



Novena University

**VOL 2
2017**

LAW JOURNAL

ISSN: 2579 - 129

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X-Raying the Legal and Administrative Consequences of Divulging Confidential Information in Taxation

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Keywords: Tax Reform, Confidential Taxpayers' information, To Third Party.

ABSTRACT

The jurisprudence and indeed the monitoring of compliance with each of the many complicated tax provisions are increasingly demanding. The fundamental issue discernable from the tax system complications is the request of information on taxpayers' records. This trend usually strains IRS at both federal and state levels in Nigeria.

This paper examines the legal as well as the administrative consequences of mishandling and or divulging of Taxpayers confidential information by tax authorities to a non-authorized third party. The paper x-rays the gravity of such act, legally and administratively. The paper, in the final analysis, proffers some practical solutions in form of recommendations to guard against such act as well as actualizing the sanctity of the secrecy of taxpayer's information.

1.0 Introduction

In recent times, most countries have extended investigation as well as information powers of their respective tax authorities as a result of sweeping tax reforms. In Nigeria, the reforms were enacted into the Federal Inland Revenue Service Establishment Act, 2007 hereinafter referred to as FIRS. To most local and international observers the reforms were "outstandingly sweeping" and "comprehensive". This is in apparent recognition of the fact that for once a developing country created a tax regime aimed at addressing social, political and fiscal economic policy goals. As a policy trust the new tax regime extended the investigative power and/or compliance strategy of the Federal Inland Revenue Service (FIRS). This essentially created a new mandate for the service to obtain any information that will enhance both the administration and collection of which will invariably control tax evasion.¹

Generally, revenue authorities have powers to obtain all information relevant to the correct assessment of tax liabilities,² and these powers may

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¹ Olokooba S. M. "Federal Inland Revenue Service's Information power vis-à-vis Bank's Secrecy Regulations in Nigeria. A Critique" *Ekili State University Law Journal*, Vol. 6, 2015, p.47.

² Tax Administration in OECD and selected Non-OECD countries. Comparative Information Series (2006). Prepared by the Forum on Tax Administration Feb. 2007 Centre for Tax Policy and Administration. www.oecd.org/ctp/consumption/cis-2010.pdf accessed on 03 February, 2012.

extend beyond the taxpayer to third parties such as the taxpayer's bankers.³ Similarly, revenue bodies also have more specific powers to compel the taxpayers to produce records and documents on request.⁴ Section 28(2) of the FIRS (Establishment) Act 2007 specifies that for the purpose of obtaining information relative to taxation, the Service may give notice to any person in Nigeria to provide within the time stipulated in the notice any tax information and such taxpayer must not refuse or provide wrong information. Filing of false statements and returns under the tax law is tantamount to evasion and according to the act, any person who;

(a) for the purpose of obtaining a deduction, set-off, relief or an overpayment in respect of tax for himself or any other person, who in a return, account or particulars made or finished with reference to tax, knowingly makes a false statement or false representation; or

(b) aids, abets, assists, counsels, incites or induces any other person;

- i. to make or deliver a false return or statement under this Act; or
- ii. to keep or prepare false accounts or particulars concerning any income on which tax is payable under this Act; or
- iii. unlawfully refuses or neglects to pay tax, is guilty of an offence⁵

If the above occurs, the offender on conviction is liable to a fine of ₦50, 000.00 for individuals or to imprisonment for not more than six months and ₦500, 000.00 for corporate bodies. Similarly, where an offence under this section is committed by a person in relation to tax payable by or repayable to him for a year of assessment, there shall be substituted for the amount of the fine as aforesaid, the amount of ₦10, 000 or treble the tax chargeable on the person for that year, whichever is the greater.

From the foregoing, it is clear that failure or refusal to give accurate information to the Service is as grave as trying to evade tax completely.⁶ This work is divided into five sections. The next section discusses the conceptual framework of the study while section three discusses the case law position on taxation as a distinct profession. Section four is on legal and administration

³ See S. 28 Federal Inland Revenue Service Establishment Act, 2007, titled, "Information to be delivered by Banker".

⁴ See S. 27(1) & (2) Federal Inland Revenue Service Establishment Act, 2007 titled call for returns, books, document and information.

⁵ Section 96 (1)(a)(b)PITA. A similar provision for such an offence and punishment in the case of Company is contained in section 94 (1)(a)(b)CITA. According to the CITA ", 1) Any person other than a company who;

⁶ For the consequences of the failure to furnish required information to be delivered by bank to the service, see, section 28(3) FIRS Act 2007.

consequences of divulging confidential information in taxation. Section five which is the final section concludes the paper with some recommendations on how taxpayers' right to privacy of information could be guaranteed.

2.0 Conceptual Framework and Operational Definition of Terms

Pursuant to section 4 of the Constitution of the Federal Republic of Nigeria as well as items 58 and 59 of the Exclusive Legislative List and items 7 & 8 of the Concurrent Legislative List, Government is empowered to impose any form of tax at whatever rate it deems appropriate on the citizens. To aid the actualisation of this, various sections of the tax laws further enjoin the tax authorities to seek for whatever information they feel will aid the assessment and collection of tax. On the part of taxpayers, the law requires them to provide all the necessary information willingly without any hesitation. However, the issues now are; what will happen if the Service mishandles or fails to handle information derived from taxpayers professionally. What are the implications and consequences of such unprofessional act, and most importantly, is there any protection or remedy in law for taxpayers if this occurs?

In doing justice to the topic at-hand, it is important to note that there are some keywords whose meaning it is helpful to be ascertain from the beginning. The words are 'Confidential Information', 'Professionalism', and 'Divulging'. 'Confidential Information' in this study is the exclusive and highly critical informational data on the taxpayer which is available to the Tax Authorities. 'Professionalism' is the performance of a task with the zenith professional competency. 'Divulging' is used as unauthorized and illegal disclosure of confidential information to another party.

3.0 Professionalism in Taxation

3.1 Who is a Taxpayer?

Ordinarily, a taxpayer is a person who pays tax to the government especially on the money that they earn.⁷ A taxpayer under the indirect tax system means the generality of the people old or young, male or female living in a particular country. Technically, therefore, a taxpayer comprises both individuals as well as corporate bodies in a given society. This is so, because, companies also pay companies income tax and other taxes⁸ as required by law.

3.2 Who are Tax Authorities?

The tax authorities are the government tax institutions that are in charge of tax administrations and collection.⁹ Tax authorities consist of tax officers and other

⁷ Hornby, A. S. Oxford Advanced Learners Dictionary of Current English, (7th ed. Oxford University Press, 2005) p. 1517.

⁸ Such as Education Development Tax.

⁹ A Tax Collector according to section 102 Personal Income Tax Act, Cap P8 LFN 2004 is a duly authorised official of the state services or the Federal Board of Inland Revenue.

categories of workers. At the federal level, the tax authorities consist of the Board as well as the Federal Inland Revenue Service, while the State Tax Board and the State Inland or Internal Revenue Service constitutes the tax authorities at the state level. What constitutes a tax authority at the local level in Nigeria is not clearly spelt out in any of the Nigerian tax laws although the Taxes and Levies (Approved List for Collection) Act,¹⁰ Cap T2 part III thereto outlines the taxes and levies the local governments are empowered to collect.¹¹

3.3 Taxation as a Profession

A tax practitioner is a person who engages, earns his living and survives partly or wholly on the profession of taxation. A tax practitioner in countries like the United Kingdom and America is known as a tax advisor. A tax advisor may belong to several professions or to none.¹² A tax practitioner can only earn recognition as such in Nigeria after satisfying the minimum condition set by Chartered Institute of Taxation of Nigeria (CITN).¹³ It would be difficult to have a well-functioning tax system without tax advisors or practitioners, the reason being that most taxpayers are not familiar with the intricacies of the tax laws. Tax advisors or practitioners are therefore needed so that taxpayers can fulfil their complicated tax obligations.¹⁴

Unlike the legal and medical profession with statutorily required discipline-specific pre-qualification for practice, the tax profession is an open profession. The meaning of this is that belonging to one profession does not stop one from also been a tax practitioner. However, when it comes to appearance before the Tax Appeal Tribunal, qualification as a legal practitioner may help. In the UK, qualification as a lawyer and accountant are required for appearance before the tax tribunal.¹⁵ The complexity of tax makes professional training advisable to any tax practitioner. In Nigeria, the only recognised body regulating the affairs of tax practitioners is the Chartered Institute of Taxation of Nigeria.¹⁶ Members of this Institute are professional tax practitioners and the law that established the Institute is the Chartered Institute of Taxation of Nigeria Act.¹⁷ Section 1 of the Act establishes the Chartered Institute of Taxation of Nigeria which in the Act is referred to as "the Institute" and which shall be a body corporate under the name and charged with the general duty of;

¹⁰ Cap T2, LFN 2004.

¹¹ See Part III.

¹² David Williams and David Salter, Geoffrey Morse, Davies Principles of Tax Law (3rd ed, Sweet & Maxwell, 1999) 19.

¹³ CITN v. ICAN suit No n/478/2005 reported in N.R.L.R.1 (2013) at 10.

¹⁴ Victor Thuronyi & Frans Vanistendael "Regulation of Tax Professional" in victor Thuronyi (ed.) Tax law Design and Drafting Vol. 1 (International Monetary Fund, 1996) 135.

¹⁵ David, op cit p. 19.

¹⁶ ICAN v CITN suit No CA/L/673/07 reported in N.R.L.R. 2 (2013) 42 holden 3.

¹⁷ CAPC 10 Laws of the Federation of Nigeria 2004.

other professionals have an automatic right to act as tax professionals. This is because taxation is legally recognised in Nigeria as a profession separate and distinct from the accounting²² and other professions.

4.0 Significance of Confidentiality in Taxation

Confidentiality of information is the standard which requires that particular information is kept secret and not made known to others.²³ If information is confidential, such information must be for private consumption and highly secret in nature. According to Bryan,²⁴ confidential information is information meant to be kept secret. Anything confidential is characterised by trust and willingness to confide in the person to whom it is disclosed. Thus, a tax officer that divulges confidential information practically commits an offence of breach of trust under the law.

The maintenance of secrecy is an essential aspect of functional taxation. According to Olokooba and Akitoye,²⁵ in any economy, be it developed or developing, exchange of information plays a vital part in the battle against tax fraud. According to them, accurate data on taxpayers' income and spending aids and accelerates the apt computation of tax payable by individuals. Invariably therefore, accurate information on taxpayers ensures effective capturing of more taxpayers within the tax net and same serves as an indirect check on tax evasion.

To acquire full taxpayer information, the Service may give notice to any person, body corporate or organization, requiring him or her within the time specified in the notice, to complete and deliver to the Service, any return specified in such notice, to appear personally before an officer of the Service for examination, or produce or cause to be produced for examination, books, documents, and any other information at the place and time stated in the notice, or to give orally or in writing any other information, including name and address specified in such notice.²⁶ The time specified by such notice shall not be less than seven days from the date of service of such notice. Anybody that contravenes these provisions in respect of each offence is liable on conviction to a fine equivalent to 100 per cent of the amount of the tax liability.²⁷

5.0 CONSEQUENCES OF DIVULGING CONFIDENTIAL INFORMATION IN TAXATION

(a) Legal Consequences

²² Court of Appeal Lagos Division in *Institute of Chartered Accountant of Nigeria v Chartered Institute of Taxation of Nigeria*, N.R.L. R. 2 (2013) at p. 41 holden I.

²³ Hornby A.S op.cit (n. 7), p.241

²⁴ Bryan A.G (ed.) *Black's Law Dictionary* (7th ed West Group St. Paul, Minn, 1999), p.294

²⁵ Olokooba S.M & Akintoye O.D "Federal Inland Revenue Service's Information Power vis-à-vis Bank's Secrecy Regulations in Nigeria: A Critique" *Ekiti State University Law Journal*, Vol. 6, 2015, p.55.

²⁶ Federal Inland Revenue Service (Establishment) Act, 2007 Section 26(1)(a-d)

²⁷ S. 26(3) FIRSA 2007, see also, Olokooba S.M & Akintoye O.D op.cit, (n. 23) .p.56

transactions, at the disposal of the tax authorities must be treated as confidential³³.

Disclosure or divulgence of confidential information on the taxpayer to an unauthorised party or person by tax officer is a serious offence that can attract both fines as well as imprisonment. Thus any member or former member of the Board or any employee or former employee of the Service or Ministry who communicates or attempts to communicate any confidential taxpayer information at the disposal of the authorities commits an offence.³⁴ The punishment for this offence on conviction is a fine not exceeding ₦200,000.00 or to imprisonment for a term not exceeding 3 years or to both such fine and imprisonment.³⁵ Still on the sanctity of taxpayer's information, the Income Tax Act³⁶ provides that;

Without prejudice to any other provision relating to the protection of official information, any person, who;

- (a) Transmits any relevant information or document to a person, other than a person authorised by this Act
- (b) Obtains, reproduces or retains any relevant information or document, which he is not authorised so to do in accordance with this Act, shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding five years.

(b) Administrative Consequences

Section 28(2) of the FIRS (Establishment) Act 2007 specifies that for the purpose of obtaining information relative to taxation, the Service may give notice to any person including a person engaged in banking business in Nigeria to provide within the time stipulated in the notice, information including the name and address of any person specified in the notice. After obtaining such information, any errant tax officer that discloses such information to an unauthorised person will face the severe punishment of imprisonment as consequences for his or her action. One implication of being a convict is that such a person's appointment or employment automatically terminates.

Similarly, flowing from the provision in section 39(2)³⁷, which stipulates the punishment of such an officer as either "...a fine not exceeding ₦200,000.00 or to imprisonment....", it is pertinent to ask, what will happen if the officer is not punished with imprisonment but asked to pay a fine? On this, even though minimal administrative sanction (reprimand, suspension, a

³³ For the applicable rules on confidentiality in the Nigerian Corporate sector, especially banking institution, see Olokooba and Akintoye, *op.cit* (n. 23).

³⁴ Section 39(2) FIRS Act, 2007. See also Section 50(2)(a)(b) FIRS Act 2007.

³⁵ Ibid. However, disclosure of confidential information ceases to be an offence if otherwise provided by the tax law or as otherwise authorised by the Minister, or according to section 50(3) FIRS Act 2007, as may be necessary in order to institute a prosecution, or in the course of a prosecution for any offence in relation to any tax in Nigeria.

³⁶ In Section 3(2)(a)(b) thereto.

³⁷ FIRS Act 2007

serious warning letter, etc.) may be meted out to such an erring tax officer, this does not extricate such an officer totally from the knot of conviction. In law, whether punished by monetary fine or jail term, once a person is pronounced guilty of a criminal offence and sentenced by a competent court of justice, such a person is a convict.

On the part of the administration, the offence committed by the officer may vicariously affect the image of the service negatively. Since it is a fact in law that a servant and/or representative of an organisation is an agent of such agency or service, the principal of such agent is liable for his/her acts especially if the principal is disclosed.³⁸ Therefore, the action of a tax officer that mishandles, misuses or divulges taxpayers' information to an unauthorised party may reduce taxpayer confidence in the Service.

Divulgence of taxpayers' confidential information by tax officers to unauthorised third parties may also discourage voluntary compliance and this may make enforcement harder. The point here is that confidential information is meant to be kept secret, and an unauthorised disclosure of such will surely make the information owner unwilling to provide further information in the future, hence a reduction in voluntary tax compliance and by implication higher cost of tax enforcement.

(c) General Implications

The general implication of divulging confidential taxpayer information of taxpayers is that such acts can easily drag the name and image of the Service into disrepute. This is so because until the issue is either administratively or legally addressed and such officer punished accordingly, most taxpayers will be in the wrong belief that undue disclosure of confidential information is the norm. Similarly, such a fraudulent act may be misinterpreted as incompetency on the part of the management cadre of the Service.

Recommendations and Conclusion

The significance, as well as importance of information to tax authorities can never be overemphasised. It is through accurate information that the authorities can make an accurate assessment of the resultant effect of higher revenue generation through taxes. The absence of information in taxation makes tax officers' task harder and their policies ineffective. Unfortunately, due to many reasons, amongst which are indiscipline on the part of tax officers, incompetency, as well as corruption and fraud, some tax officers do abuse by divulging the information collected from taxpayers which they ought to treat as confidential. The implications as well as the consequences of such acts have been

³⁸ For other categories of agents and characteristic of each, see Olokooba S.M, *Essentials of Nigerian Agency Law* (Malthouse Press Lagos, 2015), pp.19-27.

discussed in this paper. And from the discussion, it is clear that the divulgence of confidential information by tax authorities without valid authorisation is a serious offence. Therefore, in order to guard against this criminal act and to actualize the sanctity of the secrecy of taxpayer information, the following are recommended;

, as well as corruption and fraud, some tax officers do abuse by divulgence the information collected from taxpayers which they ought to treat as confidential. The implications as well as the consequences of such acts have been discussed in this paper. And from the discussion, it is clear that the divulgence of confidential information by tax authorities without valid authorisation is a serious offence. Therefore, in order to guard against this criminal act and to actualize the sanctity of the secrecy of taxpayer information, the following are recommended;

- * Enactment of Stiffer penalty for any errant tax official found guilty of divulging confidential information without authorization for whatever reason. Doing this will surely guard against the use of confidential taxpayer information negligently, wrongfully or unprofessionally.
- * Enlightenment of taxpayers on their basic rights in taxation, especially with regards to the sanctity of information they supply to the tax authority.
- * Tax officers should be enlightened on the significance of good relations in securing better taxpayer confidence which will aid voluntary tax compliance. They should be trained on best practices for handling of taxpayer information.
- * Finally, training and re-training of tax officers on the best way to do their job through seminars and workshops, with special emphasis on the legal as well as administrative consequences of their actions as tax officers, is imperative.