance with or violation of tax obligation.⁵

Judiciary as one of the institutions for the efficient resolution of tax disputes is established by the Constitution. This, however, does not preclude the National Assembly or State Houses of Assembly from establishing other courts provided they shall have subordinate jurisdiction to a High Court. Pursuant to this rule, the Federal Government established Tax Appeal Tribunal while several states have also established State Revenue Courts to adjudicate on issues arising from the imposition and collection of taxes. Over that same pedestal, the extant national tax policy encourages the use of Alternative Dispute Resolution Mechanism, especially arbitration, in the resolution of tax disputes, though tax authorities do not seem to be too inclined to consider these options.⁶ Other modalities for the resolution of tax disputes include but not limited to distress, tax clearance certificate system, tax amnesty and search and seizure.

In synopsis, this Paper seeks to examine the distinctive incidences of tax disputes as well as the disparate and diverse methods or mechanisms for the efficient and effective resolution of tax disputes within the length and breadth of the extant modern Nigeria.

⁵ Law Insider, 'Tax Disputes' <<https://www.lawinsider.com/dictionary/tax-disputes>> Accessed on 06 July 2022.

⁶ Newman U. Richards, 'An Examination of Tax Dispute Resolution Mechanism in Nigeria: A Case for the Adoption of Alternative Dispute Resolution Methods' <<https://www.researchgate.net/publication/336471488-an-examination-of-tax-dispute-resolution-mechanism-in-nigeria-a-case-for-the-adoption-of-alternative-dispute-resolution-methods>> Accessed 06 July, 2022.

VI. INCIDENCES OF TAX DISPUTES

The various incidences of tax disputes as aforementioned can be seen below:

(a) **Tax Evasion:** The Oxford Advanced Learner's Dictionary defines the word evade as "to get away, escape or escape by contrivance or artifice from; to get out of performing (a duty), making (a payment) or, to defeat the intention of (a law, stipulation etc) by specious compliance with its letter."⁷ It technically follows that tax evasion is a contravention of tax laws, whereby a taxable individual or company neglects to pay the tax due, or reduces the tax liability by making fraudulent or untrue claims on the income tax form.⁸ On that threshold, a tax evader is logically someone who, for a number of reasons, refuses to fulfill his civic responsibilities under the law. He refuses to register himself or his business with tax office for tax payment. He specialises in smuggling goods into and out of the country and thus avoiding the payment of custom duties. He fails to renew his business and vehicle particulars whenever they are due and he also runs away from task of stamping his documents to make his business agreements possess legal backing. He is in all respects considered in law a criminal.⁹

Under the Value Added Tax Act, a person who participates in or takes steps with a view to making evasion of tax by him or any other person is guilty of an offence and liable on conviction to a fine of ₦30,000 or two times the amount of the tax being evaded, whichever is greater, or to imprisonment for a term not exceeding three years.¹⁰ Without justifying tax evasion as an incidence of tax disputes, tax payers evade tax for many reasons which include high tax rates which many tax payers consider to be unbearable, lack of trust and faith in the government on the part of the citizens, tax payer's outright unwillingness to contribute to the growth and development of the society, lack of proper understanding or complete ignorance of tax laws on the part of the citizens, among others.

However, tax evasion is eminently perceived to be dishonest. Again, tax evaders are free riders who impose general losses on other tax payers by way of higher burdens or lower benefits of public expenditure which are not matched by any specific loss to themselves even though they

⁷ Abdulrasaq M. T., *Nigeria Tax Penalties* (Princeton & Associates Publishing Co. Ltd. Lagos, 2014) p.11.

⁸ Ibid. p 12.

⁹ Olugbenga S. Obatola, *The Rudiments of Nigeria Taxation* (ASCO Publisher, Lagos, 2013) p.96.

¹⁰ Value Added Tax Act, s.26.

continue to derive benefits from public expenditure.¹¹ It is on these fundamental notes that tax evasion is highly considered as socially, morally, economically and legally reprehensible.

(b) **Failure to Make Attribution:** According to Black's Law Dictionary,¹² "attribution is the process by which a person's or entity's stock ownership is assigned to a related family member or entity for the purpose of tax avoidance". Attribution rules require that a person, group of persons or entity who is or are the legal principal owners of a firm or business should be identified or attributed as such, and they are devised to prevent citizens from taking advantage of family relations to unfairly avoid taxes. It is hence an offence for any person or entity to neglect or fail to make the necessary attribution.¹³ On that premise, section 27 of the Value Added Tax Act provides that a person required to make attribution, but who fails to do so; or having done so, fails to notify the FIRS, is liable to pay a penalty of ₦5,000.¹⁴

(c) **Failure to Submit Returns:** Regard being amply had to its frequent occurrence on the part of tax payers, failure to submit returns constitute another incidence of tax dispute. On a legal threshold, tax return is an income tax form on which a person or entity reports income, deductions and exemptions, and on which tax liability is calculated.¹⁵ It is otherwise shortened as return. The filing of Value Added Tax (VAT) return, for example, is done on monthly basis. In that ramification, invaluable information that are to be contained on VAT form include the name and address of the VATable individual or organization, the total VAT payable, total VAT on output and domestic supplies, the month affected, value of total VATable services and VAT office where payment is made, to mention but a few.¹⁶

It is instructive to note that failure to submit return is similarly a lucid misdemeanor under the law. This subtle assertion is tied to the salient point that an entity or person that fails to submit

¹¹ M.T. Abdulrasaq, *Nigeria Tax Offences and Penalties* (Princeton & Associates Publishing Co. Ltd., Lagos, 2014) p.27.

¹² B. Garners, *Black's Law Dictionary* (8th ed., Minnesota West Publishing Co.2009) p.139.

¹³ Attribution Rules<[https://www.investopedia.com/termstalattribution rules.asp](https://www.investopedia.com/termstalattribution%20rules.asp)>Accessed on 07 July 2022.

¹⁴ Value Added Tax Act, *Cap VI, Laws of the Federation of Nigeria, 2004*, section 27.

¹⁵ B. Garners, *Black's Law Dictionary* p. 1503.

¹⁶<https://www.google.com/search?q=cases+on+failure+to+submit+return+0&q=cases+on+failure+to+submit+return+0&q=chrome...69i573313-15813joj4%3Fclient=ems>>Accessed 07 July 2022.

tax return to the appropriate authority is liable to a fine of ₦5,000 for every month in which the failure continues.¹⁷

It should be borne in mind that the rationale behind making most of the identified incidences of tax dispute penal is to discourage their perpetual recurrence, thereby fostering obedience for laws of taxation in Nigeria.

(d) **Resisting, etc., An authorized Officer:** By section 30 of the Value Added Tax Act, "a person who –

- a. Resists, hinders or obstructs or attempts to resist or hinder an authorized officer acting under the power of inspection section 39 of this Act, or;
- b. Fails to comply fully with any requirement made under section 39 of this Act, or
- c. Makes any statement in response to a requirement made under section 5 of this Act which is false or incomplete; or
- d. Procures or attempts to procure by any means any other person to act as aforesaid, is guilty of an offence and is liable on conviction to a fine of ₦10,000 or imprisonment for a term of six months or both such fine and imprisonment."¹⁸

In order to draw home the points and for the purpose of analytical clarity, section 39 of the Act provides that an authorised officer may at any time enter any premises, without warrant, upon which he has reasonable grounds to believe that a person is carrying on business in order to ascertain whether the Act is being complied with (on the part of the occupier of the premises or any other person and on entry he may carry out such inspection and make such requirements as may be specified by the Federal Inland Revenue Service.¹⁹

It is crystal clear that an incidence of tax dispute occurs where an authorised inspection officer is being directly or indirectly hindered, resisted or obstructed, or worst still, where attempt is being made to hinder or resist such authorised officer by an occupier of a business premises from carrying out his inspection function under the Act. Incidences of tax dispute as such ensue out of the inaction or action of tax payers (whether individuals, groups or organizations) to deny government access to the collection and receipt of payable taxes.

¹⁷ VAT Act, s.35.

¹⁸ *ibid.*

¹⁹ Olugbenga S. Obatola, *The Rudiments of Nigeria Taxation* p.96.

(e) **Issuing of Tax Invoice by an Unauthorised Person:** A tax invoice is an invoice issued for taxable supply of goods and services, which shows the amount of the tax payable for a transaction. Furthermore, it is a detailed invoice that a VAT registered business must issue in the following cases:

- (i) When making supplies, whether these are for a non taxable person or a taxable person using the supplies for personal use;
- (ii) On making deemed supplies and;
- (iii) On receiving the consideration, fully or partially, before the date of supply.²⁰

Accordingly, tax invoice has certain elements or components that must be present thereon which include but not limited to the term "tax invoice", the supplier's full name, address and tax identification number, the date of issuance, date of supply and date of payment, sequential number of the tax invoice, the applied tax rate, value of tax due, customer's full name, address and tax identification number (if any) and value of tax due.²¹ Existentially, it is an offence for an unauthorised person to issue tax invoice for the payment of tax or for any purpose whatsoever as vividly evident under section 31 of the Value Added Tax Act which provides:

"A person who, other than-

- a. A person registered under this Act; or
 - b. A person authorised to do so under this Act,
- issues an invoice purporting to be attributable to tax is guilty of an offence, and is liable on conviction to a fine of ₦10, 000 or imprisonment for a term of six months."²²

It flows from the above that six months' imprisonment or a fine of ₦10,000 is to be meted out as sanction to any unauthorised person who issues a tax invoice, should the option of litigation be applied as modality for the resolution of this incidence of tax dispute.

Finally, the crux of this discourse remains that incidences of tax disputes double as penal wrongs that attract certain punishment if the mechanism of (Criminal) litigation as against civil litigation or other mechanism – is aptly adopted for the resolution of same within the boundary of the extant modern Nigeria.

²⁰< <https://www.ioel.com/download/FAQ-invoice.pdf>>Accessed on 09 July 2022.

²¹'Element of Tax Invoice – Simple and Comprehensive'<<https://tallysolutions.com/mena/oman-vat/element-of-tax-invoice-simple-and-comprehensive>>Accessed on 09 July 2022.

²² VAT Act, 2004.



(f) **Furnishing of False Documents:** The tax law does not permit any taxable person to produce or furnish the tax authority with false information. Thus, any person who produces or furnishes the tax authority with any document or information which is false in any material particular is guilty of an offence and is liable on conviction to a fine twice the under-declared.²³ The major challenges inhibiting the growth of internally generated revenue in the country include the high level of tax evasion, obsolete tax laws, weak and incapacitated tax administrative machinery, manual tax system and unwieldy operational as well as enforcement procedures. Other sources of tax disputes are disputes arising from procedure for exercise of statutory powers vested on FIRS, failure by the taxpayers to keep records as required by law, inconsistency in the provisions of the tax laws which subjects it to different interpretations and inconsistencies in Tax Authorities' position on certain tax matters. It can arise where the tax payer disagrees with assessments and decides to object. Similarly, disputes may arise where the tax authority refuses to allow certain expenditure as allowable deduction due to lack of sufficient supporting documentary evidence tax.

(g) **Aiding and Abetting:** Disputes may arise where an officer of the Federal Inland Revenue Board or any other person aids or abets the commission of any of the offences under the tax law. Such an officer or person is liable on conviction to a fine of N50,000 or imprisonment for a term of five years if found guilty of aiding and abetting the commission of any such offence.²⁴

(h) **Mounting a Road Block by Unauthorised Person:** There are instances where some unauthorized people will mount road block with a view to collecting taxes and other levies. The law authorizes only appropriate taxing authorities to assess or collect taxes and levies on behalf of the government. Disputes arise where any unauthorised person collects or levies tax or levy or mounts a road block or causes a road block to be mounted for the purpose of collecting tax or levy and such a person is liable on conviction to a fine of N50,000.00 or imprisonment for three years or to both such fine and imprisonment if found guilty.²⁵

²³ VAT Act, s. 25.

²⁴ Value Added Tax Act, s 36.

²⁵ Taxes and Levies (Approved List for Collection) Act, s. 3.

- (i) **Failure to Deduct and Remit Tax:** The Tax Laws provide that a person who, being obliged to deduct tax under the Act, fails to deduct or having deducted fails to pay to the relevant tax authority within 30 days from the day the amount was deducted or the time the duty to deduct arose, is guilty of an offence and liable on conviction to pay tax withheld or not remitted in addition to a penalty of 10% of amount of tax due, in addition to interest at the prevailing commercial rate.²⁶ Thus, in *Commissioner of Internal Revenue v. J. A. O Aworeni*²⁷, the defendant failed to pay tax deducted to the Government treasury and the court found the defendant guilty and he was ordered to pay penalty and the cost of the suit.

The requirement of the law to secure conviction of a tax defaulter hereunder are that: the tax defaulter is obligated to deduct tax, he either fails to deduct tax or to remit same to the relevant tax authority, the non- deduction arose after 30 days when the duty to deduct arose and the non-remittance arose after 30 days from the date the amount was deducted.²⁸

- (j) **Making Incorrect Returns:** A person who, without reasonable excuse, makes an incorrect return or gives an incorrect information in relation to a matter or thing affecting the liability of any taxable person, is guilty of an offence and liable to a fine of N20,000.00 and double the amount of tax which has been undercharged or would have been so undercharged in consequence of the incorrect returns.²⁹ Hence, making an incorrect tax return to the tax authority is a criminal wrong for which a penal sanction awaits the perpetrator.

It is worthy of note that making incorrect return or making no return at all amounts to one and the same tax dispute to which the same criminal sanction applies under section 95 of Personal

²⁶ Federal Inland Revenue Service (Establishment) Act, s 40.

²⁷ (Unreported) Suit No. 1/404/72 cited in Adedokun Kareem Adeyinka, *Enforcement and Recovery of Income Tax in Nigeria* p. 52.

²⁸ Ibid., pp.51-53. See also Personal Income Tax Act, s. 95.

²⁹ Ibid., pp.57-59.

Income Tax Act as demonstrated in the case of *Moschi v. General Commissioners for Kensington and Another*³⁰

(k) **False Statement and Return:** A person who knowingly makes a false statement or false representation for the purpose of obtaining a deduction or set-off or relief or aids, abets, assists, counsels, incites or induces any other person to make or deliver a false return or statement under the Act or unlawfully refuses or neglects to pay tax is guilty of an offence and liable on conviction to a fine of ₦50,000 for individuals and ₦500,000.00 for corporate bodies or imprisonment for not more than six months.³¹ In *R v Hudson*³², the appellant was convicted for false statement to the prejudice of the crown and the public revenue with intent to defraud. He was convicted and his conviction was upheld on appeal despite his argument that the offence was unknown to common law. The appellate court, in upholding his conviction, held that the offence charged disclosed the offence of fraud on the crown and the public which was indictable as a common law misdemeanor.³³

VII. RESOLUTION OF TAX DISPUTES

There are various methods for resolution of tax disputes. However, this paper shall analyse a few categories topically embedded with the depth of the foregoing legally synchronous discourse as can be seen below:

(a) **Monetary Penalties and Criminal Prosecution:** The Income Tax Acts³⁴ and other tax laws make adequate provisions for monetary penalties and or terms of imprisonment pursuant to criminal prosecution for certain tax delinquencies. Such delinquencies include: (i) failure to deduct and remit tax (ii) making incorrect returns (iii) false statements and returns (iv)

³⁰ *Ibid.*, p.60.

³¹ Personal Income Tax Act, s. 96.

³² (1956) 1 All ER, 814.

³³ Adedokun Kareem Adeyinka, *Enforcement and Recovery of Income Tax in Nigeria*, pp. 60-62.

³⁴ Personal Income Tax Act and Companies Income Tax Act.

obstructing a tax collector and (v) contravention or failure to comply with any of the provisions of the Act; to mention but a few.³⁵ The Magistrate court is vested with jurisdiction to try any of the offences. However, the terms of imprisonment in each of the charges will determine the grade of magistrate that can entertain each offence; and if the term of imprisonment exceeds what the magistrate can entertain, the High Court would have jurisdiction.³⁶

That being the case, all tax offences enumerated above attract penal sanctions, for they are criminal offences. The State Internal Revenue Service can institute criminal proceedings in its own name or allegations of tax offences are lodged with the police that will investigate, prefer a charge and prosecute accordingly, but the State Internal Revenue Service has no such power to initiate criminal proceedings privately except with the fiat of the Attorney General of the State.³⁷

(b) **Civil Litigation:** The term civil litigation entails any civil proceeding before a court of competent jurisdiction, tribunal or person having, by law, power to hear, receive and examine evidence on oath. Under the income tax laws, government of the federation or the relevant tax authorities are empowered to sue for the recovery of income tax in a court of law with full cost action from the person charged therewith as a debt due to it. The relevant tax authority may sue in its official name. In this regard, a court of competent jurisdiction include High Court, Tax Appeal Tribunal and Magistrate/Revenue Courts provided the amount claimed in any action does not exceed the amount of the jurisdiction of the magistrate concerned with respect to action for debt.³⁸

³⁵ Adedokun Kareem Adeyinka, *Enforcement and Recovery of Income Tax in Nigeria* (Corporate Transactions Limited, Lagos, 2010) p.51.

³⁶ Ibid., p.70.

³⁷ Ibid., pp.70 -71.

³⁸ Ibid p.17

State Revenue/ Magistrate's Courts

The House of Assembly of some states, in the exercise of their power to establish courts other than those established by the constitution, with subordinate jurisdiction to that of a High Court, have established Revenue Courts. For instance, the Kwara State House of Assembly made the Kwara State Revenue Court Law which established the Kwara State Revenue Court. The Delta State House of Assembly established Revenue Courts of Delta State which is intended to be a mobile court that can sit anywhere in the State.³⁹

The jurisdiction of the court shall only relate to Revenue matters arising from state laws and the court is a court of summary jurisdiction. In other words, the court is to enforce state and local government laws and Appeal from the Revenue courts lie to the State High court. The High Court is expected to dispose of the Appeal within 30 days or such other period as the law may provide.

Tax Appeal Tribunal

Tax Appeal Tribunal is established by section 59 of the Federal Inland Revenue Service (Establishment) Act. Prior to the establishment of the Tribunal, resolution of disputes arising from the administration of federal taxes was through an appeal to the Body of Appeal Commissioners for matters relating to income tax, and the Value Added Tax tribunal for matters relating to administration of Value Added Tax. With the establishment of Tax Appeal Tribunal, the Body of Appeal Commissioners and the Value Added Tax Tribunal have been abolished.⁴⁰

³⁹ Ibid p. 19.

⁴⁰ Newman U. Richards, 'An Examination of Tax Dispute Resolution Mechanism in Nigeria: A Case for the Adoption of Alternative Dispute Resolution Methods' <<https://www.researchgate.net/publication/336471488-an-examination-of-tax-dispute-resolution-mechanism-in-nigeria-a-case-for-the-adoption-of-alternative-dispute-resolution-methods>> Accessed 06 July, 2022.

The Tax Appeal Tribunal has powers to adjudicate on disputes and controversies arising from the administration of all federal tax laws including Companies Income Tax Act, Personal Income Tax Act, Value Added Tax Act, Capital Gains Act, or any other law contained in or specified in the First Schedule to the Federal Inland Revenue Service (Establishment) Act or other laws made or to be made from time to time by the National Assembly. In addition, it has powers to adjudicate on disputes arising from enactments or laws imposing collection of taxes, fees and levies within the Federal Capital Territory.⁴¹

Under the Act, the Tax Appeal Tribunal is expected to be the court of first instance for the resolution of all federal tax related disputes and has the jurisdiction to determine its jurisdiction over any tax matter. The tribunal is guided by the Tax Appeal Tribunal (Procedure) Rules made by the minister pursuant to his power to make rules for the tribunal. Any person dissatisfied with the decision of the tribunal may appeal to the Federal High Court on point of law within 30 days and further appeals lie to the Court of Appeal and the Supreme Court.⁴²

The Constitutionality of Tax Appeal Tribunal

The debate whether the Tax Appeal Tribunal is constitutional or not has attracted the attention of lawyers, jurists and text writers. The issue has been whether the jurisdiction of Tax Appeal Tribunal is in conflict with the exclusive jurisdiction of the Federal High Court on Revenue matters of the Federation as enshrined in section 251 of the 1999 Constitution. The argument is an extension of the controversy on the constitutionality of the scrapped Value Added Tax Tribunal and the Body of Appeal Commissioners. However, recently, the Court of Appeal seems to have resolved this issue while allowing the appeal against the decision of the Federal High Court sitting in Lagos in *CNOOC Exploration and Production Limited and Anor v.*

⁴¹ See generally Paragraph 11 of the Fifth Schedule to the Federal Inland Revenue Service (Establishment) Act.

⁴² See Paragraph 17 of the Fifth Schedule to the Federal Inland Revenue Service (Establishment) Act. See also Adedokun Kareem Adeyinka, *Enforcement and Recovery of Income Tax in Nigeria* p.197.

*Nigerian National Petroleum Company and Anor*⁴³, and held that all tax disputes must commence at the Tax Appeal Tribunal and that the jurisdiction of the Tax Appeal Tribunal does not conflict with that of the Federal High Court. There had always been conflicting decisions of the Federal High Court which had compounded this controversy until this decision was reached. For instance, in *NNPC v. Tax Appeal Tribunal & Ors*⁴⁴, the issue before the Federal High Court, among others, was whether the Tax Appeal Tribunal has jurisdiction to determine the tax appeal before it. It was held that the Tax Appeal Tribunal is not a Court within the meaning of Court in the Constitution and therefore the Federal High Court does not have exclusive jurisdiction over tax matters. However, in *TSKJ II Construces Internacional Sociadade LDA v. Federal Inland Revenue Service*,⁴⁵ a similar issue arose before the Federal High Court and it was held that by Section 251 (1)(a) & (b) of the 1999 Constitution, the Federal High Court exercises exclusive jurisdiction in civil causes and matters connected with taxation of companies and the counsel's argument that the Tax Appeal Tribunal is not a court is a mere semantics in as much as its decisions affect the civil rights and obligations of companies in relation to taxation matters and revenue of the Federal Government.

Although the Court of Appeal has now held that the jurisdiction of Tax Appeal Tribunal does not conflict with that of the Federal High Court, it appears that section 251 of the 1999 Constitution clearly vests on the Federal high court exclusive jurisdiction over all matters relating to the revenue of the Federal Government and taxation. Thus, the controversy may continue until the matter is finally addressed by the Supreme Court. In that regard, there is the need to amend section 251 (1) of the CFRN 1999 to recognise Tax Appeal Tribunal as the court of first instance, while the Federal High Court will exercise Appellate jurisdiction over it.⁴⁶

⁴³ (2017) 32 TLRN 34.

⁴⁴ (2014) 13 TLRN, 39.

⁴⁵ (2014) 13 TLRN, 1.

⁴⁶ Adedokun Kareem Adeyinka, *Enforcement and Recovery of Income Tax in Nigeria* p.199.

The Federal High Court

The Federal High Court is established by section 249 of the 1999 Constitution. The jurisdiction of the Federal High Court is contained under section 251 (1) of the Constitution.

A cursory look at the jurisdiction of the Federal High Court shows that it has exclusive civil jurisdiction in all federal tax matters, including everything that has to do with the revenue of the federal government, company taxation, custom and exercise duties and import duties, among others.

The Court of Appeal summarised the exclusive jurisdiction of the Federal High Court on federal tax matters in *Lagos State Inland Revenue Board v. Motorola Limited and Anor*⁴⁷ as follows:

Under section 251 (1) (q) of the 1999 Constitution, the Federal High Court exercises jurisdiction to the exclusion of any other court in causes and matter relating to revenue of the federation in which the said government or any of its agencies is a party.

Thus, the Federal High Court has jurisdiction over all federal tax matters and appellate jurisdiction over decisions of the Tax Appeal Tribunal. However, by the decision of the Court of Appeal in *CNOOC Exploration & Production Ltd and Anor v. Nigerian National Petroleum Company and Anor*, all federal tax matters must commence at the Tax Appeal Tribunal.⁴⁸

State High Court

The Constitution of the Federal Republic of Nigeria established High Court for each state of the Federation and the Federal Capital Territory. The jurisdiction of a State High Court is provided for in section 272 (1) of the 1999 Constitution. It is worthy of note that the jurisdiction of the State High Court and High Court of the Federal Capital Territory is subject to that of the Federal High Court. Thus, a State High Court does not have jurisdiction over any matter that

⁴⁷ (2013) 12 TLRN, 181.

⁴⁸ Adedokun Kareem Adeyinka, *Enforcement and Recovery of Income Tax in Nigeria* p.199.

has to do with revenue of the federal government or taxation of companies. It nevertheless entertains appeals emendating from State Revenue/Magistrate's court on state tax disputes.⁴⁹

Court of Appeal and the Supreme Court

The Court of Appeal is established by section 237 of the 1999 Constitution, while the Supreme Court is established by section 230 (1) of the same Constitution. Both courts have no original jurisdiction on tax matter. However, the Court of Appeal has powers to hear appeal on tax matter arising from the decisions of the Federal High Courts, State High Courts and the High Court of the Federal Capital Territory. The Supreme Court, on the other hand, has exclusive appellate jurisdiction to hear and determine appeals from the Court of Appeal. Thus, the Supreme Court is the final arbiter on all tax disputes.

(c) Alternative Dispute Resolution Method (ADR)

Both Criminal prosecution and civil litigation have over the years proved not be the best and fastest way of resolving disputes, although they are the constitutionally prescribed modes of dispute resolution. In Nigeria, both criminal prosecution and civil litigation have been characterised by undue delay and attendant high cost, which has made it unattractive. Alternative dispute resolution methods are rather faster - they allow for flexibility of procedure and promote the use of experts as parties are allowed to choose the people to resolve the dispute and even the venue. As such, the extant Nigeria's National Tax Policy encourages the use of ADR in the resolution of disputes. ADR methods include negotiation, mediation, conciliation and arbitration. The discourse here is meant to examine the possibility of applying these methods in the resolution of tax disputes in Nigeria.⁵⁰

⁴⁹ Ibid.p.200.

⁵⁰ Ibid. pp 201-202.

Negotiation: Negotiation has been defined as a consensual bargaining process in which the parties attempt to reach an agreement on a disputed matter. Negotiation usually involves complete autonomy for the parties involved, without the intervention of third parties. As a matter of fact, negotiation is the first step in tax dispute resolution mechanism in Nigeria. For instance, under the provisions of the Company Income Tax Act and Personal Income Tax Act, a person who is disputing an assessment is not expected to rush to the Tax Appeal Tribunal or Court. He can apply to the relevant tax authority by notice of objection in writing to review and revise the assessment. On receipt of the objection, the tax authority may request for more particulars and may invite any person who may be able to give information for examination. When the tax payer and relevant tax authority agrees as to the correct amount of tax chargeable, the assessment shall be amended accordingly.⁵¹

This is clearly a form of negotiation and the fastest way of resolving dispute relating to tax assessment. It is when they are unable to agree that the tax payer will seek other ways to resolve the dispute.

Mediation: Mediation has been defined as a method of non-binding dispute resolution involving a neutral third party who helps the disputing parties to find a mutually agreeable solution. It is necessary, for instance, where negotiation has reached a deadlock and it has become obvious that the parties cannot resolve the dispute themselves.⁵² Mediation is, however, gripped with the effect of not being enforceable and thus, due to this defect, tax authorities may not be inclined to subject themselves to a neutral third party when they know the process may be difficult to enforce.

⁵¹ Ibid. p. 202

⁵² Ibid. pp. 202-203.

Conciliation: conciliation has been defined as the process by which a neutral third person meets with the disputing parties and explores how the dispute might be resolved. The difference between mediation and conciliation, which though seem to be similar, is that while there is no legal backing for mediation, there is legal backing for conciliation under the extant Nigerian principal legislation on Arbitration Law. In that dimension, section 37 – 42 and the Third Schedule to Arbitration and Conciliation Act provide for the use of conciliation in the resolution of disputes.⁵³

Arbitration: Arbitration has been defined as a method of dispute resolution involving one or more neutral third parties and whose decision is binding. Unlike in mediation and conciliation, arbitrators have powers to make binding decisions and arbitral awards are enforceable in the High Court as if they are judgments of the High Court. Arbitration is, therefore, an effective alternative to litigation (and prosecution). However, in practice, tax authorities frustrate the use of arbitration in tax disputes. See for example the case of *Federal Inland Revenue Service v. Nigeria National Petroleum Corporation and 4 Others*,⁵⁴ where the court, conceding to the contention of the FIRS (tax authority), voided the arbitral awards given while the court was still sitting. In that case, the matter was brought before an arbitral tribunal. The plaintiffs attended the arbitral proceedings and objected to its jurisdiction. When it was glaring that the tribunal was not going to terminate its proceedings, the plaintiff filed an originating summons before the Federal High Court questioning the jurisdiction of the Tribunal to entertain tax disputes. The Federal High Court upheld the plaintiff's contention and voided the arbitral award of the tribunal.

It is nonetheless worthy of note that in international matters, several countries have embraced the idea of international tax arbitration in resolving disputes arising from tax treaties. It is

⁵³ Ibid.203.

⁵⁴ (2012) 6 TLRN, 1.

therefore, suggested that tax disputes resolution in Nigeria can be strengthened by employing (the use of) arbitration among other methods of alternative dispute resolution. Most tax disputes are based on assessment and computation of taxable income. Thus, if an expert sits on ADR panel, he may be able to resolve the dispute on assessment and computation faster than a judge.

55

(d) Recovery of Tax by Distress

Distress is the seizure of personal property of tax defaulters to enforce payment of income taxes, to be followed by its public sale if the taxes are not voluntarily paid. By this, the personal property of the tax defaulter or that of a third party in his safe - keeping is impounded and taken out of his possession into the custody of the relevant tax authority to procure a satisfaction for non-payment of tax or arrears of tax due from the tax defaulter.⁵⁶

The introduction of the power to levy distress into the Nigeria tax system was as dictated by the prevailing exigencies in the post-independent years. The evolution of the power to distrain in the tax statutes dates back to 1996 when Decree 65 of the year was promulgated to complement civil litigation and criminal prosecution.⁵⁷

Furthermore, the Personal Income Tax Act empowers the State Board of Internal Revenue to distrain;⁵⁸ while the Companies Income Tax Act⁵⁹ and Federal Inland Revenue Service (Establishment) Act, 2007⁶⁰ empowers the Federal Inland Revenue Service to exercise the power to distrain. The Personal Income Tax Act enacts that:

⁵⁵ Ibid.pp. 203 -206.

⁵⁶ Ibid. p.3.

⁵⁷ Ibid p4

⁵⁸ Personal Income Tax Act, s 104.

⁵⁹ Federal Inland Revenue Service (Establishment) Act, s. 33.

⁶⁰ Companies Income Tax Act, s 86.

"... the relevant tax authority may, in the prescribed form, for the purpose of enforcing payment of tax due:

- (a) distrain the taxpayer by his goods or other charters, bounds or other securities
- (b) distrain upon any land, premises or places in respect of which the taxpayer is the owner...."⁶¹

A rigorous reading of the above section shows clearly that the exercise of power to distrain by the relevant tax authority is discretionary. Notwithstanding that, a tax collector must, for the purpose of levying distress, obtain a certificate or warrant of distress. It is an authority issued to a collector of taxes empowering him to make distress and sale of goods or land in default of payment of tax. The warrant must be issued by the court and have printed thereon the official name of the relevant tax authority. It suffices, however, to point out that there are requisite conditions to the exercise of power of distrain for non payment of tax. First, the power becomes exercisable only when assessment raised against the taxpayer becomes final and conclusive. That is when the tax payable had been decisively determined; and no valid objection or appeal has been lodged against the assessment within the time limited by the law; and no further notice has been given of further appeal against a decision of the appeal commissioner or a judge.⁶²

Besides, there must be a prior demand which is essentially compulsory. Where an assessment is made without a demand for return of income, such an assessment is made without jurisdiction and would therefore be ultra vires, null and void. The demand notice must be served on the tax payer in accordance with the provision of the law. The service envisaged by the Act is personal service but where impossible, a formal demand may be served by registered post.⁶³

⁶¹ Personal Income Tax Act, s 104 (1) (a) and (b).

⁶² Adedokun Kareem Adeyinka, *Enforcement and Recovery of Income Tax in Nigeria* pp. 6-10

⁶³ Ibid .pp. 10 -14.

(e) *Tax Amnesty*

In Nigeria, the concept of tax amnesty is relatively new - for a long time it was not considered a strategy for tax administration for the purpose of resolution of tax disputes; although some tax laws had provisions under which tax defaulters could be granted reliefs in the form of remission of taxes, penalties and interests as a means of encouraging voluntary compliance and increasing tax revenue. For instance, sections 23 (2) and 89 of the Companies Income Tax Act gives the President power to remit or exempt wholly or in part any tax payable by a company on any ground that appears sufficient to him as just and equitable. In the same vein, the Governor of a state on the advice of commissioner of finance and the relevant revenue authority can remit wholly or in part, personal income tax, if he is satisfied that it is just and equitable to do so.⁶⁴ Also, the revenue board has the power to remit wholly or in part penalties and interest on unpaid taxes.⁶⁵

The earliest attempt to introduce tax amnesty in Nigeria was in October 2016 when the Federal Inland Revenue Service (FIRS) declared a 45 days tax amnesty on penalties and interests on outstanding tax liabilities for the year 2013-2015 by a public notice. The waiver covered all taxes, including personal income tax collectable by the FIRS, interest and penalties for late registration, late filling of returns, and late payment for a period of 3 years, 2013-2015. To take advantage of the amnesty scheme, a written application addressed to the FIRS declaring the tax indebtedness of the organisation within 45 days is accompanied by evidence of part payment of not less than 25% or full payment of undisputed tax liabilities and a schedule of payment plan for the balance. This was followed by voluntary Assets and Income Declaration Schemes

⁶⁴ See also similar provision in Section 80 of the Personal Income Tax Act which empower the Governor of a State to remit wholly or in part, any tax payable under the Act if satisfied that it is just and equitable to do so.

⁶⁵ Section 79 of the Personal Income Tax Act.

next to which 45 days tax amnesty constituted a pardon and waiver of tax liability of tax payers in Nigeria.⁶⁶

FINDINGS

This paper examined the incidences of tax disputes such as tax evasion, failure to make attribution, failure to submit return, resisting an authorised officer and issuing of tax invoice by an unauthorised person, among others. It found that reasons for tax disputes are stifling ignorance on the part of tax payers, high rate of payable tax, and lack of proper record and drought of stiffer punishment on tax defaulters. It further examined various methods for the resolution of tax disputes in Nigeria that include civil litigation, criminal persecution, methods of alternative dispute resolution, application for distraint and tax amnesty. It, moreover, found that an effective and efficient tax dispute resolution mechanism is part of the requirements of an investor-friendly environment and holistic reliance on litigation alone does not seem to be the best approach.

CONCLUSION

In sum, the incidences of tax disputes and resolution within the Nigerian tax system cannot be ignored with a wave of hand, because of several issues like tax evasion and avoidance, orchestrated by ignorance on the part of tax payers, high rate of payable tax, lack of proper record and drought of stiffer punishment on tax defaulters. However, litigation on tax disputes has been found to be unnecessarily prolonged leading to loss of revenue to government, as a result of long duration in the court process. This has made application of alternative dispute resolution in settling tax disputes more elegant, cost effective and improvement in tax authority and tax payers relationship and enhanced revenue generation for governments.

⁶⁶ Adedokun Kareem Adeyinka, *Enforcement and Recovery of Income Tax in Nigeria* p. 209

RECOMMENDATIONS

This study recommended that litigation with court processes should be discouraged in tax disputes, instead, there is the need to consider the use of alternative dispute resolution mechanism especially arbitration in the resolution of tax disputes in Nigeria.

Further, it is suggested that the FIRS should play a facilitative role in the adoption of ADR mechanism in the resolution of tax disputes in Nigeria rather than frustrate such attempts.

In addition, tax Amnesty schemes have proven to be effective in making hitherto tax defaulters' complaints less. It is suggested that the scheme be geared towards increasing the level of tax compliance rather than merely improving tax revenues. This can be done through deliberate and intense sensitisation programmes, educating the public on taxation and government responsibilities in providing necessary infrastructure with tax payers funds for improved services in the society.

Above all, there should be constant reforms that would sustain the gains of schemes that can improve tax compliance in Nigeria.