



Joseph Ayo Babalola
UNIVERSITY LAW JOURNAL

LAW

VOL. 1 NO. 1, 2014

A PUBLICATION OF
THE COLLEGE OF LAW
JOSEPH AYO BABALOLA UNIVERSITY

IKEJI-ARAKEJI
OSUN STATE, NIGERIA

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Tax Information Circulars: Paraphernalia of Aiding Tax Reporting and Compliance in the Nigerian Banking Sector

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Abstract

Under normal circumstances banks are not expected to disclose information concerning their customers' affairs to the third parties. However, in Nigeria, every bank is required to give certain information and report even on their customers' affairs and banking transaction once it receives a notice to that effect from the Federal Board of Inland Revenue Service. The thrust of this paper therefore is to appraise the categories of instances where the law permit bank to reveal information concerning their customers. The paper further examines how tax information circulars can aid and accelerate the meeting of taxman's demand by banks and the consequences for the failure to do so. In the final analysis, the paper posits that tax information circular though not a law but qualifies as veritable paraphernalia for an administrative directive that can aid adequate tax reporting and compliance. To achieve the maximum use of the tax information circulars in this regard, the paper recommends among others for the use of simpler language in couching tax information circulars.

Keywords: "Reporting" "Compliance" "Tax" "Information Circular"

1.0 INTRODUCTION

Territorial source of profit is a vital determinant in the taxation of banking business. Therefore, before a bank is chargeable to tax, it is important that such profits must have 'accrued in', 'derived from' 'brought into' or 'received in' Nigeria. The implication of this is that, even if the bank is owed by a foreigner, once the profit is accrued in, derived from, brought into or received in Nigeria, such profits are taxable. A company can only escape tax under the Companies Income Tax Act, 1990 as amended by showing that it has got no profit or gains "...accruing in or derived from Nigeria..."¹ The profit of a Nigerian bank which its control and management² activities are exercised in Nigeria are deemed to accrue in Nigeria whenever they have arisen and whether or not they have been brought into or received in Nigeria³.

While Nigerian companies are taxed on their worldwide income, foreign companies are taxable only as regards the portion of their profits, which is attributable to business operations carried on in Nigeria.⁴ The privileges conferred on incorporation, the benefits of Limited Liability Company; in particular, makes the corporate structure an attractive form of business.⁵ And, just like every other categories of companies, Nigerian banks being a corporate entity are also liable to pay tax under the Nigerian Companies Tax Laws. Unfortunately, a major *lacuna* in the Nigerian Tax system is the absence of a tax policy document and lack of accountability for tax revenue and its expenditure⁶ both in the personal income and other categories of taxes. In other to check this menace, the Federal Inland Revenue Service most times often sends notice to the tax payers especially the corporate tax payers

¹ Ayua I.A. *The Nigerian Tax Law*, (Spectrum Law Publishing, Lagos), p.168

² For what amounts to 'control and management', see *De Beers Consolidated Mines Ltd. v Howe* (1906) AC 455.

³ For what qualifies for interest 'brought into' 'received in' and 'deemed to be derived from Nigeria', see Section 9(1)& (2) Companies Income Tax Act, Cap. C21 Laws of the Federation of Nigeria, 2004. Also for the categories of income used in measuring the taxable income of companies, see Ayua, *op.cit.*, p.168

⁴ Ade. Ipaye, 'Overview of the Tax Environment: Issues and Challenges' in Abdulrazaq, M.T. (Ed.) *CITN, Nigerian Tax Guide and Statutes* (2nd Edition, the Chartered Institute of Taxation of Nigeria, 2009), p.22.

⁵ Bakwaphi-Kanyip, B. 'Companies Income Tax' in Abdulrazaq, M.T. (Ed.) *CITN, Nigerian Tax Guide and Statutes*, (1st Edition, the Chartered Institute of Taxation of Nigeria, 2002), p. 176.

⁶ *Ibid*, p.11.

(banks in this instance) for certain information on their activities. Once sent, the law demands that such notice should promptly be honoured and responded to.

Banks are statutorily empowered to collect savings; therefore, it is imperative to presume that holding information concerning the financial standing of many taxpayers will be one of their responsibilities. This responsibility is further enhanced by the Evidence Act that a bank '...shall not be compelled to produce any banker's book the contents of which can be proved in the manner provided in Section 97 of the Evidence Act or to appear as a witness to prove the matters, transactions, and accounts therein recorded, unless by order of the court made for special cause' and most importantly except the bank is a party. The simple implication of this is that, even in a legal proceeding, except bank is a party, one of the major policies in the banking sector is not to disclose information concerning their customers' affairs to third parties. However, in Nigeria under certain circumstances, every bank is required to give certain information to the Federal Board of Inland Revenue Service once it receives a notice to that effect. What will then happen in a situation the FIRS demands for information on the banker's customer affairs since it is unethical to disclose same in the banking industry?

In this paper the major thrust will be to appraise the situations and instances where the law permit bank to reveals information concerning their customers. Not only that, the paper examines the essence of tax information circular with regards to helping the banking institutions to understand the dictate and demand of tax man easily. Structured into six sections, the second section is on the conceptual framework and definition of key terms. In section three, the paper examines the structure of the Nigerian company tax system, while the issue of the reporting and compliance matters constitutes the fourth section. In the fifth section, the paper discusses the significance of the tax information circular in aiding reporting and compliance in the Nigerian banking sector and section six contains conclusion and recommendations.

2.0 CONCEPTUAL FRAMEWORK AND DEFINITION OF KEY TERMS

In consideration of the concept at hand one must note that there are some key words which meaning is to be ascertained from the beginning. The words are "Reporting", "Compliance", "Information Circular", and "Tax"

Reporting is used in this paper as the process of supplying requested information by banks on some of their activities to the tax authorities. Compliance on the other hand, is doing things as laid down by the Nigerian tax laws. Information circular is used as a document that aims at explaining and simplifying the process by which tax language are to be understood and complied with by both the tax payers as well as the tax authorities. Tax in this study is a deductible portion of the produce or the property and labour of both individual citizen and corporate bodies taken by the nation in the exercise of its sovereign rights for the support of government.

3.0 EXAMINING THE NIGERIAN COMPANY TAXATION AND BANK'S TAXABLE PROFIT

The term 'company' for the purpose of Companies Income Tax Act⁷ is any company or corporation (other than corporation sole or partnership) established by or under any law in force in Nigeria or elsewhere.⁸ Section 105 (1)⁹ further defines what a Nigerian and foreign company means. According to the Section, a Nigerian company means '...any company incorporated under the Companies and Allied Matters Act 1990 or any enactment replaced by that Act.' While a foreign company on the other hand is '...any company or corporation (other than a corporation sole) established by or under any law in force in any territory or country outside Nigeria'.

The Companies Income tax Act divides companies into two categories, Nigerian companies and non-Nigerian companies. A Nigerian company is one that the control and management of whose activities are exercised in Nigeria under section 31 CITA 2004 (as amended) 2007. All other companies fall into the remaining category¹⁰. The importance of the division of companies into Nigerian companies and foreign companies lies in Section 11 of the Companies Income Tax Act 1990¹¹ which states that the

⁷ See Sec 105 Companies Income Tax Act, Cap. C21 Laws of the Federation of Nigeria, 2004 (as amended), 2007.

⁸ Lekan, S. Sunday. O.K. *Taxation, Principles and Practice in Nigeria*. (Ibadan: Silicon Publishing Company, 2006), p. 283.

⁹ Companies Income Tax Act, Cap. C21 Laws of the Federation of Nigeria, 2004.

¹⁰ Abdulrazaq M.T. *Revenue Law and Practice in Nigeria*. (Lagos: Malthouse Press Limited, 2010). p. 179.

¹¹ Now Section 13 Companies Income Tax Act, Cap. C21 Laws of the Federation of Nigeria, 2004 (as amended), 2007.

profits of a Nigerian Company shall be deemed to accrue in Nigeria wherever they have arisen whether or not they have been brought into or received in Nigeria¹². The simple implication of this is that a Nigerian company is liable to Companies Income Tax on all its profits whenever they arise, whether or not they have been brought into or received in Nigeria. As for a foreign company, Section 11(2) Companies Income Tax Act provides that its profit from any trade or business shall be deemed to be derived from Nigeria to the extent to which such profits are not attributable to any part of the operations of the company carried on outside Nigeria. Thus, the profit of a foreign company is taxed to the extent that they are derived from sources within Nigeria.¹³

The Nigerian Company Taxation is structured along classical model where there is a complete separation between the company and its shareholders,¹⁴ so that tax is levied on the profit of the company in its hand and if it chooses to distribute any of those to its shareholders which are charged to income tax via the withholding tax scheme.¹⁵ The Nigerian Tax is also structured to reflect the nature of the business. Depending on the type of business, taxes are levied on business on an annual basis. Profits arising from transactions of companies constitute taxable income following their assessment to tax¹⁶. The taxable profits of banks are determined in exactly the same way and according to the same rules as taxable profits of any other commercial enterprise.

In the Nigerian banking business, the measurement of taxable annual profits and gains are not a straight jacket thing, this is because profits and losses cannot be anticipated; and couple with the fact that the Companies Income Tax Act did not define what 'profit' is.¹⁷ This can cause considerable difficulties and particularly in relation to the complex financial instruments which form an important part of most banks' activities. Rules, which were drawn up and adapted to cover the commercial requirements of the early years of independence, are not always easily applied to transactions involving interest rate swaps, currency options or forward rate agreements¹⁸. Instead of defining what profit is, the Act only outlines which revenue of the company a tax is payable. According to the Act, a tax shall be payable '...upon the profits of any company accruing in, derived from, brought into, or receive in, Nigeria....' Therefore, in principle, the taxable profits of banks are determined in exactly the same way and according to the same rules as the taxable profits of any other commercial enterprise.²⁰

However, in practice, some determining factors and guidelines have accordingly been developed by decisions of the courts²¹. Unfortunately, many of the leading cases did not involve the normal CITA, 1990 charge but arose out of comments against accountants not disclosing full amount of profits²². Invariably, the leading cases on the matter²³ have not resulted in greater certainty in practice, but each has provoked a considerable amount of controversies. The major reason for these controversies was that, new accounting principles and more complex transactions do not always fit very aptly into rules developed to deal with more straightforward trades.²⁴ While in some instances the court glued to the natural meaning of profit as the apt determination of taxable profit in the banking sector²⁵, in some instances, it was held that the accountancy evidence to the satisfaction of the court is the actual ground

¹² Ayua, I.A. *The Nigerian Tax Law*, (Lagos: Spectrum Law Publishing, 1996) p. 164.

¹³ *Ibid*.

¹⁴ This was the basic gist in the case of *Salomon v Salomon & Sons Ltd.*, (1897) AC 22 wherein the issue of corporate personality of a company was firmly laid down.

¹⁵ See the argument in favour of the use of classical model for company taxation in the Structure & Reform of Direct Taxation-Report of a committee chaired by Prof. Meade, J.E. (Institute for Fiscal Studies) 1978 at p.227. Parsons, R.W. 'An Australian View of Corporate Taxation' (1967) BTR 14; Musgrave, R. *Tax Reforms in Developing Countries* (Oxford University Press, 1987) pp. 256-257. Tiley, J. *Revenue Law* (Butterworths London (1978), p. 262, and for the argument against the use of classical model for company taxation, see White, I.R. 'The Changing Face of Taxation' (1981) BTR 347.

¹⁶ Chown, P. 'The Future of Corporation Tax' (1981) BTR 30; see also, Bakwagh-kanyip, B. 'Companies Income Tax', *op.cit.* pp.174-176.

¹⁷ Mathias, A.N. and Meg. A. "The Effect of Taxes on Dividend Policy of Banks" in Nigerian *International Research Journal of Finance and Economics*, Issue 19, (2008) pp. 49-50. Also available at <http://www.eurojournals.com/finance.htm> last accessed on 23/4/2011, 7.30pm

¹⁸ Though there are judicial pronouncements on what constitutes profit in *Mersey Docks and Harbour Board v Lucas* (1883) & AC. 891, 2 TC 25 wherein the House of Lord held per Lord Selbourne LC that the word 'profit' as here used means the incoming (of fund) before their application or use. See also, Lord Herschell's definition of profit in *Russell v Town & Country Bank* (1888) 13 AC 418, *J.P Hall & Co. Ltd. v IRC*, 12 TC 382

¹⁹ See also Abdulrazaq, M.T. "The Basis of Taxation for Nigerian Banks", (*Nigerian Tax Notes*, 1995), p.78.

²⁰ Christopher, F. Miles, W. *Taxation and Banking*, (London: Sweet and Maxwell, 1990), p.11.

²¹ See section 9(1), CITA, LFN, 2004

²² Abdulrazaq, M.T. *op.cit.* p.78.

²³ See *Aluminium Industries v FBIR*, 1 NTC 202; *Karam v Commissioner of Income Tax* 12 WACA p. 22; Lasbrey's case 1 NTC 13 p.309 for the meaning of 'accruing in', 'derived from'. See also, Abdulrazaq, M.T. "The Basis of Taxation for Nigerian Banks" *International Tax Journal* Vol. 13 No.2, Spring, (1987), (Pallal Publications USA), p.4.

²⁴ See Christopher, F. Miles, W. *op.cit.* p.12.

²⁵ For example, the *Willingle v International Commercial Bank Ltd* (1978) STC 75, *Pattison v Marine Midland* (1984) STC 10 and *Synons v Weeks* (1983) STC 195.

²⁶ Abdulrazaq, M.T., *op. cit.* p.79.

²⁷ *Sun Insurance Office v Clark* (1912) AC 443 at 455 and *Gresham Life Assurance Society v. Styles* 3 TC 1885.

to determine bank taxable profit²⁶. Up till now, several contradictory opinions and courts decisions trailed the constituents of bank taxable profit²⁷.

Contemporarily however, expert evidence of accountancy practice appears to be growing in importance in determining whether or not a particular item is to be subject to tax during a particular period. This may be in part because, since the early cases, company law requirements and accountancy principles have increased the technical requirements for companies in drawing up their accounts²⁸. Ordinary commercial accounting practice now has to be determined in accordance with accounting standards set out by the accountancy bodies from time to time. The principle remains, however, that although accountancy practice is important, it is not decisive²⁹. As new financial instruments develop, it is often uncertain how they are to be treated for tax purposes and their tax treatment may vary, depending on the use made of them. The position is further complicated by the fact that the distinction between what is on capital account and what is on revenue account is not as clear for banks and financial traders as it is for other trading entities³⁰. However, whether a bank, in preparing its company tax computations, follows the accounting treatment of a transaction or applies strict tax law to it, the bank will still need to apply the prudential guide.³¹ The application of this guide can best be explained via tax information circulars.

4.0 REPORTING AND COMPLIANCE MATTERS IN THE NIGERIAN BANKING SECTOR

Compliance strategy, within the context of tax administration, refers to all the structural and procedural platforms put in place to ensure that taxpayers fulfill their tax obligation under tax laws.³² Penalties as a compliance strategy are meant to deter taxpayers from breaking tax laws. The penalties for tax default include fines, prison terms and distraint³³, seizure or confiscation of property. To enforce compliance, the laws vest the tax authority with powers of investigation³⁴ and enforcement³⁵. In exercising these powers the FIRS may engage other law enforcement agency if necessary. In the words of the Act

The service shall employ special Purpose Tax Officers to assist any relevant law enforcement agency in the investigation of any offence under this Act. Section 35 (1)

Similarly,

The Service may co-opt the assistance and co-operation of any of the law enforcement agencies in the discharge of its duties under this Act. Section 36(1)

However, before enforcement, the FBIR must have sent a demand notice to the tax payer requiring him to complete and deliver to the service any return specified in such notice, or produce for examination books, documents and any other information at the place and time stated in the notice; and such taxpayer must have failed or neglected compliance with such notice.

Since bank is a taxpaying entity, it is therefore subject to the usual compliance provisions

²⁶ See Lord Reid in *B.S.C. Footwear v Ridgway* 47 TC 511 at 525 and Lord Denning in *Heather v P.E. Consulting Group Ltd.* 48 TC 293 at 322. See also Abdulrazaq, M.T. 'Law of Business Taxation and Accounting Principles'. *Nigerian Accountant Journal*, April/June, Vol. XVIII, No.2, (1985), pp. 3-5, 7.

²⁷ In *Odeon Associated Theatres Ltd. v Jones*²⁷ Pennycuik V. C held that, in ascertaining taxable profits of a trade, the court had to apply the 'correct principles of the prevailing system of commercial accountancy, while in *IRC. v Gardner Mountain and D. 'Ambrunnil Ltd.* 29 TC 69 per Viscount Simon, the court outlined the concept of accruing profit and expenses rather than simply setting out receipts and payments. In *Western Sudan Exporters v FBIR* 1 NTC p. 239, the court held that a company's accounts will determine its taxable profits provided that these are prepared in accordance with normal accounting principles.

²⁸ Abdulrazaq, M.T. 'Law of Business Taxation and Accounting Principles', *op.cit* p.7

²⁹ See Lord Radcliffe's views in *Owen (HM, Inspector of Taxes) v Southern Railway of Peru* 36 TC 602 at 646.

³⁰ Abdulrazaq, M.T. 'Law of Business Taxation and Accounting Principles', *op.cit* p.6

³¹ See Ajayi, O. *Regulation Banks & Other Financial Institutions* (Grey House, 1990), pp. 1, 39 55, 56, 66.67 and 81; The prudential guidelines was issued by the Central Bank of Nigeria in the last quarter of 1990 pursuant to the International Convergence of Capital Measurement and Capital Standards, otherwise called the Basic Convergence Agreement, which was published in July 1988 by the Basle Committee on Banking Regulations and Supervisory Practice of the Bank of International Settlements. See also Ogunaiké, T. Presentation of Bank Balance Sheet & Financial Statements, in the Light of the New Accounting Standards & CAMD. Paper Delivered at the Grey House Seminar (1990), see further, Oliyide, O. 'The Problem, in the Relationship between Central Bank and Licensed Banks in Nigeria.' The Law Society, Faculty of Law University of Lagos in the Report of National Workshop on Banking Law, pp. 43.

³² Ifueko O.O (Ed.) *Federal Inland Revenue Service and Taxation Reforms in Democratic Nigeria* (Ibadan: Safari Books Ltd. 2012), p.193

³³ Section 33(1) Federal Inland Revenue Service Act, 2007

³⁴ Section 35(1) Federal Inland Revenue Service Act, 2007

³⁵ Section 36(1) Federal Inland Revenue Service Act, 2007

contained in the Companies Income Tax Act Cap. C21 Laws of the Federation of Nigeria, 2004 and elsewhere,³⁶ especially in two areas of banks' activities, i.e., where a bank pays interest, and the Inland Revenue demand for information on it, secondly when a bank makes payment on income whose origin is offshore.³⁷ Other areas where the law requires banks to disclose information when asked by the Inland Revenue are in:

- a. detail interest paid by banks;
- b. reporting of and accounting for interest payments;
- c. production of books, documents accounts and returns;
- d. banks acting as agents trustees or investment managers;
- e. information relation to income from dividends, and
- f. safekeeping of deposits.

4.1 Detail Interest Paid by Banks

It is statutorily required of a bank that once a notice is received from the Federal Inland Revenue to give information on interest received by it, and the rate at which tax is to be deducted shall be 10%³⁸. Specifically, however, even though interest on loan facilities granted by banks attracts tax, loans granted to agricultural trade or business, fabrication of local plant and machinery or as working capital for any cottage industry established by the company under the Family Economic Advancement Programme are exempted.³⁹ However, the amount of the loan, the moratorium period, the date repayment is due to commence, the amount of repayment showing capital & interest; and the full particulars of the recipient of the loan and its permanent address must be disclosed to the Federal Inland Revenue Service⁴⁰.

4.2 Reporting and Accounting for Interest Payments

For the tax administrators to be able to achieve optimum collection of tax there is the need to device ways and means of getting information on those that might wanted to evade tax; one of such ways is the requisition for the report on and accounting for interest payment. Similarly, a bank in accounting for the tax deducted to the FIRS shall state in writing, the gross amount of the interest or royalty, the name and address of the recipients, and the amount of tax being accounted for.⁴¹

4.3 Production of Books, Documents, Accounts and Returns

Once requested, it is mandatory for banks, to produce to the Federal Inland Revenue Service books, documents, accounts and returns. However, it is pertinent to note that a little caveat is in the production of account books, and that, it must not be disclosed in furtherance of any illegal purpose. Secondly, according to Aguda,⁴² "the requirement to disclose would also not be required in any fact observed by any of categories of special cases in the course of employment as such, showing that any crime or fraud had been committed since the commencement of the employment". The only instance where record can be disclosed will be when a customer waives his or her right and authorises the disclosure of the information. It is important to know that, this waiver is only needed in special cases such as information in possession of legal practitioners' auditors, tax advisers and banks which act as investment advisers as well as matter which may compel self incrimination.⁴³

Furthermore, section 61 of the Act⁴⁴ specifically requires anybody engaging in banking business to prepare a return at the end of each month. However, a person engaged in banking business in Nigeria, including any person charged with the administration of the Federal Savings Bank Act shall not be required to disclose any further information under section 60 unless such disclosure is required by a notice signed by the Chairman of the Board.

³⁶ One of such elsewhere is when a bank is directed by any competent court of law to disclose or produce banker's book. See Section 157 Evidence Act, Cap. E14 Laws of the Federation of Nigeria, 2004. Abdulrazaq, M.T. 'Reporting and Compliance Matters for Banks', (Lagos Business School, 2005), p.1.

³⁷ Abdulrazaq, M.T. 'Reporting and Compliance Matters for Banks', (Lagos Business School, 2005), p.2

³⁸ See Section 78(2) Companies and Income Tax Act, Cap. C21, Laws of the Federation of Nigeria, 2004, (as amended), 2007.

³⁹ Section 11(7) Companies and Income Tax Act, Cap. C21, Laws of the Federation of Nigeria, 2004, (as amended), 2007.

⁴⁰ Section 11(8) Companies and Income Tax Act, Cap. C21, Laws of the Federation of Nigeria, 2004, (as amended), 2007.

⁴¹ Section 78(5)(a)(b)(c) Companies and Income Tax Act, Cap. C21, Laws of the Federation of Nigeria, 2004, (as amended), 2007.

⁴² Aguda, T.A. *The Law of Evidence*. (3rd Edition, Spectrum Law Publishing, 1996), p.283.

⁴³ Abdulrazaq, M.T. *Nigerian Tax Offences and Penalties*, (Batay Law Publications, 1993). See also section 176 (a) Evidence Act Cap. E14 Laws of the Federation of Nigeria, 2004.

⁴⁴ Companies and Income Tax Act, Cap. C21, Laws of the Federation of Nigeria, 2004, (as amended), 2007.

4.4 Bank as Agents, Trustees, or Investment Managers

Section 49, CITA, 2004 empowered the FIRS to appoint bank to act as agent of any company or person; therefore, such bank must also give information as to any money, fund or other assets which may be held by the bank for or of any money due by the bank to any company⁴⁵.

4.5 Information Relating to Income from Dividends

The FIRS, under the Nigerian law, is also empowered to require a bank which has paid dividend to supply full particulars within fourteen days of each dividend; declare and also supply a list of the shareholders to whom the dividend is payable, showing their respective share therein.⁴⁶ The requirement to supply this information to the FIRS will surely aid the collection of tax from both corporate organization and even individual, though a bank is not obliged to disclose particulars relating to income from dividends in cases where the person beneficially entitled is not resident in Nigeria.⁴⁷ The FIRS may give notice to any company which it has reason to believe is controlled by not more than five persons requiring it to supply within such reasonable time limited in such notice, full particulars of its shareholders and other necessary information.⁴⁸

4.6 Safekeeping of Deposits

One of the major functions of bank is to receive deposits⁴⁹ and safekeeping of the said deposits. Therefore, in order to guarantee the safety of the deposits, bank must act diligently and legally right from the time of collecting the items until it is returned. However, if the bank receives information indicating that any of the items kept smacks of criminality he would be obliged to report such information to the Federal Inland Revenue Service in addition to other law enforcement agencies⁵⁰. Couple with this, if requested by FIRS, the bank must make all declarations and deposits which have been made to it available for inspection by the FIRS and copies may be taken under Sections 59 and 61.⁵¹

5.0 SIGNIFICANCE OF TAX INFORMATION CIRCULARS AS PARAPHERNALIA OF AIDING REPORTING AND COMPLIANCE IN THE NIGERIAN BANKING SECTOR

5.1 What is Tax Information Circular?

Tax information circular according to Bimbo⁵² refers to handbill, leaflets or notices commonly issued by tax authorities as a guide to tax officers, tax consultants and taxpayers. It contains information relating to the way and manner a particular tax provision is to be complied with. Tax information circular is a document that aims at explaining and simplifying the process by which tax language and policies are to be understood and complied with by both the tax payers and other stake holders in order to achieve the maximum revenue generation expectations.

5.2 Who Issue Tax Information Circulars and under what authority?

Tax information circular is issued by the Federal Inland Revenue Service. The power of tax authority to issue tax information circulars may be inherent or statutory. This is so considering the fact that a section in the Federal Inland Revenue Service (Establishment) Act⁵³ gives the FIRS Board the power to make regulations presumably, this includes the power to issue tax information circulars. In the words of the Act

The Board may, with the approval of the Minister, make rules and regulations as in its opinion are necessary or expedient for giving full effect to the provisions of the Act and for the administration of its provisions and may in particular make regulations prescribing the:

⁴⁵ See section 49(2) Companies and Income Tax Act, Cap. C21, Laws of the Federation of Nigeria, 2004, (as amended), 2007.

⁴⁶ Sec. 43 (1) (4) Companies and Income Tax Act, Cap. C21, Laws of the Federation of Nigeria, 2004, (as amended), 2007.

⁴⁷ James, A.A. *Companies Taxation in Nigeria*. (3rd Edition, JAA Nigeria Limited, 2000), p.25.

⁴⁸ Section 21(2)(a-d), Companies and Income Tax Act, Cap. C21, Laws of the Federation of Nigeria, 2004.

⁴⁹ Other bank functions are, giving of loan to customers, granting of overdraft to their customers, discount bills of exchange, and agent of payment, etc..

⁵⁰ Agencies like, EFCC and ICPC were also created to fight financial crimes in Nigeria.

⁵¹ of Companies Income Tax Act.

⁵² Bimbo A "Legal Status of Tax Information Circulars". *Nigerian Tax Notes* (Lagos Hybrid Consult, 2011), 1

⁵³ Section 61 Federal Inland Revenue Service (Establishment) Act, 2007

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⁵⁴ Abdulrazzaq.

⁵⁵ *ibid*

⁵⁶ *Ibid*, p.78, S

⁵⁷ For example

(1983) STC 19

⁵⁸ Abdulrazzaq.

⁵⁹ Adedokun K

p.133

⁶⁰ Adedokun, O.

- (a) Forms for returns and other information required under this Act or any other enactment or law; and
- (b) Procedure for obtaining any information required under this Act or any other enactment or law

5.3 Significance of Tax Information Circulars

In Nigeria, despite series of efforts by the government to actualise the objective of taxation in the Nigerian banking sector, the industry is still experiencing some challenges due to lack of clear rule to determine the taxable bank profits. This problem is further compounded because of the fact that, most of the available rules do not accommodate every new accounting principles especially, more complex transactions.⁵⁴ However, with the aid of tax information circulars, the contradiction and complexity in the tax law can be explain and simplified thereby aiding the tax compliance in the banking sector. This is so because the availability of detail explanation on the tax requirements in single and handy material will definitely make it easier for the banking institution to know what and how the provisions on compliance matter could be adherence to.

The myriad rules guiding different aspect of the Nigerian taxation as regards deductibility, exemptions and computation of taxable trading profits in the corporate taxation also constitute a clog to easy understanding of the Nigerian tax legislations. Despite the length of time over which the Companies Income Tax Act charge has existed in substantially unaltered form, there are still many areas where the rules for determining the taxable profits of a trade are anything but certain.⁵⁵ Many of the leading cases did not involve the normal CITA, 1990 charge but arose out of comments against accountants not disclosing full amount of profits⁵⁶. Even the leading cases on the matter⁵⁷ have not resulted in greater certainty in practice, but each has provoked a considerable amount of controversies. The major reason for these controversies was that, new accounting principles and more complex transactions do not always fit very aptly into rules developed to deal with more straightforward trades.⁵⁸ Hence, different principles proposed for the determination of banks' taxable profit? This paper therefore posits that a detail and simplified explanation and analysis on the determination of banks taxable profit in the tax information circular can curb the unending controversies trailing the determination of taxable bank profit.

Furthermore, since tax language is more or less a registered language, the issue of ambiguity in its interpretation has been a serious problem for compliance for both corporate as well as personal taxation. The purpose of interpretation of statutes is to assert the intention of the lawmakers from the words of the statute. However, as rightly observed by Adedokun⁵⁹, the problems of interpretation arise with revenue generation as with any other statutes. Since,

...whenever a new tax is proposed, legislators try to close any possible tax loop holes so that enormous amounts of money does not elude the Government, the result of which makes tax laws to be complex and highly technical.

Further still, the scattered nature of Nigerian tax legislation engenders clumsiness, confusion and complication upon which the sacrosanct principle of laws "*ignorantia legis nemi in excusant*" is very extant ignorance of law is very rarely accepted as a valid excuse for non compliance with tax law⁶⁰. This paper therefore posits that constant perusal and adherence to tax information circular provision and explanation can lead to certainty in the law of taxation and same will enhance procedural uniformity in the tax assessment as well as tax returns procedures. The resultant effect of this will be an increase in revenue generation through tax and same will also check the menace of tax offence in the corporate industry.

⁵⁴ Abdulrazaq, M.T. 'The Basis of Taxation for Nigerian Banks' (Nigerian Tax Notes, 1995), *op.cit* p. 1

⁵⁵ *Ibid*

⁵⁶ *Ibid*, p.78. See also Christopher. F. Miles, W. *Taxation and Banking*, p.12.

⁵⁷ For example, the *Willingle v International Commercial Bank Ltd* (1978) STC 75. *Pattison v Marine Midland* (1984) STC 10 and *Symons v Weeks* (1983) STC 195.

⁵⁸ Abdulrazaq, M.T *op. cit.*, p.79.

⁵⁹ Adedokun K.A. *Enforcement and Recovery of Income Tax in Nigeria* (Law, Practice and Procedure), (Corporate Transactions Limited, Lagos, 2010), p.133

⁶⁰ Adedokun, *op. cit.*, p.133

Interchangeable use of "construction" and "Interpretation" of taxing statutes is another source of complication in tax legislation. Our law reports are replete with expressions such as "principle guiding construction of taxing law" when such is meant to discuss "principles guiding interpretation of taxing laws."⁶¹ The complicated nature of taxing statute, its interpretation for the real fact actually imposes pecuniary burden that will be aided by some certain and assertive paraphernalia of interpretation; tax information circular though not tax laws, but could serve as instrument that will aid easy understanding of tax issues, languages as well as aiding tax compliances.

Like subsidiary legislations, tax information circular derive their validity from the principal or the enabling legislations⁶². It is an administrative direction as was held in the case of *Osadebay v. A.G (Bendel)*⁶³ that cannot revoke a statutory order. Therefore, Tax information circulars are valid only to the extent that they conform to the spirit and the general intendment of the tax law it relates to.⁶⁴ Tax information circulars are administrative directives or guidelines on how a particular tax provisions are to be complied with, it is veritable paraphernalia that can complement the understanding of the various tax statutes.

From the forgoing, it could be gleaned that, though tax information circular is not a law, but being a veritable material on tax matters, can qualify for an administrative directives or guidelines on how a particular tax provision is to be complied with.

5.4 Penalties for Failure of Compliance

For the protection of the tax authorities, Section 41⁶⁵ clearly states the forbidden act against the officers of the FIRS and penalty attached thereto if breached. The essence of this is that, both corporate and non-corporate organization must abide by the tax laws, tax compliance and not obstruct the tax officers in any way from carrying out their functions. According to the Section,

Any person who obstructs, hinders, or molests any officer of the service in the exercise of his function under this Act or who uses violence on such officer shall be guilty of an offence and shall be liable on conviction to a fine of not exceeding N200, 000 or imprisonment for a term not exceeding 3 years or to both fine and imprisonment.⁶⁶

Similarly according to the act

If, for the purpose of obtaining admission to any building or other place or of doing or procuring to be done any act which he would not be entitled to do or procure to be done of his own authority, or for any other unlawful purpose, any person, not being an authorized officer, assumes the name, designation or impersonates the character of an authorized officer, commits an offence and shall be liable on conviction to a fine not exceeding N200,000.00 or to imprisonment for a term not exceeding 3 years.⁶⁷

Furthermore, where, in the opinion of the CBN, the financial statements of a bank are not properly kept, or returns rendered by it are inaccurate, the CBN may, pursuant to Section 24(4) BOFI Decree appoint a firm of accountants to do the needful at the expense of the erring bank⁶⁸

Further still, the penalties for failing to keep proper books of account or to forward a copy of financial statements to the CBN are now quite drastic. Any director, manager or officer of a bank who fails to take reasonable steps to secure compliance with provisions of keeping proper books of account will be liable, on conviction, to a fine of N100, 000. If the failure to comply by a bank has been as a result of any willful act of any director, manager or officer of the bank, such person shall be liable to a fine of

⁶¹ *Ibid.*

⁶² See *Suleiman v. Osideinde* (1944)2 N.W.L.R.(pt. 327). *Olanrewaju v. Oyeveni*(2001)2 NWLR(pt696)229 at 255. *Ishola v. Ajibayo* (1994)6 NWLR (pt352)at 621. *Ekekeugbo v. Fibresima* (1994)3 NWLR (pt335) 707 at 729. see also *Bimbo. op.cit.*p.1

⁶³ (1991)1 NWLR(pt169)525 at 599-600, see also *Bimbo. op.cit.* p.1

⁶⁴ *Bebeji v. Abubakar* (2000)19 NRN 117

⁶⁵ Federal Inland Revenue Service (Establishment) Act. 2007. Sub section (a)-(d).

⁶⁶ Other various penalties are also stated in Section 60 (3) CITA, 2004.

⁶⁷ Section 46 Federal Inlands Revenue Service Act. 2007

⁶⁸ Abdulrazaq M.T 'Basis of Taxation for Nigerian Banks', *op.cit.* p.85

N50,000 or) (term of imprisonment for ten years or both).⁶⁹

Save under special circumstances, Section 60⁷⁰ authorises the FIRS the power to give notice to any person requiring him, within the time limited by such notice⁷¹ to:

- a. complete and deliver to the service any return specified in such notice,
- b. attend personally before an officer of the FIRS for examination with respect to any matter relating to such profit.
- c. produce or cause to be produced for examination at the place and time slated in such notice, which time may be from day-to-day for such examination of any books, documents, accounts and returns which the service may deem necessary or
- d. give orally or in writing other information, including name and address specified in such notice.

The law also stipulates that the contravention of this law by the bank shall attract, on conviction, a fine of ₦5,000 in case of body corporate, and in the case of an individual, a fine of N500⁷².

5.0 CONCLUSION AND RECOMMENDATIONS

Since the law empowers the FIRS to issue notice of demand which may compel the banking industry to disclose certain classified information concerning their customers; it is of essence to have what will serve as paraphernalia of better understanding and interpretation of the demand of FIRS in order aid adequate compliance. Even though tax information circular is not a law, considering the complexity in the tax language, ambiguity in some of the tax statutes couple with the absence of a clear rule for the determination of bank taxable profit, which now creates administrative ineptitude which to a large extent adversely affects revenue generation in Nigeria and which now made some banks directly or indirectly committing tax offences, it is my humble submission that tax information circular if adequately used can solve most of the problems facing the banking industries with regard to reporting and tax compliance matters. However, in order to have zenith achievement of this, the paper recommends;

- **The Use of Simpler Language**

Since one of the major problems of the tax statute is the ambiguous nature of most of the language used, it is most reasonable that a material that will serve the purpose of explanation must be simple enough for everybody to understand. For this, the paper recommends that the tax information circular's language be as simple as possible.

- **Constant and Adequate Funding of Production**

For any material to serve its purpose, it must be readily available, constant and have a wider circulation. For this, free and constant distribution of the tax information circular to both the corporate institutions as well as individual is recommended. Adequate funding of the publication through generated revenue by the FIRS is hereby recommended

- **Increasing enlightenment on the essence of Tax Information Circulars**

Constant enlightenment on the importance of tax information circular will also aid its usefulness and aim of publishing it. Some corporate organizations though are aware of the existence of the material, but many see it as ordinary useless paper devoid of any relevance. Thus, even when they have it, they care not to study it. Increasing enlightenment on its usefulness will serve as a wake-up call for them to know that tax information circulars is a veritable material that can aid the better understanding of tax statutes and policies.

⁶⁹ See Section 24 (5) BOFI Decree. This was hitherto a fine up to N1,000 or a term of up to six months or both under Section 16 (4) Cap. 28,1990 (repealed).

⁷⁰ Companies and Income Tax Act, Cap. C21, Laws of the Federation of Nigeria, 2004, (as amended), 2007.

⁷¹ The said time shall not be less than seven days from the date of service of such notices.

⁷² See Section 60 (3) Companies and Income Tax Act, Cap. C21, Laws of the Federation of Nigeria, 2004, (as amended), 2007.