

**AN EXAMINATION OF CORPORATE INCOME TAX LEGISLATION AND ITS
IMPACT ON REVENUE GENERATION IN NIGERIA**

BY

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**A THESIS SUBMITTED TO THE SCHOOL OF POSTGRADUATE STUDIES,
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NOVEMBER, 2021

DECLARATION

I declare that this thesis entitled an Examination of Corporate Income Tax Legislation and its Impact on Revenue Generation in Nigeria is a product of a research carried out by me in the department of commercial law. The information derived from the literature has been properly acknowledged in the text and a list of references provided. No part of this thesis was previously presented for another degree or diploma in any institution.

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CERTIFICATION

This thesis titled “AN EXAMINATION OF CORPORATE INCOME TAX LEGISLATION AND ITS IMPACT ON REVENUE GENERATIONIN NIGERIA” meets the regulations governing the award of the degree of Doctor of Philosophy (PhD) in law of Ahmadu Bello University, and is approved for its contribution to knowledge and literary presentation.

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DEDICATION

With gratitude to Almighty God for his grace, sustenance and protection, I humbly dedicate this research in memory of my late father, Augustine Nwokenekwu for his love, sacrifices and efforts in nurturing me in the way of the Lord.

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ABBREVIATIONS

ADR	-	Alternative Dispute Resolution
ANAN	-	Association of National Accountants of Nigeria
BAC	-	Body of Appeal Commissioner
BOJ	-	Best of Judgment
CAC	-	Corporate Affairs Commission
CGTA	-	Capital Gains Tax Act
CAMA	-	Companies and Allied Matters Act
CAP	-	Chapter
CCTV	-	Closed Circuit Television
CFRN	-	Constitution of Federal Republic of Nigeria
CGTA	-	Capital Gain Tax Act
CIT	-	Companies Income Tax
CITN	-	Chartered Institute of Taxation of Nigeria
CITO	-	Companies Income Tax Ordinance
CPA	-	Criminal Procedure Act
CPC	-	Criminal Procedure Code
ETC	-	Et-cetera (and so forth)
FBIR	-	Federal Board of Inland Revenue
FDI	-	Foreign Direct Investment
FEMMP-	-	Foreign Exchange (Monitoring and Miscellaneous Provision)
FIRS	-	Federal Inland Revenue Service
GDP	-	Gross Domestic Product
ICAN	-	Institute of Chartered Accountants of Nigeria
IMF	-	International Monetary Fund

ISA	-	Investment and Securities Act
IPOB	-	Indigenous People of Biafra
ITMA	-	Income Tax Management Act
JCA	-	Justice of Court of Appeal
JSC	-	Justice of Supreme Court
KADGIS	-	Kaduna Geographic Information Service
KADIRS	-	Kaduna Inland Revenue Service
LFN	-	Laws of Federation of Nigeria
LPA	-	Legal Practitioners Act
LTD	-	Limited
MDA	-	Ministries, Department and Agencies
NBA	-	Nigerian Bar Association
NCC	-	Nigeria Communications Commission
NEEDS	-	National Economic Empowerment and Development Strategies
NIPC	-	Nigeria Investment Promotion Commission
NOTAP	-	National Office for Technology Acquisition and Promotion
NRC	-	Non Resident Company
OECD	-	Organization of Economic Co-operation and Development
ORS	-	Others
PITA	-	Personal Income Tax Act
PPTA	-	Petroleum Profits Tax Act
SIM	-	Subscriber's Identification Module
SME'S	-	Small and Medium Enterprises
SPDC	-	Shell Petroleum Development Company
TAT	-	Tax Appeal Tribunal
TIN	-	Tax Identification Number

UNCTAD	-	United Nations Conference on Trade and Development
VAT	-	Value Added Tax

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ABSTRACT

This thesis titled “An Examination of Corporate Income Tax Legislation and its Impact on Revenue Generation in Nigeria” aim at utilizing the Companies Income Tax Act to enhance revenue generation in Nigeria, which is used to fund development in the economy. Company income tax is a major source of revenue to all governments in the world, Nigeria inclusive. It is levied by government against companies operating in Nigeria, which is used to raise revenue for sustainable economic development and administration of governmental policies. Companies income tax (CIT) is a tax on the profits of registered companies carrying on business in Nigeria. It is regulated by Companies Income Tax Act (CITA) Cap.C21 Laws of Federation of Nigeria, 2004. The study adopted essentially doctrinal method of research which involved the collection of materials or facts from, Constitution of Federal Republic of Nigeria 1999 (as amended), Tax Statutes, case laws, which the geographical application is limited to Nigeria only, various text books, articles contained in law journals and internet materials that are relevant to the subject matter of the research were used. However, empirical method of research was also adopted in some aspects, which consist of questionnaire and interviews through which facts and data were collected, analyzed and interpreted. Accordingly the research specifically achieved the following objectives; effective and efficient management and collection of taxes through Company Income Tax Act, it also determined the extent of contribution of corporate income tax to revenue generation in Nigeria and determined the tangible things/development taxpayers enjoyed as a result of payment of their taxes, and were inspired to pay more. The problem of the research were the conflict in the classification of companies in Nigeria arising from Section 394(4) CAMA 2020, Companies Income Tax Act (CITA) Cap.C21 L.F.N 2004 and Finance Act 2020, the effect of conflicting definitions of small companies under CITA and CAMA 2020, also impacts the required documents for the purposes of filing the company’s annual income tax returns. Section 402 of CAMA 2020, exempts companies which are yet to commence business and small companies from appointing auditors and conversely in line with Section 55 CITA, all companies are required to file annual self-assessment returns. Finance Act has amended Section 55 CITA, such that instead of audited accounts, FIRS may specify an alternative form of accounts, to be included in the tax returns. Other problems of the research include the tax evasion and avoidance which have hindered increase in revenue generation of the federal government, inadequate tax personnel to cover all areas of operations of FIRS to enhance revenue generation, mismanagement of tax payments collected by officials of FIRS, and unreliable and inadequate data problem that have hindered FIRS from improving her functions. The findings of the research based on the doctrinal and empirical methods of research used were, monetary penalties/fines contained in the Companies Income Tax Act are insignificant and inadequate to deter the offences for which they are prescribed for; high rate of 30% tax for large companies discouraged the investors from investing in Nigeria and also discouraged the local industries in Nigeria from paying their correct taxes; conflicts in the classification of companies in Nigeria between CAMA 2020 and CITA for tax purposes have created ambiguities, for instance a company with a turnover of ₦110million qualifies as a large company under CITA for tax purpose, the same company do not qualify as a small company under CAMA. and lack of skilled manpower and modern technology in the operations of FIRS adversely affected her revenue generation. The research recommended that adequate monetary penalties/fine should be provided to deter offences, for instance the fine of ₦600.00 provided for unauthorized collection of taxes contained in Section 95(b) of CITA should be increased to ₦50,000.00; reduction of 30% tax rate for large companies to 25% will encourage investors to invest in Nigeria; harmonization of the conflict between CAMA 2020 and CITA over classification of companies, is necessary to ensure uniformity and confidence of taxpayers and stakeholders and eliminate resultant conflicts. Finally, the research concluded that corporate income tax legislation has significantly impacted on the revenue generation in Nigeria.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Research

Nigeria is one of the largest geographical units in West Africa and occupies a land area of 923,768 square kilometers and lies within the tropics with two main vegetation zones¹. There are three broad sectors of the Nigeria economy, namely primary sector, which consist of agricultural and natural resources, secondary sector, which deals with processing and manufacturing and tertiary sector which consist of services. Two sectors before now, dominated Nigeria economy, that is agriculture and crude oil. The primary revenue earner was agriculture and from the late 1970s it shifted to oil sector and not until recently the prices of crude oil began to dwindle. The serious decline in the prices of oil, led to decrease of funds available for distribution to the three tiers of government for economic development, hence attention has now shifted to taxation in view of the huge government expenditure profile.

Nigeria is Africa's most populous nation and the largest economy in the continent, with the highest growing Gross Domestic Product (GDP) rate in Africa with USD397.30 billion in 2018 representing 0.64% of the world economy and world's eight largest oil exporter.² Yet more than 60% of the population lives in extreme poverty and youth unemployment is close to 80%³, coupled with the daily shortage of electricity supply, which adversely have affected operations of so many businesses in Nigeria, leading to poor revenue generation of corporate taxation in Nigeria.

In 2014, revenue generated from petroleum profits tax and other corporate income taxes were ₦2,453,947 trillion and ₦1,173,491 trillion⁴ respectively, and with this, the economy was faced with poor performance of national institutions, such as road, transportation system

¹Ofoegbu, G.N., Akwu ,D.O., and Oliver, O. (2016) Empirical Analysis of Effect of Tax Revenue on Economic Development of Nigeria. *International Journal of Asian Social Science*. Vol. 6 pp. 604-613

²Yahaya, K.A. and Bakare, T.O (2018) Effect of Petroleum Profit Tax and Companies Income Tax on Economic.

³Ibid.

⁴2014 Central Bank of Nigeria Statistical Bulletin.<https://www.cbn.gov.ng>Statbulletin> (Accessed on August 08,2019 9.25am).

and financial systems. The Niger Delta area, where oil and natural gas industry are primarily located has been a source of violence and conflict. Local groups seeking a share of the wealth of the nation illegally, often attack the oil infrastructure, forcing companies to declare force majeure on oil shipments (a legal clause that allows a party not to satisfy contractual obligations because of circumstance that are unavoidable or beyond their control). At the same time, oil pipelines vandalization which led to theft of oil, that is often severe, causing loss of production, pollution and forcing corporations to shut down production, which adversely affects the economy.

The tax system in Nigeria is made up of the tax policy, the tax laws and the tax administration. All of these are expected to work harmoniously in order to achieve economic development. According to 2008 Presidential Committee on National Tax Policy, the central objective of the Nigerian tax system is to contribute to the well being of all Nigerians directly through improved policy formulation and indirectly through appropriate utilization of tax revenue generated for the benefit of the people⁵. In generating revenue to achieve this goal, the tax system is expected to minimize distortion in the economy. Other expectations of the Nigerian tax system according to the 2008 Presidential Committee on National Policy include;

1. Encourage economic growth and development
2. Generate stable revenue or resources needed by government to accomplish important projects and/or investment for the benefit of the people
3. Provide economic stabilization
4. To pursue fairness and distributive equity
5. Correction of market failure and imperfection

In attempt to fulfill the above expectations, the national tax policy is expected to be in compliance with the principle of taxation and tax Acts, the lubricants to effective tax system.

⁵James Abiola and Moses Asiweh (2012).Impact of Tax Administration on Government Revenue in a Developing Economy- A case Study of Nigeria.*International Journal of Business and Social Science*.Vol. 3 Pp99-113.

The Nigerian tax system has been flawed by what is termed to be multiplicity of taxes and collecting entities at the three tiers of government levels and the tax Acts are filled with ambiguity and obsolete provisions which hinder effective tax compliance and enforcement. A country's tax laws and system are major determinants of other macroeconomic indexes, specifically, for both developed and developing economies; there exists a relationship between tax structured and the level of economic growth and development.

Indeed, it has been argued that the level of economic growth has a very strong impact on a country's tax base⁶ and tax policy objectives vary with the stages of development. Similarly, the economic criteria by which a tax structure is to be judged and the relative importance of each tax source vary over time⁷. For example, during the colonial era and immediately after the Nigeria's independence in 1960, the sole objective was to raise revenue and later on, emphasis shifted to the infant industries protection and income redistribution, and presently the primary objective of taxation has now shifted to the raising of adequate revenue in order to meet government expenditure. Tax revenue is a powerful tool of economic reform and a major player in every economy of the world. It is never static but dynamic and should reflect current realities prevailing in the economy. The tax system is an opportunity for government to collect additional revenue besides other sources of income, which is needed in discharging its pressing obligations. A good tax system, is also one of the most effective means of mobilizing a nation's internal resources and it lends itself to creating enabling and conducive environment to the promotion of economic growth and development⁸

Taxes are difficult to collect because of lack of skills and facilities for tax administration and enforcement. Given the fact that a complicated tax structure is not feasible and the amount

⁶Kiabel, B.D and Nwokah, N.G.(2009) Boosting Revenue Generation by State Governments in Nigeria. "The Tax Consultants Option Revisited" *European Journal of Social Sciences*. Vol.8p.4

⁷ Vincent, O.O.(2012) Fiscal Federalism: The Nigeria Experience. *European Journal of Economics, Finance and Administrative Sciences*. Vol. 48.p12

⁸Ogbonna, G.N. and Ebimobowei A. (2012) Impact of Petroleum Revenue and the Economy of Nigeria. *The Journal of Social Sciences*. Vol. 7 Pp.405-411

of revenue from corporate income tax will depend on taxpayers' compliance and the efficiency of the tax collector. An important source of government revenue during the early stage of economic development is the foreign trade sector, because exports and imports are readily identifiable and they pass through few ports. However, revenue from export and custom duties are not stable because of periodic fluctuations in the prices of primary products. This tends to complicate plan implementation in many developing countries and Nigeria inclusive.

The whole essence of tax revenue is to generate revenue to advance the welfare of the people of a nation with focus on promoting economic growth and development of a country through the provision of basic amenities for improved public services, through proper administrative system and structures. Through tax revenue, government ensures that resources are channeled towards important projects in the society, while giving succor to the weak. The role of tax revenue in promoting economic activity and growth may not be felt if poorly administered with clumsy or obsolete laws. This calls for the need for proper appraisal of the impact of corporate tax Acts on the revenue generation of Nigeria for economic development, such as, provision of infrastructural facilities, the general welfare of the citizens and to enhance proper policy formulation and strategy towards its effectiveness.

The Nigeria economy has remained backward with macroeconomic indicators reflecting an economy in dire need of rejuvenation, revival and radical reform. Unfortunately tax revenue mobilization as a source for financing development activities in Nigeria has been a difficult issue, allied to this fact is the various forms of resistance, such as tax evasion, avoidance and corrupt practices. These activities are considered as clogs and sabotaging the economy and which are readily presented as reasons for the underdevelopment of the country.

Government exists in order to effectively collect taxes from available economic resources and make use of same to create economic prosperity, such that people are gainfully employed, and providing essential public services (such as maintenance of law and order). Tax

resistance only make the development process difficult to attend. Thus, it can be said that the economic development of a country depends on various reasons, one of which is the presence of an effective and efficient tax revenue policy that leads to effective tax collection towards economic development.

Economic development is a policy intervention effort targeted at the economic and social well-being of people. Its concern is on the improvement in the quality of life of people, introduction of new goods and services using modern technology, mitigation of risk and dynamics of innovation and entrepreneurship.⁹ The objective of economic development is to create an enabling environment for local communities and regions to develop new ways of production of goods in such quantities that may lead to exportation to other countries. Availability of financial resources from exportation leads to more investment in infrastructure for the benefit of the society and improvement in living conditions of the people, in education, transportation networks, health conditions, water supply and environmental sanitation. The changes create the conditions for long-term economic growth by positioning on a higher growth trajectory.

Economic development differs from economic growth. Economic growth is a sustained increase in per capita national output or net national product over a long period of time¹⁰. It implies that the rate of increase on total output must be greater than the rate of population growth. Another quantification of economic growth is that national output should be composed of such goods and services which could satisfy the want of many people. Economic growth can be determined by four important determinants, which are human resources; natural resources, capital formation and technology, and they have a direct effect on the value of goods and services supplied. Economic growth measured by GDP means the increase of the growth rate of GDP, but what determines the increase of each component is very different. Public

⁹ Ibid.

¹⁰Gwa, D. Patrick and Kase, Joseph (2018) The Contribution of Tax Revenue on the Economic Growth of Nigeria. *International Journal of Good Governance*. Vol. 10 Pp.48-59

expenditure, capital formation, private or public investment, employment rates, exchange rates etc. have different impacts on economic growth¹¹ and there is need to take into account that these determinants have different implications if the states are developed or not. There is also socio-political factors and events that have a major influence on the economic advancement of a country, such as political regimes, political instability, civil freedom, the perception of politics play also an important role in fostering economic growth and political instability, has a negative effect on companies and their willingness to invest, can create violence and anarchy in the society and at the end, it can have serious consequence on revenue generation and economic growth.

Economic development implies improvements in a variety of indicators such as literacy rates, life expectancy, and poverty rates. Economic development encompasses policies that government's undertake to meet broad economic objectives, such as price stability, high employment, expanded tax base and sustainable growth. Economic growth specifically means an increase in the value of goods and services, produced by a country over a period, and an increase in country's GDP is used to measure it. Thus, it is possible to have economic growth without economic development in the short or even medium term. That is to say, there could be an increase in GDP without any increase in standard of living of people in a state.

Environmental conditions that would enhance economic growth must be created through an investment of the national income and infrastructural development for subsequent improvement in the standard of living of the population of a country.¹² It is the steady process by which the productivity capacity of the economy is increased over time to bring about rising level of national income.¹³ Economic growth is primarily driven by improvement in

¹¹Boldeanu, F.T, and Constantinescu Lilian(2015) The Main Determinants Affecting Economic Growth. *Bulletin of the Transylvania University of Brasov Series V: Economic Sciences*. Vol.8p.330

¹²Wilkin,S, (2014) Empirical Analysis of Effect of Tax Revenue on Economic Development. *International Journal of Asian Social Science*. Vol.6 Pp.604-613.

¹³Anyanwu, J.C. and Oaikhenan, H.(1995). *Modern Macroeconomic Theory and Applications in Nigeria*. Onitsha. Joanee Educational Publishers Ltd., p.175

productivity, which involves producing more goods and services with same input of labour, capital, energy and materials. However, a distinction is drawn between short-term economic stabilization and long-term economic growth. Short-term growth is, as the name suggests, growth in the output of a country in the terms of GDP over a given period of time, usually a year. It is measured by the annual percentage change in GDP. Long-term growth however, is when the country's productive potential is increased, the potential of the country's GDP is increased, due to an expansion in either the quality or quantity of factors or inputs the country is able to produce. Therefore, Economic growth is primarily concerned with the long-term economic growth.

One of the significant features of good governance is to improve the quality of the welfare of the generality of the populace through resources raised from taxation among others. It is generally recognized and accepted that taxation has an important and established role in any economy. There is hardly any government today that does not rely or make pretensions to rely on taxation measures not only to provide the much needed revenue for socio-economic development but also to reduce the inequalities of wealth in the society.¹⁴

Before the introduction of modern tax legislations and the advent of British rule in Nigeria, pre-colonial people already had a functional tax system whereby farmers and traders paid taxes. In Northern Nigeria there were taxes such as "*Zakat*" (a tax levied on the Muslims for charitable, religious and educational purposes). "*Kurdin-Kasa*" (an agricultural tax) and "*Jangali*" (a cattle tax, levied on livestock). In the South Western Area of Nigeria, there were also various forms of taxes such as "*Isakole*" (tax levied on land used by local communities

¹⁴Ijaiya, H.(2018) Petroleum Profits Tax in Nigeria. *KIU Journal of Humanities*, Vol,2 Pp. 59-63.

who are normally expected to pay “tribute tax” to the local chiefs) and “*owo 'ori*” (tax paid by every individual in the community to the government).¹⁵

In the Eastern part of Nigeria, the religious, political, economic and administrative institutions were entirely different. The Eastern Nigeria, had no organized system of taxation and they relied and practiced ceremonial or festivity tax system, such as “*egbu-nkwu*” (tax imposed before palm fruits were harvested. It was compulsory and there can be no harvest without it) and community effort tax (tax on members of each community for specific purposes).¹⁶

In any given economy, corporate taxation is one of the keys to a sustainable development. Corporate income tax also known as (companies’ income tax or corporation tax) is a fundamental instrument for effective fiscal policy in Nigeria tax system. This accounts for the reason why no government can survive without sufficient revenue to finance its budget.

The importance of tax is well noted by Felix Frankfurter¹⁷ when he stated in his discourse that:

Taxation has always been the sensitive nerve of government. The enormous increase in the loss of society and the extent to which wealth is represented by intangibles are putting public finance to its severest tests. To balance budgets, to pay for the cost of progressively civilized social standards, to safeguard the future and to divide these burdens with substantial fairness to the different interests in the community, strains to the utmost the ingenuity of statesmen.

However, in the Constitution of Federal Republic of Nigeria, 1999 (as amended)¹⁸ and some of the outlined laws¹⁹ demand that business operators within the country should be taxed,

¹⁵ History of Taxation in Nigeria: Understanding Nigeria Tax: <https://www.taxprof.com.org/history> (Accessed March 10, 201, 9.52am).

¹⁶ Ibid.

¹⁷ Pollack, E.N. (2005): The Brandies Reader Oceana, *Docket Series* Vol. 7, in: Akanle, O. (ed) Tax Law & Tax Administration in Nigeria. *Nigeria Institute of Advanced Legal Studies, Journal of Law of Development*. p.109.

¹⁸ Cap C23 Laws of Federation of Nigeria 2004.

¹⁹ Item No. 59, 2nd Schedule of the 1999 Constitution Cap 23 Laws of Federation of Nigeria 2004.

since their activities are taxable.²⁰ In other words, companies that run stable businesses and have steady income must pay tax as long as they are registered in Nigeria. The principal source of a government's revenue in several jurisdictions is companies' taxation. This is not the case in Nigeria. The Nigeria government relies heavily on crude oil revenue, foreign loans and aid for a significant fraction of revenue for development. The need for the government to provide social amenities, engage in developmental projects is a compulsory one for the improvement of the standard of living of the citizenry.²¹ But the government has often lamented lack of fund to embark on these projects, hence the necessity for urgent and intensified revenue generation effort by the government through corporate taxation.²²

Many reasons account for the insufficient revenue generation in Nigeria. In the 1970s, at the initial stage of the oil boom, the Nigerian government relied heavily on oil revenue, with little or nothing to show for this oil boom in terms of basic infrastructural facilities. Petroleum profits tax (PPT) had gain more eminence at the expense of other forms of taxes. Between the early 1970 to 2008 which were the periods of oil boom in Nigeria, which had a remarkable increase in the foreign exchange earnings²³ the Federal Government of Nigeria had neglected to properly harness other taxes that would have supported and complimented its oil revenue generation, despite the numerous sources of revenue available to the Federal Government as contained in the Constitution of Federal Republic of Nigeria. 1999(as amended).²⁴ From 1970 to date, over 50 per cent of the annual revenue of the government came from Petroleum.²⁵ However, the world financial crisis in 2009 prompted serious decline in the price of crude oil

²⁰Section 13 Companies Income Tax Act Cap.C21 Laws of Federation of Nigeria, 2004.

²¹Adedokun, K.A (2011). An Appraisal of Companies Income Tax and Its Effects on Revenue Generation in Nigeria, Ph.D Thesis (Unpublished) Faculty of Law A.B.U, Zaria, p. 2

²² Ibid.

²³Onuoha, M.E, and Elegbede, I.O (2018) The Oil Boom Era. Available at <https://www.sciencedirect.com/topics> (Accessed October 29, 2021, 11.35am)

²⁴ Cap C23 Laws of Federation of Nigeria, 2004.

²⁵Mivayi, J. (2015). Impact of Company Income Tax on Revenue Generation of Federal Inland Revenue Service (MSTO) Yola Adamawa State, p. 10.

in the international market²⁶, and this development also caused Nigeria income to fall and led to a decrease in the funds available for distribution to the States. The need for government to generate adequate revenue from internal sources has therefore, become a matter of extreme urgency, importance, aggressive and innovative.

Development is important for modern civilization. In order to carry out development at all nooks and crannies of the society, it is the responsibility of government to provide direct development to people to a certain level. Development is associated with funds and much revenue is needed to plan, execute and maintain infrastructures, both at the Federal and State levels. The revenue generated for such development projects, such as construction of accessible roads, building of public schools, health care centers, and construction of bridges are from taxes, royalties, haulages, fines and grants from taxable resources, locally generated. Thus, the Federal Government cannot embark, execute and possibly carry out the maintenance of these projects without adequate generation of funds.²⁷

Nigeria as a developing nation has many taxes²⁸ in its system, through which revenues are generated towards financing government expenditures or policies. Notable among these include corporation tax known as (companies' income tax or corporate income tax), petroleum profits tax, value added tax and capital gains tax. The combination of these is called corporate tax. These taxes are capable of generating sufficient income to meet government needs. In Nigeria, corporate tax is assumed to be one of the most essential and important instruments of government fiscal policies. The improvement of the efficiency of taxpayers' voluntary and the effectiveness of collection of corporate tax procedures are of great significance.

²⁶Onuoha, M.E, and Elegbede, I.O (2018) The Oil Boom Era. Available at <https://www.sciencedirect.com/topics> (Accessed October 29, 2021, 11.35am)

²⁷Ibid.

²⁸The Major taxes in Nigeria are Corporate Tax, Petroleum Profits Tax, Value Added, Tax, Personal Income Tax, Stamp Duty, Withholding Tax etc.

Company income tax like other taxes, is imposed under the authority of the legislature, levied by a public body and intended for public purposes²⁹. It is payable for each year of assessment on the profits of any company accruing in, derived from, brought into and received in Nigeria in respect of all kinds of income. That is income derived from a trade, business or investment. It presupposes that government needs to provide for a coherent national tax policy and tax strategy to complement it. These will ensure equitable distribution of the taxes remitted to government treasury. They will also guide the thinking and action of the government towards judicious and prudent management of public funds. Unfortunately, this is conspicuously lacking in Nigeria.

Under the Companies' Income Tax (Amendment) Act,³⁰ the Federal Inland Revenue Service hereinafter called (F.I.R.S.) as against the defunct Federal Board of Inland Revenue (F.B.I.R) is now charged with the responsibilities to administer and managed corporate taxation in Nigeria, and to ensure enforcement and strict compliance. The Federal Inland Revenue Service (F.I.R.S) has undergone organizational and institutional reform to combat administrative ineptitude, to cope with the challenges and emerging new trends in corporate tax administration in Nigeria and to operate a transparent and efficient tax system that will optimize tax collections and voluntary compliance.

Recently the federal government of Nigeria, introduced Finance Act 2020, which took effect on the 1st day of January 2021. The Finance Act introduced over 80 amendments to the existing tax and regulatory legislations in Nigeria, including Companies Income Tax Act, Valued Added Tax Act, Capital Gains Tax Act, Personal Income Tax Act, Federal Inland Revenue Service (Establishment) Act and Custom and Exercise Duties Act, among others³¹. The amendments made by the Act are intended to provide counter-cyclical fiscal policy

²⁹Abdulrazaq, M.T (2005). *Nigeria Revenue Law*, Malthouse Press Limited, Lagos, p.1.

³⁰Act No. 13 of 2007.

³¹Obayomi, W, and Olomola, A. et.al (2021) Finance Act 2020 Impact Analysis. <https://home.kpmg> (Accessed on March 10, 2021, 11.10am)

measures that will aid economic recovery and growth, given the devastating effect the COVID-19 pandemic lockdown has had on the Nigeria economy. Finance Act, 2020 bravely continued in the same direction as Finance Act, 2019. It is important to note that, the Finance Act, 2020 did not repeal the Finance Act, 2019, although it modified some sections to provide clarity and make it consistent with the government's fiscal plans and current economic realities and increased the wallet share of taxpayers' by reducing the tax burden on the most vulnerable sectors of the economy. These would include loss-making companies or companies with lower profitability ratios that might otherwise have fallen into the minimum tax threshold and would have had to source for money with which to pay tax.

The Act³² introduced a 50 percent temporary reduction of the 0.5 percent minimum tax rate as contained in CITA³³ for companies liable to minimum tax for the years of assessment falling due on any date between 1st January 2020 to 31st December 2021 to 0.25 percent³⁴. The amended minimum tax rate is in response or an incentive to the impact of the COVID-19 pandemic, which will be reactivated to 0.5 percent after 2021. Unfortunately before the Act could take effect, many corporate organizations have filed their 2020 returns and paid their taxes. This is one of the pitfalls of the 2020 Finance Act, as one is not sure whether the Federal Government will extend the year to 2022 by further amendment.

Finance Act, 2020 provides that all companies, including those exempted from incorporation and payment of tax, must maintain accounting records in English language for a minimum period of six years.³⁵ Non-compliance with the above provisions of the law attracts a penalty of ₦100,000.00 in the first month in which the failure occurs, and ₦50,000.00 for each subsequent month in which the failure continues³⁶ and further empowers the FIRS to

³² Finance Act, 2020.

³³ Section 33(1) Companies Income Tax Act. Cap. C21 Laws of Federation of Nigeria 2004.

³⁴ Section 13(2) Finance Act, 2020.

³⁵ Section 17 Ibid.

³⁶ Ibid.

request companies to translate accounting records initially stated in foreign language to English language, which will be certified by a sworn translator at the company's cost.

Further amendments introduced by the Finance Act, 2020, include changes to timeline for settlement of undisputed tax assessment, 2020. It reduced the timeline required by companies to settle any undisputed tax assessment raised by the FIRS, from 2 months to 30 days from the date of service of the assessment³⁷. Where an assessment becomes final and conclusive, due to the failure of the taxpayer to file a formal objection within the statutory 30 days period, or the assessment has been agreed by the taxpayer or determined on objection or appeal, the additional liability must be settled within 30 days of the service of the relevant assessment by the FIRS³⁸. The Act also provides for sanctions for a deliberate and dishonest filing of incorrect companies income tax returns by corporate organizations³⁹. These sanctions include payment of the outstanding tax assessed by the FIRS and penalty and interest accruing on the outstanding amount from the date the incorrect returns were filed.⁴⁰ There might be challenges with the application of this provision as it may be difficult for the tax authority to determine when a taxpayer dishonestly files a return or when an incorrect tax return was filed by reason of an innocent mistake.

Other noteworthy amendments to Companies Income Tax Act, include the introduction of definition of the term "public character" to mean an organization or institution that is registered in accordance with the relevant laws in Nigeria and does not distribute or share its profits in any manner to its members or promoters⁴¹. This definition clarifies the issue on what constitutes "public character" for the purpose of determining the profits of an educational institution⁴². The Act also clarifies the ambiguity in section 4(b) of Finance Act, 2019, thus,

³⁷ Ibid.

³⁸ Ibid.

³⁹ Section 15 Ibid.

⁴⁰ Ibid

⁴¹ Section 21(b) Ibid.

⁴² Section 23(1) (c) Companies Income Tax Act. Cap C21 Laws of Federation of Nigeria, 2004.

clarifying that withholding tax (WHT) will be the final tax on the income derived by a non-resident company (NRC) from technical, management, consultancy, or professional services provided to persons resident in Nigeria, where the NRC does not have a fixed base or engages in other trade or business as defined under Companies Income Tax Act⁴³. Value added tax is to be computed at the rate of 7.5 percent with effect from 1st February, 2021, on the value of all goods and services, except that goods and services listed under Part 111 of the First Schedule to this Act shall be taxed at zero rate.⁴⁴

Corporate income tax system is one of the most powerful means available to the government to stimulate and guide its economic and social development. In the life of any nation, taxation is an indispensable tool employed by the government for the promotion of their overall economic and social objectives. The crucial role that taxation plays in the development of Nigeria economy cannot be over emphasized.⁴⁵ Though, revenue generation appears to be the primary objective of the government when it levies taxes, but it goes beyond this, as it produces economic need for the government. For instance, when investment, production, consumption etc begin to rise or fall, a change in the tax structure can stop or reverse the undesired trend. The importance of taxation in economic integration and sustainability cannot be over emphasized. It is in recognition of this crucial role of taxation in a country's economy that taxation is regarded by the United States Supreme Court to be:

One great power upon which the whole national fabric is based. It is as necessary to the existence and prosperity of a nation as is the air he breathes to the natural man. It is not only the power to destroy but it is also the power to keep alive.⁴⁶

1.2 Statement of the Research Problem

⁴³Section 13(2)(a) –(d) Ibid.

⁴⁴Section 42 Finance Act, 2020 (which is an amendment to section 4 of VAT)

⁴⁵Is-haq, O. Oloyede (2010). *Repositioning the Nigeria's Tax System: Suggested Policy Measure* University of Ilorin Press Ltd. p.3

⁴⁶*Nicholes, v. Ames*(1935).T.C. 531.

The imposition of tax is statutory. This is to enable government meets its financial obligations. It is provided in section 24(f) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)⁴⁷ that “It shall be the duty of every citizen to declare his income honestly to the appropriate and lawful agencies and pay his tax promptly”. This by extension include corporate organizations, since a corporation is a legal personality and/or artificial person created by law and has a legal existence.⁴⁸

Corporate income tax is one of the taxes that are imposed by government in Nigeria.

There are various views for and against the imposition of corporate income tax in Nigeria. The problems of the topic of dissertation as in connection with corporate income tax legislation are:

It is no longer news that the Companies and Allied Matters Act (CAMA) 2020 was signed into law in August 2020 by the President, further to significant changes in the economic and business world compared to when the law was enacted in 1990. The new CAMA is to ensure economic and business realities with the legislation governing the conduct of such businesses. The CAMA 2020 has become effective from January 1, 2021 and it is expected that business owners, investors and other stakeholders adhere to its provisions which are primarily aimed at ensuring the ease of doing business and enhanced corporate governance structures in companies. Similarly, the Companies Regulations 2021 has been issued to give effect to the implementation of the CAMA 2020.⁴⁹ Although not a tax statute, some provisions of the CAMA

⁴⁷Cap C23 Laws of Federation of Nigeria 2004.

⁴⁸Clive M. Schmitthoff and David A.G.Sarre (1984). *Charlesworths Mercantile Law* (Fourteenth Edition) London Stevens & Sons, p. 69.

⁴⁹ Key highlights of CAMA 2020 available at <https://home.kpmg>home>insights> accessed on October 20, 2021)

2020 have bearings on tax obligations and compliance processes and have consequently altered certain tax requirement and constitute problems as follows:

CAMA 2020 classifies companies to small and others using a combination of different parameters, whereas CITA classifies companies on the basis of their turnover. Below are the classifications of companies under CAMA and CITA⁵⁰

CAMA Classification	CITA Classification
<p>Section 394(3) of CAMA 2020 classifies a company as small if it satisfies all the following conditions:</p> <ul style="list-style-type: none"> a. must be a private company; b. maximum turnover of N120million c. has no foreign member; d. has no government membership; and e. directors must hold at least 51% of its capital. 	<ul style="list-style-type: none"> a. Small Company: Gross turnover of less than ₦25million b. Medium-sized Company: Gross turnover of more than N25million but less than N100million c. Large Company: Gross turnover of ₦100million and above

These features of a small company under CAMA 2020 differs significantly from the tax classification of companies. The Finance Act 2019 (amending the Companies Income Tax Act) introduced the classification of companies into small, medium and large for tax purposes. The variances in the basis of determining small companies under the CAMA and CITA have created ambiguities. For instance, while a company with a turnover of ₦110million qualifies as a large company under CITA for tax purposes, the same company may qualify as a small company under CAMA provided all other conditions are satisfied.

⁵⁰ Key highlights of CAMA 2020 available at <https://home.kpmg>home>insights> accessed on October 20, 2021)

This contradiction transcends mere classification as it borders on the taxability of affected companies. Section 40 of CITA (as amended by the Finance Act 2019) prescribes varying tax rates for each class of companies. While profits of small companies are exempt from tax, medium-sized and large companies are taxed at 20% and 30% respectively. Again, companies which qualify as ‘small’ under CAMA may still be subject to tax at 20% or 30% since such companies are considered ‘medium’ or ‘large’ under CITA. Consequently, a company deemed ‘small’ by virtue of CAMA may not enjoy the tax incentives provided for small companies under CITA. A harmonization of what constitutes a small company in Nigeria under CAMA, CITA as well as other relevant laws and regulations is necessary to ensure uniformity and confidence of taxpayers and stakeholders and eliminate resultant conflicts⁵¹.

The effect of conflicting definitions of small companies under CITA and CAMA also impacts the required documents for the purposes of filing the company’s annual income tax returns. Section 402 of CAMA 2020 exempts companies which are yet to commence business and small companies (by its definition) from appointing auditors to audit its account for the period. Conversely, in the line with Section 55 of CITA, all companies (including small companies despite exemption from tax) are required to file annual self-assessment returns with the Federal Inland Revenue Service (FIRS) along with their audited statements amongst other documents⁵².

Auspiciously, the Finance Act 2020, which became operational on January 1, 2021, has amended Section 55 of CITA, such that instead of audited accounts, FIRS may specify an alternative form of accounts to be included in the tax returns to be filed by small and medium-sized companies (by its definition). This amendment was precipitated by the exemption granted to small companies from appointing auditors. Considering the provisions of CITA, all large companies are expected to file audited accounts with FIRS regardless of whether such company falls within the category of small company under CAMA. Also, in view of the amendment introduced by Finance Act 2020, which grants FIRS the power to specify the form of accounts to be included in a tax return, small and medium-sized companies can still be compelled by FIRS to prepare audited accounts for filing. Notwithstanding the provisions of

⁵¹ Companies and Allied Matters Act. 2020: Interactions with Extant Tax Provisions. <https://pedaba.com> (accessed on October 28, 2021)

⁵² Ibid

these laws, the credibility of a company is often enhanced by the existence of an independent auditor's opinion as to whether the financial statements of a company represent a true and fair view of the financial position of such company. It is pertinent that companies, regardless of size, consider the financial audit of accounts as this allows for transparency and ultimately boosts the confidence of users of the financial statements⁵³.

A major feature of CAMA 2020 is the updated amounts of penalties to reflect current economic realities. While some are expressly contained in the law, the Corporate Affairs Commission (CAC) is to prescribe most of the penalties for any contravention of the provisions therein. Following the provisions of Section 27 of CITA (as amended by Finance Acts 2019 and 2020), penalties prescribed by an Act of the National Assembly or by any Law of a State's House of Assembly are treated as disallowable expenses for the purpose of ascertaining the profits of a company. Consequently, any penalty or fine stipulated in CAMA 2020 or prescribed by the CAC for non-compliance with the law will not be allowed for deduction by a company for income tax purposes.

Sections 426 and 427 of CAMA 2020 provide that dividends payable to shareholders are payable only out of the distributable profits of the company. Distributable profits have in turn been defined as the company's accumulated realized profits which have not been previously utilized by distribution or capitalization, less any accumulated realized losses which have not been previously written off in a reduction or reorganization of capital. On the other hand, Section 19 of CITA which deals with excess dividend tax makes provision for the payment of dividend from retained earnings, which could be either realized or unrealized profits.

⁵³Ibid

Following the provisions of CAMA 2020, it is expected that dividends are only paid out of the accumulated realized profits of the company.

CAMA 2020 now allows for the incorporation of single-shareholder private companies, thus modifying the erstwhile requirement for a minimum of two (2) persons to set up a company. This type of company enjoys the full benefits of a duly incorporated limited liability company including but not limited to having a separate legal personality, perpetual succession, and so on. Section 108 of the Personal Income Tax Act (PITA) which deals with the taxation of persons other than companies defines ‘individual’ to include ‘a corporation sole’. When then constitutes a corporation sole? This is a legal entity consisting of a single incorporated office and occupied by a sole natural person⁵⁴.

In the light of Section 18(2) of CAMA 2020, which now permits single-shareholder companies, there is a tendency for a mix-up with corporation soles, particularly in the determination of the appropriate taxing authority. While State’s Internal Revenue Service’s are responsible for taxing individuals, the FIRS is responsible for the collection of taxes from incorporated companies.

Tax evasion and avoidance are two major factors that militate against the achievement or revenue projection of the government. Tax evasion in general, refers to illegal practices to

⁵⁴ Ibid

escape from taxation⁵⁵, to this end, taxable income, profits liable to companies income tax or other taxable activities are concealed, the amount and/or the source of income are misrepresented, or tax reducing factors such as deductions, exemptions or credits are deliberately over stated.

Tax avoidance on the other hand is when an individual or a company legally exploits the tax system to reduce tax liabilities, such as establishing an offshore company in a tax heaven, or claiming capital allowances on things used for companies or where an individual makes a claim of dependants (wife and Children) allowance when he is not married⁵⁶. Simply put, tax avoidance, is the use of legal methods to minimize the amount of income tax owed by an individual or a business. This is generally accomplished by claiming as many deductions and credits as are allowable under the law.

Lack of adequate staff or manpower in FIRS to carry out the assignment efficiently, has contributed to low revenue generation of the Federal Government of Nigeria. Following the economic recession currently being experienced in the country, the government has downsized the staff strength of various Federal Ministries and parastatals including the Federal Inland Revenue Service. The current staff strength of the Federal Inland Revenue Service at 9,600⁵⁷ staff for a country with about 196,796,335 million people⁵⁸ representing 2.57% of the total population⁵⁹, is grossly inadequate. Consequently, this has made it difficult for the Federal Inland Revenue Service (FIRS) to cover some of its areas of operations and leading to low revenue generation in Nigeria.

⁵⁵<https://www.investopedia.com/terms> (Accessed on July 20, 2017. 11:30am)

⁵⁶ Ibid

⁵⁷Tax – FIRS Calls for Review of Governing Laws.<https://allafrica.com/stories/200801310237.htm> (Accessed March 10, 2017, 1.34pm)

⁵⁸Nigeria Population (2018) Available at Woldmeters.www.worldmeters.infor>Nigeria.population. (Accessed on September 12, 2018. 1.05pm)

⁵⁹Ibid.

At times, tax payments collected are not utilized for the purpose for which they were collected or meant for and end up in some private pockets of government functionaries. For instance on Wednesday, June 23, 2021 the Economic and Financial Crimes Commission (EFCC) re-arraigned one Peter Hena, former Coordinating Director of FIRS and eight other officers of the agency before Hon. Justice Toyin Bolaji Adegoke of the Federal High Court Abuja, following the transfer of former trial judge, Hon. Justice Ifeoma Ojukwu⁶⁰. The FIRS staff were docked on a 42 count charge bordering on alledge corruption, fraud and criminal misappropriation of funds to the tune of ~~N~~4,558,160,676.9k (Four Billion, Five Hundred and Fifty Eight Million, One Hundred and Sixty Thousand, Six Hundred and Seventy Six Naira, Nine Kobo) belonging to federal government and punishable under the Money Laundering (Prohibition) Act⁶¹. This development discourages the taxpayers' not to give out their hard earned wealth for the nation. This has a negative effect on the administrative machinery and enforcement in Nigeria.

The Federal Inland Revenue Service (FIRS) is responsible for the administration of corporate tax laws in Nigeria. In order to effectively discharge its functions, it needs to work harmoniously with the Corporate Affairs Commission (CAC) which is another Federal Government agency charged with responsibilities of formation and incorporation of companies, registration of business names and other ancillary matters as provided under the Act⁶². The Corporate Affairs Commission (CAC) is required to provide the Federal Inland Revenue Service (FIRS) with the authentic and up-to-date data and/or records of companies properly incorporated in Nigeria. This is to equip the Federal Inland Revenue Service (FIRS) to

⁶⁰EFCC Re-arraigns Three FIRS Directors, Six Others for N4.5billion Fraud. Available at online premiumtimesng.com/new. (Accessed on October 28, 2021, 5.43pm)

⁶¹Section 15(2) (a) and (3) Money Laundering (Prohibition) Act, No.1 2021

⁶²Section 7 Companies and Allied Matters Act 2020

put in place its own database and to effectively enforce tax compliance on corporate taxpayers'. As good as this arrangement appears to be, it is posing some serious challenges that agitate the mind of the researcher. Evidence abound of cases of companies that are not incorporated or registered with Corporate Affairs Commission, either as a private limited liability company or business names that were awarded with contracts in Millions of Naira by Federal Government of Nigeria, and collection of various forms of taxes as agents of the government, without any evidence of remittance to government treasury.⁶³ With this disclosure, it is certain that the corporate income tax legislation, tax enforcement agency, administration and enforcement procedures need a proper scrutiny to forestall loss of revenue to Federal Government of Nigeria.

Many of the penalty provisions as contained in the Companies Income Tax are insignificant and grossly inadequate to serve as a deterrent measure for evasion of taxation in Nigeria and this has adverse effect to revenue generation in Nigeria. Section 95 of Companies Income Tax Act⁶⁴ is to the effect that any person not being authorized under this Act to do so, collects or attempts to collect the tax under this Act, shall be guilty of an offence and shall be liable on conviction to a fine of ₦600.00 or imprisonment for three years or to both such fine and imprisonment.

This provision of the law gave a discretionary power to the court to apply any of the options provided therein. This will not serve any useful purpose if the court decides to use its discretionary power to penalize the tax offender with an option of fine of ₦600.00 only, for the above offence. Definitely, this will not discourage default in tax compliance, and will not serve as deterrence.

Following these numerous problems, the core question that seeks for resolution is how would the Companies Income Tax Act be better harnessed to ensure more efficient and effective revenue generation in Nigeria?. Arising from this question are the following specific questions to be answered:

⁶³Reported Case of Messrs Kymco Motor Nigeria Ltd (among others) awarded a contract sum of ₦400 million for delivery of Seventeen (17) cars to the Principal Officers of the National Assembly and the company name does not exist in the register of Corporate Affairs Commission and that of ₦13.7 million including 5% VAT paid to it was not remitted to the Federal Inland Revenue Service. Daily Trust p. 1 & 5, Monday November 03, 2008.

⁶⁴Cap. C21 Laws of Federation of Nigeria 2004

1. How has the Company Income Tax Act provided for effective and efficient management of collectable taxes?
2. What is the institutional framework for tax administration and how proficiently has it discharged her statutory responsibilities?
3. To what extent has corporate income tax contributed to revenue generation in Nigeria?
4. What are the factors militating against the effective implementation of the Company Income Tax Act? And
5. What appropriate recommendations can be made to fully actualize the provisions of Company Income Tax Act?

1.3 Aim and Objectives of the Research

The aim of this study is to show how the Company Income Tax Act can be utilized to enhance revenue generation in Nigeria. This will enable the government to adequately fund development in the economy. In view of this, the research, specifically, seeks to achieve the following objectives.

1. To examine how the Company Income Tax Act has provided for effective and efficient management of collectable taxes.
2. To examine the institutional framework for tax administration and how proficient it has discharged her statutory responsibilities.
3. To determine the extent of contribution of corporate taxation to revenue generation in Nigeria
4. To determine the factors militating against the effective implementation of the Company Income Tax Act. And
5. To make appropriate recommendations that can fully actualize the provisions of the Company Income Tax Act

1.4 Justification of the Research

This research is justified on the ground that it will contribute to knowledge and learning, particularly in the aspect of corporate tax laws. It is expected to fill the knowledge gaps in the existing literature. This research will be of immense use to law students, lecturers, legal practitioners, Judges, members of Institute of Chartered Accountants of Nigeria (ICAN), Association of National Accountants of Nigeria (ANAN), Chartered Institute of Taxation of Nigeria (CITN), tax Consultants, tax Administrators, Tribunals, taxpayers' and legislators. The research will also serve as a viable, veritable tool and guide to independent researchers' who may have interest in the subject matter.

1.5 Scope and Limitations of the Research

This thesis is concerned with the examination of Corporate Income Tax Legislation and its impact on revenue generation in Nigeria. These include Companies' Income Tax Act⁶⁵ (known as Corporate Income Tax or Corporation Tax), Petroleum Profits Tax Act⁶⁶, Value Added Tax Act⁶⁷, and Capital Gains Tax Act⁶⁸, which are Nigerian laws and the researcher has endeavoured to state the Laws from 2010 to January 1st, 2021.

The impact and/or contribution of Corporate Income Tax Legislation to revenue generation and on the economic growth and development of Nigeria between 2010 to 2021 using its effects on infrastructural development has direct and indirect relationships with the infrastructural development and the gross domestic product (GDP) respectively. The channels through which corporate tax revenue generation affects and/or impact economic growth in Nigeria are basically infrastructural development, foreign direct investment (FDI) and gross domestic product (GDP).

⁶⁵ Cap. C21 Laws of Federation 2004

⁶⁶ Cap. P13 Ibid.

⁶⁷ Cap. V1 Ibid.

⁶⁸ Cap. C1 Ibid.

However, the crux of the research will be on Companies' Income Tax Act (C.I.T.A)⁶⁹, also called Corporation Income Tax Act. This is the Act which deals with the taxation of companies in Nigeria. The geographical area of its application is limited to Nigeria only. Nothing prevents the researcher from sourcing for materials from other jurisdictions which will add meaning, relevance and importance during the presentation of this research. However, the research witnessed some challenges arising from paucity of fund to carry out this work. Some States that needed to be visited for data collection could not be visited as a result of insecurity problems in those States and more importantly time constraint is another challenge, as the researcher is actively involved in private legal practice and combining same with the research was a herculean task.

1.6 Research Methodology

The method adopted in this research is essentially doctrinal; although, empirical method was employed in some aspects, which include questionnaires and interviews. Doctrinal research involves the gathering of information from both primary and secondary sources. Doctrinal research also means, theorizing without considering the practical consequences.⁷⁰ It is called a visualized research, imaginative research, unpractical, a visionary research, or a conceptual research.⁷¹ Empirical research involves the collection of facts and data through interviews, questionnaires, etc. from target groups. The facts and data are later analyzed and interpreted. The primary documents used in this work are the Constitution of the Federal Republic of Nigeria⁷² (as amended), Companies' Income Tax Act,⁷³ Federal Inland Revenue Service (Establishment) Act,⁷⁴ Petroleum Profits Tax Act,⁷⁵ Companies and Allied Matters Act⁷⁶, other tax statutes and case laws.

The secondary documents consulted by the researcher consist of various textbooks, articles contained in reputable law journals that are relevant to the subject matter of the

⁶⁹Cap C21 Ibid.

⁷⁰Aboki, Y. (2013). *Introduction to Legal Research Methodology, A Guide for Writing Long Essays, Thesis, Dissertations and Article*. Ajiba Printing Production, Kaduna, p.3

⁷¹Ibid.

⁷²Cap. C23, Laws of Federation of Nigeria 2004.

⁷³Cap. C21, Ibid.

⁷⁴No. 13, 2007.

⁷⁵Cap. P13, Laws of Federation of Nigeria 2004.

⁷⁶Companies and Allied Matters Act 2020

research. Others include internet materials that are also necessary and relevant to the research. This helped the researcher to carry out a critical examination of corporate income tax legislation and its impact on revenue generation in Nigeria. The choice of the combination of doctrinal and empirical methods of research was as a result of the desire of the researcher to achieve a better understanding of the law and to make specific inquiries in order to identify some specific information. For example an investigation was conducted to find out why the public are not willing to pay taxes as and when due. All the inquiries have specific answers to specific questions that can easily found and verified, and these are the foundations to doctrinal and empirical research.

1.7 Literature Review

The literature review is subdivided or classified into issues relating to company income tax and revenue generation in Nigeria.

(a) Company Income Tax

A work of this magnitude cannot be successfully undertaken without recourse to authorities who have contributed to literary knowledge and have distinguished themselves in this area of research like: Olokooba⁷⁷ offered a straightforward introduction to the basis of Nigeria tax. He also discussed various tax legislations in Nigeria in addition to practice and procedures.

Burke⁷⁸ focused on the corporation as a taxable entity. It traces the corporate life cycle from incorporation to complete liquidation and further discussed the issue of problems and solutions in corporate tax administration as it is obtainable in United States of America, which is quite different from Nigeria Jurisdiction. Although the solutions offered in the book, may be useful in Nigeria corporate tax system, considering the challenges facing corporate taxation in Nigeria, for example tax evasion and avoidance which are major setback in the increase in revenue generation in Nigeria. Despite treating or focusing on corporation as a taxable entity,

⁷⁷Olokooba, S.M (2019) *Nigerian Taxation Law, Practice and Procedures Simplified*. Springer Press. P. 28

⁷⁸ Burke, K.C (2019) *Federal Taxation of Corporations and Stockholders in a Nutshell, 12th Edition*. West Academic Publishing U.S.A. pp. 18-19

the book did not provide the basis for chargeable profits of a corporation. The study tends to cover this gap.

Auru⁷⁹ discussed significant issues relating to corporate taxation in Nigeria touching on this study, such as chargeable income or profits of companies, profits exempted from tax, tax compliance, enforcement procedures and companies that are also exempted from payment of taxes, which is important to this study considering the recent conflicting classification of a company for tax purposes by CAMA 2020 and Finance Act 2020. This work seeks to close the gaps created by the two legislations i.e CAMA 2020 and Finance Act 2020.

Kahn, *et.al*⁸⁰, is not organized according to the chronological life of a corporation. Instead the book begins by examining the tax treatment of a withdrawal of property from an existing corporation. The book discussed on what organization constitutes a corporation. The categorization and/or classification of a company were based on resident and non-resident company which is quite different from what is obtainable in Nigeria. By the provision of Finance Act⁸¹ a company is classified into three that is, small sized company, medium sized company and large company, whereas a small company is exempted from payment of taxes

⁷⁹Auru, O.H (2018) *Principles and Practice of Taxation*.Klix Press Zuba Abuja Pp.115-118.

⁸⁰Khan, D.A, Kahn,J.H and Perries, T.G (2019) *Kahn and Kahn's Principles of Corporate Taxation 2nd Edition*. West Academic Publishing. p. 75

⁸¹Section 24 Finance Act 2020

while medium-sized company and large companies are subject to 20% and 30% payment of taxes on their profits. However, by the provisions of Section 394(3) of the Company and Allied Matters Act 2020 classifies a company as small if it satisfies all the following conditions: (a). must be a private company; (b). maximum turnover of ₦120million; (c). maximum net assets value of ₦60million; (d). has no foreign member; and (e). has no government membership; and directors must hold at least 51% of its share capital. The study will seek to harmonize what constitute a small company in Nigeria under CAMA and CITA.

Bassey⁸², provided a full coverage of companies income tax, value added tax, capital gains tax and definitions of terms relating to companies taxation in Nigeria. The book treated chargeable profits, ascertainment of profits and basis of assessment in chapters 2,3, and 7 respectively. The book considered value added tax at the rate of 5 percent which is contrary to the provisions of the Act⁸³ which amended the Valued Added Tax Act⁸⁴ by substituting for the expression, “5%” with 7.5%. This study will cover the gaps created in the book.

Ola⁸⁵, discussed some topics which include but not limited to assessment, collection and incentives under the provisions of the Companies’ Income Tax Act, 1961. The Companies Income Tax Act, under which the learned Professor of law, discussed the above topics does not represent the current position of Companies Income Tax Act in Nigeria any longer. Suffice to say that the 1961 Companies Income Tax Act has seriously undergone several amendments and changes from 1990 Act and now Companies’ Income Tax Act⁸⁶. In the same manner, the Federal Inland Revenue Service (F.I.R.S) which is the agency responsible for corporate tax laws administration and management in Nigeria has been re-organized towards effective and efficient management of corporate taxation. For these reasons, the opinions of the learned

⁸²Bassey, O.U (2013) *Companies Taxation in Nigeria*. CIBN Press Ltd.

⁸³ Section 42 Finance Act 2020.

⁸⁴ Cap. V1 Laws of Federation of Nigeria 2004.

⁸⁵Ola, C.S. (1984). *Income Tax Law for Corporate and Unincorporated Bodies in Nigeria*, the Heinemann, Ibadan, pp. 231 – 265.

⁸⁶ No. 13 of 2007

Professor, with respect to corporate tax laws are no longer the position of the laws, and cannot be relied upon in view of the new legislations that have come on board. As such, his work created serious gaps and consequently to be filled by this research.

Abdulrazaq,⁸⁷ stated that the Federal Board of Inland Revenue is responsible for the administration of Companies' Income Tax Act, and premised his submission under the 1979 Companies' Income Tax Act. This Act is no longer the applicable law of Companies Income Tax Act in Nigeria. The current position of the law is that Federal Board of Inland Revenue has been dissolved and replaced with Federal Inland Revenue Service, following the enactment of the Federal Inland Revenue Service (Establishment) Act.⁸⁸ The Service which is a body corporate with perpetual succession⁸⁹ is now responsible for the control and administration of companies' income tax in Nigeria. The 1979 Companies' Income Tax Act, under which the learned Professor wrote his book has been repealed and replaced with Companies' Income Tax Act.⁹⁰ In the same vein, the author,⁹¹ stated at pages 37 and 38 of his book that "Revenue Board has the power to sell off, the defaulting taxpayers' goods or other chattels, bonds or securities as well as his premise without recourse to a court of competent jurisdiction, so that the amount owed can be recovered".⁹² With due respect to the author, it is submitted by the researcher that the Revenue Board by virtue of section 36(6) of Federal Inland Revenue Service (Establishment) Act⁹³ does not have absolute power to sell off defaulting taxpayers' goods or other chattels, bonds or securities without recourse to a court of competent jurisdiction. The law provides that: "Nothing in this section shall be construed so as to

⁸⁷Abdulrazaq, M.T. (1993). *Nigeria Tax Offences and Penalties*. Betay Law Publications Ltd, Ilorin, p. 132.

⁸⁸Act No. 13 of 2007.

⁸⁹Section 1(2) Federal Inland Revenue Service (Establishment) Act 2007.

⁹⁰Cap. C21, Laws of Federation of Nigeria 2004.

⁹¹Abdulrazaq, M.T (2015) *Revenue Law and Practice in Nigeria 3rd Edition*, Malthouse Press Limited p.184

⁹²Ibid.

⁹³No. 13 2017.

authorize the sale of any immovable property without an order of a High Court, made on application”.⁹⁴

This provision of law is considered to be of very important in order to protect the defaulting taxpayers from the hands of overzealous and corrupt tax officials. This study will cover the gaps created in the book.

Adesola’s book⁹⁵ discussed issues relating to corporate income tax administration in Nigeria, tax assessment, ascertainment of profits from trade, fundamental principles of revenue law. It is observed that the book subjects every company carrying on business in Nigeria to payment of tax at the rate of 30 per cent and 0.5% minimum tax. This is no longer the current position of law, with respect to rate of payment of companies income tax and minimum tax in view of the coming into effect of Finance Act, 2020. In Nigeria small-sized companies are exempted from payment of tax⁹⁶, while medium-sized and large companies are subject to 20% and 30% payment of tax in respect of their total profits⁹⁷ and the minimum tax rate for medium-sized and large companies is 0.5%⁹⁸ and this was later reduced to 0.25% for the periods between 1st January 2020 and 31st December 2021⁹⁹. This is to cushion the adverse effect of Covid-19 pandemic lockdown on corporate organizations and this will be re-activated to 0.5% after 2021. This work will cover the gaps created in Adesola’s book¹⁰⁰.

Ayua,¹⁰¹, made a good contribution with respect to tax administration in Nigeria as it relates to corporate tax laws. It also provides the basic and general principles of law to this work. However, he stated in his book that “Federal Board of Inland Revenue is responsible for

⁹⁴Section 36(6) F.I.R.S (Establishment) Act 2007.

⁹⁵Adesola, S.M (1986) *Income Tax Law and Administration in Nigeria*. University of Ife.Ife, 1st Edition p.208.

⁹⁶ Section 9 Finance Act, 2019

⁹⁷ Section 16 Ibid.

⁹⁸Section 33 Companies Income Tax Act. Cap. C21 Laws of Federation of Nigeria, 2004

⁹⁹ Section 13 (2)Finance Act 2020 (An amendment to section 33 CITA)

¹⁰⁰Adesola, S.M (1986) *Income Tax Law and Administration in Nigeria*. University of Ile.Ife, 1st Edition p.208

¹⁰¹Ayua, I.A (1996). *Nigeria Tax Law*, Spectrum Law.p.95

administration of company taxation in Nigeria”.¹⁰² This is no longer the current position of the law, in view of section 2 of Federal Inland Revenue Service (Establishment) Act, 2007

This shows that only the Federal Inland Revenue Service has the legal right to control, administer, collate and collect taxes due to the Federal Government. This research work will cover the gaps in the book.

Umenweke¹⁰³, did not provide a comprehensive and detailed analysis on offences and penalties with respect to corporate tax. The offences and penalties as contained therein were a reproduction of the Act¹⁰⁴. This work tends to provide the basis for offences and penalty against a defaulting corporate taxpayer, and the need for an upward review of some of the penalty provisions considering the fact that many people including corporations in Nigeria detest the payment of tax. Due to this fact there has been hostile regard for payment of tax in Nigeria. This is why more ways and means have been devised by taxpayers’ to perpetrate tax offences. The work of Umenweke¹⁰⁵ did not cover these areas and this work tends to fill the gaps in the book of the learned Professor of law.

Ali,¹⁰⁶ stated that “at the commencement of the sixteenth century, it was difficult to indict a corporation”. This was as a result of technical rule that criminal courts expected the accused to “stand at the dock’ and did not permit ‘appearance by Attorney”. The reason behind this traditional idea, that a corporation is not indictable, is that it did not have an actual existence, and to that extent, corporation could not be guilty of a tax crime because it could not have a guilty mind or will.

The modern trend has completely eroded this argument as a company or corporation is regarded in law as a legal personality or an artificial person, and to that effect, the ability to

¹⁰²Ibid.

¹⁰³Umenweke, M.N. (2008) *Tax Law and its Implication for Foreign Investment in Nigeria*. Norlix Educational Publication, Enugu. Pp.160-169

¹⁰⁴Companies Income Tax Act. Cap.C21 Laws of Federation of Nigeria 2004

¹⁰⁵Umenweke, M.N. (2008) *Tax Law and its Implication for Foreign Investment in Nigeria*. Norlix Educational Publication, Enugu. Pp.160-169

¹⁰⁶Ali, L.H (2008). *Corporate Criminal Liability in Nigeria*, Malthouse Press Limited, Zaria, p.43.

think, intend, will and the mental element of the corporation is situated in the executives, managers and controlling officers of the corporation who are now answerable to the tax authorities for offences of its corporations and are held criminally liable for the acts of tax evasion of its organization.

In an era where considerable emphasis is been laid on the corporate person being responsible to his tax obligations, Ali's work did not offer a theoretical and practical basis from the point of criminal law and procedure¹⁰⁷ for achieving this goal and, this work is aimed at presenting the current position of law.

Soyode and Kajolu¹⁰⁸ treated corporate income tax under the tax laws of 1990 which has been modified, repealed and amended to meet up with the global practices on corporate taxation. The above authors defined "profit" of a corporate organization as "the surplus by which the receipts from the trade exceed the expenditure necessary for the purpose of earning those receipts and unless and until you have ascertained that there is such a balance, nothing exists to which the name profit can properly be applied to taxation".¹⁰⁹ By virtue of section 33(1) of Companies' Income Tax Act¹¹⁰ this position is no longer tenable in Nigeria.

The implication of the above provision is that, the definition of 'profit' offered by Lekan and Kajolu does not reflect the current position of the tax laws, and the Income Tax Act of 1990 upon which they premised their argument is no longer applicable, following several amendments and changes on corporate tax by the Finance Act 2020. However, the implication of section 33(1) as stated above is that whether a medium-sized and large company makes

¹⁰⁷Nwokenekwu, E.U (2010) *A Critical Analysis of Offences and Penalties Under Nigeria Corporate Tax Statutes* . LLM Thesis (Unpublished) Faculty of Law ABU Zaria p.21

¹⁰⁸LekanSoyode and Sunday O. Kajolu (2006).*Taxation Principles and Practices in Nigeria*. Silicon Publishing Company, Ibadan, Pp.283 – 284.

¹⁰⁹Ibid.

¹¹⁰Cap. C21, Laws of Federation of Nigeria 2004.

profit or not, is still liable to payment of minimum tax as in section 33 (2) of the Companies Income Tax Act¹¹¹

In an era where there is an economic downturn, high interest rate from commercial banks, and loss of business opportunities, many industries who are unable to make profits to sustain taxation may likely close shops, and consequently, this will further have negative effects on the economy, i.e loss of jobs/unemployment. This research seeks to cover the gaps in the book.

Ariwodola¹¹² discussed the following issues relating to corporate tax, assessment, double taxation, capital allowances at page 180 of his book where he stated that “as a general rule, income tax is payable by companies at a standard fixed rate of 30% on their profits under CITA”. It is the submission of the researcher that the position of Ariwodala in his book is only tenable for large companies and not all companies in Nigeria, in view of the amendments introduced by the Finance Act 2019 and 2020 respectively which has classified companies in Nigeria into three categories, to the effect that small-sized companies are exempted from payment of tax and minimum tax payment, whereas a medium-sized company and a large companies are subject to 20% and 30% payment of income tax on their profits and 0.5% minimum tax in the event of loss arising from the operations of the companies in any financial year. This work will update the book of Ariwodola¹¹³.

John,¹¹⁴ is of the view that administration is crucial to tax policy and that administration itself is an element of revenue authority. He raised many topical issues and problems relating to procedures of assessment, collection and enforcement of taxes, low compliance issues, bribery and corruption ravaging Nigeria tax system, inadequate qualified tax personnel, poor

¹¹¹Ibid.

¹¹²Ariwodola, J.A. (2008) *Personal Taxation in Nigeria*. J.A.A Nigeria Press Limited, Lagos.Pp.15-25

¹¹³Ibid.

¹¹⁴John, L.M (2003). *Developing Options for the Administration of Local Taxes: An International Review. Innovations in Local Revenue Mobilization*. Being a Paper Presented at the World Bank Workshop, Washington D.C. June, 24.

record keeping. Unfortunately, he could not provide solutions on how these issues and/or problems can adequately be tackled. A presentation of such resourcefulness ought to cover all these aspects exhaustively. This research will cover the gaps in the work.

Ewa¹¹⁵, stated that company income tax is regulated by the Company Income Tax Act(2011) and managed by Federal Inland Revenue Service and that section 40(1) of Company Income Tax Act (CITA) subject all companies in Nigeria to payment of tax at the rate of 30%. This position is no longer correct as it is only large companies that are subject to 30% payment of their earned profits in view of the recent amendment to Company Income Tax Act by Finance Act, 2020. This work will state the current position of tax rates applicable to medium-sized and large companies.

Kabel and Nwokah¹¹⁶ posited that tax evasion is a problem plaguing many emerging economies across the globe and Nigeria situation seems peculiar when viewed against the scale of corrupt practices prevalent in the country, they further stated that corporate organizations refused to pay tax by reporting losses every year. The position of refusal to pay tax on account of losses recorded by corporate institutions every year is no longer tenable in view of payment of 0.5% minimum tax payment of tax¹¹⁷ each financial year for loss making companies. The article of Kabel and Nwokah with respect to non- payment of tax on account of loss recorded in the business activities of corporate organizations no longer represent the current position of the law. This research seeks to cover the gaps created in the article.

Fakile and Adegbite¹¹⁸ asserts that low corporate tax rate is part of the system of developing countries and usually established by governments in order to grant foreign investors more attractive conditions to invest in their country”. Besides low corporate tax, there

¹¹⁵Ewa, U.E (2021) Appraisal of Self-Assessment Tax Policy in Nigeria. *European Journal of Business and Management Research* .Vol. 6 p.191

¹¹⁶Kabel, B.D. and Nwokah, N.G (2009) Tax Evasion and Avoidance. *European Journal of Economics, Finance and Administrative Sciences* Vol. 15 Pp.51-69

¹¹⁷Section 13(2) Companies Income Tax Act. Cap C21 Laws of Federation of Nigeria, 2004.

¹¹⁸Fakile, A.S and Adegbite, F.F. (2011). Tax Incentives: Tool for Attracting Foreign Direct Investment in Nigeria Economic. *International Journal of Research in Commerce and Management*, vol. 2, p. 105.

are other issues investors may consider in investing in a country, for example provision of adequate basic infrastructure and security of lives and property, unlike in Nigeria where of recent there has been incessant security challenges, leading to kidnapping of innocent citizens, treat of disintegration by Indigenous People of Biafra (IPOB), destruction of lives and properties by bandits and *boko-haram*, not many investors will like to invest in the economy of Nigeria irrespective of low rate of corporate taxation the tax system may offer in view of the security challenges. This work seeks to cover the gaps in the article.

In contrast, Morisset¹¹⁹ stated that it is shortage of resources and not low corporate tax rates that places a limit on the pace of economic development. Therefore, government should impose high corporate tax rate for the provision of infrastructural facilities. The researcher submits that, this should not be so, because, without the ability to raise revenue effectively; States are limited in the extent to which they can provide security, meet basic needs or foster economic development as high corporate tax rate will discourage corporations from paying tax. This work seeks to cover the gaps in the article.

Ekpung and Wilfred¹²⁰ observed that high corporate tax rate is bad for economic growth and discourages Foreign Direct Investment (FDI). This is because, it discourages new incentives by distorting FDI decisions and discouraging work effort too.

Okoi and Edame¹²¹ found that high corporate tax rate as witnessed in Nigeria has an enormous effect to Foreign Direct Investment (FDI) and Gross Domestic Product (GDP) as high corporate tax rate, would discourage Foreign Direct Investment in the country. Corporate income tax rate in Nigeria is placed directly on the accounting profits of incorporated

¹¹⁹Morisset, J. (2000). *Foreign Direct Investment in Africa: Policies and Matter*. Transactional Corporation, p107

¹²⁰Ekpung, E.G and Wilfred, O.W (2014). *The Impact of Taxation on Investment and Economic Development in Nigeria*. *Academic Journal of Interdisciplinary Studies*, Vol. 3, Pp. 209 – 318.

¹²¹Okoi, W.W. and Edame, E. (2013). *The Impact of Taxation on Economic Development in Nigeria: A Case of Small Scale Business in Calabar Metropolis (1980 – 2010)* PGD Economics Thesis (Unpublished) Department of Economics, University of Calabar, p.96.

companies. Utilizing this tax base creates two problems, a practical one of administration and a theoretical one of being able to determine how the companies respond to the tax.

There is no doubt that revenue is necessary for Nigeria to meet the basic needs of citizenry in fulfillment of social contract. While this objective is being pursued there is need for a focus on the bases or core fundamental for understanding the impediments to industrial development and jobs generation also serve as a means for formulating and implementing dynamic industrial and employment policies. This is because special achievement that is unidirectional in terms of generating revenue for the country can fuel unemployment and de-industrialization due to its short run optimism in financing state physical policy.¹²² In addition, it can lead to local and foreign investors' disenchantment, a situation where both local and international investors will quickly rebalance off their investment in Nigeria and flee to those countries where the tax systems provide for industrial growth and its consequent high investment returns.

The researcher is of the view that corporate tax rate should be in proportion to the revenue which the corporate organizations enjoy under the protection of the government. Companies operate with profit motives. They enjoy essential services from the government. Government embarks on the construction of better road networks, effective and efficient telecommunication network, electricity and water supply. Government also develops human resources by establishing universities, polytechnics, colleges of education and technology and the amount of tax paid by the companies represent the contribution that they make to the economies as they operate.

Kanyip,¹²³ carefully analyzed some issues on companies' income tax in Nigeria dealing with tax incentives regime, methods of taxing companies and its problems for business

¹²²Ekpung, E.G and Wilfred, O.W.(2014).The Impact of Taxation on Investment and Economic Development in Nigeria.*Academic Journal of Interdisciplinary Studies*, Vol. 3, Pp209 – 318

¹²³Kanyip, B.B (1998). In "Taxation Issues in Foreign Investment", *Modern Practice Journal of Finance in investment Law MPJFIL*, Vol. 2, p. 107.

ventures, which significantly by virtue of section 13(2) of Finance Act 2020 has been amended to the effect that the minimum tax to be levied and paid by a company shall be 0.5% in the relevant year of assessment on gross turnover of ₦25,000.00 against gross turnover of ₦500,000.00. as contained in section 33(2) of Companies Income Tax Act. Kanyip, left out the issues of administration and enforcement of corporate tax in his work. This thesis will harmonize all various views and or laws, gaps and proffer necessary recommendations that will update and re-position the corporate tax system in Nigeria.

John,¹²⁴, discussed extensively on the meaning of a company for purpose of taxation in Nigeria. His discussion and/or argument was predicated on the definition of a company by Companies and Allied Matter's Act¹²⁵, which provides that: "A company formed and registered under the Companies and Allied Matters Act or any enactment replaced by it, is what the Act recognizes as a company in Nigeria"¹²⁶. The CAMA 1990 upon which the author premised his argument has been amended to CAMA 2020.¹²⁷

Gwangdi,¹²⁸ share the same view with John, D.C¹²⁹ on the meaning of a company for determination of payment of corporate tax in Nigeria. Gwangdi, further stated that all companies in Nigeria are liable to pay companies income tax on their global profits accruing in, brought into, derived from, or received in Nigeria.¹³⁰ Following the Finance Act 2020

¹²⁴ John, D.C (2011) Corporate Taxation Laws in Nigeria: A Review. *International Journal of Advanced Legal Studies and Governance*, Vol.2p.238

¹²⁵ Cap. C20 Laws of Federation of Nigeria 2004 now CAMA 2020

¹²⁶ Ibid..

¹²⁷ Companies and Allied Matters Act 2020.

¹²⁸ Gwangdi, M.I (2015) Administration of Companies Income Tax in Nigeria: Issues of Companies and Enforcement. *European Journal of Business and Management*. Vol.7p.20

¹²⁹ John, D.C (2011) Corporate Taxation Laws in Nigeria: A Review. *International Journal of Advanced Legal Studies and Governance*, Vol.2 p.238

¹³⁰ Gwangdi, M.I (2015) Administration of Companies Income Tax in Nigeria: Issues of Companies and Enforcement. *European Journal of Business and Management*. Vol.7p.25

which came into force on 1st day of January, 2021¹³¹, the views of the above authors no longer represent the basis for taxation of companies in Nigeria and to the extent that some companies are now exempted for payment of minimum tax, contrary to views of Gwangdi, M.I that “all companies in Nigeria are liable to pay companies income tax on their global profits.”¹³² By virtue of the provisions of Finance Act 2020, small companies are exempted from company income tax (CIT) and minimum tax payments. In addition, the tax rate for medium-sized and large companies are 20% and 30% on their profits¹³³. The new provision also exempts the profits of small companies earned from dividends of small manufacturing companies in their first five years of operations¹³⁴. This will have a significant impact on start-ups and other small companies and will be of immense benefit to small investors and shareholders. This research is aimed at filling the gaps created by the works of the above authors.

Okorodudu,¹³⁵ provided an insight to the nation’s tax system with suggestion for reform and of particular importance are the suggestions concerning improvements in the administration of the system. His discussions are no longer the current position of the law, in view of the recent innovations to corporate tax regime brought by Finance Act. 2020. This work will cover the gaps.

Ugbe, and Izzi, et.al¹³⁶ examines the offences and sanctions under the Nigeria tax laws and endeavours to review the efficacy of the sanctions in the light of Companies Income Tax Act (CITA). The contributions of the authors are quite different from the sanctions introduced by Finance Act 2020.¹³⁷ This work seeks to cover the gaps created in the article.

¹³¹ Federal Republic of Nigeria Official Gazette No.4Vol.108

¹³²Gwangdi, M.I (2015).Administration of Companies Income Tax in Nigeria: Issues of Companies and Enforcement. *European Journal of Business and Management*.Vol.7p.25

¹³³ Section 16(b) Finance Act 2020

¹³⁴ Section 9 Ibid.

¹³⁵Okorodudu, M.T. (1991) Analysis of Federal and State Taxing Powers in Tax Law and Tax Administration in Nigeria. In Oluwole Akanle. (eds) Tax Law and Tax Administration in Nigeria. *Nigeria Institute of Advanced Legal Studies.Conference series* No.1 Lagos. p. 46

¹³⁶Ugbe, R,Izzi, M., et.al.(2020) A critical Appraisal of Offences and Penalties Under Nigeria Tax Laws. *Journal of Private and Property Law, University of Lagos*. Vol.37 pp100-125

¹³⁷Section 17 Finance Act, 2020

Sani¹³⁸ examined the foundation upon which lies the basis, machinery and implementation of taxation in contemporary Nigeria. The article also appraise the following issues, historical perspective of tax in Nigeria, direct and indirect taxes, body of Appeal Commissioners. The author canvassed for a paradigm shift in the machinery for tax assessment and collection, and also in the sensitization of taxable persons on their obligations to the nation. The research noted with concern that the discussion of the author on Body of Appeal Commissioners is no longer tenable in Nigeria by virtue of section 59 Federal Inland Revenue Service (Establishment) Act¹³⁹ which provides for the establishment of Tax Appeal Tribunal (TAT) which has since replaced Body of Appeal Commissioners, and TAT is vested with powers to settle disputes and controversies arising from the operations of the Act¹⁴⁰. This research seeks to fill the gaps in the above article.

Adesanya and Oguntola¹⁴¹. made a critical analysis on the tax system in Nigeria as a tripartite foundation that comprises of the tax policy, tax legislation and tax administration. The authors noted that a major challenge confronting tax system in Nigeria has been the scope and usage of tax which ought to be clear to the government and also to the citizens at all times. They also highlighted the following as the relevant tax authorities and administrative machineries, currently in operation in Nigeria: Joint Tax Board, the Local Revenue Committee, the State Board of Internal Revenue (SBIR) and the Federal Board of Inland Revenue (FBIR).

Certainly, the Federal Board of Inland Revenue (FBIR) is no longer an administrative machinery charged with the administration of tax in Nigeria. The tax system in Nigeria has undergone several amendments, the latest, being the Finance Act, 2020. In effect, the Federal Board of Inland Revenue has been dissolved and replaced with Federal Inland Revenue Service

¹³⁸Sani, A.M (2015) An Appraisal of the Legal Framework for Taxation in Nigeria. *Journal of Law, Policy and Globalization*. Vol. 34. p. 62

¹³⁹ No. 13, 2007

¹⁴⁰ Companies Income Tax Act. Cap C21 Laws of Federation of Nigeria 2004

¹⁴¹ Adesanya, T., and Oguntola, B., (2018). The Legal and Institutional Framework for Taxation in Nigeria: Some Aspects of Law, Policy and Practice. *International Journal of Research and Innovation in Social Science (IJRISS)*. Vol. 11. pp 65 – 66

(FIRS) following the enactment of Federal Inland Revenue Service (Establishment) Act, which vested FIRS with the power to assess, collect and account for tax and other revenues accruing to the federal government of Nigeria. The research seeks to cover the gaps created in the above article.

Ali,¹⁴² treated the issue of legislative authority on taxation in Nigeria and stated that power to impose or legislate on tax matters in Nigeria is vested in the National Assembly. In other words the provision of section 23(3) of the Companies Income Tax Act¹⁴³ which empowers the President of the Federal Republic of Nigeria to alter, amend, and or repeal any exemption made by notice or Order under the provisions of section 9(2) of Personal Income Tax Act¹⁴⁴ is purely legislative functions and not that of the executive (President). The article further discussed the profits/income exempted from taxation and companies tax rate. The tax rates discussed in his book are no longer operational and of no effect in company tax administration in view of the Finance Act 2109 and 2020. This work seeks to cover the gaps.

(b) Tax and Revenue Generation

Obadan. and Akpakpan¹⁴⁵ asserted that VAT represent the most significant tax reform of the period, following the report of the 1991 study group on the Nigerian tax system and administration. They further stated that VAT rate has remained at 5.0 percent. This position is no longer tenable, in view of the Finance Act¹⁴⁶ which now put VAT rate at 7.5 percent representing an increase of 50 percent from the previous tax rate of 5 percent. This work seeks to cover the gaps created in the book of the authors.

¹⁴² Ali, H.L.(2002) Acase for the Reform and Harmonization of Companies Income Tax Legislation in Nigeria. *Ahmadu Bello University Law Journal (ABULJ) Vol. 19-20 p. 157-158*

¹⁴³ Cap. C21 Laws of Federation of Nigeria 2004.

¹⁴⁴ Cap. P8 Ibid..

¹⁴⁵Obadan, M.I. and Akpakpan A.(2013) *Tax Administration and Government Revenue Performance*. Petra Digital Press Abuja Pp.88-89

¹⁴⁶Section 42 Finance Act 2020 (which is an amendment to section 4 of Valued Added Tax Act)

Abdulrazaq¹⁴⁷ stated that Companies Income Tax Act (C.I.T.A) divided a company into two categories as Nigeria companies and non-Nigeria companies. By virtue of provisions of Finance Act 2020, the Companies Income Tax Act¹⁴⁸ has been amended to the extent that a company is now classified into three, as follows, a “small-sized company” which means a company that earns gross turnover of ₦25,000,000.00 or less per annum, or as otherwise defined by the companies Income Tax Act¹⁴⁹, “medium-sized company” means a company that earns a gross turnover greater than ₦25,000,000.00 but less than ₦100,000,000.00 per annum or as otherwise defined by Companies Income Tax Act and large company being a company that is not a small sized or a medium sized company¹⁵⁰. This research will endeavour to cover the gaps in the above text book.

Effiong¹⁵¹. stated that Nigeria government commitment to diversify its sources of revenue by increasing tax to Gross Domestic Products (GDP) makes it imperative to subject our tax policy to constant review, and that the tax system has witnessed tremendous policy changes geared at a more effective and efficient system of tax administration, such as introduction of the Treasury Single Account (TSA), the 2017 National Tax Policy and bank verification number (BVN) and the automated tax system. However, these reforms from the researcher’s point of view, are cosmetic as they yet to address the potential liability in response to both income tax and taxation of goods and services. The article did not address the issue of lack of accountability, transparency and corruption which have bedeviled tax administration in Nigeria and have negatively impacted on the revenue generation in Nigeria. This study seeks to cover the gaps created in the article.

¹⁴⁷Abdulrazaq, M.T. (2015) *Revenue Law and Practice in Nigeria 3rd Edition*. Malthouse Press Limited p.184.

¹⁴⁸Section 105 Companies Income Tax Act. Cap. C21 Laws of Federation of Nigeria 2004.

¹⁴⁹ Section 24 Finance Act 2020

¹⁵⁰ Ibid.

¹⁵¹Effiong, A. (2018) An Appraisal of Nigeria Tax System and the Implications of Electronic-Commerce Taxation. *International Journal of Business, Economics and Management Vol.9p.1*

Worlu and Nkoro¹⁵² examined the impact of tax revenue on the economic growth of Nigeria, judging from its impact on infrastructural developments from 1980 to 2007. They reported that tax revenue has a direct and indirect relationships with the infrastructural development and the gross domestic product. The authors argued that the channels through which tax revenue affects economic growth in Nigeria are infrastructural development and foreign direct investment. They stressed that availability of infrastructural facilities stirs up an investment. As ingenious as the argument of the authors could be, one wonders if the availability of infrastructural facilities will attract foreign investors to Nigeria in view of the alarming rate of insecurities in Nigeria, as such no meaningful investment or development through foreign direct investment could take place in a violent and volatile environment where incessant kidnapping and banditry has become the order of the day. Unless and until there is peace and provision of adequate security in Nigeria, then can foreign investors think of investing in Nigeria. However, tax revenue can only materialize its potential on the economy, if government will strengthen the existing tax legislations which will check-mate tax offenders in order to minimize corruption, tax evasion and avoidance.

Ngerebo and Musa¹⁵³. examines the usefulness of the tax system in Nigeria, using valued added tax system as a reference point. The authors used the ability to generate revenue and the ability to influence consumption patterns as the basis in concluding that VAT has been “effective” and not “efficient”. Consequently, the usefulness (effectiveness and/or efficiency) of taxes can be measured by several parameters, some of which are its revenue generating capacity, its impact on the consumption and savings patterns in the economy, evaluation of any of the approaches will point to the analysis of revenue derived from any tax (VAT). Before arriving at the conclusion that VAT is not “efficient”, the authors did not provide the public

¹⁵²Worlu, C.N and Nkoro, E., (2012) Tax Revenue and Economic Development in Nigeria: A Macroeconomics Approach. *Academic Journal of Interdisciplinary Studies*. Vol. 1 p180

¹⁵³ Ngerebo, T.A and Musa, A. (2012). Appraisal of Tax System in Nigeria(A Case Study of Value Added Tax Act) . *Research Journal in Organizational Psychology & Educational Studies*. Vol.1

with the analysis of tax revenue generated by VAT for any given year. The research quickly added that in most third world countries, Nigeria inclusive, measuring the effectiveness and efficiency of a tax has been difficult. Certain reasons account for this difficulty and they are problems of keeping appropriate records and corruption. The inability to trace taxes paid to government for the funding of development projects that could positively impact on the welfare of the citizens and/or taxpayers' will not be a sufficient reason, to say that VAT is not efficient, if government official decides to loot the funds in their custody.

However, with the introduction of Finance Act 2020, which significantly increased VAT rate from 5% to 7.5% which will increase the revenue generation of the three tiers of government. It is hoped that VAT will not only be effective but will be more efficient as a source of revenue that will assist many states where industrial activities are very low.

1.7.1 Gaps in the Literature Reviewed

a. Conflict in some Legislations and Regulations

Finance Act 2019 and CAMA 2020 provide different classification of companies. The features of a small company under CAMA2020 differ significantly from the tax classification of Companies. The variances in the basis of determining small companies under CAMA and CITA have created ambiguities. For instance, while a company with a turnover of ₦110million qualifies as a large company under CITA for tax purposes, the same company may qualify as a small company under CAMA provided all other conditions are satisfied.

A harmonization of what constitute a small company in Nigeria for purposes of taxation under CAMA and CITA is necessary to ensure uniformity and confidence of taxpayers and stakeholders and eliminate resultant conflicts.

b. Obsolete Laws

Some of the books reviewed contained obsolete laws that have been repealed by instant laws. The books needed to be reviewed by the authors in order to stand the taste of time, despite that they contained important principles of laws of taxation.

c. Territorial/Jurisdictions

Some of the books and some articles in the relevant Journals reviewed made wonderful contributions to corporate taxation and revenue generation in Nigeria, but some of them were for foreign jurisdictions, though their contributions could help to find solutions to factors militating against the increased revenue generation and corporate tax system in Nigeria.

d. Conflict in Administration and Collection of VAT and other Taxes in Nigeria.

There is a ragging controversy in Nigeria over the administration and collection of Value Added Tax in Nigeria. Value Added Tax Act, Cap. V1 Laws of Federation of Nigeria 2004 empowers the Federal Inland Revenue Service to collect Value Added Tax in Nigeria, whereas VAT Law No.4 of Rivers State empowers the Inland Revenue Service of River State to collect VAT following the recent Federal High Court, Port Harcourt Division decision, stating that the federal government of Nigeria lacks the power to impose and collect taxes that are not listed under items 58 and 59 of Part1 of the Constitution. Consequently, taxes such as value added tax, withholding tax, tertiary education tax, and the national information technology development agency levy(among others) that are not specifically listed under Items 58 and 59 respectively are outside of the jurisdiction of the federal government of Nigeria for now until Court of Appeal and Supreme court rules otherwise.

1.8 Organizational Layout

The research is organized into seven chapters. Chapter one deals with the general introduction of the research and focuses on such primary issues as statement of the research problem, which include but not limited to the following: Conflict in the classification of companies between Companies and Allied Matters Act 2020 and Finance Act 2020. CAMA 2020 classifies companies to small and others using a combination of different parameters, whereas CITA classifies companies on the basis of their turnover and into small, medium-sized and large companies. The variances in the basis of determining small companies under CAMA and CITA created ambiguities for instance a company with a gross turnover of ₦110million qualifies as a large company under CITA for tax purposes, the same company may qualify as a small under CAMA 2020 provided all other conditions are satisfied.

The chapter also deals with other research problems such as tax evasion and avoidance, mismanagement of payment of taxes collected by officers of FIRS, inadequate tax personnel, unreliable and inadequate data problem of companies within the tax net, and problems of some penalty provisions of corporate income tax legislation. Chapter one also discussed the aim and specific objectives of the research, scope and limitation of the research, justification of the research, methodology of the research and literature review. The literature review was done under two subheadings, i.e. issues relating to Company Income Tax Act and revenue generation. The essence of the primary issues discussed in this chapter is to lay a general background necessary to the attainment of the overall objectives of the research.

It is germane to state here that, the researcher appreciates the importance of history of corporate tax in Nigeria. To this end, chapter two deals with conceptual discourse, history of corporate taxation and taxing Statutes. It also discussed the fundamental concepts relevant to the subject of the study such as corporate taxation, revenue generation and taxing power and traces the detailed historical evolution of corporate taxation from pre – 1939 to date. The

chapter also discussed the theories of corporate taxation, such as political theory, growth theory, benefit theory, contra theory to the benefit theory, ability to pay theory and Laffer curve theory of taxation. From the above theories, Nigeria corporate tax system is favoured with the benefit theory, which is to the effect that corporation or an individual will be levied for taxes based on the benefit the government conferred on the corporation or the individual. In other words the more benefits an organization or an individual derives, the more payment of tax.

Chapter three deals with legal and institutional framework for corporate income tax in Nigeria. The chapter also discussed the basis of corporate taxes in Nigeria, profits of companies exempt from payment of taxes, Corporate Income Tax Act, Petroleum Profits Tax Act, Capital Gains Tax Act, Value Added Tax Act, with the legal argument on which tier of government that is constitutionally empowered to control, administer and collect VAT in Nigeria and challenges confronting corporate income tax legislation.

Chapter four deals with corporate tax compliance and enforcement in Nigeria. The chapter also deals with companies income tax assessment, basis of computing tax assessment of corporate organizations, reasons for low tax compliance in Nigeria, ways of improving tax compliance in Nigeria, procedures for enforcement of tax compliance and the rights available to taxpayers under Nigerian laws.

Chapter five is on the impact of corporate income tax legislation on revenue generation and economic development of Nigeria. The chapter also discussed the strategies to enhance tax revenue generation in Nigeria, impact of foreign direct investment (FDI) to corporate tax revenue generation and economic development of Nigeria.

Chapter six, deals with data analysis, presentation and interpretation, analysis of socio-demographic characteristics of respondents and empirical analysis of field data. The technique used in arriving at the sample population was also highlighted.

Finally, chapter seven is the summary and conclusion of the research. The entire work is presented with the general findings and recommendations.

CHAPTER TWO

CONCEPTUAL DISCOURSE, HISTORICAL BACKGROUND AND THEORETICAL FRAMEWORK

2.1 Introduction

The law of taxation is complex and highly technical. It requires clear perception of fiscal terms and concepts as well as strict application of myriad rules allowing various deductions and exemptions. Some of these concepts connote something more than what is commonly understood by the term under non-tax statutes.¹ Surprisingly, some of these terms are either not defined at all by the corporate tax laws or they are incomprehensively defined, posing more confusion than clarification.

This chapter provides conceptual discourse of the key terms with respect to the subject of the study. The chapter, starts with some fundamental concepts such as “corporate tax” “revenue generation” and “taxing power”. Alternative approaches to the concepts based on different understandings that are pertinent are also highlighted. A basic understanding of these concepts and salient issues which they raised are relevant to the overall objective of this study.

2.2 Corporate Tax

A corporate tax, also called company tax is a tax on the income or capital of corporation's or analogues legal entities. It is also defined as a levy placed on the profit of a firm to raise taxes, after operating earnings is calculated by deducting expenses including the cost of goods sold.² A company is liable to pay corporate tax on its profits while a shareholder is liable to pay income tax in respect of any income distribution by the company i.e by way of dividend. The charge to tax of both company and shareholder who earns a dividend from the

¹ John D.C, (2011). Corporate Taxation Laws in Nigeria: A Review. *International Journal of Advance Legal Studies and Governance*, vol. 2, p.236.

² Available at www.investopedia.com/terms/c/corporatetax.asp (Accessed November 06, 2015, 11.06am)

profit of the company is a clear case of imposition of two taxes, on one corporate profit. In other words, it occasioned a situation whereby corporate profits are taxed twice; one to the corporation when earned and one to the shareholders when dividends are distributed from the company profit.

The tax system should be contended with the emergence of the income in the form of individuals in the hands of the shareholders who could then be subject to income tax under the Personal Income Tax Act.³ In other words, the doctrine of ‘*alter ego*’ which means that corporation and those who own its stock are identical and can be invoked to impute the profits of the company to that of the individual shareholders and for it to be taxed as such in the hands of the shareholders.

Another school of thought argues that if the above view is accepted, it means companies will simply become repository for accumulation of income free tax.⁴ This will occasion huge revenue loss to the government. Otherwise, what happens should a company decide not to distribute its profit to its shareholders or device a ploy of a sale of the shares in order to realize a capital gain? This also will definitely occasion a loss of revenue to the nation as companies will just be used as a conduit pipe for tax free income.⁵ Corporate status conveys certain privileges and the companies should pay for these privileges. In particular companies that have limited liability status. This protects their shareholders in the event of bankruptcy.⁶

Allied to this, is the fact that taxing companies is politically more acceptable than taxing individuals as it is less personal, and because companies occupy important place in the economy, governments cannot afford not to tax them.⁷ Suffice it to say that company taxation

³Cap.P8 Laws of Federation of Nigeria 2004.

⁴Tiley, J. (2000) *Revenue Law*, Butterworths, London, Pp.622 – 623

⁵John D.C.(2011) Corporate Taxation Laws in Nigeria: A Review. *International Journal of Advance Legal Studies and Governance*, vol. 2, p.238

⁶Abdulrazaq, M.T. (2005). *Nigerian Revenue Law*, Malthouse Press Ltd, Lagos, p.26.

⁷Tiley, J. (2000) *Revenue Law*, Butterworths, London, Pp.622 – 623

had existed in Nigeria since 1939. There is thus a case for its continuation, more so, as this is an element of truth in the adage that “an old tax is a good tax”.⁸ In so far as people have adjusted their affairs in the expectation of the continuation of a tax, the elimination of which would bring unexpected windfall gains to a particular section of the community. Parsons⁹ in his word concludes:

The interest in the efficient raising of revenue is therefore, likely to be asked to compromise with the principle of progression so that some of the appropriate burden of tax will be borne by the shareholders paying tax at individual rates. The possible compromise are many and varies and in some of them other interest may find expression, interest which conceivably may go to important aspects of the national economy, and may indeed reflect new political theory. Corporation tax systems are one class of such compromises.

In Nigeria, a tax on the company as a separate entity, distinct from the shareholders, in the researcher’s view ought to continue.

2.3 Revenue Generation

Revenue is the live-wire of any successful undertaking not only for the private sector, but much also for the public sector. The primary objective of a modern tax system is generation of revenue to help the government to finance ever-increasing public sector expenditure; and the function which government must perform, can only be discharged with resources in the form of money and manpower. For a government to maintain its sovereignty and uplift the social and economic, status of its citizens, it must need and generate revenue.¹⁰ Generation of revenue in Nigeria ought not to pose a problem considering the fact, that Nigeria is richly endowed with material and/or mineral and human resources. Nigeria is being referred to as

⁸Meade, J.E., (1978). Report on the Structure and Reform of Direct Taxation. The Institute of Fiscal Studies Pp. 7 – 11.

⁹Parsons, R.W. (1967). An Australian View of Corporation Tax: *British Tax Review*, p. 14.

¹⁰Okoye, E.I (2006) Strategies and Ways of Revenue Generation Internally in Anambra State by the State Government. Journal of Marketing. Vol 4 Pp 1-19

the “giant of Africa” because of high level of economic activities. In spite of the abundant resources available, Nigeria continues to fall short of expectation in the area of revenue generation among other areas. Revenue generation, is the processes of raising funds for the government.¹¹The chief basis of income generation for any government is through taxation, and the essence of revenue generation is to advance the welfare of citizen of a country with focus on promoting economic growth and development.

2.4 Taxing Power

Taxing power within the context of this study means the power of a tier of government to impose a tax by its own law and prescribe conditions for the collection and due administration of the tax either by its own agency or that of another tier of government. This must be distinguished from the power to merely collect taxes or levies which is executive or administrative in character. The most important factor that determines the division of taxing powers in a country is whether the country is operating a federal or unitary system of government¹².

There is no universal technique for the division of taxing powers in a federal system just as there is no universal system of federalism. Arrangements for the division of taxing powers, differ from country to country and from Constitution to Constitution depending on the prevailing national policies and economic realities. However, from the study of the Nigerian Constitutions the following techniques have been adopted over the years irrespective of certain fiscal changes¹³:

- (a) the division of taxing powers broadly follow the division of legislative powers. Thus, a tier of government can impose taxes only in respect of the subject matters within its competence;

¹¹ Ibid.

¹² A.O. Sanni (2011) Division of Taxing Powers in Nigeria Under the 1999 Constitution. <https://ir.unilag.edu.ng> (Accessed on July 20, 2020 at 2.30pm)

¹³ Ibid.

- (b) the Constitution may specifically mention certain taxes by name or their bases and exclusively reserve them for a tier of governments;
- (c) the power to legislate with respect to certain elements of a tax may be reserved for one tier of government while some other elements are vested in another tier. Under this arrangement, each tier of government is competent to legislate on the elements within its competence;
- (d) a distinction could also be made between tier of implementation. For instance, the power to impose a tax may be reserved for one tier of government, while the administrative power to collect it, may be delegated to another tier of government.

2.5 Historical and Evolution of Taxing Statutes in Nigeria

During military rule the country was governed as a unitary State¹⁴. The military era witnessed the enactment of certain tax Decrees and Edicts of which are bound to generate jurisdictional conflicts between the Federal and State Governments¹⁵ with the coming into effect of a new Constitution, i.e. the Constitution of the Federal Republic of Nigeria 1999(as amended). For instance, the Lagos State Government recently declared its intention to re-introduce the collection of “sales tax” as permissible under fiscal federalism¹⁶ notwithstanding the existence of a Value Added Tax. There are various taxes in Nigeria, only four of them are specifically mentioned by name in the Second Schedule to the Constitution of Federal Republic of Nigeria 1999 (as amended)¹⁷. These are customs and exercise duties, export duties, stamp duties and in addition, item 59 of the Exclusive Legislative List which vests the federal government with the powers on the “taxation of incomes, profits and capital gains” pursuant

¹⁴For instance, the Federal Military Government was vested with sweeping powers to make laws on any subject matter whatsoever including subject matters that was hitherto residual to the state governments. Consent of the federal government was required before a state legislate on matters, which are on the Concurrent Legislative List. Not only that, the validity of any Decree or Edict cannot be challenged in any law court. See sections 2 and 5 of the Constitution Suspension and Modification Decree 107, 1993.

¹⁵A.O. Sanni(2011) Division of Taxing Powers in Nigeria Under the 1999 Constitution. <https://ir.unilag.edu.ng> (Accessed on July 20, 2020 at 2.30pm)

¹⁶ Ibid.

¹⁷Constitution of Federal Republic of Nigeria, 1999 (as amended), Cap. C23 Laws of Federation of Nigeria 2004.

to which the personal income tax, companies income tax, petroleum profits tax and capital gains tax have been imposed by the Federal Government.

It is instructive to note that not all the taxes within the Exclusive Legislative competence of the Federal Government are collected by the Federal Government or even accrue to it. As a matter of fact, of all the Federal taxes, only custom and excise duties, companies income tax and petroleum profits tax are administered by the Federal Government through its revenue agencies. The exclusive control of the Federal Government over these taxes is quite logical: federalism presupposes the existence of a minimum degree of fiscal and economic cohesion and uniformity.

It may be stated that in as much as the historical sketch below deals with the changes in legislation against the background from which they evolved, the courts as well as the legislatures have been much concerned on the development of the income tax; hence, this brief account will be confined to the more important reforms and changes in corporate income tax laws in Nigeria. The historical evolution of company income tax in Nigeria, for the purposes of this thesis is divided into nine modern tax trends, which are as follows:

2.5.1 The Pre-1939 taxation in Nigeria

The history of economy of Nigeria has shown that people in Nigeria paid taxes before the British administration, especially in the Northern part of Nigeria. The organized forum of Emirs' administration and the spirit of Mohammedism made it possible for the people to contribute towards charity, which laid a sound foundation for direct taxation in Nigeria.¹⁸

Direct taxation has been in existence in Nigeria before the advent of the British rule in 1861, particularly in the North where there was an efficient and stable administration based

¹⁸Eze, J.C (2012). Effectiveness of Taxation as an Instrument for Control of Money in Circulation. MBA Thesis, Department of Accountancy, Faculty of Administration, University of Nigeria, Nsuka, p. 10.

on Islamic system.¹⁹ Prior to the early 1930s, the formalization of modern taxation in Nigeria was practically non-existent but were only exposed to variety of levies as dictated by paramount rulers at that time. The various traditional rulers all created their various forms of taxes and levies which were used in boosting the various economy of regions, particularly the Northern region and this was due to the fact that the emirs had a more organized system of administration unlike in the other parts of the country. The Islamic religion also preached stringent adherence to payment of taxes as one of the principles of forthrightness in the religion²⁰. This brought about a more stringent enforcement of payment of taxes and levies in that part of the country; more so, that the organized structure assisted in no small means to effective administration in the region.

Various forms of taxes were developed and paid through this period of economic development in the Northern region. These include the *Gandu*, an agricultural tax levied on one-eighth of every farmers crop; the *Zakkat*, a type of taxation prescribed by the Holy Quran and levied on Muslims for charitable, religious and educational purposes. The *Kudin-kasa* or land tax was a form of tax on land utilization, *Jangali* a cattle tax levied on livestock. In addition, there was a *Kudinsarauta* , an accession duty paid by every Chief or holder of an office upon appointment. Finally, there was *Gado*, death duty and/or levy on a deceased's estate paid to the Emir when there was no recognized or proven heir.

In the South Western part of Nigeria, there were various forms of taxes such as “*Isakole*” (tax levied on land used by local communities who are normally expected to pay “tribute tax” to the local chief), “*Owo-ori*” (tax paid by every individual in the community to the government). There was also war tax which was a tax paid by a defeated town after a war

¹⁹Abdulrazaq, M.T. (2005). *Nigerian Revenue Law*, Malthouse Press Ltd, Lagos, p. 26

²⁰ History of Taxation in Nigeria: Understanding Nigeria Tax. <https://www.taxprof.com.ng?hi...> (Accessed on June 13, 2018, 2.15pm).

to the victorious town. There were community taxes that were payable by all adults in a community to carryout community projects²¹

In the Eastern part of Nigeria, *Igbo* people are one of Nigeria's dominant ethnic groups whose egalitarian worldview encouraged individual attainment rather than hereditary aristocracy. Consequently, the evolution of *Igbo* history did not permit the development of monarchies.²² However, based on the republican nature of the *Igbos*, the following were some form of taxes in the area: "*Egbu-nkwu*" (tax imposed before palm oil is harvested). It is compulsory and there can be no harvest without it, (community effort tax on members of each community for specific purpose, it is also applicable in the Western part of Nigeria).²³

During the pre-colonial era, taxation functioned more or less on an ethnic basis with a centralized authority, administrative machinery and judicial institutions such as the Northern areas where the "*emirs*" with reasonable amount of control over their subjects; and *Yorubas* as an organized ethnic group with kingly societies and in Igbo land there was no form of organized system of taxation.²⁴ It should be noted, however, that taxes were mostly not paid in money during this period. Some were mostly paid in kind; and obligatory personal services otherwise known as "tribute taxes".

The creation of the colony of Lagos in 1862 brought about the English law. The income tax as it exist today was first introduced in Nigeria by the British administrators in 1904. Later changes were made which culminated in the Native Revenue Ordinance of 1917. This ordinance was amended and the extended provision of the 1917 ordinance to Nigeria was passed in 1918. The first Ordinance applied to Abeokuta in Ogun State and Benin City in

²¹ Ibid.

²² Omolewa, M., (1986). *Certificate History of Nigeria*, Lagos, Longman Group, p. 41.

²³ History of Taxation in Nigeria: Understanding Nigeria Tax. <https://www.taxprof.com.ng?hi...> (Accessed on June 13, 2018, 2.15pm)..

²⁴ Fakile, A.S (2012). History of Taxation in Nigeria. Eprints.covenantuniversity.edu.ng/701/12CHAPTERS.doc (Accessed August 10, 2017, 10.22am).

the former Bendel State (now Edo State) and in 1923, it was extended to Eastern Part of Nigeria.²⁵

In 1918, the Native Revenue Ordinance of 1917 was reluctantly accepted in the Western Province of Southern Nigeria. The introduction of Native Ordinance was most difficult in the Eastern part and Delta areas of the South, due to the absence of recognized central authority unlike the Northern part of Nigeria. As a result of this, direct taxation was not introduced in the Eastern part of Nigeria until 1927. Resistance to this form of direct taxation in this area was such that led to riot, notable in *Calabar*, *Owerri* and the famous *Aba* women riot of 1929.²⁶

2.5.2 The Period of 1939 – 1945

Towards the end of 1938 and the beginning of 1939, with the Second World War looming in Europe, governments including that of Nigeria became tax conscious; considerable interest was stimulated in bringing corporations into the tax net due to the economic and political upheavals throughout Europe and changes in policy resulting from the development in England.²⁷ The concept of imposing tax on corporate organization's incomes was then mooted as a war measure for the specific purpose of generating sufficient revenue to enable Nigeria make her own contributions to the imperial government of the United Kingdoms.²⁸

The major highlights before the shortcoming of income tax legislation in 1939, with the enactment of Companies' Income Tax Ordinance (CITO), were that the tax ordinance was to be administered by one Mr. G. Frank who was seconded from the U.K Treasury Office,²⁹ and it left out individuals from the tax net. When this error was discovered, the Nigeria

²⁵ Origin of Taxation: articlesng.com/taxation_nigeria_origin_importance_taxation_nigeria/ (Accessed August 10, 2017, 11.05am).

²⁶ Ibid.

²⁷ Toby, R.A. (1978). *The Theory and Practice of Income Tax*, Sweet & Maxwell, London, p. 17

²⁸ Ibid.

²⁹ Ani, A. (1989). *Companies Income Tax & Petroleum Profits Tax in Nigeria*, UPL, Ibadan, p.viii.

Income Tax Ordinance was enacted in 1940³⁰, to cater for this omission. This legislation brought into the tax net both companies and individuals under a single codification, and for the first time Commissioner³¹ for income tax was appointed to cover Gambia, Sierra Leone, Ghana and Nigeria.³²

Three years after, the 1940 Ordinance was replaced by Income Tax Ordinance (No. 29) of 1943, it took effect from 1st April, 1943. Under this law, 50% standard rate of tax was payable subject to the discretion of the Tax Commissioner upon satisfactory proof to him of any dividend payment out of such chargeable income.³³ The Income Tax Ordinance of 1948 consolidated the 1943 Ordinance and subsequent amendments. Companies and individuals were taxed under the Ordinance which was repealed along with Amendment Ordinances of Companies' Income Tax Act 1961.³⁴

2.5.3 The Period of 1946 – 1959

This period was comparatively short one, but a lot happened in the evolution of corporate taxation in Nigeria. It also witnessed the commencement of the allocation of the “regions” of non-declared revenues into the distributable pool. As short as this period is, but it is important as a transitional stage between the unitary and federal system of government in Nigeria. This period covered the Hicks-Philipson Commission reports on Revenue Allocation.³⁵ The Commission in 1946 among other things was saddled with the responsibility of examining various fiscal issues and to recommend the best principles and formulas in sharing national revenues to meet-up the challenges of the time.³⁶ The Commission was also charged with the

³⁰No.4 Cap 54, 1940.

³¹By Name Mr. Walter Bliss Daye.

³²Ani, A. (1989). *Companies Income Tax & Petroleum Profits Tax in Nigeria*, UPL, Ibadan, p.viii

³³ Ibid.

³⁴Arogunadade, J.A. (2005). *Nigeria Income Tax and its International Dimension*, Spectrum Books Ltd, Ibadan.

³⁵ Victor I. Lukpata (2013). Revenue Allocation Formulae in Nigeria: A Continuous Search: *International Journal of Public Administration and Management Research*. Vol. 2, p. 32.

³⁶Ibid.

task of formulating the administrative and financial system to be adopted under the Richard's Constitution of 1946, which came into effect on 1st January, 1947.

2.5.4 The Period of 1960 – 1973

The period of 1960 – 1973 is referred to as the era of fiscal measure. Nigeria was granted full independence on October 1, 1960, as a federation of three regions (Northern, Western and Eastern) under a Constitution that provided for a parliamentary form of government. Under the Constitution, each of the three regions retained a substantial measure of self-government. Prior to 1960, the Raisman Commission was set up to review the existing taxing powers and revenue allocation formula as this had become an issue subsequent to Nigeria becoming a federation in 1954.³⁷ The Commission recommended that the Federal Government should have exclusive power over corporations and companies taxes as well as taxation of non-residents persons, and to enter into double taxation agreements with other countries. The regions (later states) had exclusive power to impose Personal Income Tax on individuals, sole traders, partnerships, clubs, trusts and other unincorporated associations.³⁸ These recommendations formed section 70 of the Nigeria (Constitution) Order-in-Council 1960. In giving the regions exclusive power to impose personal income tax on individuals, the Commission identified three problems that might arise:³⁹

- a. the danger that regional Personal Income Tax Law might conflict with double taxation agreements which the Federal Government had entered into, or might do so in the future with foreign governments
- b. the danger of internal double taxation.

It was recorded in the Commission's report that the Eastern region taxed the individual income of its residents while the Western region not only taxed those residents in the West, but also taxed any income which was derived from the Western Region irrespective

³⁷ Dudley, B.J (1968). *Parties and Politics in Northern Nigeria*. London Routledge, p. 268.

³⁸ Ayua, I.A. (1996). *Nigerian Tax Law*, Ibadan Spectrum, p. 26

³⁹ Ibid.

of the residency of the recipient.⁴⁰ The result of this, was that a resident in Eastern Nigeria working in Western Nigeria would be taxed twice on the same income by both governments. The Commission felt it was desirable to define carefully what income would be subjected to income tax by the tax authority.⁴¹ Consequently, while granting each regional government the exclusive right to fix tax rates and personal allowances and to decide upon its own method of assessment and administration, the Commission went ahead to recommend areas wherein there needed to be uniformity. These include:

- a. the definition of taxation income and the basis of charge;
- b. the period of assessment;
- c. the taxation of income remitted to Nigeria from overseas sources;
- d. the taxation of income accruing in Nigeria to residents overseas;
- e. the approval of pensions and provident funds for tax purposes;
- f. the treatment of dividends;
- g. the taxation of partnership; and
- h. the type of information to be exchanged between one tax authority and another.⁴²

The acceptance of the foregoing is the basis for section 70(ii) and (iii) of the 1960 Constitution Order-In-Council which conferred concurrent powers upon parliament to make laws for Nigeria or any part thereof with respect to certain enumerated uniform principles in relation to personal income tax. The consequence of this was the enactment of the Income Tax Management Act 1961 (ITMA) and it defined taxable income and the basis of charge, the period of assessment, the list of allowable deductions, the treatment of dividends as well

⁴⁰A Comprehensive Tax History of Nigeria: Federal Inland Revenue Service. www.firs.gov.ng/abouts/Tax%20History%20Documentspdf/chapter%203pdf (Assessed March 07, 2016, 10.45pm).

⁴¹ Ibid.

⁴² Ibid.

as the general administration of personal income tax.⁴³ Corporate taxation was placed within the purview of the Federal Board of Inland Revenue, established under the Companies' Income Tax Act No. 22 of 1961. The Act categorized assessments into four types viz: original assessment, additional assessments, amended assessment and revised assessment.⁴⁴

Companies' Income Tax Act of 1961 imposed the duties, assessment, collection and remittance of taxes collected from companies to the Revenue Board. The 1961 Act was broader in outline and scope than previous enactments. It introduced for the first time, some fiscal measures, governing principles, practical and administration of Companies' Income Tax in Nigeria. One of such fiscal measures is the pioneer income tax relief which serves as an investment incentive aimed at stimulating rapid economic growth and enhancing investment in Nigeria. Another fiscal measure include but not limited to the repeal of Part 1 of 1961 Act. The first noticeable feature of CITA of 1961, is the repeal of PART1 of the 1961 Act (the Principal Act) which formerly provided for the establishment, composition and powers of the Federal Board of Inland Revenue. The effect of this amendment is that, the establishment of FIRS and other provisions relating to the enforcement of CITA were contained under a separate Statute in line with the demand for a strong and efficient administrative framework⁴⁵. This structure which separated the substantive provisions of CITA from its administrative provisions makes for easy reference by administrations, investors and researchers⁴⁶

A clear perception of tax measures enumerated above shows the intention and policy rationale for the tax reform of the period, as predicated by the prevailing exigencies. The corporation tax of the period was designed and characterized by a harsh inquisitorial system which was ready and eager to strengthen its powers by assuming the right to interrogate tax

⁴³Ayua, I.A. (1996). *Nigerian Tax Law*, Ibadan Spectrum, p. 26

⁴⁴ Sections 49, 50(1), 53(3) and the Proviso to 53(3) Companies Income Tax Act No. 22 of 1961.

⁴⁵Sani, A (2011) Recent Developments in Company Income Taxation in Nigeria. *Bulletin for International Taxation* vol.65. p3.

⁴⁶ Ibid.

payers', examine bank accounts and insist on returns of total incomes of companies and prosecute tax defaulters.

2.5.5 The Period of 1974 – 1975

The period of 1974 -1975 witnessed a tremendous change in the modern trend of taxation.

This witnessed the coming into effect of Income Tax Management (Uniform Tax Provisions Decree No. 7 of 1975). This law aimed at unifying all tax reliefs and rates throughout the country.

2.5.6 The Period of 1976 – 1982

The period of 1976- 1982 witnessed a significant legislative changes, that is, the Federal Board of Inland Revenue, became the executive arm of the Board, pioneer companies whose raw materials were locally produced were entitled to pioneer certificate for a statutory period of 5 years, wherein profit made was tax free as provided under the Industrial Development Income Tax Relief Decree 1971.⁴⁷ In the realm of personal taxation, a taxpayer became entitled to either 600 Naira personal or tenth of his annual earned income whichever was higher while dependent relative allowance became 400 Naira per any taxable person who made a claim.⁴⁸

The government also approved with effect from 1977 to 1978 certain fiscal incentives in order to create favourable investment atmosphere for the companies, strengthen the mutual confidence between the government and the producing oil companies and to encourage greater exploration and production activities. The incentives covered expenses of exploration, drilling cost, petroleum profits tax and royalty rates modification, amortization in five years of all capitalized expenditure, granting of investment tax credit on the basis of area of operation and increase in company margin for light and medium oils.

⁴⁷ A Comprehensive Tax History of Nigeria: Federal Inland Revenue Service. www.firs.gov.ng/abouts/Tax%20History%20Documentspdf/chapter%203pdf (Assessed March 07, 2016, 10.45pm)..

⁴⁸ Ibid.

In 1978, the Federal Military Government set up a Task Force on tax administration under the chairmanship of Alhaji Shehu Musa, the then Permanent Secretary of the Federal Ministry of Finance.⁴⁹ The Task Force was to:

- i. examine the source of tax revenue and the structure of tax administration in Nigeria.
- ii. assess the effectiveness in the management of the existing taxes both at the Federal and State levels; and
- iii. suggest ways and means of making the administration of the tax system more effective and efficient.

The Task Force submitted its report in early 1979 and the outcome of that report was the promulgation of the Companies' Income Tax Decree No. 28 of 1979 (CITA 1979) which repealed the Companies' Income Tax Decree of 1961. Also, as an outcome of the Shehu Musa Task Force, the government introduced the withholding tax on building and construction companies.⁵⁰ The CITA 1979 also established the Federal Board of Inland Revenue⁵¹ and vested it with the administration of the Act as well as the Capital Gains Tax Act 1967, Petroleum Profits Tax Act 1959, Stamp Duties Act, Armed Forces and Other Persons (Special Provisions) Act 1972 and Industrial Development Income Tax Relief Act 1974.⁵²

However, with effect from October 1, 1979 (that is at the inception of civilian administration), the suspended 1979 Constitution of Nigeria vested power to legislate on the taxation of income, profits and capital gains in the Federal Government and all States Tax Laws were deemed to have become Federal Tax Laws.⁵³ The period of 1st October 1979 and

⁴⁹ Ibid.

⁵⁰ Okoh, S. (2006) Political and Economic Imperatives of the New Tax Reform. Leadership, 5 March, p. 39.

⁵¹ Section 1 CITA 1979

⁵² The Three Eras of Taxation in

Nigeria. www.fics.gov.ng/Tax%20History%20Documentspdf/Chapter%203pdf (Accessed August 10, 2017, 9.30am).

⁵³ Abdulrazaq, M.T. (2005). *Nigerian Revenue Law*, Malthouse Press Ltd, Lagos, p. 26

31st December 1983 witnessed another trend in the Nigerian Taxation. The advent of the civilian administration witnessed abolition of poll tax, development rates, community tax and cattle tax for political and sentimental reasons even in States where it eventually became difficult, if not impossible, to pay workers' salaries. Furthermore, as a result of the oil glut and an alarming decline in Federal Revenue and statutory allocations, many States hurriedly passed their Sales Tax Laws in order to increase internally generated revenue. The trend continued until the civilian administration was overthrown by the Military in December 31st, 1983.

However, the period 1976 – 1982 also marked the era of fiscal reprimand and condemnation. This prompted the government into commissioning task forces on tax administration to have a thorough and dispassionate overhaul of the corporate tax enactments of the period, in order to remove any noticeable fiscal impairment. Emphasis was basically on how to widen corporate tax base to cover a wide range of services and activities in order to boost revenue generation, rather than introducing any comprehensive reform to the system.⁵⁴

Prior to 1980, government fiscal year ran from 1st April to 31st of March. This prompted the idea of setting up of a Task Force on tax administration in 1978 by the Federal Government of Nigeria. The Task Force however, recommended a change of government fiscal year to coincide with the current calendar year i.e. 1st January to 31st December. Although before the appointment of the Task Force, the Petroleum Profits Tax of 1959 had been amended by Petroleum Profits Tax (Amendment) Decree 1973.⁵⁵

The acceptance of the recommendations of Task Force by the government poses tax implications on the accounting year end of the companies. The change affected the determination of their basic period and the due dates of payment of income tax and provisional tax.

⁵⁴Adedokun, K.A; (2011) Analysis of Company Income Tax and Its Effets in Revenue Generation in Nigeria. Being a Ph.D Thesis Unpublished. A.B.U Zaria p.47.

⁵⁵Published in the Federal Republic of Nigeria Gazette, No. 12, Vol. 60 of March 1, 1973.

2.5.7 The period of 1983 – 1984

The Military Government which emerged on December 31, 1983 inherited substantial decline in the main revenue source of the nation, which is oil. The first step was a nation-wide reorganization of the revenue departments and the declaration of an open war, unprecedented in the history of taxation in the country, on the social evil known as tax evasion. In the first few months of the new administration, many state governments strove to improve existing revenue sources and to break new grounds.⁵⁶ Some introduced sales tax, business premises, property tax, social functions or merriment tax and sand dealers' tax; while some re-introduced poll tax. In effect, income tax has now become a factor to be reckoned with in both Federal and State Government's budgets.

2.5.8 The period of 1985 – 1991

During this period, the Federal Military Government promulgated the Miscellaneous Taxation Provisions Decree, otherwise known as Decree 4.⁵⁷ This new law among other things increased personal allowances slightly, empowered tax authorities to request from any bank, any information about customers' status and that, from January 1, 1995, the maximum capital allowances that was to be claimed in any assessment year was fixed at a minimum of 75% of the profit for the year.⁵⁸ In the case of manufacturing companies, 62% and 3% in other cases.⁵⁹ This was aimed at conserving foreign exchange and to discourage Nigerians from unnecessary travels outside Africa.

Furthermore, in order to ensure prompt payment of tax, companies' income taxes were to be paid before dividends were paid to shareholders. In order to further tackle the knotty problem of tax evasion, deductions at sources under the provisions of section 59 (c) of

⁵⁶A Comprehensive Tax History of Nigeria: Federal Inland Revenue Service. www.firs.gov.ng/abouts/Tax%20History%20Documentspdf/chapter%203pdf (Accessed March 07, 2016, 10.45pm)..

⁵⁷Ayodele, O. (2006). Tax Policy Reforms in Nigeria: <https://www.researchgate.net> (Accessed on September 08, 2017, 10.50am)

⁵⁸Ibid.

⁵⁹Ibid.

the Companies' Income Tax Act 1979 were extended to all aspects of building construction of civil works and other related construction activities, contract activities, agency arrangements, consultancy services, technical skills and commission.⁶⁰

2.5.9 The Period of 1992 to date

The period 1992 till date is regarded as a period of tax as an instrument of economic reform. It is a period when agitations were rife on the need for Nigerian income tax system to assume a progressive outlook designed to serve the public welfare and to emphasize the fiscal objectives of taxation. That is raising revenue and affecting a general distribution of wealth, so as to achieve some improvements in the economic conditions of the people within the society. In 1992, the Federal Government set up a study group on the Nigeria tax system and administration headed by Professor Emmanuel Edozien.⁶¹ The recommendations of the Study Group formed the basis for the promulgation of the Finance (Miscellaneous Taxation Provisions) Amendment Decree.⁶²

The Finance (Miscellaneous Taxation Provisions) (Amendment) Decree⁶³ re-structured the F.B.I.R by establishing the FIRS as an operational arm of the Board. It also established States Boards of Internal Revenue and Local Government Revenue Committees. Again in 1992, the Study Group on indirect taxation was constituted under the chairmanship of Dr. Sylvester Ugoh.⁶⁴ The recommendations of the Ugoh Committee formed the basis for the enactment of the Value Added Tax Act and also marked the refocusing of government's attention from direct to indirect taxation.⁶⁵

On a return to democratic rule in 1999, Nigerian Government was poised towards genuine democratic governance, highly decentralized polity; private sector dominated pro-

⁶⁰Abdulrazaq, M.T. (2005). *Nigerian Revenue Law*, Malthouse Press Ltd, Lagos, pp.62 – 63.

⁶¹Okaru, I.O (2012). *F.I.R.S Handbook on Reforms in the Tax System (2004 – 2011)* Safai Books Ltd, p.3.

⁶²No. 3 of 1993.

⁶³Ibid.

⁶⁴Okaru, I.O (2012). *F.I.R.S Handbook on Reforms in the Tax System (2004 – 2011)* Safai Books Ltd, p.8

⁶⁵Ibid.

growth market economy, rule of law and due process and freedom of citizenry. The Federal Government desired to put in place and execute a tax system that will remove all the fiscal tricks of military era in order to enable citizens derive immediate benefits attached to taxation. To achieve this, another Study Group on the review of the Nigeria Tax System in 1992 was constituted and headed by Professor Dotun Philips. The Study Group identified some knotty areas which had hitherto constituted obstacles to the Nigerian tax system, for example, lack of articulated tax policy in Nigeria, taxation and Nigerian Federation, tax incentives and disincentives regimes. Other examples are; administrative ineptitude and lopsidedness issues on oil and gas taxation etc. The Study Group observed inter-alia that there is absence of articulate national tax policy in Nigeria, and lack of autonomy for Federal Inland Revenue Service constituted obstacles to a tax administration in Nigeria. It was noted that too much power to legislate on income tax is concentrated on the Federal Government.

Based on the findings and/or the report of Dotun Philips Study Group, a private sector driven working group headed by Mr. Seyi Bickerseth was set up to review the report. The harmonized report of the two groups provided the roadmap for the reforms that commenced in the Nigerian tax system in 2004, which excited the preparation of nine drafts bills on Tax Reforms to the National Assembly in 2005.⁶⁶ The result produced, among others, are the following tax legislation.

(a) Federal Inland Revenue Service (Establishment) Act, 2007⁶⁷

(b) Companies' Income Tax (Amendment) Act, 2007⁶⁸ (which enacted all the 49 proposed amendment to Companies' Income Tax Act) and

⁶⁶ The Nine Draft Bills on Tax Reforms Approved by the Federal Executive Council for the consideration of the National Assembly include: A Bill for an Act to establish FIRS as an autonomous service; A Bill for an Act to amend Companies' Income Tax Act; A Bill for an Act to amend Petroleum Profits Tax Act; A Bill for an Act to amend Personal Income Tax Act; A Bill for an Act to amend Value Added Tax Act; A Bill for an Act to amend Education Tax Act; A Bill for an Act to amend the Customs, Excise, Tariff etc (Consolidation) Act; A Bill for an Act to amend the National Sugar Development Council Act, and A Bill for an Act to amend the National Automotive Act.

⁶⁷No. 13 of 2007.

⁶⁸Ibid.

(c) Value Added Tax (Amendment) Act.⁶⁹

As evidenced from the foregoing, tax legislation has been more pervasive than any other policy tool throughout Nigeria's colonial and post-colonial eras. During the colonial eras, legislation were passed as Ordinances, after independence, Federal Legislation were designed as Acts, while legislations passed by States were referred to as laws, a practice that has endured up to date, aimed at ensuring an organized tax system that will encourage adequate revenue generation in Nigeria.

On December 31, 2020, the President of Federal Republic of Nigeria Muhammadu Buhari signed the Finance Bill 2020 (the Finance Act or the Act) into law. The Finance Act, 2020 which came into effect on January 1, 2021 compliments the 2021 Federal Government's Budget of Economic Recovery and Resilience, anchored on the following key objectives⁷⁰:

1. Adopt appropriate counter cyclical fiscal policies to respond to the economic and revenue challenges;
2. Reform extant fiscal policies to priorities job creation, economic growth and social economic development and domestic revenue mobilization;
3. Provide fiscal relief for taxpayers;
4. Propose measures to fund the Federal Government's COVID-19 pandemic as well as any similar crises in the future;
5. Ensuring coordination of fiscal, monetary and trade policies; and
6. Reform the Fiscal Responsibility and Public Procurement Acts.

The Finance Act, 2020, amended the following Acts: Companies Income Tax Act, Capital Gains Tax Act, Value Added Tax Act, Personal Income Tax Act, Petroleum Profits Tax Act, Stamp Duties Act, Federal Inland Revenue Service (Establishment) Act, Fiscal Responsibility Act, Public Procurement Act, and Companies and Allied Matters Act among

⁶⁹Cap V1 Laws of Federation of Nigeria, 2004.

⁷⁰Oyedele, T. and Chime, E (2021) Nigeria's Finance Act 2020: Insights Series and Sector Analysis. www.pwc.com/ng (Accessed on March 10, 2021, 9.25am)

others. The Finance Act 2020 continues the tax reform measures introduced by the Finance Act 2019 and provides different framework to respond to the economic challenges brought about by the Covid-19 pandemic lockdown. The new Finance Act also clarifies a number of ambiguities identified in the previous amendments as well as other extant provisions of the various tax laws. The changes underscore the government's resolve to continue to adopt and leverage technology in tax administration. Beyond tax, the Finance Act 2020 extends to other legislation bothering on public procurement, fiscal responsibility, business regulations and trade policies. It is expected that government will continue to engage with key stakeholders to keep the reforms under constant review and make further changes as may be necessary in order to meet the intended objectives.

The historical account from pre-1939 taxation to date shows that Nigeria is governed by a federal system, hence its fiscal operations also adhere to the same principle. This has serious implications on how the tax system is managed in the country. The study groups on the review of Nigerian tax system for the periods under review highlighted the need to increase tax revenue and reduce expenditure as the major fiscal issues to be addressed. In spite of the importance of a result-oriented policy review for the country, attempts have not been made to assess development over the years.

The implementation of fiscal federalism in Nigeria, particularly with regard to tax administration, has been plagued with problems. A critical aspect of this is multiple taxes. In fact, all the study groups on tax reform have also highlighted this as the most serious problem for the country's tax administration. In addition to corporate income tax, companies are subjected to a wide range of taxes, levies and rates at the state and local levels.

2.6 Theoretical Framework

2.6.1 Model of Corporate Tax Rate

There are several approaches of corporate tax rates which include but not limited to the following:

a. Effective Tax Rate (E.T.R)

The effective tax rate is the average rate at which an individual or corporation is taxed. The effective tax rate for individuals is the average rate at which their earned income is taxed, and the effective tax rate for corporation is the average rate at which its pre-tax profit are taxed⁷¹. An individual effective tax rate is calculated by dividing total tax expenses by his taxable income. For corporations, the effective tax rate is computed by dividing total tax expenses by the firm's earnings before taxes. In many cases, effective tax rate only refers to income incurred by taxpayers and does not include sales tax or other types of taxes. However, in other cases, analysts include excise taxes as well as payroll taxes. This can be useful when trying to compare the effective tax rate of two or more individuals, as income tax is only a portion of the total tax paid by most taxpayers.⁷²

b. Statutory Tax Rate Model

Statutory tax rate model as the name implies, refers to a tax rate that is fixed by tax Statutes or any other legislation in a country. This is the tax rate that is favoured or applicable to Nigeria tax system and by virtue of the Finance Act 2019, amending Companies Income Tax Act (CITA) prescribes varying tax rates for each class of companies. While profits or income of small companies are exempt from tax, medium-sized and large companies are taxed at the rate of 20% and 30% respectively in Nigeria.

c. Marginal Tax Rate (M.T.R)

⁷¹Nnubia, I.C, and Okolo, M.N (2018) Effect of Corporate Tax on Profitability of Business Organizations in Nigeria. *International Journal of Management Studies, Business and Entrepreneurship Research*. Vol. 3Pp.14-17

⁷²Ibid.

A marginal tax rate is the amount of tax paid on the additional income. The marginal tax rate for an individual will increase as income rises. This method of rate of taxation aims to fairly tax individual or corporate organizations based upon their earnings or profits, with low income earners being taxed at a lower rate than higher income earners.

Corporate marginal tax rate measures are used in studies examining tax motivated behaviour⁷³. Under a marginal tax rate, taxpayers are most often divided into tax brackets or ranges, which determine the rate applied to the taxable income of the tax filer. As income increases, what is earned will be taxed at a higher rate than the first income earned.

In Nigeria, corporate tax law treats gains and losses asymmetrically by taxing income for the current period and losses at the rate provided by the Statutes. Profits of companies are taxed at the rate of 20% or 30% for medium-sized and large companies respectively, while loss making companies are expected to pay taxes at the minimum rate of 0.25 and 0.5% for medium-sized and large companies.

2.6.2 Corporate Tax Theories

The quest for the optimum taxation rate where tax revenues are maximized for social welfare and economic growth has been the essence of the various theories. In its regulatory function, taxation provides a mechanism to redistribute national income. In its catalytic role, taxation is applied to increase the value of effective demand, stimulate investment and engender economic development. There are quite a number of theories underlying the concept of taxation which include:

(a) Political Theory

This theory of taxation states that social and political objectives should be the major factors in selecting taxes. The theory advocated that a tax system should not be

⁷³Ibid.

designed to serve individuals, but should be used to cure the ills of the society as a whole.⁷⁴ The political theory is premised on the prediction that large companies face lower effective tax rate and has greater advantage in both political and economic power over the smaller firms. The larger firms lessen its tax liabilities by engaging in aggressive tax planning, by utilizing its economic and political power; due to their economic of scale and availability of abundant resources

(b) Growth Theory.

Growth theory is the basis of increased prosperity. This makes the attainment of growth a key objective for government across the world. The rate of growth can be affected by policy choices through the effect that taxation has upon economic decisions and through productive public expenditures⁷⁵. An increase in taxation reduces the returns to investment (in both physical and human capital) and Research and Development. Lower returns means less accumulation and innovation, and hence a lower rate of growth. This is the negative aspect of taxation. Taxation also has a positive aspect. Some public expenditure can enhance productivity, such as the provision of infrastructure, public education, and healthcare. Taxation provides the means to finance these expenditure and, indirectly can contribute to an increase in the growth rate.

⁷⁴ Available at SSRN: <https://ssrn.com/2513207> (Accessed on October 28, 2021, 11.25am)

⁷⁵ Myles, G. (2009) Economics Growth and the Role of Taxation – Theory. OECD Economics Department Working Papers: Available at <https://doi.org/10.1787/222800633678> (Accessed on October 28, 2021, 11.35am)

(c) Benefit Theory

The benefit theory of taxation suggests that the taxes are to be imposed on individuals according to the benefit conferred on them. In effect, the more benefits a person derives from the activities of the State, the more he should pay to the government, thus a “*quid pro quo*” is expected to subsist.⁷⁶

(d) Contra Theory to the Benefit Theory

The contra theory to the benefit theory is the ‘cost of service’ theory of taxation which provides that the government should tax the citizens according to the cost of service rendered by it. The tax, an individual or corporate organization should bear, must be equal to the cost of benefit received⁷⁷

(e) Ability to Pay Theory

The ability to pay theory of taxation by Pigou⁷⁸ suggests that every citizen should pay taxes according to his ability to pay, to meet the cost of government expenditure. The ability to pay theory of taxation is synonymous with the principle of equity or justice in taxation.⁷⁹ In other words people with higher income should pay more taxes than people with lower income. It is more reasonable and just that taxes should be levied on the basis of the taxable capacity of an individual.

(f) Theory of Laffer Curve of Taxation

This theory was propounded⁸⁰ by professor Arthur Laffer, the theory explains the theoretical representation of the relationship between government revenue raised by taxation and all possible rates of taxation. The theory demonstrated with a curve (i.e Laffer curve) which was constructed through experiment. It considers the amount of

⁷⁶Babatunde, O., Ibukun, A.O, and Oyeyemi, O.G (2017) *Academic Journals* Vol. 9 Pp.11-12

⁷⁷ Ibid.

⁷⁸Pigou, A.C (1920) *The Economics of Welfare*. Macmillan, London p.10

⁷⁹Ibid.

⁸⁰ Available at SSRN: <https://ssrn.com/2513207>. (Accessed on October 28, 2021, 11.45am)

tax revenue raised at the extreme tax rate of 0% and 100%. He concluded that a 100% tax rate raises no revenue in the same that a 0% tax rate raises no revenue. This is because, at 100% rate, there is no longer incentive for a rational taxpayer to earn any income, thus the revenue would be a maximum⁸¹

From the foregoing theories, Nigeria tax system is favoured by the benefit theory of taxation. This is premised on the account that a corporate organization or a poorman will have some tangible things in terms of development to benefit as a result of payment of his taxes and this will inspire him to pay more. With this option Nigeria government will provide the basic infrastructure facilities that will inspire or boost the morale of her citizens to pay taxes as and when due and this will reduce tax evasion in the country.

⁸¹Ibid.

CHAPTER THREE

LEGAL AND INSTITUTIONAL FRAMEWORK FOR CORPORATE TAXATION IN NIGERIA

3.1 Introduction

The Nigerian tax system stands on a tripod of tax policy, tax legislation and tax administration. Tax policy gives birth to legislation, which in turn provides the foundation upon which administration can be implemented.¹ While the tax policy can be likened to a sketch or drawing of a structure, tax legislation and administration are the actual pillars upon which the structure is built and stands. The premise upon which this discussion is built is the relationship between legislation and administration. This relationship is underlined by the fact that corporate taxation is made up entirely by laws. It is not possible to mention of effective corporate tax administration without referring to the legislations or the Acts that stipulate what type of corporate taxes are to be administered, how they are to be collected and the powers of the tax authority to administer or collect them. So in discussing company income tax, petroleum profits tax, capital gains tax, or value added tax, what they are really referring to, are the legislation or enabling status that define them as such and give guidelines for how they are to be assessed, collected and accounted for.

Nigeria tax laws also provide various mechanisms for the resolution of disputes that may arise from the implementation or administration of the tax laws². If tax administration is to be successful and effective, the empowering legislation must be sound, robust and practical in application. For there to be sound or effective tax legislation, legislation must be certain.

That is to say, it has to be clear on what it aims to achieve, what does it want to tax? How does it want to tax it? And who is doing the taxing? Generally speaking, tax legislation or Act

¹Ifueko, O.O.(2015) The Challenges of Effective Tax Legislation and Revenue Administration for the Funding of Public Services in Nigeria: The Role of Tax Professionals. A Paper Presented at the Tax Week Organized by the Chartered Institute of Taxation of Nigeria, Abuja(CITN) and District Society, held at the NAF Conference Centre & Suites, Kado Road, Abuja, on Wednesday, October 28 p.3

²Ibid.

must be unambiguous and as direct as possible. Allied to this fact is that tax legislation must be transparent – that is, taxpayers’ must know that the tax exists and know when it is imposed on them. There should be no hidden provisions, potholes, bumps or sharp bends, which serve as traps to the taxpayers’. A good legislation or Act must be one, which is clear about each party’s obligations and how to discharge it. To achieve this, such legislation or Act must have the quality of simplicity, such that the law is easy to understand and comply with in a cost efficient manner. Tax Act must also exhibit fairness so that taxpayers’ in similar circumstances are taxed similarly. Equality before the law breeds compliance, while inequality breeds resentment and a justification for cutting corners.³

Since corporate taxation must be careful not to stifle the taxpayers’ income generation capability, good tax legislation or Act must not create circumstances which have the effect of impeding the productive capacity of the taxpayers’ and it must not unduly affect the corporate taxpayer’s decision making as to whether or not to engage in particular transactions. In all these, tax legislation or Act must have the goal of enhancing rather than complicating voluntary compliance and/or adequate revenue generation.

3.2 Tax Legislation as the Basis of Corporate Tax in Nigeria

Tax legislation or Acts are the body of laws that provide for the levying of taxes and tax administration. The existing Corporate income Tax Act or legislation in Nigeria, are discussed hereunder.

3.2.1 Companies income tax Act (CITA)

Tax is a civic or compulsory obligation imposed by the government upon her citizen as provided in Section 24(f) of the 1999 Constitution⁴ which obligates every citizen of Nigeria to “declare his income honestly to appropriate and lawful agencies and pay his tax promptly”.

³ Ibid.

⁴Cap C23 Laws of Federation of Nigeria 2004

By implication, a company or corporation is regarded as an artificial person in law, and must also declare her income honestly and appropriately to the tax authorities.

Company income tax is levied on the income or profits of companies that are carrying on business in Nigeria. A company is liable to pay corporation tax on its profits and to this effect, section 9 (1) of the Companies Income Tax Act⁵ provides for a charge of corporate tax as follows:

Subject to the provisions of this Act, the tax shall, for each year of assessment, be payable at the rate specified in subsection (1) of section 40 of this Act upon the profits of company accruing in, derived from, brought into, or received in Nigeria in respect of:

- (a) any trade or business for whatever period of time such trade or business may have been carried on;
- (b) rent or any premium arising from a right granted or any other person for the use or occupation of any property; and where any payment on account of such a rent as is mentioned in this paragraph is made before the expiration of the period to which it relates and is included for the purposes of this paragraph in the profits to company, then, so much of the payment as relate to any period beginning with the date on which the payment is made shall be treated for these purposes as accruing to the company proportioned from day to day over the last mentioned period or over the five years beginning with that date, whichever is the shorter;
- (c) dividends, interest, royalties, discounts, charges or annuities;
- (d) any source of annual profits or gains not falling within the preceding categories;
- (e) any amount deemed to be income or profits under a provision of this Act or, with respect to any benefit arising from a pension or provident fund, of the Personal Income Tax Act;

⁵Cap C21 Ibid.

- (f) fees, dues and allowances (whenever paid) for service rendered;
- (g) any amount of profits or gains arising from acquisition and disposal of short term money instruments like Federal Government Securities, treasury bills, treasury or savings certificates, debenture certificate or treasury bonds.

Companies Income Tax Act ⁶, section 9(1) deals with charge of tax, rates of tax among a small-sized company, medium-sized and large companies, deduction of tax from dividends and relief for double taxation and while section 40(1) of the Companies Income Tax Act⁷ as amended by the Finance Act 2019⁸, which specifically provides that: “There shall be levied and paid for each year of assessment in respect of total profits of every company, tax rates as provided under section 23(1)(0) of this Act, in the case of small company it is exempted from payment of any tax; medium-sized company, tax rate is 20 Kobo for every Naira; and large company, tax a rate is 30 Kobo for every Naira”.

However, CAMA 2020 which became effective from January 01, 2020 classifies companies to small and others using a combination of different parameters, which is quite different from the classification of Finance Act, 2020 and the legislations were all passed by the same legislature (National Assembly) in the same year. One wonders why this should be so. According to section 394(3) CAMA⁹, a small company provides for the following features: (a) must be a private company, (b) must have a maximum turnover of ₦120million, (c) must have a maximum assets value of ₦60million (d) has no foreign member, (e) has no government membership and (f) directors must hold at least 51% of its share capital, whereas under Companies Income Tax Act (CITA) , a small company has a gross turnover of ₦25million or less, medium-sized company has a gross turnover greater than ₦25million but

⁶ Ibid.

⁷ Ibid.

⁸ Section 16 Finance Act, 2019

⁹ Companies and Allied Matters Act 2020.

less than ₦100million, while a large company gross turnover is ₦100million and above. This difference raises a number of problems

1. A small company under CAMA qualifies as large company under section 40 of CITA
2. Companies which qualify as small under CAMA may still be taxed 20% or 30% under Companies Income Tax Act.
3. A small company under CAMA may not enjoy tax incentives under CITA
4. By section 402 CAMA companies yet to commence business and small companies are exempted from appointing auditors to audit accounts for the period, but section 53 CITA, small companies despite exemption from paying tax are to file self-assessment returns with FIRS along with audited financial statements
5. Finance Act 2020, which became operational on January 01, 2020 has amended section 55 of CITA, such that instead of audited accounts, FIRS may specify an alternative form of accounts to be included in the tax returns to be filed by small and medium-sized companies (by its definition). This amendment was precipitated by the exemption granted to small companies from appointing auditors.

3.2.1.1 Profits exempted under companies income tax Act

The profits of some companies are exempted from payment of company tax. For instance section 23(1) of the Companies Income Tax Act¹⁰ as amended, provides for exemption of the following profits of companies from taxation.

- (1) There shall exempt from the tax
 - (a) the profits of any company being a statutory or registered friendly society, in so far as such profits are not derived from a trade or business carried on by such society;
 - (b) the profits of any company being a cooperative society registered under any enactment or law relating to cooperative societies, not being profits from any trade or business carried on by that

¹⁰ Section 23 Companies Income Tax Act. Cap. C21 Laws of Federation of Nigeria, 2004.

- company other than cooperative activities solely carried out with its members or from any share or other interest possessed by that company in a trade or business in Nigeria carried on by some other persons or authority;
- (c) the profits of any company engaged in ecclesiastical, charitable or educational activities of a public character in so far such profits are not derived from a trade or business carried on by such company;
 - (d) the profits of any company formed for the purpose of promoting sporting activities where such profits are wholly expendable for such purpose, subject to such conditions as the board may prescribe;
 - (e) the profits of any company being a trade union registered under the Trade Unions Act in so far as such profits are not derived from a trade or business carried on by such trade union;
 - (f) dividend distributed by Unit Trust;
 - (g) the profits of any company being a body corporate established by or under any Local Government Law or Edict in force in any state in Nigeria;
 - (h) the profits of anybody corporate being a purchasing authority established by an enactment and empowered to acquire any commodity for export from Nigeria from the purchase and sale (whether for the purpose of export or otherwise) of that commodity;
 - (i) the profits of any company or any corporation established by the law of a state for the purpose of fostering the economic development of that state, not being profits derived from any trade or business carried on by that corporation or from any share or other interest possessed by the corporation in a trade or business in Nigeria carried on by some other person or authority;
 - (j) any profits of a company other than a Nigerian company which but for this paragraph, would be chargeable to tax by reason solely of their being brought into or received in Nigeria;

- (k) dividend, interest, rent, or royalty derived by a company from a country outside Nigeria and brought into Nigeria through “Government approved channels” means the Central Bank of Nigeria, any bank or other corporate body appointed by the minister as authorized dealer under the Foreign Exchange (Monitoring and Miscellaneous) Act or any enactment replacing that Act;
- (l) the interest on deposit accounts of a foreign non-resident company: provided that the deposits into the account are transfer wholly of foreign currencies of Nigeria on or after 1st January 1990 through Government approved channels;
- (m) the interest on foreign currency domiciliary account in Nigeria accruing on or after 1st January 1990;
- (n) paragraph(n) is deleted following the coming into effect of Finance Act 2019¹¹
- (o) The profits of a small company in a relevant year of assessment: provided that-
 - (i) such company shall, without prejudice to this exemption, comply with the tax registration and tax return filing stipulations of this Act and be subject to the provisions as regards time of filing, penalties for breach of statutory duties and all other provisions of this Act in all respects during the period which its profits are below the tax payment threshold, or
 - (ii) they are dividends received from small companies in the manufacturing sector in the first five years of their operations;
 - (p) dividend received from small companies in the manufacturing sector in the first five years of their operation;
 - (q) the profits of any Nigerian company in respect of goods exported from Nigeria, if the proceeds of such exports are used for the purchase of raw materials, plant equipment and spare parts:

Provided that tax shall accrue proportionately on the portion of such proceeds which are not utilized in the manner prescribed.

From such export at repatriated to Nigeria and are used

¹¹ Section 9(1) Finance Act 2019(Amendment to section 23 CITA)

exclusively for the purchase of raw materials, plant, equipment and spare parts;

- (r) the profits of a company whose supplies are exclusively inputs to the manufacturing of products for exports provided that the exporter shall give a certificate or purchase of the inputs of the exportable goods to the seller of the supplies power to exempt...

As a company is liable to pay corporation tax on its profits earning, similarly, a shareholder who is entitled to a dividend is also liable to pay income tax in respect of any dividend or income distribution by the company. The charge to tax of both company and shareholder's dividend is a clear case of imposition of two taxes on one corporate profit.¹² That is, the dividend is derived from the gross profit of the company which has been taxed and again dividend which is a product of the gross profit is being taxed again. In other words, it occasioned a situation whereby corporate profits are taxed twice; one to the corporation when earned; and one to the shareholder when the earnings are distributed as dividends.

This approach exact a double burden on the company, thereby making it detestable. This is because the idea of levying tax on companies as juristic persons has led to either juridical or economic double taxation.¹³ The former is imposition of comparable taxes in two or more states on the same taxpayer for the same subject matter or identical goods. It may occur in a situation whereby a company is regarded as resident in two different tax jurisdictions (place of incorporation and place of central management and control). The latter is imposition of two taxes on one corporate profit.¹⁴ Both the company tax and tax on the dividend are all paid from the gross profit of the company known as the corporate profit.

¹² John, D.C. (2011). Corporate Taxation Laws in Nigeria: A Review. *International Journal of Advanced Legal Studies and Government*, Volume 2, p.237.

¹³ Tiley, J. (2000). *Revenue Law*, Butterworths, London, p. 622.

¹⁴ Ibid.

If the above view is accepted, it implies that companies will simply become a preservation or storage for accumulation of income free of tax.¹⁵ This will occasion huge revenue loss to the government, otherwise, what happens should a company decide not to distribute its profit to its shareholders or devise a ploy of a sale of the shares in order to realize a capital gain. This also will definitely occasion a revenue loss to the nation as companies will just be used as a conduit for tax free income. Thus, a tax on companies is needed to protect the individual income tax. Corporate status conveys certain privileges and the companies should pay for these privileges. In particular, companies have limited liability status. This protects their shareholders in the event of bankruptcy.¹⁶

Allied to this, is the fact that taxing corporations is more acceptable than taxing individuals as it is less personal.¹⁷ It is the researcher's view that the latter position that supports taxing companies seems more plausible and the researcher concur with it on the ground that it will generate sufficient revenue for the government to cater for the societal needs.

3.2.2 Petroleum profits tax Act (PPTA)

The history of oil production in Nigeria dates back to 1908 when an affiliate of a German Exploration Company, the Nigeria Bitumen Company came to the present, Ondo State to venture for Bitumen (tar sand).¹⁸ By 1971, a year after the Civil War, oil had started becoming more important to the economy. With the boom in the late seventies of oil, attention shifted completely from the agricultural sector to the oil sector of the economy.¹⁹.

The very vital importance of oil to Nigeria dictates government's involvement in the regulation of the Nigeria oil sector. It is noteworthy that prior to 1971, all of the multinational

¹⁵ Ibid.

¹⁶ Abdulrazaq, M.T. (2005). *Nigerian Revenue Law*, Malthouse Press Ltd, p.28.

¹⁷ Tiley, J. Tiley, J. (2000). *Revenue Law*, Butterworths, London, p. 628.

¹⁸ Olanrewaju, Fagbohun (2010). *The Law of Oil Pollution and Environmental Restoration: A Comparative Review*. Odade Publishers, Nigeria, p. 153.

¹⁹ Lawal Kamoru Taiwo (2013). Taxation of Petroleum Profits under the Nigeria's Petroleum Profits Tax Act. *International Journal of Advanced Legal Studies and Governance*, vol. 4, p. 123.

companies were wholly owned by their foreign parent companies. In that same year, government started acquisition of participating interest in the operation of these companies while citizens also acquired varied shareholding interests in the assets of these companies²⁰

Nigeria has both upstream and downstream petroleum operations. Upstream refers to petroleum product exploration, mining and drilling. Downstream refers to the simple sale and distribution of processed oil products by local corporations. Thus, corporations engaged in upstream exploration are subject to the petroleum profits tax while downstream corporations are subject to companies income tax. Taxation of petroleum profits started in 1959 with the enactment of the Petroleum Profits Tax Act 1959 which was meant to have a retrospective effective date of 1st January, 1958. This Act serves as a foundation for the present Petroleum Profits Tax Act²¹, which was further amended in 2007.

The objective of this Act can be gleaned from its preamble which reads: “An Act to impose a tax upon profits from the winning of petroleum in Nigeria, to provide for the assessment and collection thereof and for purposes committed therewith”. In line with its objectives, Petroleum Profits Tax Act²² thereon established a body known as the Board and saddled with the responsibility of assessment, collection of the petroleum profits tax and administration.

²⁰Olanrewaju, Fagbohun (2010). *The Law of Oil Pollution and Environmental Restoration: A Comparative Review*. Odade Publishers, Nigeria, p. 153

²¹ Cap P13 Laws of Federation of Nigeria 2004

²² Ibid. Section 3

(i) Administration of Petroleum Profits Tax Act

The administration of Petroleum Profits Tax Act is vested on the Federal Inland Revenue Service. The FIRS is statutorily responsible for the assessment and collection of taxes in the oil and gas sector of the economy.²³ Section 3 of the Petroleum Profits Tax Act²⁴ vests the Board with the following powers, among others:

- i. Due administration of the Act;
- ii. Acquisition, holding and disposal of any property taking as a security for or in satisfaction of any tax or any judgment debt due in respect of any tax, etc
- iii. The Board may by notice in the Federal Gazette direct that any information, returns or documents required to be supplied, forwarded or given to the Revenue Service be supplied to such other person as the Service may direct;²⁵ specify from time to time, form of returns, claims, statement and notices under the Act.²⁶

The scope of FIRS²⁷ power over tax administration and enforcement covers three types of companies in the oil and gas industry, namely:

- a. Crude oil and natural gas producing companies;
- b. The petroleum marketing companies; and
- c. Servicing companies.²⁸

The Act regulates upstream activities as opposed to downstream.²⁹ Upstream operation involves all activities carried out in the exploration, drilling, extraction,

²³Section 2 Federal Inland Revenue Service (Establishment) Act 2007.

²⁴Cap P13 Laws of Federation of Nigeria 2004.

²⁵Section 3(d) Ibid.

²⁶Section 6(2) Ibid.

²⁷The Powers and Functions of the Service are also being regulated by section 1 of the Federal Inland Revenue Service (Establishment) Act 2007.

²⁸Services include drilling, seismic survey, logging, data interpretation from oil field, etc.

²⁹Downstream Operations, which are not subject to Petroleum Profits tax, include Marketing and Refining Activities.

development, production, transportation and sale of crude oil.³⁰ Downstream operations on the other hand involve conversion of crude oil into usable form such as premium motor spirit, diesel, kerosene, gas utilization project etc. In exercising the duties and power conferred on it by the Act, the Service shall be subject to the authority, direction and control of the Federal Minister of Finance.³¹ Consequently, any written direction, order or instruction given by the minister, after consultation with the chairman of the service, shall be carried out by the Service.

(ii) Ownership of Petroleum Resources

The ownership and control of all petroleum resources in Nigeria is vested in the Federal Government of Nigeria as contained in Section 44(3) of the Constitution of Federal Republic of Nigeria 1999 (as amended)³², which provides that:

Notwithstanding the foregoing provisions of this section, the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the exclusive economic zone of Nigeria shall vest in the government of the federation and shall be managed in such manner as may be prescribed by the National Assembly.³³

The decision in the Supreme Court in the case of *Attorney-General of the Federation vs. Attorney-General, Abia State & 35 ors (No. 2)*³⁴ supports the above section of the law. The facts of the case are that the Federal Government contended that natural resources derivable from Nigeria's water; continental shelf and exclusive economic zone are not derivable from any littoral state. The littoral states contended to the contrary. They claimed those areas as part of their respective territories.

³⁰Lawal, KamoruTaiwo (2013). Taxation of Petroleum Profits under the Nigeria's Petroleum Profits Tax Act. *International Journal of Advanced Legal Studies and Governance*, vol. 4, p.4.

³¹ Section 3(1)(f) Petroleum Profits Tax Act, Cap. P13 Laws of Federation of Nigeria 2004.

³² Cap C23 Laws of Federation of Nigeria 2004.

³³Section 44(3) Ibid.

³⁴(2002) ALL F.W.L.R (pt. 102)1.

The Supreme Court put the position succinctly as follows:

By virtue of section 315 of the Constitution, the four enactments mentioned above are existing laws of the National Assembly and by virtue of section 4(2) and (3) of the Constitution, National Assembly has the power to make laws for the peace, order and good government of the Federation of Nigeria or any part thereof with respect to any matter included in the exclusive legislative list set out in part 1 of the second schedule to the Constitution item 26 of the said exclusive list is external affairs and each of the aforementioned enactments is concerned with external affairs, one of the items in the Exclusive Legislative List which the State Houses of Assembly are banned from legislating upon. In the circumstances, the Federal Government alone and not the littoral States can lawfully exercise legislative, executive and judicial powers over the maritime belt or territorial waters and sovereign right over the exclusive economic zone subject to universally recognized rights. The validity of the four aforementioned enactments has not been questioned.³⁵

The legal implication of this, is that no State Government, Local Government or any group or group of persons other than Federal Government can exercise any sovereign right, control or ownership over oil and gas resources within, upon or underlying all lands, seabed and sub-oil including lands under the territorial waters of Nigeria or what forms part of the continental shelf or exclusive economic zone of Nigeria.³⁶ The Federal Government, however, permits the involvement of private and public interest in the development, production, marketing and export of discovered associated gas. Although, Petroleum Profits Tax Act provides a framework for the understanding of the Nigerian petroleum tax regime, there are other contractual agreements, memorandum of understanding and side letters that

³⁵Per Ogwuegbu, JSC at p.243, paras B – E.

³⁶ Exclusive Economic Zone is defined in Article 55 of the United Nations Conventions on the Law of the Sea, 1982, as an area beyond and adjacent to the territorial sea subject to the specific legal regime established in this part; under which the rights and jurisdiction of the Coaster State and the Rights and Freedom of other states are governed by relevant provisions of this Convention. The Zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

provide information on the incentives made available by the Federal Government to the operators in the oil and gas sector.³⁷

(iii) Assessment of Petroleum Profits Tax

The Federal Government of Nigeria has the legislative power like any other country of the world to levy on its citizens, any form of tax and at whatever rates it deems fit. The

Constitution of Federal Republic of Nigeria 1999 (as amended)³⁸ is the mother of all laws from which all other laws derive their validity. In other words, it is the basis upon which the existence of other laws rest. The Court of Appeal, Per Omoleye, JCA, put the position as:

“The Constitution of the Federal Government of Nigeria, 1999 is the organic law from which all other laws flow and derive their validity”.³⁹ The taxation of petroleum profits is governed by Petroleum Profits Tax Act.⁴⁰ The tax is levied on the profits of a company engaged in petroleum operations during an accounting period. The chargeable persons under the Act are corporate organizations engaged in petroleum operations as opposed to individuals who are not permitted to go into petroleum operations.⁴¹ Petroleum, for the purpose of taxation is defined as: “Mineral oil (or related hydrocarbon) and natural gas as it exists in its natural state, and does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destruction distillation”.⁴² While petroleum operation is defined as:

The wining or obtaining and transportation of petroleum or chargeable oil in Nigeria by or on behalf of a company for its own account by any drilling, mining, extracting or other like operations or process, not including refining at a refinery, in the course of a business carried on by the company engaged in such operations, and all operations

³⁷Lawal, K. T. (2013) Taxation of Petroleum Profits under the Nigeria’s Petroleum Profits Tax Act. *International Journal of Advanced Legal Studies and Governance*, vol. 4, p.7

³⁸ Cap. C23 Laws of Federation of Nigeria 2004.

³⁹*Njikonye vs. MTN Nig. Communication Ltd. (2008) ALL F.W.L.R (pt. 413) 1343.*

⁴⁰ Cap. P13 Laws of Federation of Nigeria 2004.

⁴¹Section 24Ibid.

⁴²Section 15 Petroleum Act Cap.P10 Laws of Federation of Nigeria 2004.

incidental thereto and any sale of or any disposal of chargeable oil or on behalf of the company.⁴³

In the case of *Shell Petroleum Development Company (Nig.) Ltd vs. Federal Board of Inland Revenue*,⁴⁴ the Appellant was registered in Nigeria as a company. Its main object was to engage in petroleum operations. Its yearly profits, became taxable by virtue of the provisions of the Petroleum Profits Tax Act, 1959⁴⁵. The Appellant submitted its petroleum profits tax returns for the accounting period of 1st January, 1973 to 31st December, 1973 to the Respondent (exhibit 39). The returns contained the revised tax assessment which in the view of the Appellant was payable by it. The Respondent disallowed the following 4 items from the returns, which were incurred by the Appellant, on the ground that such expenses were not deductible for the purpose of computing chargeable tax under the provisions of the Petroleum Profits Tax Act, 1959:

- (1) Exchange losses on payment of Petroleum Profits Tax ₦3,355,091.00.
- (2) Central Bank Commission for payment of Petroleum Profits Tax ₦2,915,490.00.
- (3) Scholarships expenses ₦257,550.00.
- (4) Gifts and donations ₦61,222.00.

The Appellant objected to the exclusion of these items in the computation made by the Respondent for the tax payable on the adjusted profits for the period in question. The Supreme Court stated that: “Petroleum operations for the payment of profits tax by companies engaging in petroleum operations includes not only wining or obtaining petroleum oil by drilling, mining, etc but all operations that are incidental to such operation”. The legal implication of this, is that activities such as refining of crude oil, marketing, solid minerals, oil field services, etc are not subject to petroleum profits tax. These activities are rather subject to companies income tax under the Companies Income Tax Act. Petroleum profits tax

⁴³ Section 2 Petroleum Profits Tax Act Cap P13 Laws of Federation of Nigeria 2004.

⁴⁴(1996)8 N.W.L.R. (pt. 466) 256.

⁴⁵now Cap P13 Laws of the Federation of Nigeria 2004

is imposed on the profits derived from petroleum operations. The legal basis for imposition and payment of petroleum profits tax by companies engaged in petroleum operations in Nigeria is contained in section 8 of the Act. The Act provides as follows: “There shall be levied upon the profits of each accounting period of any company engaged in petroleum operations during that period, a tax to be charged, as ceased and payable in accordance with the provisions of this Act.”

The above provisions have received judicial blessings on a number of authorities.⁴⁶ The Supreme Court in *Shell Company (supra)*⁴⁷ held that: “by virtue of section 8 of the Petroleum Profits Tax Act, company engaged in petroleum operations is liable to pay profit tax and such tax is to be deemed as debt due to the Federal Government.” In order to ascertain the petroleum profits tax payable by a company under the Act, the computation of the following is necessary. The Act provides for the computation of the petroleum profits tax as follows:

⁴⁶*Shell Petroleum Development Company (Nig.) Ltd vs. Federal Board of Inland Revenue (1996)8 NWLR (pt. 466) 256; Gulf Oil Company (Nig) Ltd vs. F.B.I.R (1997)7 N.W.L.R (pt. 514).698*

⁴⁷ *Ibid.*

(a) Adjusted Profit:

By virtue of section 9(3) of the Petroleum Profits Tax Act,⁴⁸ adjusted profit of a company on an accounting period shall be the profits for that period after the deductions as contained in section 10(1) of this Act.⁴⁹ The nature of petroleum operations necessary require that certain expenses will have to be incurred for the business that could not be tied directly to the income produced. It is clear that such would have been incurred for the petroleum operations but have not produced income/profits. Consequently, section 10(1) of the Act allows a company engaged in petroleum operations to make some deductions before calculating its profit payable by it. These are regarded as allowable expenses, and they include;

- a. Rent incurred by the company;
- b. All non-productive rents, the liability of which was incurred by the company during that period;
- c. All royalties;
- d. Sums incurred by way of interest of money borrowed by the company;
- e. Expenses incurred for repair of premises, plant, machinery or fixtures;
- f. Debts directly incurred by the company and proved to the satisfaction of the Board to have become bad or doubtful in the accounting period;⁵⁰
- g. Exploration and drilling cost, including cost relating to the drilling of the first two appraisal wells in a particular field;
- h. All sums incurred by way of interest on any inter-company loans under terms prevailing in the open market;
- i. Any contribution to person, provided or other society, scheme or fund as may be approved.

⁴⁸ Cap P13 Laws of Federation of Nigeria 2004.

⁴⁹Petroleum Profits Tax Act, Cap P13 Laws of Federation of Nigeria 2004.

⁵⁰ The deduction to be made in respect of a doubtful debt shall not exceed that portion of the debt which is proved to have become doubtful during that accounting period.

Bank charges and scholarships, are ordinarily, not deductible as allowable expenses. However, where the charges arose or were imposed by the Federal Government in the course of the company's operation relating to petroleum operation, such charges will be allowed. In other words, the charges will be allowed once they are incidental to petroleum operations. It was held by the Supreme Court in the case of *Shell Petroleum Development Company (Nig.) Ltd vs. F.B.I.R* (Supra)⁵¹ that scholarship expenses incurred by a company will qualify as allowable expenses under section 10(1) of the Act. In that case, one of the issues in contention was whether or not the scholarship expenses incurred by the company was deductible as an allowable expense or not. The court further stated, that the bank charges qualifies for deduction under the general provisions of section 10 subsection (91) of the Petroleum Profits Tax Act".⁵² This decision was followed by the Nigerian Court of Appeal in the case of *Gulf Oil Company (Nig) Ltd vs. F.B.I.R*⁵³. The facts or issues before the court was whether or not the following items were deductible for the purpose of computing chargeable tax under the Act (i) Exchange losses on payment of Petroleum Profits Tax (ii) Central Bank charges/commission for payment of Petroleum Profits Tax (iii) Scholarship expenses. The facts of this case appears to be similar with that of *SPDC (Nig) Ltd vs.F.B.I.R (supra)*⁵⁴ hence the same decision.The deductions allowed by virtue of the provisions of section 10(1) are however limited.⁵⁵ The following expenses are not allowed for the purpose of calculating adjusted profit.

- i. Any disbursement or expenses not been money wholly and exclusively laid out or expended, or any liability not being a liability wholly or exclusively laid out or expended, or any liability being a liability wholly or exclusively incurred, for the purpose of those operations;

⁵¹*Shell Petroleum Development Company (Nig) Ltd vs. F.B.I.R (supra)*

⁵² Ibid..

⁵³*Shell Petroleum Development Company (Nig) Ltd. vs. Federal Board of Inland Revenue(supra)*

⁵⁴*Gulf Oil Company (Nig) Ltd. vs. F.B.I.R (1997) 7NWLR (pt 514) 698*

⁵⁵ Section 13 Petroleum Profits Tax Act Cap P13 Laws of Federation of Nigeria 2004..

- ii. Any capital withdrawn or any sum employed or intended to be employed as capital;
- iii. Any capital employed in improvement as distinct from repairs;
- iv. Any sum recoverable under an insurance or contract of indemnity;
- v. Rental of or cost of repairs to any premises or part of premises not incurred for the purpose of those operations, etc.

The Petroleum Profits Tax Act⁵⁶ allows for some adjustment to be made in accordance with the provisions of section 14 which excludes certain profits in the computation of petroleum profits tax. The section provides that:

Where a company engaged in petroleum operations is engaged in the transportation of chargeable oil; by ocean going oil-tankers operated by or on behalf of the company from Nigeria to another territory then such adjustments shall be made in computing an adjusted profit or loss as shall have the effect of excluding there from and profit or loss attributable to such transportation.

The income derived from the transportation of crude oil by an ocean going tanker is not an income derived from petroleum operations. Consequently, such income is not chargeable to tax under the provisions of the Petroleum Profits Tax Act. The position of the law is that such income should be subject to tax under the provisions of the Company Income Tax Act. Thus, any expenses incurred to earn the income from the transportation of crude oil shall be treated as a non-allowable expense under the Petroleum Profits Tax Act.

It follows that the profit of the company will be adjusted in such a way as to exclude that portion of the profit relating to transportation of oil outside the shores of the country. The profit so excluded shall be subject to tax under the Company Income Tax Act. Apart from

⁵⁶ Cap.P13 Laws of Federation of Nigeria 2004.

this, there are other incomes which are regarded as non-taxable incomes, and for which adjustments must be made. These include:

- a. Income from refinery operations
- b. Any reversal into income of a previously disallowed expenses
- c. Any profit on the disposal of a fixed asset.

There is no provision under Petroleum Profits Tax Act, unlike the Companies Income Tax Act, relating to allowable donations. It is correct to say that any donation made by a company engaged in petroleum operations shall be regarded as a non-allowable expense. It should also be noted that before expenses can be regarded as incidental to petroleum operation such expenses must wholly, exclusively and necessarily be incurred by the company. The Supreme Court held that for the purpose of petroleum operation,⁵⁷ where a deduction has been allowed to a company under section 10 in respect of any liability or any part thereof corresponding to such part of the liability, shall, for the purpose of section 9(1)(d)⁵⁸ be treated as income of the company of the accounting period in which such waiver or release was made or given.

(b) Assessable Profit

Assessable profit is another way or form of computing Petroleum Profits Tax. This is provided in section 9(4) of the Act⁵⁹. It means adjusted profit of an accounting year in accordance with section 16 of the Act. Section 16(1) provides:

Subject to the provisions of this section, the assessable profit of any company for any accounting period shall be the amount of the adjusted profit of that period after the deduction of:

⁵⁷ Per Uwais, CJN in *Shell Petroleum Development Company Nig. Ltd vs. Federal Board of Internal Revenue* 1996)8 NWLR (pt. 466) at p.109, paragraph F.

⁵⁸ Petroleum Profits Tax Act Cap.P13 Laws of Federation of Nigeria 2004.

⁵⁹ Ibid.

- (a) The amount of any loss incurred by that company during any previous accounting period; and
- (b) In a case to which section 18 of this Act applies, the amount of any loss which under that section is deemed to be a loss incurred by that company in its trade or business during its first accounting period.

Losses incurred by a company engaged in petroleum operation may be carried forward indefinitely. This is for a company subject to a tax under the Petroleum Profits Tax Act, it is possible for the relief of the loss to be deferred to the succeeding accounting period upon a formal application to the relevant tax authorities. This application can only be made not later than five months after the year has ended.⁶⁰

(c) Chargeable profits

Chargeable profits as provided under section 20(1) of the Petroleum Profits Tax Act forms part of the computation of petroleum profits tax, which means the amount of the assessable profits of any deduction of any amount to be allowed as capital allowance in accordance with the provision of this section. In calculating the amount to be deducted for the accounting period, it is provided that the limitation imposed by subsection (4) shall apply to ensure that the amount of any tax chargeable on the company for the period shall not be less than fifteen per cent of the tax which would be chargeable on the company.

Capital allowance is granted to a company engaged in petroleum operations in lieu of depreciation. This includes acquisition of right in or over petroleum deposits, searching for and discovery and testing of petroleum deposits and winning access thereto or the construction of any work or buildings which are likely to be of little or no value when the petroleum operations for which they were constructed ceased to be carried on. Capital

⁶⁰Section 16(3)Ibid.

allowance may be claimed on the following qualifying capital expenditure, which can be classified into four headings:

- i. qualifying Plant Expenditure
- ii. qualifying Pipeline and Storage Expenditure
- iii. qualifying Building Expenditure
- iv. qualifying Drilling Expenditure

(d) Assessable tax

Assessable tax is another form of computation of profit of petroleum profits tax, which is specifically provided under section 21(1) of Petroleum Profits Tax Act⁶¹. The assessable tax for any accounting period of a company shall be an amount equal to 85% of its chargeable profits of that period. The assessable tax of a company engaged in petroleum operations in any accounting period is the amount equal to 85 per cent of its chargeable profit for that period.⁶² Where however, a company has not yet commenced to make sale or bulk disposal of chargeable oil under a programme of continuous production and sale, its assessable tax for any accounting period during which it has not fully amortized all pre-production capitalized expenditure shall be 65.75 per cent of the chargeable profits for that period⁶³.

(e) Chargeable tax

Chargeable tax as the name suggests is also another method of computing profits arising from petroleum as provided under section 22(1) of the Petroleum Profits Tax Act.⁶⁴ This is calculated as the amount of assessable tax less the certain tax offset.⁶⁵ Section 22(3) provides that in computing the tax payable, the investment tax credit shall be applicable in full to

⁶¹ Ibid.

⁶²Section 21(1) of the Petroleum Profits Tax Act Cap P13 Laws of Federation of Nigeria 2004.

⁶³Ibid

⁶⁴ Ibid.

⁶⁵ Ibid.Section 2

petroleum operations in the contracts such that the chargeable tax is the amount of assessable tax less the investment tax credit.

3.2.3 Value added tax Act

A German businessman Wilhen Von Siemens is credited with the coming up with the idea of a VAT in the 1920s.⁶⁶ What was only an idea has since been built into a tax system by Maurice Laure, who was then the Joint Director of the French Tax Authorities. The VAT was implemented in France. In 1954⁶⁷ manufacturing-level VATs were introduced shortly thereafter in Cote d' Ivoire and Senegal in the 1960s, around the time that these former French colonies became independent.⁶⁸ Brazil, by the fiscal reform of 1965, introduced a traditional VAT that applied at all stages of production.⁶⁹ VATs expansion was limited to less than 10 countries in the late 1960s.⁷⁰ By 1989, 48 other countries, primarily located in Western Europe and Latin America but also including a handful of developing countries, had adopted VAT.⁷¹ The spread of VAT in Europe was driven by the fact that it is a prerequisite for membership of the European Union). Its spread has accelerated since, with strong support from the IMF, as it has now been implemented in more than 140 countries,⁷² where it often accounts for one-fifth of the total tax revenue. In most countries, it has been used to increase revenue. It has also enabled reductions in income taxes and excises.⁷³ Revenue generated by general consumption taxes (that is VAT or goods and services tax) represented 18.6 per cent of the total tax revenues of OECD countries in 2007 (compared with 13.5 per cent in 1970) and up to 19 per cent of total tax revenues of European OECD Countries (compared with

⁶⁶Lian, E, and Michael K (2001). The Modern VAT, IMF, p. 4.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹Alian, C. and Jeffrey Owens (2010). An International Perspective on VAT. Tax Notes International p. 943.

⁷⁰Stephane Buydens (2008). *Consumption Tax Trends*, OECD Publishing, p.23.

⁷¹John Norregaard and Tehminas Kahn (2007). Tax Policy: Recent Trends and Coming Challenges. IMF Working paper No. WP/07/274 IMF, p. 37.

⁷² Ibid.

⁷³ Ibid.

15.2 per cent in 1970).⁷⁴ The part of general consumption taxes as a percentage of Gross Domestic Product(GDP) almost doubled between 1970 and 2007 (3.3 per cent in 1970 compared with 6.7 per cent in 2007 for OECD countries and 3.7 per cent (compared with 7.5 per cent for European OECD countries)⁷⁵ whereas in 2014 and 2015, there were significant increase of 21 per cent⁷⁶. Thirty-two of the 33 OECD countries have adopted VAT.⁷⁷

VAT raises revenue in a neutral and transparent manner. Some suggested that “a VAT is the most effective instrument for generating government revenue”⁷⁸ and that “the marginal cost of raising funds for public purposes through VAT is generally lower than it would be, if other taxes were employed”.⁷⁹ In former communist economies, key considerations were the need to replace levies on State enterprises and anticipating membership of the European Union.⁸⁰ VAT’s neutrality towards international trade has also made it the preferred alternative to custom duties in the context of trade liberalization (and decline in revenues due to the dismantling of trade barriers).⁸¹

Some countries introduced value added tax (VAT) because they are dissatisfied with their existing tax structure. Value added tax (VAT) was introduced in Nigeria in 1993 by the Federal Military Government. Before then, sales tax was under the jurisdiction of the states. It was poorly administered with marginal contribution in terms of revenue. The idea of introducing VAT in Nigeria sprang from the study group set up by the Federal Government in 1991 to review the tax system of the federation as a replacement of sales tax. After extensive deliberation and consultation, VAT was introduced on 24th August 1993 as a

⁷⁴Table 29 of Revenue Statistics 1965 – 2008, 2009 edition, OECD Publishing, p. 91.

⁷⁵ Ibid.

⁷⁶ OECD Revenue Statistics (2016) <https://www.Deld.org/tax/tax-policiesrevenue-statistics.com>. (Accessed July14, 2017, 9.25am).

⁷⁷ Ibid..

⁷⁸Delfin S. G, and Marna Kearney,(2005). An Analysis of South Africa’s Value Added Tax World Bank Policy Research Working Paper No. 3671, p.19.

⁷⁹Stephane Buydens (2008). *Consumption Tax Trends*, OECD Publishing, p.23

⁸⁰John Norregaard and Tehminas Kahn (2007). Tax Policy: Recent Trends and Coming Challenges. IMF Working paper No. WP/07/274 IMF, p. 37.

⁸¹ Ibid.

federal tax by the Value Added Tax Decree of 1993. Since then, the relative success of VAT in Nigeria has surpassed the expectations of skeptics including the International Monetary Fund (IMF) and emerged as a significant source of income for all the levels of government. The current policy is to gradually reduce the rate of income tax while focus is shifted to indirect taxes, especially VAT, according to the National Tax Policy Document.⁸²

Since 1993, the Value Added Tax Act had undergone severe amendments, the latest being the Value Added Tax (Amendment) vide Finance Act No.1 2019, which came into effect on January 13,2020. VAT is a tax on the supply of goods and services which is eventually borne by the final consumer but collected at each stage of the production and distribution chain. It is eventually borne by the final consumer.⁸³ It is an indirect tax collected from someone other than the person who actually bears the cost of the tax.⁸⁴

The imposition of value added tax in Nigeria is provided by section 1 of the Value Added Tax Act.⁸⁵ Section 1 of the Act provides thus: “There is hereby imposed and charged a tax to be known as the value added tax (in this Act referred to as the “tax”) which shall be administered in accordance with the provisions of this Act.” The standard rate of the Value Added Tax is 7.5%⁸⁶ of the value of goods and services as determined under sections 5 and 6 of this Act. Section 5 of the Act⁸⁷ provides:

- (1) for the purpose of this Act, the value of taxable goods and services shall be determined as follows:
 - (a) if the supply is for a consideration not consisting of money, the value of the supply shall be deemed to be its market value.

⁸²Abiola Sanni (2011). Current Law and Practice of Value Added Tax in Nigeria. <http://blogspot.com.ng>. Assessed July 15, 2017. 11.05am).

⁸³ Nairametrics.com/what-you-need-to-know-about-value-added-tax-in-nigeria/. Accessed July 14, 2017, 2.05pm)

⁸⁴Nwokenekwu, E.U. (2010). *A Critical Analysis of Offences and Penalties Under Nigeria Corporate Tax Statutes, Being an LL.M Thesis* (Unpublished), Faculty of Law, A.B.U Zaria, p.21.

⁸⁵Cap VI Laws of Federation of Nigeria 2004.

⁸⁶ Ibid.Section 4

⁸⁷ Ibid.Section 5

- (2) where the supply of taxable goods and services is not the only matter which a consideration in money relates, the supply shall be deemed to be such part of the consideration as is properly attributed to it.
- (3) for the purpose of this Act, the open market value of supply of taxable goods and service shall be taken to be the amount that would fall as its value under subsection (1)(b) of this section, if the supply were for such consideration in money as could be payable by a person in a transaction at arm's length.

While section 6 of the Act provides:

The value of imported taxable goods for the purpose of this Act shall be the amount so imported and shall include:

- (a) all taxes, duties and other charges levied either outside or by reason of importation into Nigeria, other than the tax imposed by this Act;
- (b) all cost by way of commission, parking, transport and insurance up to the port or place of importation

The administration of Value Added tax is contained in section 7 of the Act⁸⁸ which provides:

- (1) the tax shall be administered and managed by the Federal Board of Inland Revenue (in this Act referred to as "the Board");
- (2) the Board has such powers to do such things as it may deem necessary and expedient for the assessment and collection of the tax and shall account for all amounts so collected in accordance with the provisions of this Act.

⁸⁸ Value Added Tax Act Cap.VI Laws of Federation of Nigeria 2004.

Value added tax is imposed on the supply of goods and services except those that are exempted by section 3 of the Act and listed in the First Schedule of the Act. Section 3 of the Act provides that “there shall be exempt from the tax the goods and services listed in the First Schedule to this Act. The goods and services exempted from tax are as contained in the First Schedule to the Value Tax Act.

However, Value Added Tax Act provided the sharing formula of all revenues collected through the value added tax. Section 40 of the Act ⁸⁹ provides:

Notwithstanding any formula that may be prescribed by any other law, the revenue accruing by virtue of the operation of this Act shall be distributed as follows, that is:

- (a) 15% to the Federal Government;
- (b) 50% to the State Governments and the Federal Capital Territory, and
- (c) 35% to the Local Governments

By the combined effects of sections 313 and 315 of the Constitution of Federal Republic of Nigeria 1999,⁹⁰ the National Assembly can call for the periodic review or modification of the revenue sharing formula. Section 313 of the Constitution provides:

Pending any Act of the National Assembly for the provision of a system of revenue allocation between the federal and states, among the states, between the states and local government councils and among the local government councils in the states, the system of revenue allocation in existence for the financial year beginning from 1st January 1998 and ending 31st December 1998 shall, subject to the provisions of this Constitution and as from the date when this section comes into force, continue to apply:
Provided that where functions have been transferred under this Constitution from the Government of the Federation to the states and from the states to the local Government councils, the appropriations in respect of such functions shall also be transferred to

⁸⁹ Ibid.

⁹⁰ Cap C23 Laws of Federation of Nigeria 2004.

the states and the local government councils, as the case may require.

Section 315 of the Constitution provides as follows:

(1) Subject to the provisions of this Constitution; an existing law shall have effect with such modifications as may be necessary to bring it into conformity with the provisions of this Constitution and shall be deemed to be:

- a. an Act of the National Assembly to the extent that it is a law with respect to any matter on which a House of Assembly is empowered by this Constitution to make laws.
- b. a law made by a House of Assembly to the extent that it is a law with respect to any matter on which a House of Assembly is empowered by this Constitution to make laws.

(2) The appropriate authority may at any time by order make such modifications in the text of any existing law as the appropriate authority considers necessary or expedient to bring that law into conformity with the provisions of this Constitution. In line with the above provisions of the law, the sharing formula of Value Added Tax as contained in section 40 of the Value Added Tax Act⁹¹ was modified in the year 2015⁹² to:

56 percent to the Federal Government

24 Per cent to the States Government and federal Capital Territory, and

20 per cent to the Local Governments

This is the present trend and/or sharing formula as at date. Although the former Executive Governor of Ogun State, Senator Ibikunle Amosun canvassed for the review of sharing formula of revenues accruing to the federation account through non-oil taxes

⁹¹ Cap. VI Laws of Federation of Nigeria 2004

⁹² Henry Umoru (2016). Existing Revenue Sharing Formula Archaic – Sendt www.vanguardngr.com>News. Accessed July 15, 2017, 3.06pm).

including value added tax (VAT).⁹³ This is yet to be implemented. One wonders when this call will be addressed in view of the dwindling rate of federal government income.

Of recent there has been raging legal argument as to who is Constitutionally empowered to impose and collect value added tax in Nigeria, Federal or State government? The recent judgment of Honourable Justice S. D. Pam of the Federal High Court, Port Harcourt Division, in the case of AG Rivers State vs FIRS and Anor⁹⁴ has generated a lot of legal arguments. The judgment is novel because the suit from which it arose is the first case where a State Government in Nigeria would challenge the constitutionality and validity of the Federal Government to impose and collect value added tax (VAT). Preceding cases that had been decided by the Nigerian Courts on VAT were not on the constitutionality and validity of VAT. For instance, in Manufacturer's Association of Nigeria vs. Attorney-General of Lagos State and Anor⁹⁵, it was the constitutionality of Lagos State Sales Tax Law (in view of the VAT Act on the same area), that was challenged and the suit was initiated by aggrieved tax payers⁹⁶. Also in Lagos State Board of Internal Revenue vs Nigerian Bottling Company and Anor⁹⁷ and AG Lagos State vs Eko Hotels Ltd and Anor⁹⁸, it was the constitutionality of Lagos State Sales Tax Law (also in view of the VAT Act on the same area), that was challenged and the suits were also initiated by aggrieved tax payers. Although in the case of Manufacturers' Association of Nigeria vs. The Attorney-General of Lagos State and

⁹³ Sheriff Balogun (2016). Amosu Calls for Review of VAT Sharing Formula. *This Day Newspaper*, Tuesday July 26,

⁹⁴ Suit No. FHC/PH/CS/149/2020 (Yet to be reported)

⁹⁵ Suit No. ID/105M/2001, (Unreported); Sanni, A.O.(2001) Division of Taxing Powers in Nigeria-a Paradigm Shift, A Ph.D Thesis (Unpublished) Department of Commercial and Industrial Law, University of Lagos. Pp.287-293. Available online on

<https://ir.unilag.edu.ng/bitstream/handle/123456789/4346/Division%20of%20Taxing%20Powers%20in%20Nigeria%29-a%20Paradigm%20Shif..pdf>. (Accessed October 28, 2021. 2.35pm)

⁹⁶ Arekhandia Zebedee(2021) Between the Federal Government and the Rivers State Government who is Constitutionally Empowered to Impose and Collect Value Added Tax: A Legal Opinion on the Recent Judgment in Attorney General of Rivers State vs. Federal Inland Revenue Service (Available at [https://ed.docworkspace.com/d/sIMDCObt_2MqEjAY\(Accessed](https://ed.docworkspace.com/d/sIMDCObt_2MqEjAY(Accessed) on October 28, 2021, 12.48pm)

⁹⁷ (2011)1TLRN 45

⁹⁸ (2017)LPELR-4371(SC)

Anor(supra)⁹⁹ the Hon. Justice O.M. Falase of the Lagos State High Court declared VAT as unconstitutional and ultra vires the Federal Government¹⁰⁰, the suit cannot be said to be on all fours with the instant case of AG Rivers State vs. FIRS and Anor. because the parties and issues are not the same.

It is germane to state here that since VAT was enacted via the VAT Decree of 1993, there have been agitations and protests by State Governments in Nigeria over the unilateral imposition and collection of VAT throughout Nigeria by the Federal Government. The reason for the opposition by State Governments is based primarily on the fact that the VAT Decree of 1993 repealed the Sale Tax Act of 1986, which hitherto vested the State Governments with the powers to administer and keep proceeds of the sales tax within their jurisdictions.¹⁰¹ The new VAT Decree altered and reduced the tax revenue of the State because the VAT at inception introduced a sharing formula of money from VAT in the ratio of 20/80 percent between Federal and State Governments respectively, and this was later changed to 15%, 50% and 35% between Federal, State and Local Governments respectively.¹⁰²

It was in opposition to the VAT Decree (hereinafter referred to as VAT Act) that some State Governments introduced the Sales Tax Law as a form of consumption tax imposed by the State¹⁰³. And the Sales Tax Law of the States were on goods and services already taxed by the Federal Government through the VAT Act. This did not go down well with the taxpayers that were subjected to the new Sales Tax Law of States, and as expected, taxpayers that were subjected to the new Sales Tax Law of States initiated several suits, most especially in Lagos State.

With the Supreme Court decision in AG Lagos State vs. Eko Hotels Ltd and Anor¹⁰⁴, where the Supreme Court held that VAT was valid and the Sales Tax Law of the Lagos State was void to the extent that it conflicted with the VAT Act. This decision was based on the doctrine of covering the field because the VAT Act and the Sales Tax Law were held to be on the same field, i.e both are consumption taxes. Many taxpayers and even Tax Administrators

⁹⁹ Ibid.

¹⁰⁰ It should be noted that the judgment of Falase J. in Manufacturers' Association of Nigeria vs. The Attorney-General of Lagos State and Anor. Suit No. ID/105M/2001 (Unreported) is of no legal consequences in view of the Supreme Court's decision in the case of AG Lagos State vs. Eko Hotels Ltd. and Anor (2017)LPELR-4371(SC) which voided the Sales Tax Laws of Lagos State in favour of VAT.

¹⁰¹ Sanni, A.O.(2010) Current Law and Practice of Value Added Tax in Nigeria. <http://blogspot.com.ng>. Assessed July 15, 2017. 11.05am).

¹⁰² Ibid.

¹⁰³ For example, the Sales Tax Lagos Law of Lagos State enacted in 2002.

¹⁰⁴ (2017)LPELR-4371

thought that the issue of validity of VAT had been laid to rest. It is not surprising that there have been several comments and analysis of the judgment in *AG Rivers State vs FIRS and Anor*¹⁰⁵ since it was delivered. A careful look at the judgment shows that the case decided who, between the Federal Government of Nigeria and the Rivers State Government, is empowered to impose and collect VAT under the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

According to the judgment of Justice Pam, the Rives State Government has the constitutional right to impose and collect VAT within its domain. Expectedly, in a press statement by the Federal Inland Revenue Service (FIRS), the 1st Respondent in the case, FIRS declared that it had appealed the judgment and filed an application for a stay of execution of the judgment. Consequently, the FIRS has advised the public to maintain the status quo ante (to continue to pay VAT to the FIRS) pending the outcome of its appeal¹⁰⁶. Despite the FIRS press statement, the Rivers State Government has now enacted the Rivers State VAT Law No.4 2021, and there are divergence views on whether taxpayers in Rivers State should continue to pay VAT to the FIRS in view of the pending appeal, or to the Rivers State Government in line with the State's new VAT Law.

Some lawyers disagreed with the FIRS press statement and insisted that the Rivers State VAT Law is valid. For example, Mike Ozekhome (SAN) opined that the VAT law is constitutional¹⁰⁷. Ogala¹⁰⁸ argued that the Items outside the Exclusive and Concurrent Lists are for Local Governments and not for State Governments. Kazeem¹⁰⁹ advised FIRS to obey

¹⁰⁵ Suit No. FHC/PH/CS/149/2020 (yet to be reported)

¹⁰⁶ Available at <https://punch.com/firs-appeals-rivers-high-court-ruling-on-vat-collection/>. (Accessed on October 28, 2021, 11.26am)

¹⁰⁷ Mike Ozekhome (SAN), Taxpayers Can't Disregard Rivers VAT Law, SANs Tell FIRS. Available online in <https://thenigerialawyer.com/taxpayers-cant-disregard-rivers-vat-law-sans-tell-firs>. (Accessed on October 28, 2021. 11.30am)

¹⁰⁸ Ogala Babatunde (SAN) Available online at thenigerialawyer.com (Accessed on October 28, 11.35am)

¹⁰⁹ Kazeem Adeniji (SAN) Available at thenigerialawyer.com (Accessed on October 28, 2021, 11.36am)

the order of the Port Harcourt Federal High Court until it is set aside. And Falana¹¹⁰ warned that the FIRS should not be prevented from collecting VAT, pending the hearing and determination of the appeal.

In light of the pending appeal, legal issues relating to the judgment are sub judice. While there is the need to wait for the judgments or the decisions of the appellate courts (the Court of Appeal and the Supreme Court, as the case may be), it is however not out of place for academics, researchers and writers to express divergent opinions on the case. The opinion expressed by this researcher is not intended to pre-empt or prejudice the expected judgment of the Court of Appeal in the case.

A careful scrutiny of the judgment of Federal High Court Port Harcourt division, reveals that it was premised mainly on the constitutionality of the Federal and State Governments to impose and collect VAT, and that the Court interpreted the ‘Taxing Powers’ of the Federal Government of Nigeria and State Governments with respect to VAT under the Constitution of Federal Republic of Nigeria 1999 (as amended). Under the Constitution, ‘Taxing Powers’ are divided between the Federal Government of Nigeria and State Governments. Instructively, the Constitution does not specifically reserve power to make laws for the imposition of any tax for State Governments. The only references to the power of State Governments in relation to taxation are Items D9 and D10 in the Concurrent Legislative List under the Second Schedule of the Constitution¹¹¹.

A careful perusal of Items D9 and D10 shows beyond doubt that State Governments, including the Rivers State, are not specifically empowered to impose or collect VAT.

¹¹⁰Femi Falana (SAN) Judgment on VAT Will Strengthen Campaign for Restructuring. Available online in <https://www.thisdaylive.com/index.php/2021/08/30/falana-judgment-on-vat-will-strengthen-campaign-for-restructuring>. (Accessed on October 28, 2021, 11.38am)

¹¹¹Arekhandia Zebedee(2021) Between the Federal Government and the Rivers State Government who is Constitutionally Empowered to Impose and Collect Value Added Tax: A Legal Opinion on the Recent Judgment in Attorney General of Rivers State vs. Federal Inland Revenue Service (Available at https://ed.docworkspace.com/d/sIMDCObt_2MqEjAY(Accessed on October 28, 2021, 12.48pm)

However, this is without prejudice to the provision of Item D7 of the Concurrent Legislative List in the Second Schedule of the Constitution which empowers State Governments to collect certain taxes such as Capital Gains Tax and Personal Income Tax. This was the interpretation given by the Court in the case of Lagos State Internal Revenue Board vs Motorola Nigeria Limited & Citibank Nigeria Limited¹¹² where the Court of Appeal held that “Even though taxation of incomes, profits’ and capital gains are items on the Exclusive Legislative List, the collection of taxes is brought under the Concurrent Legislative List”. Specifically item D7 says: “In the exercise of its powers to impose any tax or duty –

(a) capital gains, incomes or profit of persons other than companies; an

(b) documents or transactions by way of stamp duties, the National Assembly may, subject to such conditions as it may prescribe, provide that the collection of any such tax or duty or the administration of the law imposing it shall be carried out by the Government of a State or other authority of the State. In the instant case of AG Rivers State vs FIRS and Anor (supra), the reasoning of the Court in its judgment that the Federal Government lacks the power to impose and collect VAT is premised on the ground that Items 58 and 59 of the Exclusive Legislative List do not specifically mention VAT as one of the taxes over which the Federal Government has exclusive jurisdiction, in the researcher’s view, that is the law for now, irrespective of the fact whether the judgment was made per incuriam or not, until the Court of Appeal and Supreme Court decides otherwise.

3.2.4 Capital gains tax Act (CGTA)

Capital gains tax is defined as profits from the sale of a capital asset, such as share of stock, a business, a parcel of land, or a work of art. Capital gains are generally included in taxable income, but in most cases, are taxed at a lower rate and it is regulated by Capital Gains Tax

¹¹²(2013) 12TLRN 181 at 185, ratio 1; per Akaahs, JCA.

Act¹¹³. A capital gain is realized when a capital asset is sold or exchanged at a price higher than its basis. Basis is an asset's purchase price, plus commissions and the cost of improvements less depreciation. A capital loss occurs when an asset is sold for less than its basis. Gains and losses (like other forms of capital income and expense) are not adjusted for inflation. Taxation on a capital gain is provided in section 1 of the Capital Gains Tax Act.¹¹⁴ as follows:

- (1) Subject to the provisions of this Act, there shall be charged a tax to be called Capital gains tax for the year of assessment 1967-1968 and for subsequent years of assessment in respect of any capital gains, that is to say, gains accruing to any person on or after 1st April, 1967 on a disposal of assets.
- (2) Every such gain shall, except so far as otherwise expressly provided, be a chargeable gain.
- (3) In this Act, unless the context otherwise requires, any reference to a person shall include a reference to any person to whom the Personal Income Tax Act applies.

Capital gains tax is chargeable at the rate of 10 per cent¹¹⁵ on the capital gains arising from the disposal of capital assets and investments such as stocks, mutual funds, real estate, precious metals, art works and other collectibles. The increase or decrease on the value of such capital assets is taxed when sold. Chargeable assets are clearly provided in section 3 of the Act¹¹⁶ as follows:

Subject to any exception provided by this Act, all forms of property shall be assets for the purposes of the Act whether situated in Nigeria or not, including:

- (a) options, debts and incorporeal property generally;
- (b) any currency other than Nigerian currency; and

¹¹³Cap.C1 Laws of Federation of Nigeria, 2004

¹¹⁴ Ibid.

¹¹⁵ Ibid. Section 2 (1)

¹¹⁶Capital Gains Tax Act Cap. C1 Laws of Federation of Nigeria, 2004

- (c) any form of property created by the person disposing of it, or otherwise coming to be owned without being acquired; and without prejudice to the foregoing provisions

The administration and management of Capital Gains Tax Act is vested in the FBIR (now FIRS) as contained in section 43 of the Capital gains Tax Act¹¹⁷ and any appeal for payment of capital gain tax shall lie before the body of Appeal Commissioner now Tax Appeal Tribunal (TAT).

Section 43 of the said Act provides that:

- (1) The capital gains tax shall be under the care of the Federal Board of Inland Revenue (now FIRS) and the provisions of the Income Tax Act in the schedule of this Act shall apply in relation to capital gain tax as they apply in relation to income tax chargeable under those Acts subject to any necessary modification.
- (2) An appeal shall lie against any assessment to capital gain tax made in accordance with section 54 of the Companies' Income Tax Act, or section 59 of the Personal Income Tax Act as the case may be (as applied under this section) to the body of Appeal Commissioner established under section 71 of the companies Income Tax Act., now Tax Appeal Tribunal established under Section 59(1) of Federal Inland Revenue Service¹¹⁸

Section 54 of the Companies' Income Tax Act¹¹⁹ referred in the above provisions upon which appeal shall lie against any assessment of capital gains tax specifically provides that:

“Notwithstanding anything to the contrary in any law on income tax assessment under sections 52, 53 or 55 of this Act shall be made in the currency in which the transaction giving

¹¹⁷ Ibid.

¹¹⁸ Fifth Schedule of the F.I.R.S (Establishment) Act 2007

¹¹⁹ Cap C21 Laws of Federation of Nigeria 2004.

rise to the assessment was affected.”A capital gain (or loss) generally refers to the price of an asset when it is sold compared to its original purchase price.

Capital gains tax generates revenues for government but they do so with considerable economics costs. Capital gains tax imposes costs on the economy because they reduce returns on investment and thereby distort decision making by individuals and business. This no doubt can have a substantial impact on the reallocation of capital, the available stock of capital, and the level of entrepreneurship.¹²⁰

Capital gains are taxed on a realization basis. This means that the tax is only imposed when an investor opts to withdraw his or her investment from the market and realize the capital gain. One of the most significant economic effects is the incentive this has created for owners of capital to retain their current investments even if more profitable and productive opportunities are available. Capital gains tax has been justified on the ground that capital gain on assets increase a person or person’s taxable capacity by increasing his power to spend or save. Capital gains are not distributed among the different members of the tax paying community in fair proportion to their taxable incomes, but are concentrated in the hands of property owners. It has been argued that their exclusion from the scope of taxation constitutes a serious discrimination in tax treatment in favour of a particular class of taxpayers.

Non-payment of capital gains tax will create discrimination in favour of property owners that will lead to further reinvestment of those gains in assets thereby perpetuating further severe inequalities in income and wealth as capital gains only accrue to those in the upper income bracket puts greater relative burden on the income tax of those who do not enjoy such gains. In developing countries, capital gains tax is a lucrative ground for raising money for purposes of development. However, in a (developing) country like Nigeria, there exist large opportunities for the realization of capital gains because of the tendency of rising

¹²⁰ Assessment of Capital Gain Tax Administration in Nigeria: Problem and Prospects, Case Study of Federal Inland Revenue Services (FIRS) Ogun State Branch. *Nairaproject.com>projects*. (Accessed July 14, 2017. 11.00am).

prices inevitably accompanying a process of accelerated economic development, besides, the process of economic development itself tends to generate capital gains because of the rise in real income, company profits and the value of shares. But as the proportion of wealth held in the form of equity shares of the capital gain arises to the owners of property such as land and real estate.¹²¹ This, the taxation of capital gains tax constitute an important fiscal mechanism to plough back a proportion of the increase benefits accruing to the holders of property as a result of a process of development into the developmental funds of public sectors. Capital gains tax has contributed immensely to the revenue generation of Nigeria, towards accelerated economic development, such as provision of infrastructural facilities, provision of health facilities, and education etc.

3.2.5 Companies and Allied Matters Act 2020

The repeal and re-enactment of the Companies and Allied Matters Act, 1990¹²² as CAMA 2020 (“the Act”) is a major reform in the corporate regulatory landscape. The newly enacted Act introduces measures to ensure efficiency in the registration, regulation, corporate governance, and to reduce the compliance burden of small and medium enterprises (SMEs), enhance transparency and stakeholders’ engagement in corporate governance and, overall, promote a more friendly business climate.

The objective of the reformed CAMA 2020 Act which has direct sections on taxation, is to promote legislation for regulatory quality and efficiency which would enable efficient ease of doing business for Nigerian businesses in general, and Medium and Small-Scale Enterprises (MSMEs) in particular. MSMEs are the engine of growth for most developing nations, Nigeria inclusive. As can be expected, without reforms for enabling business environments to sync with global business evolution, most businesses may shut down due to economic and environmental shocks. It follows logically that without reforms in a rapidly

¹²¹Ibid.

¹²²Cap. C20 Laws of Federation of Nigeria 2004

changing global market, most firms-MSMEs especially may not survive beyond the unanticipated COVID-19 pandemic lockdown.

Specifically, the reformed CAMA 2020 Act among other things, made the starting and running of business more seamless and less expensive by operationalizing electronic platforms that integrate the tax authority and the Corporate Affairs Commission (CAC). Considering that Nigeria is largely dominated by Medium and Small-Scale Enterprises (MSMEs), making business registration or company incorporation easier will bring in more businesses into the formal space. This also will enhance tax revenue for the government. Some of the major alterations made to the Act which directly promote the ease of doing business in Nigeria compared to the repealed Act and its implications on ease of doing business and which have tax implications are:

1. CAMA 2020 exempt small companies from appointment of Auditors. Section 402 of CAMA exempts companies which are yet to commence business and small companies (by its definition) from appointing auditors to audit its financial account for the period. Conversely, in line with Section 55 of CITA, all companies (including small companies despite exemption from tax) are required to file annual self-assessment returns with the Federal Inland Revenue Service (FIRS) along with their audited financial statements amongst other documents. Auspiciously, the Finance Act 2020, which came to effect on January 1, 2021 has amended Section 55 of CITA, such that instead of audited accounts, FIRS may specify an alternative form of accounts to be included in the tax returns to be filed by small and medium-sized companies (by its definition). This amendment was precipitated by the exemption granted to small companies from appointing auditors.

2. Distributable Profits and Source of Dividends as contained in Sections 426 and 427 of CAMA 2020 is to the effect that dividends payable to shareholders are payable only out of

the distributable profits of the company. Distributable profits have in turn been defined as the company's accumulated realized profits which have not been previously utilized by distribution or capitalization, less any accumulated realized losses which have not been previously written off in a reduction or reorganization of capital.

On the other hand, Section 19 of CITA which deals with excess dividend tax, makes provision for the payment of dividend from retained earnings, which could be either realized or unrealized profits. Following the provisions of CAMA 2020, it is expected that dividends are only paid out of the accumulated realized profits of the company

3. CAMA 2020 now allows for incorporation of single-shareholder private companies, thus modifying the erstwhile requirement for a minimum of two (2) persons to set up a company. This type of company enjoys the full benefits of a duly incorporated limited liability company including but not limited to having a separate legal personality, perpetual succession, and so on. This however, has an implication of taxing of single-shareholder companies.

Section 108 of the Personal Income Tax Act (PITA) which deals with the taxation of persons other than companies defines "individual" to include 'a corporation sole'. What then constitutes a corporation sole? This is a legal entity consisting of a single incorporated office and occupied by a sole natural person.

In the light of Section 18(2) of CAMA 2020, which now permits single-shareholder companies, there is a tendency for a mix-up with corporation soles particularly in the determination of the appropriate taxing authority. While States' Internal Revenue Service are responsible for taxing individuals, the FIRS is responsible for the collection of taxes from incorporated companies.

4. A major feature of CAMA 2020 is the non-deductibility of penalties, or the updated amounts of penalties to reflect current realities. While some are expressly contained in the law, the Corporate Affairs Commission (CAC) is to prescribe most of the penalties for any contravention of the provisions therein. Following the provisions of Section 27 of CITA(as amended by Finance Act 2019 and 2020), penalties prescribed by an Act of the National Assembly or by any Law of a State's House of Assembly are treated as distributable expenses for the purpose of ascertaining the profits of a company. Consequently, any penalty or fine stipulated in CAMA 2020 or prescribed by the Corporate Affairs Commission (CAC) for non-compliance with the law will not be allowed for deduction by a company for income tax purposes.

The enactment of the CAMA 2020 is a step in the right direction considering the developments in the business environment particularly in the last decade, which is largely aimed at ensuring ease of doing business and increased in tax revenue. The research highlighted areas in which the CAMA 2020 has interacted with extant tax provisions and obligations. It is expected that clarification guidelines are issued to ensure that administrators, investors, taxpayers and other stakeholders are conscious of their respective responsibilities, in order to avoid ambiguities which may act as a snag in the wheel of seamless implementation of the Act

3.3 Structure of Corporate Tax Administration

The following are the structures of corporate tax administration in Nigeria.

3.3.1 Federal Inland Revenue Service

The administration of corporate taxation in Nigeria is vested in the Federal Inland Revenue Service (FIRS) which used to be known as the Federal Board of Inland Revenue (FBIR) until the enactment of the Federal Inland Revenue Service (Establishment) Act 2007, which hitherto scrapped the FBIR. The National Assembly in April 2007 enacted the Federal Inland Revenue Service (Establishment) Act, 2007 (hereinafter referred to as the Act) to usher in a new tax administration in Nigeria.¹²³ The Act created the Federal Inland Revenue Service (FIRS) and by virtue of the combined effect of sections 2, 8, 25, 59 and 68 of the Act,¹²⁴ it effectively put administration and collection of personal income tax and other taxes listed in the First Schedule to the Act under the Federal Inland Revenue Service (FIRS).¹²⁵

Section 2 of the Act¹²⁶ provides that:

The object of the Service shall be to control and administer the different “taxes and laws specified in the first schedule or other laws made or to be made, from time to time, by the National Assembly or other regulations made thereunder by the Government of the Federation and to account for all taxes collected.

The taxes and laws listed under the First Schedule to the Act administered by the Service are:

1. Companies Income Tax Act¹²⁷
2. Petroleum Profits Tax Act¹²⁸

¹²³ The Act came into force on April 16, 2017.

¹²⁴ Federal Inland Revenue Service (Establishment) Act 2007.

¹²⁵ Pedro, L.L (2010) Law, Politics and Development. The Challenges of An Emerging Megacity, *Nigerian Bar Association, Journal* Vol. 1Ikeja Branch, p. 471.

¹²⁶ Capital Gains Tax Act. Cap C1 Laws of Federation of Nigeria 2004.

¹²⁷ Ibid.

¹²⁸ Ibid. Cap. P13

3. Personal Income Tax Act¹²⁹
4. Capital Gains Tax Act¹³⁰
5. Valued Added Tax Act¹³¹
6. Stamp Duty Act¹³²
7. Taxes and Levies (approved list for collection) Act¹³³

3.3.1.1 Functions of the Service

Section 8 of the F.I.R.S Act provides that:

1. The Service shall:
 - a) assess persons including companies, enterprises chargeable with tax;
 - b) assess, collect, account and enforce payment of taxes as may be due to the Government or any of its agencies;
 - c) collect, recover and pay to the designated account any tax under any provision of this Act or any other enactment or law;
 - d) in collaboration with the relevant ministries and agencies, review the tax regimes and promote the application of tax revenues to stimulate economic activities and development;
 - e) in collaboration with the relevant law enforcement agencies, carryout the examination and investigation with a view to enforcing compliance with the provisions of this Act;
 - f) make, from time to time, a determination of the extent of financial loss and such other losses by government arising from tax fraud or evasion and such other losses (or forgone) revenue arising from tax waivers and other related matters;

¹²⁹ Cap. P8 Ibid

¹³⁰ Cap. C1 Ibid

¹³¹ Cap. V1 Ibid

¹³² Cap. S8 Ibid.

¹³³ Cap. T2 Ibid.

- g) adopt measures to identify, trace, freeze, confiscate or seize proceeds derived from tax fraud or evasion;
- h) measures which include compliance and regulatory actions, introduction and maintenance of investigative and control techniques on the detection and prevention of non-compliance;
- i) collaborate and facilitate rapid exchange of information with relevant national or international agencies or bodies on tax matters;
- j) undertake exchange of personnel or other experts with complementary agencies for purposes of comparative experience and capacity building;
- k) establish and maintain a system for monitoring international dynamics of taxation in order to identify suspicious transactions and the perpetrators and other persons involved;
- l) provide and maintain access up to date and adequate data and information on all taxable persons, individuals, corporate bodies or all agencies of government involved in the collection of revenue for the purpose of efficient, effective and correct tax administration and to prevent tax evasion or fraud;
- m) maintain database, statistics, records and reports on persons, organizations, proceeds, properties, documents or other items or assets relating to tax administration including matters relating waivers, fraud or evasion;
- n) undertake and support research on similar measures with a view to stimulating economic development and determine the manifestation, extent, magnitude and effects of tax fraud, evasion and other matters of effective tax administration and make recommendations to the government on appropriate intervention and prevention measures;

- o) collate and continually review all policies of the Federal Government relating to taxation and revenue generation and undertake a systematic and progressive implementation of such policies;
- p) liaise with the office of the Attorney-General of the Federation, all government security and law enforcement agencies and such other financial supervisory institutions in the enforcement and eradication of tax related offences;
- q) issue taxpayer identification number to every taxable person in Nigeria in collaboration with States Boards of Internal Revenue and Local Government Councils;
- r) carry out and sustain rigorous public awareness and enlightenment campaign on the benefit of tax compliance within and outside Nigeria;
- s) carry out oversight functions over all taxes and levies accruable to the Government of the Federation and as it may be required, query, subpoena, sanction and reward any activities pertaining to the assessment, collection of and accounting for revenues accruable to the federation; and
- t) carry out such other activities as are necessary or expedient for the full discharge of all or any of the functions under this Act.

Section 25(1) of the Act¹³⁴ provides that:

The Service shall have power to administer all the enactments listed in the first schedule to this Act and any other enactment or law on taxation in respect of which the National Assembly may confer power on the Service.

Section 26(1) of the Act provides that:

¹³⁴Federal Inland Revenue Service (Establishment) Act 2007.

1. For the purpose of obtaining full information in respect of the profits or income of any person, body corporate or organization, the Service may give notice to that person, body corporate or organization requiring him or within the time specified by the notice to:
 - (a) complete and deliver to the Service any return specified in such notice;
 - (b) appear personally before an officer of the Service for examination with respect to any matter relating to such profits or income;
 - (c) produce or cause to be produced for examination books, documents and any other information at the place and time stated in the notice, which time may be from day-to-day, for such period as the Service may deem necessary; or
 - (d) give orally or in writing any other information including a name and address specified in such notice...

3.3.1.2 Establishment of the board

The establishment of the Board is provided in Section 3(1) of the Act¹³⁵ which provides that “There is established for the Service a Board to be known as the Federal Inland Revenue Service Board (in this Act referred to as “the Board”) which shall have overall supervision of the Service as specified under this Act.”

The Act further provides for the composition of the board, that:

The Board shall consist of

- (a) the Executive Chairman of the Service who shall be experienced in taxation as chairman of the Service to be appointed by the President and subject to the confirmation of the Senate.¹³⁶

It has also six members who shall have relevant qualifications and expertise also appointed by the President to represent each of the six geo-political zones¹³⁷ of the country, a

¹³⁵Ibid.

¹³⁶Ibid. Section 3(2)(a)

representative of the Attorney-General of the Federation,¹³⁸ the Governor of the Central Bank of Nigeria or his representative,¹³⁹ a representative of the Minister of Finance not below the rank of a Director,¹⁴⁰ the Chairman of the Revenue Mobilization, Allocation and Fiscal Commission or his representative who shall be any of the Commissioners representing the 36 states of the Federation,¹⁴¹ the Group Managing Director of the Nigerian National Petroleum Corporation or his representative who shall not be below the rank of a Group Executive Director of the corporation or its equivalent,¹⁴² the Comptroller General of the Nigerian Custom Service or his representative not below the rank of a Director,¹⁴³ and the Chief Executive Officer of the National Planning Commission or his representative not below the rank of a Director.¹⁴⁴

Given the present membership of the Federal Inland Revenue Service Board and its corporate entity status, having a perpetual succession,¹⁴⁵ one would have expected that it would have allowed for private sector participation in the composition of its membership. That is, the present membership structure would have included representatives of the legal, medical and accounting professions, the Nigerian Institute of Taxation, the Manufacturer's Association of Nigeria, the Nigeria Association of Small and Medium Entrepreneurs, the Nigeria Chamber of Commerce and Industry¹⁴⁶. The rationale for this is that the above bodies represent at least to an extent a segment of taxpayers'. They would in their respective

¹³⁷ Ibid. Section 3(2)(b)

¹³⁸ Ibid. Section 3(2)(c)

¹³⁹ Ibid. Section 3(2)(d)

¹⁴⁰ Ibid. Section 3(2)(e)

¹⁴¹ Ibid. Section 3(2)(f)

¹⁴² Ibid. Section 3(2)(g)

¹⁴³ Ibid. Section 3(2)(h)

¹⁴⁴ Ibid. Section 3(2)(i)

¹⁴⁵ Ibid. Section 1(2)(a)

¹⁴⁶ Nwokenekwu, E.U (2010) A Critical Analysis of the Offences and Penalties Under Nigeria Corporate Tax Statutes. Being an L.L.M (Unpublished) Faculty of Law A.B.U Zaria p.38.

capacities ensure compliance with tax laws by their members, an issue that is important considering the rate of tax evasion and avoidance.¹⁴⁷

The Tax Act provided that the tenure of those appointed by the President to serve on the board is for a term of or period of four years, and renewable once only,¹⁴⁸ except the ex-officio members. They should see their appointment as a call to serve rather than opportunity to serve their personal interests.

3.3.1.3 Powers and functions of the board

The powers and functions of the board are clearly spelt out in part 11 of the Act.¹⁴⁹ The Chairman and other members of the board, other than ex-officio members, each holds office for a term of four years renewable once only, on such terms and conditions as may be specified in the letter of appointment.¹⁵⁰ The implication of this provision is that the appointment of the chairman is that of a political appointee and not a civil servant. The researcher views this act as wrong, in the sense that it may create the tendency of corrupt practices as the appointee may be after enriching himself/herself and his or her family members illegally within the tenure of his or her office. The Act¹⁵¹ further provides that:

1. The Board shall:
 - a. provide the general policy guidelines relating to the functions of the Services;
 - b. manage and superintend the policies of the Service on matters relating to the administration of the revenue assessment, collection and accounting system under this Act or any enactment or law;
 - c. review and approve the strategic plans of the Service;
 - d. employ and determine the terms and conditions of service including disciplinary measures of the employees of the Service;

¹⁴⁷ Ibid.

¹⁴⁸ Section 4(a) Federal Inland Revenue Service (Establishment) Act 2007.

¹⁴⁹ Ibid. Section 7

¹⁵⁰ Ibid. Section 4(a) & (b)

¹⁵¹ Ibid. Section 7(1)

- e. stipulate remuneration, allowances, benefits and pensions of staff and employees in consultation with the National Salaries, Income and Wages Commission; and
- f. do such other things which in its opinions are necessary to ensure the efficient performances of the functions of the Service under this Act.

3.3.2 Tax appeal tribunal

The Tax Appeal Tribunal (TAT) was established in conformity with the Federal Inland Revenue Service (Establishment) Act 2007¹⁵² to adjudicate on disputes and controversies arising from the following tax laws as specified in the Fifth Schedule to the Act¹⁵³

- i. Companies Income Tax Act, 2004
- ii. Personal Income Tax Act, 2004
- iii. Petroleum Profits Tax Act, 2004
- iv. Value Added Tax Act, 2004
- v. Capital Gains Tax Act ,2004
- vi. Any other law contained in or specified in the First Schedule to this Act or other laws made or to be made from time to time by the National Assembly.

The Tax Appeal Tribunal formally took off pursuant to the Tax Appeal Tribunals Establishment Order 2009 issued by the Minister of Finance.¹⁵⁴ By this enactment, TAT replaced the former Body of Appeal Commissioners (BAC) and Value Added Tax (VAT) Tribunal. Members of the Tax Appeal Tribunal are appointed by the Minister.¹⁵⁵ Each member is known as a Tax Appeal Commissioner.¹⁵⁶ The Tribunal shall have a chairman for each zone who shall be a legal practitioner, who has been so qualified to practice for a period of not less than 15 years with cognate experience in tax legislation and tax matters.¹⁵⁷

¹⁵²Section 59(1) Federal Inland Revenue Service (Establishment)Act 2007.

¹⁵³ Federal Inland Revenue Service (Establishment) Act No. 13 2007.

¹⁵⁴ Available at: <http://tat.gov.ng/content/tat-establishment-order>. (Accessed April 26, 2018 2.30pm).

¹⁵⁵ Paragraph 2 of the Fifth Schedule to the Federal Inland Revenue Service (Establishment) Act 2007.

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

The Tax Appeal Tribunal is not conferred with criminal jurisdiction. However, where in the course of its adjudication, the tribunal discovers evidence of possible criminality, the TAT is obliged to forward such information to the office of the Attorney-General of the Federation or the Attorney-General of any State of the Federation or any relevant enforcement agency.¹⁵⁸

From the provisions of paragraph 13 of the Fifth Schedule to the F.I.R.S Act and paragraph 17(1) of the same Act, it is very clear that the Tax Appeal Tribunal adjudicates on tax matters between a taxable person and the Federal Inland Revenue Service (FIRS) as court of first instance and Federal High Court as an appellate court with respect to payment of corporate taxes. The law is trite looking at section 251(1) (a)(b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)¹⁵⁹ which confers an original and exclusive jurisdiction to Federal High Court against the Tax Appeal Tribunal which hears issues relating to corporate tax disputes. Section 251(1)(a)(b)¹⁶⁰ provides that:

- (1) Notwithstanding anything to the contrary contained in this constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters.
 - a. Relating to the revenue of the Government of the Federation in which the said Government or any organ thereof or a person suing or being sued on behalf of the said Government is a party.
 - b. Connected with or pertaining to the taxation of companies and other bodies established or carrying on business in Nigeria and all other persons subject to Federal taxation.

¹⁵⁸ Ibid.

¹⁵⁹ Constitution of Federal Republic of Nigeria 1999 (as amended) Cap C23 Laws of Federation of Nigeria 2004

¹⁶⁰ Ibid.

From the foregoing, the Constitution of the Federal Republic of Nigeria 1999 (as amended)¹⁶¹ confers jurisdiction on the Federal High Court to the exclusion of any other court in civil causes or matters; relating to the revenue of the Government of the Federation in which the said Government or any of its organs or a person suing or being sued on behalf of the said Government. The Federal High Court is empowered by the Constitution of the Federal Republic of Nigeria 1999 (as amended) to adjudicate on matters pertaining to all federal taxes and on matters relating to the revenue of the Government of the Federation in which the Government or any of its organs or a person suing or being sued on behalf of the said Government is a party to the exclusion of any other court in Nigeria. The implication is that no other court or Tax Appeal Tribunal has the power to adjudicate on matters relating to Federal Taxes in Nigeria. The Constitution did not state that Federal High Court shall be an appellate court with respect to tax matters, but from the constitutional provisions, it is very clear that matters relating to federal taxes are to be commenced at the Federal High Court and not at the Tax Appeal Tribunal.

In the case of *Attorney-General of Lagos State vs. Eko Hotels Ltd*¹⁶² where the first respondent as plaintiff in the Federal High Court of Justice Lagos by originating summons sought for a declaration whether it was supposed to remit money collected as tax on its sales to its customers to the Federal Board of Inland Revenue or Lagos State Government (1st and 2nd defendants respectively) in view of the provisions of the Value Added Tax Decree No. 102 of 1993, Sales Tax Law Cap 175 and Sales Tax (Schedule Amendment) Order, 2000. In determining the appeal, the Court of Appeal considered section 251(1)(a) and (b) of the Constitution and held that by the said provisions of the Constitution of the Federal Republic of Nigeria 1999(as amended), the Federal High Court has exclusive jurisdiction to determine matters in which the revenue of the Government of the Federation is involved.

¹⁶¹ Cap C23 Laws of Federation of Nigeria 2004.

¹⁶²(2008) ALL FWLR (pt 398) p.237.

The court went further to state that, where Value Added Tax is the subject matter and an agency of the Federal Government is a party, the Federal High Court is the competent court to hear and determine such matter.¹⁶³ In the case of *Federal Housing Authority vs. John Shoy Int'l Ltd*,¹⁶⁴ in a debt recovery, involving the Federal Government and its Agency, wherein the appellant instituted an action at the Federal Capital Territory High Court against the respondent under the undefended list procedure. Wherein it claimed the sum of ₦3,405,107.63, retention fee and 10% interest on the entire sum claimed from the date of judgment till the entire judgment sum is liquidated. The trial court found for the appellant, granting its claims. Dissatisfied, the respondent appealed to the Court of Appeal challenging the decision of the trial court on grounds that as an agent of the Federal Government, the Federal Capital Territory High Court had no jurisdiction to try the suit as constituted. The court held that “it is clearly spelt out in section 251(1)(a)(b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), that where an Agency of the Federal Government is a party to an action and the revenue accrues to the Federal Government, the Federal High Court has exclusive jurisdiction”.

From the provisions of section 251(1)(a)(b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), and decisions of courts in the cases cited above, it can be seen that the Federal High Court is the only court with exclusive jurisdiction to hear and deal with disputes and controversies in tax matters stated in the Federal Inland Revenue Service Act 2007 in Nigeria and not the Tax Appeal Tribunal. The provisions of section 59(2) of the Federal Inland Revenue Service (Establishment) Act, paragraph 13(1) of the Fifth Schedule to the F.I.R.S (Establishment) Act 2007, paragraph 14 of 17(1) of the same Act, and paragraph 9 of the Second Schedule of VAT Act are all inconsistent with the provisions of section 251(1)(a)(b) of the Constitution of the Federal Republic of Nigeria 1999 (as

¹⁶³Oladele, G.A. (2008) Constitutionality of the Tax Appeal Tribunal in Nigeria, *University of Ilorin Law Journal* vols. 3&4, p. 175.

¹⁶⁴(2005)1 NWLR (pt. 908) p. 641.

amended). Unfortunately section 68(2) of the Federal Inland Revenue Service (Establishment) Act¹⁶⁵ provides that:

If the provisions of any other law, including the enactments in the First Schedule are inconsistent with the provisions of this Act, the provisions of this Act shall prevail and the provisions of that other law shall to the extent of the inconsistent be void.

As deceptive or misleading as this provision could be, it has a negative implication to the effect that, if there be any inconsistency between any law, which include the Constitution of Federal Republic of Nigeria 1999 (as amended) and the Federal Inland Revenue Service (Establishment) Act 2007, the provisions, of the later shall prevail. However, it is submitted by the researcher that from the foregoing provision there is no legislation in Nigeria that supercedes the Constitution of Federal Republic of Nigeria 1999 (as amended). In fact the Constitution of Federal Republic of Nigeria 1999 (as amended) is the mother of all laws in Nigeria. The taxes mentioned in the Fifth Schedule to the Federal Inland Revenue Service (Establishment) Act¹⁶⁶ besides personal income tax, all others are corporate taxes, clearly within the purview of the provisions of section 251(1)(a)(b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and as such they are matters within the exclusive jurisdiction of the Federal High Court.

The Constitution of the Federal Republic of Nigeria 1999 (as amended) is the basic law of Nigeria legal system upon which other laws and subsidiary legislation are based. Notwithstanding the provisions of section 36(1)-(3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). The Court of Appeal in the case of SNEPCO and 3 Others vs. FIRS And Anor¹⁶⁷ which judgment was delivered on August 31, 2016, upheld the decision of the Federal High Court that disputes over company taxation are exclusive to the

¹⁶⁵ No.13, 2007

¹⁶⁶ Paragraph 11 of the Fifth Schedule to F.I.R.S Act.

¹⁶⁷ CA/A/208/2012 (Unreported)

Federal High Court. This argument is further strengthened by section 1(3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)¹⁶⁸ which provides that: “If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistency be void.” To this effect, all provisions of Corporate Tax Laws, that are inconsistent with the provisions of the Constitution of the Federal Republic of Nigeria 1999 (as amended) by virtue of section 1(3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) are void to the extent of their inconsistency. It was publicly stated that:

It is no doubt that the establishment of TAT would reduce the incidence of tax evasion, ensure fairness and transparency of the tax system, minimize the delays and bottlenecks in adjudication of tax matters in traditional court system, improve the tax payers’ confidence in our tax system, provide opportunity for expertise in tax dispute resolution, provide avenue for effective involvement of parties, focus on facts rather than legal technicalities and promote early and speedy determination of matters without compromising the principle of fairness and equity.¹⁶⁹

Despite these efforts, the applicability and practicability of the right to speedy trials is still suffering severely in Nigeria.¹⁷⁰ The TAT is still a very slow tribunal, like its predecessor the Body of Appeal Commissioners. The FIRS legal and prosecution department is not assisting in ensuring speedy trials by its organization and preparation for trials. Despite being constituted in 2010, as at May 2012, no judgment has been delivered in any of the zones.¹⁷¹ In Nigeria, there is a general reluctance by the poor citizens, to settle disputes, through the court system. The similar situation is experienced in the tax landscape, where aggrieved

¹⁶⁸ Cap C23 Laws of Federation of Nigeria 2004.

¹⁶⁹ Tax Appeal Tribunal (2010). Available: <http://tat.gov.ng/node/1> (Accessed on April 25, 2018, 3.06pm)

¹⁷⁰ Busayo O. Oke (2012). Taxpayers Rights Protection in Nigeria. MA Thesis Taxation (Law, Administration and Practice) Institute of Advanced Legal Studies, School of Advanced Study, University of London, p. 16.

¹⁷¹ Ibid.

taxpayers show strong reluctance to seek legal redress. Some of the reasons advanced for this apathy are:¹⁷²

- (a) Delay in justice delivery;
- (b) Corruption amongst judicial officers;
- (c) Corruption amongst tax officials;
- (d) Bias of judicial officers to their employers (the Government);
- (e) Threats from the Revenue Authority; and
- (f) Uncertainty of the outcome.

Another sad but true cause of litigation apathy is the practice of tax investigators and auditors requesting bribes from taxpayers to conceal facts, even if they are genuine and valid facts raised by the taxpayers. Because of the above challenges, many corporate taxpayers, especially in the oil and gas sectors started opting for arbitration as a dispute resolution option, and only resort to judicial determination as a last resort.

However, in practice, tax authorities frustrate the use of arbitration in tax disputes.¹⁷³ For instance, in the case of *Federal Inland Revenue Service vs. Nigerian National Corporation and 4 Others.*¹⁷⁴ The plaintiff (tax authority) brought an action seeking the determination of whether the Arbitral Tribunal had jurisdiction to determine the subject matter of taxation of the defendants by the plaintiff; a jurisdiction which is ordinarily conferred on the Federal High Court by section 251(1) of the Constitution of Federal Republic of Nigeria 1999 (as amended). The 2nd to 5th defendants had taken the 1st defendant to an arbitral panel pursuant to the arbitration clause in the production sharing contracts. Before the awards were given, the FIRS approached the Federal High Court to stop the arbitral proceedings on the grounds that tax issues were raised in the arbitral proceedings,

¹⁷² Ibid.

¹⁷³ Newman, U. R (2017). An Examination of Tax Dispute Resolution Mechanisms in Nigeria: A Case for the Adoption of Alternative Dispute Resolution Methods. *Uniport Law Review Vol. 1, p. 204.*

¹⁷⁴ (2012)6 TLRN. 1.

which are not resolvable by arbitration. The Federal High Court upheld the contention of the FIRS and voided the arbitral awards given while the court was still sitting.¹⁷⁵ This decision clearly foreclosed the use of arbitration in the resolution of tax matters, unless the Supreme Court holds otherwise. With the greatest respect, the Court of Appeal is inconsistent on the interpretation of the implications of the exclusive jurisdiction of the Federal High Court under section 251(1)(a)(b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), which issue had earlier been argued, that by virtue of the said provisions, the Federal High Court has exclusive jurisdiction over Federal Taxes. In the case of *CNOOC Exploration and Production Ltd. & Anor vs. Nigerian National Petroleum Company and Anor*.¹⁷⁶ The facts were that in the course of resolving the tax disputes between the Appellants and FIRS, the Tax Appeal Tribunal (TAT) made orders, joining NNPC as a party, that the TAT, NNPC, objected to the orders, joining it as a party and also challenged the jurisdiction of the TAT to hear the disputes on the ground that the subject matter of the dispute was within the exclusive jurisdiction of the Federal High Court. The TAT however, ruled that it had jurisdiction to determine the disputes but struck out the name of NNPC as a party.

NNPC then appealed against the rulings of the TAT striking it out as a party contending inter alia that the TAT did not have jurisdiction to determine tax matters, as such matters were within the exclusive jurisdiction of the Federal High Court. Dissatisfied with the judgments of the Federal High Court, the Appellants further appealed to the Court of Appeal. The Court of Appeal agreed with the Appellants' arguments and held that the TAT has jurisdiction to adjudicate over tax related disputes and that all tax matters must commence at TAT. Notwithstanding the exclusive jurisdiction of the Federal High Court in tax matters, the Tax Appeal Tribunal (TAT) can still hear tax matters at first instance, this no doubt will

¹⁷⁵ Ibid.

¹⁷⁶ (2018) LPELR-45345(CA).

breed a nasty situation. It means that Tax Appeal Tribunal and Federal High Court have original jurisdiction in tax matters. This will lead to forum shopping. That is to say, if a company has a tax dispute, the company has an option to go to Federal High Court, or Tax Appeal Tribunal.

However, the jurisdiction of the Federal High Court and TAT should not be a bar on the use of arbitration in resolving tax disputes and controversies. It is hoped that at the earliest opportunity the Court of Appeal will revisit their position on the non-arbitrability of tax dispute.¹⁷⁷ This is more so as, it will be better to interpret the exclusive jurisdiction of the Federal High Court in section 251 of Constitution of the Federal Republic of Nigeria 1999 (as amended) in relation to other courts created by the Constitution and not to extend it to Arbitration Tribunals that run on a separate track.¹⁷⁸

Surprisingly, the case of the *Federal Inland Revenue Service vs. Nigeria National Petroleum Corporation and 4 Ors (Supra)*¹⁷⁹ was initiated by tax authority¹⁸⁰ and the F.I.R.S in the Court of Appeal decisions under reference, had argued against the arbitrability of tax disputes. While it is in the interest of the country that revenue is not lost as a result of an award against the FIRS; the FIRS ought not to have frustrated the possibility of resolving tax disputes through arbitration. This is because the National Tax Policy is a brain child of the FIRS and the extant National Tax Policy which was in force when those matters were instituted, encourage the use of Alternative Dispute Resolution.¹⁸¹ The Federal Inland Revenue Service ought to be at the forefront of encouraging the use of ADR in resolving tax

¹⁷⁷ Ibid.

¹⁷⁸ Olaniwumi Ajayi (2017). Tax Disputes in the Oil & Gas Sector – Are they subject to Arbitration? Available: <https://www.olaniwunaji.net>2017/1/> (Assessed April 27, 2018, 11.06am).

¹⁷⁹ Shell Petroleum Development Company (Nig) Ltd vs. Federal Board of Inland Revenue (supra)

¹⁸⁰ Oluchi Monye (2012) 'FIRS Secures Landmark Judgment Against the Arbitration of Tax Disputes' p. 20.

¹⁸¹ Paragraph 5.6 of the Former National Tax Policy Adopted by the Federal Executive Council on January 20, 2010

disputes considering the advantage of ADR rather than subjecting itself to the uncertainties of litigation.¹⁸²

3.3.3 Joint tax board

The Joint Tax Board has over the years continued to contribute to the advancement of the tax administration in Nigeria, especially in the area of harmonization of personal income tax administered throughout Nigeria.¹⁸³ The Joint Tax Board is established by virtue of section 86(1) of the Personal Income Tax Act.¹⁸⁴ The membership¹⁸⁵ of the Board consist of the following members, that is:

- a. The Executive Chairman of the Federal Inland Revenue Service, appointed pursuant to section 11 of the Federal Inland Revenue Service (Establishment) Act 2007 who shall be Chairman of the Board; and
- b. One member from each State, being a person appointed pursuant to section 87(2) of this Act, and a nomination under this paragraph shall be evidenced by notice in writing delivered to the Secretary of the Board by the Governor,
- c. Co-opted as members are the representative of the following bodies¹⁸⁶
 - i. Federal Road Safety Commission (FRCS),
 - ii. Revenue Mobilization Allocation and Fiscal Commission (RMAFC),
 - iii. Federal Capital Territory Administration,
 - iv. Federal Ministry of Finance, and
 - v. Federal Inland Revenue Service.
- d. A Legal Adviser who is also the Legal Adviser to the FIRS.

¹⁸²Newman U.R (2017).An Examination of Tax Dispute Resolution Mechanisms in Nigeria: A Case for the Adoption of Alternative Dispute Resolution Methods. *Uniport Law Review* Vol. 1, p. 204.

¹⁸³ About JTB. Available: www.jtb.gov.ng .(Accessed April 28, 2018 3.20pm).

¹⁸⁴ Cap P8 Laws of Federation of Nigeria 2004.

¹⁸⁵Ibid. Section 86(2)

¹⁸⁶ About JTB. Available: www.jtb.gov.ng .(Accessed April 28, 2018 3.20pm).

(a) Functions of Joint Tax Board

The Board meets on quarterly basis to appraise the performance of the members, deliberate on tax issues of national importance and to develop new strategies to carry out its functions¹⁸⁷ which include to:

- (a) exercise the power or duties conferred on it by express provisions of this Act, and any other powers and duties arising under this Act which may be agreed by the Government of each territory to be exercised by the Board;
- (b) exercise powers and performs duties conferred on it by any enactment of the Federal Government imposing tax on the income and profits of companies or which may be agreed by the Ministry to be exercised or performed by it under the enactment in place of the Federal Board of Inland Revenue;
- (c) advise the Federal Government, on request, in respect of double taxation arrangement concluded or under consideration with any other country, and in respect of rates of capital allowances and other taxation matters having effect throughout Nigeria and in respect of and proposed amendment to this Act;
- (d) use its best endeavors to promote uniformity both in the application of this Act and in the incidence of tax on individuals throughout Nigeria; and
- (e) impose its decision on matters of procedure and interpretation of the Act on any state for purposes of conforming with agreed procedure or interpretation

3.4 Challenges of Corporate Income Tax Legislation

Corporate Income Tax Legislation provides the foundation upon which its administration can be implemented. Tax legislation and administration are the actual pillars upon which the structure is built and stands. The premise upon which this discussion is built is the relationship between the tax legislation and administration. This relationship is underlined by

¹⁸⁷Section 86 (9) of Personal Income Tax Act Cap P8 Laws of Federation of Nigeria 2004.

the fact that corporation taxation is made up entirely of laws. It is not possible to discuss of effective tax administration without referring to the Act that stipulate how corporate taxes are to be administered, how they are to be collected and the powers of the tax authority to administer or collect them.

The challenge of Corporate Tax Legislation is how to ensure that it provides an amenable framework upon which company income tax administration can thrive. The researcher's experience in Nigeria has shown that the major issues with legislation or Act have remained largely the same over the years, some of which are really legacy issues. For example, in keeping with colonial heritage, tax laws which were passed down, had been written in archaic English language, which gave rise to misinterpretations and ambiguities.¹⁸⁸ While a lot of work has been done in simplifying the language of laws, there is still room for further improvement, in the area of harmonization of legislation.

Another challenge which corporate tax legislation suffers from, is the conflict in the provisions of some legislation, example is the provisions of section 394 (3) of CAMA 2020 and Finance Act 2020 which have different classifications of companies and this affect the taxation of companies. Other challenges include multiplicity of taxes which has to do with levying of tax on the same income by two or more jurisdiction. It is a situation which result from taxing an earning more than once. A bad administration is a problem in the administration of corporate income tax in Nigeria and this leads to lack of transparency in the management of taxpayers' money as some of the tax collections are not properly accounted for.

However, the biggest challenge for effective corporate tax legislation in Nigeria in recent times has to do with the issue of administration, control and collection of value added

¹⁸⁸Ifeuko O.O.(2015) The Challenges of Effective Tax Legislation and Revenue Administration for the Funding of Public Services in Nigeria: The Role of Tax Professionals. A Paper Presented at the Tax Week Organized by the Chartered Institute of Taxation of Nigeria, Abuja(CITN) and District Society, held at the NAF Conference Centre & Suites, Kado Road, Abuja, on Wednesday, October 28 p.3 (2015 op. cit.

tax. This has posed serious problems and raging legal arguments as to which tier of government is constitutionally empowered to administer and collect payment of VAT in Nigeria. Unless and until this problem is resolved by the apex court, this may continue to be a problem in the administration of value added tax between the Federal Inland Revenue Service and some states.

CHAPTER FOUR

CORPORATE TAX COMPLIANCE AND ENFORCEMENT IN NIGERIA

4.1 Introduction

The fundamental objective of any revenue authority is to collect taxes and duties payable in accordance with the law. However, taxpayers' are not always willing and ready to comply, when it comes to financial obligations imposed on them by the Constitution.¹ Tax compliance is the ability and willingness of taxpayers' to comply with tax laws, declare the correct income in each year and pay the right amount of taxes on time.² Anderoni³ considered tax compliance as the taxpayers' willingness to obey tax laws in order to attain economic development and goal. From a wider perspective, tax compliance requires a degree of honesty, adequate tax knowledge and capability to use this knowledge, timelessly, accuracy and adequate records in order to complete the tax returns and associated tax documentation.⁴

A fundamental component of any tax system is the manner in which it is administered. No tax is better than its administration, so tax administration matters a lot.⁵ An essential objective of any tax administration is to ensure the maximum possible compliance by taxpayers' with their tax obligations. Unfortunately, in many developing countries, Nigeria inclusive, tax administration is usually weak and characterized by extensive evasion, corruption and coercion.⁶ In many cases, overall tax compliance levels are low and large proportion of the informal sector of the economy escapes the tax net entirely.

¹ Section 24(f) Constitution of Federal Republic of Nigeria 1999 (as amended) Cap C23 Laws of Federation of Nigeria 2004.

² Internal Revenue Service (IRS) (2009). Update on Reducing the Federal Tax Gap and Improving Voluntary Compliance. http://www.irs.gov/pub/newsroom/tax+gap__report__final__version.pdf (Assessed April 30, 2018)

³ Andreoni, E.B. , (1998). Tax Compliance *Journal of Economic Literature* Vol. 36, pp. 818-860.

⁴ Adeshina, O. O. and Yuioghosa, O. (2016). Tax Knowledge, Penalties and Tax Compliance in Small and Medium Scale Enterprises in Nigeria *Business Journal* Vol. 08, pp. 1-9

⁵ Singh, V. and Bhunplan R. (2001). The Malaysian Self-Assessment System of Taxation: Issues and Challenges. *Tax National* pp. 12-17

⁶ Adeshina, O. O. and Yuioghosa, O. (2016). Tax Knowledge, Penalties and Tax Compliance in Small and Medium Scale Enterprises in Nigeria *Business Journal* Vol. 08, p.8.

Corporate tax law enforcement in Nigeria tax system has become one of the integral parts of the tax administration given the ability to awareness of corporate bodies in keeping aside part of what is due to the government as taxes or not remitting same at all. By enforcing corporate tax laws, Federal Inland Revenue Service, not only catches tax defaulters, tax fraudsters or cheats, but also promotes broader compliance by giving taxpayers' confidence that others are paying their fair share. Tax enforcement has become imperative, given the low level of voluntary compliance and the dire need to surge improve government's dwindling revenue, through taxation.⁷ It is only through the application of law and tax enforcement that the offences of tax evasion, non-compliance of tax laws and corruption in the tax administration and/or tax system are detected and tax offenders are brought into the tax net or punished in accordance with the law.

In the same vein, there is no gainsaying that tax enforcement has become an essential aspect of tax administration in view of the ingenious ways corporate taxpayers' use to undermine the revenue generation process by not remitting what is due to government, under declaration of income as well as withholding revenue due to government for their own use etc. However, the question of many Nigerians is, is there a strict enforcement of corporate tax laws in Nigeria considering the low level of corporate tax compliance? This chapter examines compliance and enforcement issues in corporate tax administration in Nigeria.

4.2 Corporate Tax Compliance

Corporate tax administration depends on compliance with laws. Voluntary tax compliance is not always achievable, hence the need for a comprehensive compliance and enforcement strategy which will run side by side with initiatives to aid ease of compliance. Tax compliance in some cases is proxied on the determination or willingness of some corporate organizations and/or citizens to pay tax. This is because they recognized the fact that tax

⁷ Mohammed Bashir Tanko (2015) Tax Law Enforcement: Practice and Procedure. *Research Journal of Finance and Accounting*, Vol. 6 p. 143

revenue is an important instrument for economic growth and development. Tax compliance according, to Marti,⁸ is a complex term to define, but simply put, tax compliance refers to fulfilling all tax obligations as specified by law freely and completely.

Tax compliance means submitting a tax return within the stipulated period, correctly stating income and deductions, paying assessed taxes by due dates and paying levied taxes.⁹ The researcher is of the opinion that tax compliance means, making correct tax payments by providing and submitting correct information to the appropriate tax authorities on time and in the required format, through the correct declaration and paying on time of corporate taxes. Non-compliance of tax laws, may be in many forms; it could either be failure of an organization to submit a tax return within the stipulated period or non-submission, understatement of income, overstatement of deductions, or failure to pay assessed taxes by due date and in some cases non-compliance may mean an outright failure to pay taxes.

All over the world, taxation is a major avenue of government revenue generation. However, not every national government appears to have been able to effectively and efficiently explore the great opportunity of revenue generation. This may be attributed to a number of reasons including the system of taxation, tax legislation, tax administration, policy issues, over reliance on other sources of revenue (such as foreign aids and grants), corrupt practices in the system, especially as it relates to the system of tax collection and behaviour of citizens towards tax payment and ease of tax payment.

Tax compliance is a major problem for many tax authorities. It is not an easy task to persuade taxpayers to comply with tax requirements even as the tax laws are not always precise in some respects.¹⁰ Taxpayers' are inherently disposed to reducing their tax liability

⁸Marti, L.O (2010) Taxpayers' Attitude and Tax Compliance Behaviour in Kenya. *African Journal of Business Management*. Vol. 1, Pp. 112-122

⁹Atawodi, O.W (2012) Factors that Affect Tax Compliance Among Small and Medium Enterprises (SMEs) in North Central Nigeria. *International Journal of Business and Management* Vol. 7 p.108

¹⁰James, S. and Alley, C. (2004). Tax Compliance, Self-Enforcement, Self-Assessment and Tax Administration. *Journal of Financial and Management in Policy Services*, Vol. 2, Pp. 27-42

either through tax evasion or tax avoidance. This gives rise to incorrect filling of tax returns and loss of revenue to the government. An unduly complex regulatory system and tax regime enforcement makes tax compliance unduly burdensome and often have a discretionary effect on the development of small and medium enterprises (SMEs) and/or small companies¹¹ as they are tempted to change into forms that offer a lower tax burden or no taxation burden at all and thus results in a tax system that imposes high expenses on the society.

4.3 Corporate Tax Payments

Corporations are taxed differently than other business structures. A corporation is the only type of business that must pay its own income taxes on profits, in contrast, partnership or sole proprietorship are not taxed on business profits, instead the profits pass through the business income or losses on their personal tax returns. However, compliance of payments of taxes by corporate organizations can be fulfilling all tax obligations as specified by law freely and completely such as:

(a) Filing of returns

Companies are required to register for tax and file their audited accounts and tax computerizations, with the Federal Inland Revenue Service within six months of the end of their financial year on a self-assessment basis or 18 months after incorporation (whichever comes first). Section 55(1) of Companies Income Tax Act¹² deals with returns and provisional accounts. It provides thus:

Every company, including a company granted exemption from incorporation shall, whether or not a company is liable to pay tax under this Act for a year of assessment, with or without notice from the Service, file a self-assessment return with the Service in the prescribed form at least once a year and such return shall contain:

¹¹ A private company limited by shares, which amount of its turnover is not more than 2 million naira and net assets value is not more than 1 million (see section 374 (2) (a)(b)& (c) Companies and Allied Matters Act Cap.C20 Laws of Federation of Nigeria 2020

¹²Cap.C21 Laws of Federation of Nigeria 2004

- (a) the audited accounts, tax and capital allowances computation for the year of assessment and a true and correct statement in writing containing the amount of profit from each and every source computed;
- (b) a duly completed self-assessment form as may be prescribed by the Service, from time to time, attested to by a director or secretary of the company and such attestation shall contain a declaration that it contains a true and correct statement of the amount of its profits computed in respect of all sources in accordance with this Act and any rule made and that the particulars given in such return are true and complete; and
- (c) evidence of payment of the whole or part of the tax due into a bank designed for the collection of the tax.

Nigerian corporate organizations file their tax returns based on a self-assessment system where the taxpayers prepares its annual returns and determines its tax liability. However, the Federal Inland Revenue Service may apply the Best of Judgment (B.O.J) assessment where it is of the opinion that the tax returns filed are deliberately misstated or where no returns are filed within the stipulated period.¹³ Assessments are made on a preceding year basis. This means that the financial statements for a period ended in 2018 will form the basis for the 2019 year assessment.

(b) Assessment by the tax authorities

¹³Section 65(3) Ibid.

By virtue of section 65 of Companies Income Tax Act, ¹⁴ the board is empowered to assess every corporate organization chargeable with tax after the expiration of the period allowed for delivery of audited accounts and returns.¹⁵ This procedure is aimed at ensuring compliance by companies.

Assessment is the determination of the rate or amount of something, such as tax or damages or official valuation of property for purposes of taxation.¹⁶ The assessment for the purpose of this study is on the profits of a company, for the purposes of determining the amount payable of the corporate organization as a tax. The overriding objective of assessment by the tax authorities is to ensure that all taxpayers, within a defined tax jurisdiction are brought into the tax net and assessed correctly in order to plug all possible leakages. Assessment are normally raised on the income or profit of companies or corporation arising from trade or business carried on by the company in relation to an accounting period. There are two classes of assessment; namely.

(i) Self-assessment of tax payable

This assessment scheme aims at shifting the duty of raising assessment to the taxpayers themselves. Under this class of assessment, the taxpayer is expected to compute its tax payable for the year of assessment and to accompany its tax returns with self-assessment notice and evidence of direct payment of the whole or part of tax due into a bank designated for the payment of tax.¹⁷ The idea of direct payment of a tax to a designated bank account of FIRS through Treasury Single Account (TSA) recently introduced by the federal government is a welcome development. This will eradicate the fraudulent practices of some FIRS staff who opened and operate dubious bank accounts in the name of FIRS and acts as signatories to those bank accounts that are not official or designated bank account of the Agency (FIRS)

¹⁴ CapC21 Laws of Federation of Nigeria 2004

¹⁵ Section 55Ibid

¹⁶ Garner, B.A (2004) *Black's Law Dictionary, 8th Edition*, West Publishing Co. United States Of America. p.125

¹⁷ Section 53 (a) and (b) Companies Income Tax Act Cap.C21 Laws of Federation of Nigeria 2004

and unofficially lodge into same account, some of the cheques they received through which they fraudulently siphoned billions of naira for their own personal interest.¹⁸

(ii). Government assessment

This is an assessment raised on behalf of government by the tax authorities, examples of such assessments are:

- (i) Administrative assessment, raised in accordance with audited accounts and capital allowance computations filed by the taxpayers,¹⁹
- (ii) Best of Judgment (BOJ) assessment is based on estimated profit or profit perceived by the tax authorities to be fair and reasonable.²⁰ This is raised where audited accounts and other relevant returns are not submitted within the stipulated time in line with tax law. It is usually based on “fair and reasonable” estimate of income or profit

(c) Additional assessment

This is an assessment, where the board is of the opinion or discovers at any time that any corporate organization liable to tax has not been assessed or has been assessed at a less amount than that, which ought to have been charged. The board may within the year of assessment or after the expiration thereof and as may be necessary, assess such company at such amount or additional amount, as ought to have been charged.²¹ In effect the service is empowered to examine thoroughly the returns submitted by taxpayers. This is to ensure that the presentation of the accounting details conform with provisions of the Income Tax Act.

(d) Assessment on turnover

¹⁸The case of EFCC Re-arraigns Three FIRS Directors, Six Others for ₦4.5billion Fraud. Available online at premiumtimesng.com/new (Accessed on October 28, 2021, 5.43pm)

¹⁹ Section 55 (1) (a) Companies Income Tax Act Cap. C21 Laws of Federation of Nigeria 2004.

²⁰ Section 65 (3) Ibid

²¹ Section 66 (1) Ibid

This is an assessment where the board is empowered to make an assessment on the turnover of the taxpayer's business, where it appears to the board that the trade or business produces no assessable profits or which in the opinion of the board are less than what might be expected to arise from the trade or business, the board is authorized, if the company is a Nigerian company to assess, and charge that company for that year of assessment on such fair and reasonable percentage of the turnover of the trade or business as the board may determine and where the company is a company other than a Nigerian company and it has a fixed base of business in Nigeria, the board will assess and charge that company for that year of assessment on such fair and reasonable of that part of the turnover attributable to the fixed charge.²² A turnover, is the amount of business that a company does in a period of time²³ and therefore, the idea of assessment on such "fair and reasonable percentage turnover of the trade or business is at the absolute discretion of the board. This, in the opinion of the researcher will open the flood gate of bribery and corruption, a situation where some tax officials will start to demand for bribe in order to reduce the tax assessment. It is expected that a fixed percentage should have been provided by the tax laws that will determine the actual and correct assessment on turnover of the trade or business of corporate organizations.

(e) Assessment levied on dividend provision where no tax is computed or payable

By virtue of Section 19 of CITA, the Board is empowered to raise assessment on amount of dividend paid to shareholders, as if such dividend declared is the total profits of the company for the year of assessment to which the accounts relates, such a situation may arise, where a corporate organization declares dividend to its shareholders when it has no tax payable, reported as a result of

- i. no total profits; or
- ii. total profits which are less than the amount of dividend paid

²² Section 30(1) (a) and (b) Ibid

²³ Meaning of Turnover: <https://dictionary.cambridge.org>>...(Assessed on 18/7/2019. 12.30pm)

4.4 Basis for Computing Tax Assessment on Profits

Taxpayers that are liable to tax under Companies Income Tax Act (CITA) are assessed on the periods for which their accounts are made up as provided in section 29 (1)(a) & (b) of Companies Income Tax Act²⁴, usually the profits of the year immediately preceding the year of assessment from each such sources. Companies have choice under CITA as to the date to which they make up their accounts, provided that the accounting year-end dates are maintained from year to year²⁵ for instance the assessment for the year 2019, shall be the profits of the period from the beginning of the accounting year to 31st December, 2018 and in 2020 year of assessment, shall be the profits for 1st January to the end of the company's accounting year in 2019. Normal basis period is a period of twelve (12) months from the date preceding the year of assessment.

4.5 Reasons for Low Tax Compliance in Nigeria

The contribution of income taxes to the total revenue of Nigeria's government remained consistently low and is relatively shrinking due to low tax compliance. Government revenues arising from taxation receipts decreased to ₦798.82 Billion in the first quarter of 2019 from ₦1,121,55 Billion in the fourth quarter of 2018.²⁶ Furthermore, out of the Nigerian labour workforce of 77 million at the end of 2015, the number of people in the tax net is only 13%²⁷

The situation is not any better for corporate income tax as 75% of registered companies in Nigeria were not in the tax net, while 65% of those in the tax net do not file returns or pay taxes.²⁸ This translates to less than 9% of all companies operating in Nigeria²⁹ and this has adversely affected revenue generation in Nigeria. Other factors militating against revenue generation in Nigeria have been attributed to the following.

²⁴ Cap.C21 Laws of Federation of Nigeria 2004

²⁵ Section 29 (1) (a) and (b) Ibid

²⁶ Nigeria Government Revenues (2019). <https://eradingeconomic.com.nig> (Accessed on July 12, 2019. 11.35am)

²⁷ Taiwo Oyedele: Guess How Nigerians pay Tax and How our Government Spends it. <https://www.pwc.com> (Assessed on July 19, 2019. 12.25pm)

²⁸ Ibid

²⁹ Ibid

(i) Perception of the Government Spending

Perception means an observation, awareness or realization, based on physical sensation or experience, appreciation or cognition.³⁰ Government's efficiency and credibility influence's taxpayers' compliance. This determines the tax revenue the government can raise.

Furthermore, when the public perception, of the revenue generated by the government does not correspond with the provision of infrastructural facilities or when there is nothing to show for payment of their taxes, there is likely to be taxpayer's apathy and this will portend a great danger in the administration of tax system and payment of future taxes. In order words, tax service quality and government spending priorities greatly affect taxpayers' compliance decision. Perception on government spending is a factor that positively and significantly affects taxpayers' compliance behaviour.

(ii) High Level of Corruption

Due to high level of corruption, corporate organizations cannot be certain whether their paid taxes are used to finance public goods and services, their willingness to pay tax will suffer some set back and it becomes more likely that they evade their tax liabilities. A taxpayer might consider evading taxes if the cost of bribing a tax auditor is lower than the potential benefit from tax evasion, e.g. minimizing the cost and time needed for tax compliance.

(iii) Lack of Transparency and Accountability in the Management of Public Funds

Lack of transparency and accountability in the management of public funds and reporting of public finances have created a high level apathy among Nigerians and corporate organizations. They see the government as being corrupt and not deserving of their taxes and creates public distrust both with respect to the tax system as well as the government.

This in turn increases the willingness to evade taxes. It must be understood that taxation goes beyond the raising of money from corporate organizations by the government

³⁰ Garner, B.A (2004)*Black's Law Dictionary, 8th Edition*, West Publishing Co. United States Of America. p. 1172

to pay for the service it provides. Collection and payment of tax establish a binding term of contract and reciprocal obligations between the government and the people. When the government honour's its own part of the contract in transparent and honest manner, payment of taxes by corporate institutions become more compelling and intuitive, until the government is able to institute a transparent and accounting system in the management of public funds and thereby renewing people's faith in the government, voluntary tax compliance will be a mirage.

(iv)Lack of Taxpayers' Education/Awareness

Tax education programme is focused on enlightening taxpayers' on socio-economic implications of tax evasion opportunities; and the transparent and accountable use of tax proceeds have significant influence on tax payers' voluntary compliance, and when the taxpayers lack the knowledge with respect to their tax affairs, there is likely to be non-compliance. Taxpayer's education should be an important ingredient in any efficient tax administration. It will enhance the level of tax knowledge to taxpayers'. Tax payers' should be able to understand the tax rules for computations by which they are to be taxed. These tax rules should be simple, understandable and clear in order to enhance tax compliance. Taxpayers' education will enhance the level of voluntary tax compliance and reduce tax evasion.

The starting point for taxpayers' education should be on finance record keeping. Business/company owners should be made to understand how good financial record keeping will help their business grow and position them adequately to benefit from commercial banks and government sponsored credit facilities. This will be mutually beneficial to both the government and small businesses. If the tax authorities can assist small businesses to understand and achieve this, then payment of taxes becomes a secondary issue that can be carried out voluntarily. After all, company's income tax is based on profit and how can an

entity that is unable to determine its profit accurately be expected to pay accurate tax? Unless its profit or loss is properly determined.

(v) Low Quality of Service in Return for Payment of Taxes

In general, Nigerians expect some kind of qualitative service delivery or benefit in return for the taxes paid. If the government fails to provide some basic infrastructural facilities or provides insufficiently, both corporate and individual citizens may not be willing to pay taxes and evasion and avoidance will be the consequence.

(vi) Absence of Rule of Law

Rule of law refers to the doctrine that every person is subject to the ordinary law within the jurisdiction or the supremacy of regular as opposed to arbitrary power.³¹ The Nigerian corporate tax laws are replete with punitive measures as well as criminal sanctions but these laws in most case are not strictly enforced. Courts of competent jurisdiction are also essential to protect corporate taxpayers' right and to safeguard them from arbitrariness. The failure of government on its part to obey courts order in some cases will reduce transparency of public action and foster distrust among companies. As a result, corporation may not be willing to finance the state through their taxes, and may decide to evade tax liabilities.

4.6 Ways of Improving Tax Compliance in Nigeria

Some of the ways of improving tax compliance in Nigeria are:

(a) Provision of Infrastructural Facilities, Accountability and Transparency in Government

In the recent times various strata of government in Nigeria are faced with developmental challenges due to the dwindling and insufficient revenue at its disposal, hence the need to strategize towards improving non-oil tax revenue sources. The efforts of government and tax authorities to improve tax administration and tax revenue yield will be meaningless, except

³¹ Garner, B.A (2004)(2004)*Black's Law Dictionary, 8th Edition*, West Publishing Co. United States Of America. p..1359

on appreciable level of voluntary compliance of taxpayers' and effective enforcement of tax laws that can propel taxpayers' behaviour to obey tax laws are achieved.³²

Voluntary tax compliance will be significantly improved, if the government will embark on social responsibilities aimed at improving the welfare of public or the taxpayers e.g. provision of adequate infrastructural facilities. Taxpayers are reluctant to pay taxes due to the failure of government to provide essential physical and social infrastructures for her people and therefore a failure of good governance. This implies that government failure to fulfill her promises to the citizenry can induce negative taxpayers' morale, apathy or taxpayers' to pay more taxes due to lack of provision of essential amenities by the government of the day.

An indispensable tax administrative policy measure for improved tax revenue performance of government is to build a comprehensive and articulated plan of action designed to induce voluntary compliance and effective implementation of tax enforcement program. Tax compliance is perceived to be behavioral induced towards governmental actions, for example on provision of basic infrastructure amenities, transparency and tax accountability confidence in government will no doubt induce tax compliance. Taxpayers are sensitive about compliance and enforcement, particularly, when the government is accountable and transparent to taxpayers' money on the one hand, and on the other hand, when government and tax authorities enforce tax laws strictly to compel taxpayers to obey tax laws. However, irrespective of such sensitiveness to compliance measures, the panacea to ensure obedience to tax laws and improvement on corporate tax compliance is the government provision of social amenities, such as educational facilities, housing, transportation and security among others.

(b) Strict Enforcement of section 85 of Personal Income Tax Act (PITA)

³²Uchechukwu, G. A (2017) Tax Compliance Strategy and Tax Revenue Yield: *Empirical Evidence from River State*, *Pyrex Journal of Taxation and Accounting Management*, Vol. 1 Pp. 9-23

One of the most effective ways to increase tax compliance is to ensure strict enforcement of section 85 of PITA.³³ Majority of tax compliant individual taxpayers are those under the payroll system. This is easy for the government to enforce compliance, because the employer serves as an agent of the tax authorities of deducting payroll taxes at source and remitting same to the authorities through the designated bank. The issue of countless number of people not under the payroll system or working for small firms, becomes a problem as they are not within the tax net. Section 85 of the Personal Income Tax Act (as amended) is meant to solve this problem. The section provides that:

A ministry, department or an agency of government or a commercial bank with whom a person has any dealing with respect to any of the transactions mentioned in subsection (4) of this section shall demand from the person a tax clearance certificate (TCC) for three years immediately preceding the current year of assessment and shall verify the genuineness by referring same to issuing tax authority³⁴.

Some of the transactions mentioned in section 85(4) of PITA that are subjected to tax clearance certificate requirement are:

- (a) application for certificate of occupancy
- (b) registration of motor vehicle
- (c) application for registration of a limited liability company or of a business name and
- (d) application for allocation of market stalls.

The aim of this provision is obviously to make the scope of transactions large enough to make it impossible to carry out any sort of business in Nigeria without being tax compliant. The tax clearance certificate (T.C.C) shows chargeable income, tax payable, tax paid, tax outstanding or alternatively a statement to the effect that no tax is due, and the tax

³³ Cap.P8 Laws of Federation of Nigeria 2004

³⁴Section 85(2) Personal Income Tax Act. Cap.P13 Laws of Federation of Nigeria 2004.

identification number (TIN) of the individual in respect of the last three years. The law also provides that TCC must be submitted to the issuing tax authorities for verification. The law further stipulates that government organization or corporate entity that does not comply with provisions of section 85 of PITA is guilty of an offence and liable on conviction to a fine of ₦5,000.00 or to imprisonment for three years or both fine and imprisonment.

Regrettably the researcher's experience at the ongoing recertification of title documents at Kaduna Geographic Information Service (KADGIS) and registration of vehicles at Kaduna Internal Revenue Service (KADIRS) shows that this provision of the law is not being enforced, despite that the transactions involving application for certificate of occupancy and registration of vehicles are subject to tax clearance certificate requirement. Allied to this fact is that both the KADGIS and KADIRS being State Agencies have not been prosecuted for failure to comply with provisions of section 85 of Personal Income Tax Act (PITA). The application of this law should not be restricted to government agencies and commercial banks alone. Transactions such as application for loans other than government loans, the renewal of professional licenses, opening of bank accounts, issuance/renewal of driver's license, application/renewal of international passports, should also be subject to T.C.C requirement.

(c) Strict Compliance of section 101 of Companies Income Tax Act

There is a similar provision of section 85 of PITA as discussed above in the Companies Income Tax Act (CITA) (as amended) subjecting certain transactions to the Tax Clearance Certificate requirement. Section 101 of Companies Income Tax Act, mirrors the transactions provided for in Section 85 of Personal Income Tax Act (PITA) but does not provide any penalty for its breach. However, Section 92 of Companies Income Tax Act provides that: "Any person guilty of an offence against this Act or Provisions of this Act or of any rule

made there under for which no other penalty is specifically provided, shall be liable on conviction to a fine of ₦20,000.00”.

This penalty is unlikely to deter non-compliance. An amendment of the law is required to provide a stiffer penalty for the breach of this provision. An important transaction properly covered in section 101 of CITA and section 85 of PITA is the “application for award of contracts by Government and its agencies and registered companies”. This is particularly important considering how much companies jostle for lucrative governments contracts. When a company realizes that it cannot be awarded any contract (from either government or private companies) without submitting its tax clearance certificate (T.C.C) that will motivate it to be tax compliant. This law should be amended to include contracts awarded by individuals and unincorporated entities and to deal with situations where a company is currently contesting tax assessment issued by tax authorities.

(d)Seamless Tax Registration and Payment of Taxes

Tax registration in Nigeria should be a walk-through process. It should be an electronic online process without stepping into any tax office. The payment of taxes should be a simple process, tax officials should be made to understand that their main job is to make tax registration and payment simple for taxpayers to comply with their tax obligations.

(e)Strengthening of Tax Audit

Tax audit is an exercise undertaken by tax authorities to determine if a taxpayer paid the correct amount of tax, and to ensure that tax collections are properly paid into the designated bank account of the tax authorities. Tax audit plays a major role in improving tax administration and overall taxpayer compliance by impacting on taxpayer’s behaviour. The contribution of tax audit in improving taxpayers’ compliance is significant among other measures taken by revenue authorities of the country. Tax audit aim towards achieving target

revenue is that, tax audit reduces the incidence of tax evasion. Modugu³⁵, depicted that the probability of being audited was found to be significant factor that positively affect the level of tax compliance. This suggests that the compliance rates rises if the tendency of tax-audit is high.

(f) Training of Tax Officials

Over the past few years, tax administrators have increased their attention to the significance of staff training and education. As the tax evaders adopt new technology and strategies of evading tax, the training and education of tax officials becomes necessary, this is to ensure that tax personnel, obtain the technical know-how, such as how to detect or combat tax related crimes and methods of increasing tax collections or revenue. Staff development and training are not only perceived as the mere transfer of knowledge but forms the basis for behavioural change, and it incorporates international best practice in staff training as applied by modern tax administration. Staff training and education is a central part of human resources management and its significance has been underlined by overall strategy of tax administration in Nigeria. The need for properly and highly trained staff is also to meet the new challenges of the tax administration, aimed at increasing revenue generation.

4.7 Enforcement of Tax Legislations

Tax law enforcement in the Nigerian tax system has become one of the integral parts of the tax administration, giving the ingenuity of taxpayers', individual and corporate bodies, in keeping aside part of what is due to the government as taxes or not remitting same at all. Tax enforcement has become crucial, giving the low level of voluntary tax compliance and the dare need to surge government's dwindling revenue through taxation³⁶. It is only through tax enforcement that the offences of tax evasion, non-compliance and corruption in the tax system are detected and the taxpayers' are brought into the tax net.

³⁵Modugu, K..P. and Anyaduba, J.O (2014) Impact of Tax Audit on Tax Compliance in Nigeria, *International Journal of Business and Social Science*. Vol. 5, pp. 207-215

³⁶ Ibid.

Enforcement is a fundamental issue in enhancing tax compliance. It involves compelling taxpayers' to adhere or obey the provisions of the relevant tax laws. It is directed at taxpayers' who fall short of their tax responsibilities. It involves levies, search and seizure, fines, seeking information from third parties such as banks and court actions. Enforcement is defined as the act or process of compelling compliance with a law, mandate, command, decree or agreement³⁷ Enforcement is of two types: enforcement of tax laws and enforcement of court judgment. Enforcement of tax laws involves the use or application of all those relevant laws that will aid and assist the tax man in the performance of his duties³⁸. While enforcement of court judgment is the process whereby judgment or Order of a court of competent jurisdiction is enforced or to which it is made effective according to law³⁹. It is the last stage of judicial process after the legal right, claim or interest has ended in a judgment or Order which remains to be enforced.⁴⁰

However, section 85(1)(c) CITA⁴¹ provides for enforcement of payment of taxes,⁴² and states that: "The Board shall serve a demand notice upon the company or person in whose name the company is chargeable and if payment is not made within one month from the date of the service of such demand notice, the Board may proceed to enforce payment.

The above provision made it mandatory that a demand notice must be served on the defaulting tax company before any form of enforcement on the company. This is a welcome development aimed to guide some overzealous tax officials who may wish to enforce

³⁷ Garner, B.A (2004).(2004)*Black's Law Dictionary, 8th Edition*, West Publishing Co. United States Of America. p.569

³⁸ Mohammed, B. T (2015) Tax Law Enforcement : Practice and Procedures. *Research Journal of Finance and Accounting*. Vol.6 p143

³⁹ Adebayo, J. (2011) An Enforcement of Judgments and Court Orders in the Nigerian Legal System.<https://devayollp.wordpress.com> (Accessed on July 10, 2018. 10.26am)

⁴⁰ Ibid.

⁴¹ Cap. C21 Laws of Federation of Nigeria, 2004

⁴² Ibid.

payment of corporate taxes on the expiration of the time within which tax is to be paid as contained in section (77)(1) of CITA⁴³ without due process.

4.8 Procedures for Enforcement of Taxes

Corporate organizations are expected to voluntarily comply with the payment of their taxes and also required to pay the correct tax assessed as and when due. Where the said expectations of the tax authorities from the taxpayers are not forthcoming, the next line of action or option will be how to enforce compliance. There are certain procedures for enforcement of taxes employed by the Federal Inland Revenue Service referred to as the “tax authority”, in accordance with the provisions of tax laws and regulations, which include writing a demand notice⁴⁴ to the taxpayers to file their annual returns.⁴⁵ The demand notice allows for any objection (if any) to the assessable tax. It also allows amendment of the assessment, collection and administration of those taxes so collected.

There are also laid down procedures for the enforcement of payment of taxes on the delinquent taxpayers’ when voluntary compliance proved difficult to achieve, which include penalties, civil and criminal sanctions, distraint and sale of defaulting taxpayers’ property, search, seizure, and use of tax clearance certificate etc. These procedures will not bar the tax authority from taking advantage of other procedures if it becomes necessary and expedient⁴⁶. However, there are also rights for taxpayers’ that should be observed and protected when applying for the procedures of enforcement, which includes:

⁴³ Ibid.

⁴⁴ Section 85 (1) (c) Companies Income Tax Act, Cap C21, Laws of Federation of Nigeria 2014

⁴⁵ Section 55 Ibid.

⁴⁶ Abdulrazaq, M.T (2015) *Principles and Practice of Nigeria Tax Planning and Management*. Stirling-Hoden Publishers Ltd. Ibadan. p. 103

(i) **Right to a Court Order before the Sale of Immovable Property.**

Tax authorities are empowered by Section of 33(4) of CITA⁴⁷ to sale goods or property of taxpayers distressed subject to subsection (6) of this Act which provides that: “Nothing in this section shall be construed so as to authorize the sale of any immovable property without an Order of a High Court, made on application in such form as may be prescribed by the rules of the court”.

(ii) **Right to Refund of Excess Tax⁴⁸**

Section 23(1) FIRS Act⁴⁹ provides that “there shall be refunded to taxpayers, after proper auditing by the Service, such over-payment of tax as is due, while section 90 of Companies’ Income Tax Act provides inter alia that: “

If any company which has paid tax for any year of assessment alleges that any assessment made upon it for that year was excessive by reason of some error or mistake in the return, statement or account made by or on behalf of the company for the purposes of the assessment, it may at any time not later than six months after the end of the year of assessment within which the assessment was made make an application in writing to the Board for relief”.

However, section 16 (1) of VAT⁵⁰ provides that: “If the input tax exceeds the output tax, he is entitled to a refund of the excess tax from the Board on production of such documents as the Board may from time to time require.” Despite the guarantee to refund excess taxes as contained in the above provisions of law. From our empirical research, the Federal Inland Revenue Service is not always inclined to comply with these provisions of the law, as it always fails to refund excess tax whether in the form of VAT or arising from the

⁴⁷ Section 33 (6) CITA Cap C21 Laws of Federation of Nigeria 2004

⁴⁸ Section 23 (1) FIRS Act, Section 16 (1) of VAT Act and Section 90 CITA Cap C21 Laws of Federation 2004

⁴⁹ (Establishment Act) No. 13 of 2007

⁵⁰ Cap. VI Laws of Federation of Nigeria, 2004

withholding tax and companies income tax system. One devastating impact of non-remittance of excess tax is the constant reduction in the cash flow of the company or individual businesses. This attitude is a flagrant breach of taxpayers' right in Nigeria.⁵¹

The provisions of section 23 (1) of the FIRS (Establishment) Act, sections 16(1)(b) of VAT Act, and 90 of Companies Income Tax Act appears to be some of the most innovative provisions of the Acts. Despite the existence of these provisions no step, whatsoever has been taken by the tax authorities to put into operation the provisions of the above laws. This no doubt has significantly placed many taxpayers' in an unstable position by exposing their unpaid sums to the risk of value erosion by reason of inflation and it also affects the time value of money.

(iii) Relief Under Petroleum Profits Tax Act (PPTA)

Corporate taxpayers' can seek relief under section 49 (1) of the Petroleum Profits Tax Act,⁵² whereby error or mistake in the supply of certain wrong information, which forms the basis of an incorrect tax assessment. The section empowers a taxpayer who has paid excess tax by reason of the error to seek relief from the Federal Inland Revenue Service within a period of six years. A good incentive that can arrest this situation will be imposition of interest on any unpaid sum held by the FIRS. This will compel the FIRS to creatively comply with the express provisions of the law. Realizing the amount of interest that is likely to be claimable from her, the FIRS will no doubt force itself to set-up the needed machinery to comply with the laws.

(iv) Right to be searched only by a person of the same gender

The right to be searched only by a person of the same gender is provided in Section 36 (4) of the Federal Inland Revenue Service (Establishment) Act. In the event of serious tax

⁵¹Olokooba, S.M; and Muritala A. (2018). Taxpayers' Right to Refund Under the Nigeria Law: A Right in Fact or Privilege in Camouflage. *Nnamdi Azikiwe University Journal of International Law and Jurisprudence (NAUJILJ)*. Vol.9, Pp.192-195

⁵² Cap.P13 Laws of Federation of Nigeria 2004

infraction or suspicion of tax abuse, the Federal Inland Revenue Service is empowered to carry out inspections, searches, seizures, make copies of evidences, obstruct or break into premises etc. it should be carefully noted that undertaking this exercise, the FIRS Act forbids the search of a person to be carried out by a person of the opposite sex. In other words, a man can only be searched by another man and vice versa. This is put in place to protect cultural and religious values of most Nigerians. Section 34 (4) of the FIRS Act provides that: “No person shall be bodily searched under this section except by a person who is of the same gender as the person to be bodily searched”.

(v) Right to Object to a Revised Assessment

It is necessary that in a situation where the tax authority serves a notice of additional assessment on a taxpayer, such taxpayer shall be entitled to object to such an assessment. Section 69 (1) of Companies Income Tax Act provides thus: “If any company disputes the assessment, it may apply for the Board, by notice of objection in writing to review and revise the assessment made upon it”.

In most cases, the tax laws provide the time frame within which a person or an authority is required to comply with clearly stated obligations. However, it is a common practice for the revenue authority to flout such binding obligations, with utter disdain and notoriety⁵³.

(vi) Right to Private Life

Right to private life is provided by Section 37 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and section 29(5) of the Federal Inland Revenue Service (Establishment) Act. Section 37 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) which deals with the right to privacy has a far reaching tax implication as

⁵³*Oando Supply and Trading Ltd vs. FIRS (2011)*.4TLRN. Pp 128-129, where the issue was whether a taxpayer can appeal to the TAT against a tax assessment, while the taxpayer objection against the assessment is yet to be resolved by FIRS.

analyzed below⁵⁴. The provision provides that; “The privacy of citizens, their homes, correspondence, telephone conversation and telegraphic communications is hereby guaranteed and protected”. However, Section 45 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) allows for derogation from this right by any law for any exception that is reasonably justifiable in a democratic society and it is in the interest of defense, public safety, public order, public mortality or public health or for the purpose of protecting the rights and freedoms of other persons. These provisions confer a general right to taxpayers’ to be entitled to their privacy. However, there is a derogation stated in section 45 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). However, such derogation are not absolute. Where the taxing authority seeks to exercise its very wide powers to search and investigate, it must be conducted in a manner that will not offend the provisions of section 37 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and such an action must clearly fall within the exceptions and situations in section 45 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). Any exercise of power beyond sections 37 and 45 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) will be an infringement on a taxpayer’s rights and will be unconstitutional.⁵⁵

The Service by virtue of Section 28 of FIRS (Establishment) Act is authorized to demand from every commercial bank, quarterly information on transaction above ₦5,000,000.00 in the case of individuals and ₦10,000,000.00 in the case of companies including the name and addresses of all new customers and other information with respect to customers, which ordinarily are supposed to be private. Section 29 of FIRS Act empowers an authorized officer of the Service to have free access at all reasonable times to lands, buildings, places, books, documents, computers and other electronic devices etc for the purposes of collecting tax or carrying out any other function lawfully conferred on the

⁵⁴Oke, B. O. (2012). Taxpayer Rights Protection in Nigeria. M.A International Taxation Thesis (Unpublished) Institute of Advanced Legal Studies University of London, p.5

⁵⁵ Ibid

Service. For emphasis, Section 29 (1) of Federal Inland Revenue Service (Establishment) Act provides thus:

Notwithstanding anything to the contrary in any other enactment or law, an authorized officer of the Service shall at all reasonable times have free access to all lands, buildings, places, books and documents in the custody or under the control of a public officer, institution or any other person, for the purpose of inspecting the books or documents including those stored or maintained in computers or on digital, magnetic, optical or electronic media, and any property, process or matter which the officer considers necessary or relevant for the purpose of collecting any tax under any of the relevant enactment, law or for the purpose for carrying out any function lawfully conferred on the Service or considered likely to provide an information required for the purposes of any of those enactments or any of those functions and may without fee or reward, make extract from, or copies of such books or documents.

This power is limited by section 29 (5) of FIRS Act, which restricts the exercise of the above powers to require either consent of an occupier or an authorization by a judicial officer. While it is important for the revenue authority to have reasonable access to information on taxpayers, it is important to know that the proper balance must be struck with the right to privacy. In the course of exercising the powers of the Service to access information, certain infractions may be committed. For example, the powers to obtain banking information by FIRS are too broad and no provision is made for judicial checks and balance before application and disclosure. This is a typical instance of the law going outside the spirit of this fundamental right.⁵⁶ The Constitution of Federal Republic of Nigeria 1999 (as amended) clearly guarantees the right to privacy. The exceptions for derogation are public safety, public order, public health and public morality among others. In other words, overriding public interest must be shown to exist. Where this is not sufficiently shown, the

⁵⁶ Ibid.

powers to access information by the FIRS cannot be effectively and legitimately exercised.

The affected taxpayer in this circumstance can proceed to court to seek for legal redress.

(vii) Right to ownership of property

The right of a taxpayer to own any property in any part of Nigeria is guaranteed under Section 43 and 44 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)⁵⁷ and Article 14 of the African Charter. Section 43 (1) of the Constitution of Federal Republic of Nigeria 1999(as amended) provides to the effect that, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria”.

Section 44 (1) of the said Constitution provides:

No movable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purpose prescribed by a law that, among other things:

- (a) requires the prompt payment of compensation thereof, and
- (b) give to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.

Furthermore, section 44 (2)(a) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides that; “Nothing in subsection (1) of this section shall be construed as affecting any general law for the imposition or enforcement of any tax or duty”. Article 14 of the African Charter provides that: “The right to property shall be guaranteed. It may only encroach upon, in the interest of public need or in the general interest of the community and in accordance with the provision of appropriate laws”.

(viii) Right of Appeal

⁵⁷ Cap.C23 Laws of Federation of Nigeria 2004

By virtue of Sections 43 (2) of Capital Gains Tax Act and 32 (3) of the Petroleum Profits Tax Act provides for taxpayers right of appeal. Section 43 (2) of the Capital Gains Tax Act provides that: “An appeal shall lie against any assessment to capital gains tax made in accordance with section 65 of the Companies Income Tax Act, as the case may be (as applied under this section) to the Body of Appeal of Commissioners established under section 71 of the Companies Income Tax Act”. However, it should be noted that section 71 of Companies Income Tax Act that deals with body of Appeal Commissioners as contained in above provision has been repealed. The defunct Body of Appeal Commissioners has been replaced with Tax Appeal Tribunal (TAT) established in accordance with section 59 (1) of the Federal Inland Revenue Service (Establishment) Act 2007. The Tax Appeal Tribunal shall have the power to settle disputes arising from the operation of the Act.⁵⁸

Petroleum Profits Tax Act Section 32 (3) provides that: “An Appeal shall lie from any direction of the Board made under this section to a Judge of the High Court”. This right of appeal is a legislative safeguard against the excess or likely abuse by the tax authorities.

4.8.1 Enforcement by distraint

Enforcement of taxation in Nigeria has always been a battle between the defaulting taxpayers and the Federal Inland Revenue Service with respect to delinquent taxes. Distraint means to seize the property of a person in order to compel payment of debts. It is defined by Black’s Law Dictionary as:

The taking, either with legal process, or extra judicially subject to the performance of some necessary condition precedent by a private individual or by an officer of the court, of a person’s chattel out of the possession of a wrongdoer, or defaulter and into the custody of the law to be impounded as a pledge in order to bring pressure to bear upon the owner of the chattel to redress an injury, to perform a duty, or to satisfy a lawful demand subject, however, to the right to the owner to have the chattel

⁵⁸ Section 59 (2) Federal Inland Revenue Service (Establishment) Act No. 13 of 2007

returned to him upon the injury being redressed or the duty performed or the demand satisfied or upon security being given so to do.⁵⁹

FIRS by the provisions of Section 86 (1) of Companies Income Tax Act⁶⁰ and 33 (1) of Federal Inland Revenue Service Act⁶¹ is empowered to levy distress against the property of any defaulting taxpayer to enforce the payment of the delinquent tax. Section 86 (1) of CITA provides that:

Without prejudice to any other power conferred on the Board for the enforcement of payment of tax due from a company, where an assessment has become final and conclusive and a demand notice has, in accordance with the provisions of this part of this Act, been served upon the company or upon the person in whose name of company is chargeable, then, if payment of the tax is not made within the time limited by the demand note, the Board may in the prescribed form, for the purpose of enforcing payment of the tax due:

- (a) distrain the taxpayer by his goods or other chattels, bonds or other securities
- (b) distrain upon any, land premises, or place in respect of which the taxpayer is the owner and subject to the following provisions of this section, recover the amount of tax due by sale of anything so distrained.

Sub-sections (2) and (3) of the section provides the procedures that must be followed before a distraint can be levied. Under the Act, there has to be a warrant of distraint as contained in the Fourth Schedule of the Act (CITA), the Warrant must contain the name of the defaulting taxpayer, the amount of tax due. Furthermore, section 86(1) of CITA⁶² which is similar with the provisions of section 33 (1) of FIRS Act⁶³ is to the effect that ‘power to distraint cannot be effective unless an assessment has become final and conclusive’. Apart

⁵⁹ Garner B. A. (2004) (2004) *Black's Law Dictionary, 8th Edition*, West Publishing Co. United States Of America. Pp.542-543

⁶⁰ Cap.C21 Laws of Federation of Nigeria 2004

⁶¹ No. 13 of 2007

⁶² Cap.C21 Laws of Federation of Nigeria 2004

⁶³ (Establishment) Act No. 13 of 2007

from that condition a demand notice to pay tax must be served upon the taxpayer. If those conditions were not met, then there would be no power to levy distress.

By the provisions of Sections 86 (4) and (5) of the Companies Income Tax Act ⁶⁴ and 33 (4) and (5) of FIRS Act⁶⁵, Federal Inland Revenue Service is empowered to sell the property distrained after 14 days and at the expiration of the time contained in the Warrant and deduct the amount due in respect of the tax and costs and charges that are incidental to the process of distraint and the sale is subject to subsection (6) of this section. Section 86 (6) of the CITA provides that: “Nothing in this section shall be construed so as to authorize the sale of any immovable property without an Order of a High Court, made on application in such form as may be prescribed by rules of court”.Notwithstanding, the application to a high court for an Order to sale, there are other procedures that must be followed, before the sale can be effective or legal. The tax authority must take reasonable steps to ensure that the taxpayer receives actual notice of the sale. Where there is non-compliance with the above procedures, the taxpayer may institute an action in a court of competent jurisdiction for an order to set aside or invalidate the purported sale or where the purchaser has taken possession he may join him in the suit.

4.8.2 Enforcement by search and seizure

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

⁶⁴ Cap.C21 Laws of Federation of Nigeria 2004

⁶⁵ (Establishment) Act No. 13 of 2007

if necessary, by force to conduct a search.⁶⁶ The power to enter and search premises are provided in sections 64 (1)(a), (b) and (2) of the Act⁶⁷ and 29 and 30 of the Federal Inland Revenue Service (Establishment) Act.⁶⁸The combined effect of the above sections is that, there must be a Warrant and it shall be the responsibility of any person on whom such Warrant is served to:-⁶⁹

- (a) co-operate fully with the person or persons authorized to conduct a searched by allowing easy access to the premises to be search and to the items or documents that may be required for the investigation;
- (b) answer all questions and queries put to him in the cause of search and
- (c) put in accessible position and facilitate the removal of all items that may be required to assist the investigation;

In the cases of serious tax infraction or suspicion of tax abuses, the FIRS is authorized to carry out inspection, searches, seizures, make copies of evidence, obstruct or break into premises etc.⁷⁰ However, in the course of carrying out any of these activities, the Federal Inland Revenue Service (Establishment) Act frowns at the search of a person by person of same gender. Section 36 (4) of FIRS Act⁷¹ provides that: “No person shall be bodily searched under this section except by a person who is of the same gender as the person to be bodily searched”. In other words, a man can only be searched by another man, and vice versa. Both the C.P.C and the C.P.A prohibits the search of the body of a woman by a man. Only another woman can search the body of woman.⁷² The search of the body of a woman by another woman must be done with strict regard to decency. It is indecent and unlawful for a

⁶⁶Section 64 (1) (a) and (b) Companies Income Tax Act Cap.C21 Laws of Federation of Nigeria 2004

⁶⁷ Ibid.

⁶⁸ No. 13 of 2007

⁶⁹ Section 64 (6) of CITA Cap. C21 Laws of Federation of Nigeria 2004

⁷⁰ Mohammad, A.M (2004). An Appraisal of Income Tax Enforcement Procedures Under the Nigerian Tax System. Being an LL.M Thesis (Unpublished) Faculty of Law, A.B.U Zaria, p.131

⁷¹ (Establishment Act) No. 13 of 2007

⁷² Section 6 (2) C.P.A and 44 (3) C.P.C

woman, while searching the body of another woman, to fondle, caresses or otherwise violates her person.⁷³ Section 82 of Criminal Procedure Code provides that “whenever it is necessary to cause a woman to be searched; the search shall be made by another woman, with strict regard to decency”.

Where these provisions as above are breached, it can be a ground for a legal action for assault. But such an infraction will not affect the admissibility of any evidence so illegally obtained in view of section 14 of Evidence Act⁷⁴ which provides that:

Evidence obtained

- (a) improperly or in contravention of a law; or
in consequence of an impropriety or of a contravention of a law shall be admissible unless the court is of the opinion that the desirability of admitting the evidence is out-weighed by the undesirability of admitting evidence that has been obtained in the manner in which the evidence was obtained.

⁷³ Section 82 C.P.C

⁷⁴ Evidence Act Cap. E.14 2011

4.8.3 Enforcement through imprisonment for tax delinquents

Tax delinquency refers to a tax that is unpaid after the payment due date. Usually a penalty is attached to delinquent tax. The power, jurisdiction and authority to collect delinquent taxes are vested with the relevant tax authorities. An action to recover delinquent taxes is not an action upon a contract, obligation, or liability, not founded upon an instrument in writing, but is one which arises upon a liability created by tax Statutes⁷⁵. Tax delinquency is also a technical connotation for tax offences. It is in form of tax fraud, negligence on the part of taxpayer and tax evasion.⁷⁶ Whichever form it presents itself, it attracts punishment by way of penalty of fine or imprisonment upon conviction. This is what is referred to as punitive measures, as one of the procedures of enforcement of taxation.

It is instructive to state that payment of penalties for tax default is quite different from criminal prosecution which upon conviction may earn term of imprisonment. It presupposes that a criminal prosecution does not exclude penalties and does not relieve a taxpayer from liability to payment of tax for which he is or may become liable.⁷⁷ The question that quickly comes to mind is whether this is compatible with the constitutional provision of freedom from double jeopardy? In other words, can acquittal of a taxpayer on a charge for any delinquency bar the relevant authority from imposing penalty for tax fraud regarding the same facts and intent? The authority of the case of *Helvering vs. Mitchell*⁷⁸ is apposite in this regard. The brief facts of the case, is a certiorari, to review a judgment, revising in part a decision of the Board of Tax Appeals, which sustained a deficiency in the income tax assessment, with a 50% addition for fraud. The issue for determination is whether an

⁷⁵Delinquent Tax Law and Legal Definition: <https://defines.uslegal.com.>delinquent>. (Accessed on May 18,2019. 12.30pm)

⁷⁶Adedokun, K. (2015). An Analysis of the Models of Punitive Measures of Tax Delinquencies in Nigeria. <https://kwasu.academia.edu>. (Accessed on May 18,2019. 12.35pm)

⁷⁷Abdulrazaq, M.T. (2015). *Nigerian Revenue Law*, Malt House Press Ltd, Lagos, Pp21-22

⁷⁸(1937) 303 U.S 1620

assessment of the addition is barred by the acquittal of the defendant on an indictment for an act for a willful attempt to evade and defeat the tax. It was held that:

The doctrine of double jeopardy is inapplicable because the addition to that is not primarily punitive, but is a remedial sanction imposed as a safeguard for protection of the revenue and to reimburse the government for expenses and loss resulting from the taxpayer's fraud. As such it may be enforced by a civil procedure to which the accepted rules and constitutional guaranties governing the trial of criminal prosecution do not apply.⁷⁹

However, it is noteworthy that the use of penalties in the Nigeria tax laws connotes criminal element. This is evident from the use of words like guilty, conviction and imprisonment in the penal sections of tax statutes coupled with the similarity of the usual mode of punishment in criminal offences which is imprisonment or fine or both conjunctively.⁸⁰ In criminal law parlance, two types of jurisdiction are recognized viz: statutory jurisdictions and common law jurisdiction. In the former, the law must be effectuated in the form of specific criminal statute. This means that no act is considered a crime unless there is a specific Statutes making it as such. In the latter, both the common and statutory crimes are enforced.⁸¹ The Nigerian Constitution recognizes statutory jurisdiction when it provides that a person shall not be convicted of a criminal offence unless that offence is defined and penalty thereto is prescribed in a written law.⁸² The Constitution enjoins the citizens to discharge their tax obligation with utmost patriotism.⁸³

Section 92 – 93 of Companies Income Tax Act,⁸⁴ sections 40 – 49 of Federal Inland Revenue Service (Establishment) Act⁸⁵ and sections 51 – 55 of Petroleum Profits Tax Act⁸⁶

⁷⁹ Ibid.

⁸⁰ Agbonike, J.A.A (2012). *Problems of Personal Income Tax in Nigeria*. Ababa Press Ltd Ibadan, p.250

⁸¹ Alfred, C., (1979). *The Criminal Justice System and its Psychology*, Van Nostrand Reinhold Company, New Jersey pp. 12-13, Chukkol, K.S (2009). *The Law of Crimes in Nigeria*, Zaria, University Press Ltd, p.60

⁸² Section 36 (12) Constitution of Federal Republic of Nigeria 1999 (as amended) Cap C23 Laws of Federation of Nigeria 2004

⁸³ Section 24 (f) Ibid; Adedokun, K. (2015). An Analysis of the Models of Punitive Measures of Tax Delinquencies in Nigeria. <https://kwasu.academia.edu>. (Accessed on May 18, 2019. 12.35pm)

⁸⁴ Cap.C21 Laws of Federation of Nigeria 2004

defined tax offences and prescribed penalties thereto, for emphases, section 92(1) of CITA provides that: “

Any person guilty of an offence against this Act or any person who contravenes or fails to comply with any of the provisions of this Act or of any rule made there under for which no other penalty is specifically provided, shall be liable on conviction to a fine of ₦20,000.00, and without prejudice to section 55(4) or 55(5) Where such offence is the failure to furnish a statement or information or to keep records required, a further sum ₦2,000.00 for each and every day during which such failure continues, and in default of payment to imprisonment for six months, the liability for such further sum to commence from the day following the conviction, or from such day thereafter as the court may order.

A close perusal and scrutiny of section 36 (12) of the Constitution of Federal Republic of Nigeria 1999 (as amended) provides that:

Subject as otherwise provided by this Constitution, A person shall not be convicted of a criminal offence unless that offense is defined and the penalty thereof is prescribed in a written law; and in this section, a written law refers to an Act, of the National Assembly or a law of a State, any subsidiary legislation or instrument under the provision of a law.

This means that there are certain Constitutional requirements and Penal provisions that tax Statutes must meet viz: definition of offence(s) and prescription of penalties. The two conditions must be present in a clear and unambiguous terms so as to give warning and constructive notice to tax offenders of the consequences of their action⁸⁷. The definition states the meaning and ingredients of the tax offences and any ambiguity in them are interpreted in favour of the tax offender. The penalties are prescribed in form of sanctions either by imprisonment or fine. It is very important for a country like Nigeria, in her serious bid to

⁸⁵ No. 13 of 2007

⁸⁶ Cap.P13 Laws of Federation of Nigeria 2004

⁸⁷ Cap P13 Laws of Federation of Nigeria 2004

enforce tax laws to convict and punish comparatively cases of tax fraud and evasion as deterrent to other potential violators. The failure to do so would bring about the collapse of the whole system because tax fraud and evasion are innocuous to the country. They destroy the government's crusade on voluntary compliance and consequently deny government means of generating adequate revenue to cater for her citizenry.⁸⁸

⁸⁸Adedokun, K (2015)op.citfn78.

CHAPTER FIVE
IMPACT OF CORPORATE INCOME TAX LEGISLATION ON REVENUE
GENERATION AND ECONOMIC DEVELOPMENT OF NIGERIA

5.1 Introduction

The Constitution of the Federal Republic of Nigeria 1999 (as amended).¹ under the fundamental objectives and directive principles of the State policy, made elaborate provisions for the welfare of the people. Section 14(2) (a) of the Constitution of Federal Republic of Nigeria 1999 (as amended), provides that “sovereignty belongs to the people of Nigeria from whom government, through this Constitution derives all its powers and authority”. Section 14(2) (b) of the Constitution of Federal Republic of Nigeria 1999 (as amended)² further states that “the security and welfare of the people shall be the primary purpose of the government”. In attempt to realize the objectives of section 14(2) (b) of the Constitution, the Corporate Tax Acts plays a vital role by making provisions on how corporations are to pay their taxes and the taxable rates applicable. This is to ensure adequate tax revenue generation, to fund the said objectives towards economic development from revenues derived from corporate taxes.

The Federal Inland Revenue Service (FIRS) is the agency of the federal government charged with the responsibility of assessing, collecting and accounting for corporate taxation and other revenues accruing to the federal government of Nigeria. The Agency reported successes in tax revenue generation in 2018, shows a significant improvement compared to previous years.³ The tax revenue analysis showed that FIRS generated a whopping sum of ₦12.65trillion from corporate tax revenue, from 2016-2018.⁴ The analysis of the tax revenue showed that the amount was generated from two major sources of tax, which were oil tax and non-oil tax. The oil tax is made up of petroleum profits tax (PPT) while the non-oil taxes are corporate taxes (company income tax, capital gains tax, value added tax etc.). Under the

¹ Cap. C23 Laws of Federation of Nigeria 2004.

² Ibid.

³ News Analysis: ₦8.2trillion Revenue Target by FIRS, a Mirage? <https://www.pulse.ng>local>n...> (Accessed July 05, 2019. 1.05pm)

⁴ Ibid.

petroleum profits tax, analysis of the tax revenue figures from the Federal Inland Revenue Service (FIRS) revealed that the sum of ₦5.14trillion was generated between 2016 and 2018, while the balance of ₦7.51trillion was earned from other corporate tax collection between 2016-2018⁵.

A breakdown of the ₦12.65trillion revenue collection figure showed that the sum of ₦3.3trillion was generated in 2016. In 2017, the amount rose to ₦4.02trillion, before the Service recorded its highest revenue collection figure of ₦5.32trillion in its entire history in 2018.⁶ Further breakdown of the petroleum profits tax (PPT) of ₦5.14trillion, revealed that ₦1.15trillion was collected in 2016, while the tax figure rose in 2017 and 2018 fiscal years to ₦1.52trillion and ₦2.47 trillion respectively.⁷

For corporate taxes, further analysis of the tax statistics showed that the sum of ₦2.14trillion was collected in 2016. The tax revenue collection figures rose to ₦2.5trillion in 2017 and peaked at ₦2.85trillion in 2018 fiscal period.⁸ This development contributed to the successful implementation of federal government of Nigeria annual budgets for 2016 which stood at ₦7.28trillion, 2017 at ₦7.44trillion and ₦8.6trillion as against 2018 budget.⁹ Based on certain parameters, that is, the overhead costs in the 2018 budget, it is evident that the budget was centered on the reinforcement of the gains of the 2017 budget, which is aimed at reducing the country's dependence on oil revenue and imports. It is projected that by shifting the country's dependence to non-oil revenue source, Nigeria's economy will be steered to the part of steady growth.

Further to the above analysis of tax revenue collections between 2016-2018, the researcher observed that companies income tax and other corporate tax (VAT & CGT) made an impact and/or contribution of 29.40% to the 2016 annual budget, and increased to 33.60% for 2017 budget and 33.14 % to the 2018 budget as against the oil tax that contributed

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

⁹ Global Tax Alert: [https:// www.ev.com/taxalerts](https://www.ev.com/taxalerts). (Accessed on July 06, 2019. 12.15pm)

15.80% to the annual budget of 2016, 20.43% to 2017 budget and 28.72% for 2018 budget. This shows that the non-oil tax (CITA, VAT, and CGT) competed keenly and favourably over revenue generated from oil, for economic development and prosperity of Nigeria between 2016-2018. The researcher noted that both oil tax and non- oil tax, could not provide the needed revenue to service the annual budgets for each of the year under review and this requires that Federal Inland Revenue Service (FIRS) must intensify more efforts to generate adequate revenue for federal government expenditure.

Whether the revenue collected are enough to finance government expenditure of any country, will depend on the needs of that country and countries can seek alternative sources of revenue to finance sustainable development. Government collects taxes in order to provide an efficient and steadily expanding non-revenue yielding services, such as employment opportunities, maintenance of law and order, irrespective of the prevailing ideology or political system of a particular nation.¹⁰ Nigeria with a realization of ₦2.85trillion from corporate tax revenue in 2018, representing 14% increase over ₦2.5trillion corporate tax revenue generation in 2017¹¹ shows that corporate tax revenue is one of the ways by which infrastructural development and other government expenditure can be funded. The tax base in Nigeria had continued to increase for rapid economic development. According to Kaldor¹², those who believe that insufficient growth and investment are mainly a consequence of lack of resources, are concerned with increasing the resources available for investment through additional taxation. The availability and mobilization of revenue is the fundamental factor on which an economic development is sustained and managed.

In the face of resource deficiency to service overall annual budgets and finance long-term development, Nigeria government had heavily resorted to foreign capital, such as loans

¹⁰Algoni, U.S., and Agrawal, P.K.(2017). An Assessment of the Contribution of Tax on Nigeria's Economic Development and Its Effects on Companies' Performance in Nigeria. *International Journal of Scientific and Research Publication*. Vol.7p.478

¹¹Global Tax Alert: [https:// www.ey.com/taxalerts](https://www.ey.com/taxalerts). (Accessed on July 06, 2019. 12.15pm).

¹²Kaldor, N.(1963) Capital Accumulation and Economic Growth. Being Seminar Paper on the Programming of Economic Development, Kings College, Cambridge. Available online at <http://www.fep.up.pt/docentes/jao/material/macro2/kaldor1961.pdf> (Accessed May 13, 2019. 2.15pm)

and aid as additional means to achieve rapid economic growth. By foreign capital, the government accumulated huge external debts in relation to gross domestic product (GDP) and creates serious debt servicing problems in terms of foreign exchange flow and as a result, majority of the populace live in abject poverty. Government has expressed deep concern over its huge external debts and has agreed to expand its tax revenue base, in order to meet its mandate. It is against this backdrop, that Nigeria government decided to carry out a tax reform, based on taxes that are politically feasible and administratively practicable, and at the same time, reducing the tendency for economic distortions¹³. Also an accurate estimation of the optimal level of expenditure requires knowledge of the productivity of the tax system and this will assist in identifying a sustainable revenue profile for the country, towards economic development. It is important that developing countries, Nigeria inclusive, must be able to raise the adequate revenue required to finance the services demanded by their citizens and the infrastructure (physical and social) that will enable them to move out of poverty.

From the foregoing, the researcher is very optimistic that revenue derived from corporation taxes have contributed substantially to the economic development of Nigeria. However, the need to streamline the nation's tax system so as to ensure the realization of optimal tax revenue through equitable and fair distribution of the tax burden and the need to provide strategies that will enhance the tax revenue generation in Nigeria is necessary.

5.2 Strategies to Enhance Tax Revenue Generation in Nigeria

Tax revenue generation is indispensable in meeting the government obligations to the citizens through provision of enhanced welfare package, security of lives and property, adequate food and shelter, improving living standards, transportation system, employment opportunities, among others. It is against this backdrop that the following strategies¹⁴ become important for an improved revenue generation in Nigeria.

¹³ Dickson E. Oriakhiet.al(2014). The Impact of Tax Reform on Federal Revenue Generation in Nigeria. *Journal of Policy and Development Studies*. Vol.9p.98

¹⁴ Ibid

1. Effective Monitoring and Control

Effective monitoring and control is important to the responsibilities of all revenue agents in Nigeria as they will sit up to their responsibilities. Effective and efficient monitoring will reduce the age old delay in assessment, collection and remittances, as well as diversion of revenue by Ministries, Department and Agencies (MDA) and/or tax authorities.

2. War Against Corruption

A frontal attack on corruption and/or corrupt practices is necessary in order to flush out all the bad eggs among revenue agents, which will improve service delivery of tax authorities through transparency and accountability. This will bring about an increase in revenue generation of the federal government.

3. Adequate and Reliable Information on Tax Matters

Regular gathering, processing, dissemination and management of information reliable, adequate and accurate data on tax matters will reduce the information gap among stakeholders and this will enhance revenue generation of Federal Inland Revenue Service and will bring more corporate institutions to tax net.

4. Synergy among Stakeholders

Synergy among all revenue stakeholders, will encourage cooperation, collaboration and effective interaction among them. This will reduce conflicts, duplication of efforts and resources among the stakeholders, thereby improving the inter agency relations and boosting revenue collection.

5. Stimulating and Challenging Business Environment

Nigeria business environment is very costly. Government provision of basic infrastructure, such as good road network, regular electricity supply, clean and portable water supply, will reduce the cost of doing business in the country, and thereby attract more investors and improving the fortunes of small and medium enterprises (SMEs) and increasing their annual turnover, net profit and taxable income.

6. Moral Rearmament

Moral rearmament campaign to instill the spirit of patriotism, hard work, creativity, honesty and dignity among Nigerians and corporate institutions, will help to support and promote government drive for more revenue. This also requires leadership by example. The moment corporate institutions or citizens begin to see their leaders or tax authorities as competent, honest, disciplined, credible, humble and committed, they will naturally join the bandwagon and support government revenue policies and programmes.

7. Over-hauling of Institutional Framework for Revenue Collection.

Over-hauling the institutional framework for tax assessment, collection and remittances and to be strengthened to cope with the challenges in the field will improve revenue drive of the government.

8. Double and Multiple Taxation

The Federal Inland Revenue Service (FIRS) as well as State Boards of Internal Revenues looking closely into the issue of double and multiple- taxations and taking appropriate steps for immediate discontinuation of the exercise, will attract more business into Nigeria environment and leading to an increase of taxable income and revenue generation.

9. Accountability and Transparency Governance

Accountability and transparency governance at all levels of government in the country will reassure taxpayers, who have become evasive to tax payment, that public resources are not being prudently managed. Unprecedented corruption, arrogant display of ill-gotten wealth by some public officers, unimaginable wastage by public institutions, give erroneous impression that our government do not know what to do with the public money, and this will affect the revenue collection.

10. Derivative Principle in Revenue Allocation

Reconsidering the use of derivative principle in revenue sharing at all levels of government in the country will improve revenue generation. If revenue allocation, public projects, programmes and service are done on the basis of the contributions of all stakeholders into the common pool, then every man, corporate institutions, communities, local governments, state agencies and ministries will sit up and struggle for higher productivity.

5.3 Impact of Foreign Direct Investment (FDI) to Corporate Tax Revenue Generation and Economic Development

The prolonged state of insecurity in Nigeria is another major factor or deterrent for investors and partly plays a role in FDI inflow. It does little to attract foreign investors. The country continues to contend with spurts of violence in the Middle- Belt, between herdsmen and communal farmers, North- East of Nigeria and other parts of Nigeria, with incessant act of kidnapping and *boko haram* terrorizing the regions; threats of secession in the South- East by Indigenous People of Biafra (IPOB) and also insecurity in the Niger Delta region. No foreign company is willing to jeopardize the lives of their employees and assets in such a volatile and sometimes violent environment.

Another key fundamental factor is the poor investment climate characterized by overly stringent government policies, bureaucratic bottlenecks for securing permits, and weak

legal framework. In 2015 MTN Nigerian telecom giant, one of the most prominent and successful foreign investors in Nigeria was sanctioned with a colossal sum of USD5.2billion fine by Nigeria's Communications Commission (NCC)¹⁵ for non-compliance with a deadline set by the NCC to disconnect all non-registered subscriber's identification module (SIM) cards. Such sanction cannot encourage prospective investors to invest in Nigeria, and has a negative impact on the economic development of Nigeria and corporate tax revenue generation.

The nation's huge infrastructure deficit is another major investment challenge and/or deterrent. The lack of stable electricity supply, means manufacturers' have to rely on expensive alternative energy sources, such as diesel generators, solar energy and power inverter, etc. In addition many investors are afraid that despite a large population of 195.9 million people as at 2018,¹⁶ there is no viable market for their products. This is due to high level of poverty, unemployment and insecurity. Given all of these factors, it is not difficult to see why many potential investors opt for other African countries, like Ghana, Kenya, Morocco and South Africa.

However, all hope is not lost. The federal government of Nigeria has set to work to correct these anomalies. Efforts to expand the tax base and strengthen the regulatory framework, like the Companies and Allied Matters Act(CAMA)¹⁷, Nigerian Investment Promotion Commission (NIPC) Act¹⁸, and Investment and Securities (ISA) Act¹⁹ etc., to ensure that investment are being pursued, albeit with varying degrees of success. This will help enhance the lure of Nigeria's business environment, which will in turn, attract FDI²⁰.

¹⁵ . The Curious Case of MTN,s Whopping \$5bn Fine in Nigeria. <https://www.forbes.com>sites>. (Accessed October 02, 2019. 11.00am).

¹⁶. Trading Economics- Nigeria Population.<https://tradingeconomics.com> (Accessed on October 02, 2019. 12.10pm).

¹⁷ Cap. C23Laws of Federation of Nigeria 2004.

¹⁸ Cap. N114. Ibid.

¹⁹Cap.124. Ibid

²⁰Nigeria and Failure to Boost Foreign Direct Investment.<https://www.proshareng.com> (Accessed on July 9, 2019. 12..35pm)

Considerable progress has also been made on the drive to reduce Nigeria's dependency on oil revenue as more efforts are now being channeled to tax revenue generation, and a more diversified economy would make FDI more attractive and result in a more stratified economy.

CHAPTER SIX

DATA PRESENTATION, ANALYSIS AND INTERPRETATION

6.1 Introduction

The study is aimed at examining the corporate tax legislation that has significant influence on the revenue generation in Nigeria with a view to proffering recommendations geared towards increased revenue for Nigeria. Data collected from the field are presented and analyzed in tables and pictographic format.

The study scheduled a total of 300 questionnaires administered to corporate institutions randomly selected from Abuja FCT, Jos, Kaduna, Kano, Lagos and stakeholders at managerial level whose routine responsibilities are germane on the issue under study. The corporate entities cut across public limited companies (PLC) such as ABC Transport PLC, Access Bank PLC, African Alliance Insurance PLC, AIICO Insurance PLC, Cadbury Nigeria PLC, Capital Oil PLC, Charms PLC, Cornerstone Insurance PLC, Conoil PLC Custodian Investment PLC, Dangote Cement PLC, Evans Medical PLC, Fidelity Bank PLC, Fidson Healthcare PLC, Hardy Oil and Gas PLC, Julius Berger PLC, Lafarge Africa PLC, Unilever Nigeria PLC, Union Bank PLC, and Zenith Bank PLC. Also, private limited liability companies which include among others, are Bank of Agriculture Limited, First Bank of Nigeria Limited, First City Monument Bank Limited, Globacom Nigeria Limited, Keystone Bank Limited, Leadway Assurance Company Limited, Microvis Microfinance Bank Limited, Mikano International Limited. The stakeholders also include Managers, Company Secretaries, Managing Directors/CEO's and Directors of Federal Inland Revenue Service (FIRS) Abuja-FCT, Institute of Chartered Accountants of Nigeria (ICAN), Chartered Institute of Taxation of Nigeria (CITN), and Tax Consultants/Administrators. An in-depth interview was also conducted with relevant stakeholders whose responsibilities are important to the issue under investigation. The stakeholders includes, the Hon Judge of the Kaduna State High Court of Justice, Court No.11, the past Vice Chairman of Institute of Taxation of Nigeria,

Kaduna State Branch, Chairman NBA Barnawa Branch, Kaduna State; some students of Nigerian Law School, Abuja Campus and the Internal Auditor/Control Officer of First Bank of Nigeria Limited, Kaduna Main Branch, Kaduna State.

The population of the study is the census of all items or a subject that possess the characteristics or that have the knowledge of the phenomenon that is being studied²¹. It also means the aggregate people from which the sample is to be drawn. Population is referred to as the pool of individuals from which a statistical sample is drawn for a study²². The population of the research study is the entire staff of the entire population of 1400 staff of the following companies, ABC Transport PLC, Access Bank PLC, African Alliance Insurance PLC, AIICO Insurance PLC, Cadbury Nigeria PLC, Capital Oil PLC, Charms PLC, Cornerstone Insurance PLC, Conoil PLC, Custodian Investment PLC, Dangote Cement PLC, Evans Medical PLC, Fidelity Bank PLC, Fidson Healthcare PLC, Hardy Oil and Gas PLC, Julius Berger PLC, Lafarge Africa PLC, Unilever Nigeria PLC, Union Bank PLC, Zenith Bank PLC, Bank of Agriculture Limited, First Bank of Nigeria Limited, First City Monument Bank Limited, Globacom Nigeria Limited, Keystone Bank Limited, Leadway Assurance Company Limited, Microvis Microfinance Bank Limited, and Mikano International Limited

A sample is a statistically significant portion of a population, and not an entire population²³. The sample size that is used to represent the whole population is determined by the use of Taro Yamane 1967 formula

6.3. Calculation of Sample Population

The respondents were selected by probability sampling method (quota sampling technique). Based on the population of the target audience, a sample size of 300 was determined using Taro Yamane Formula 1967, at a 95% confidence level, of 0.05 standard deviation and a margin error (confidence interval) of +/-5%. This means that the sample size of 300 is

²¹Asika, N. (1991) *Research Methodology in the Behavioural Sciences*. Longman Publishers, Ibadan. Pp.39-40

²²Available at <https://www.investopedia.com/terms>. (Accessed on July 20, 2020. 11.30am)

²³Ibid.

analysed at 95 percent confidence level, implying that there is a high probability of arriving at a logical conclusion. Macrocosm population stand at 1400 and microcosm sample population stand at 300. This is derived or computed using the Taro Yamane formula 1967 as shown below.

Table 6.1: Population of the Study

S/N	Company	Population
1.	ABC Transport PLC,	50
2.	Access Bank PLC	50
3.	African Alliance Insurance PLC	50
4.	AIICO Insurance PLC	50
5.	Cadbury Nigeria PLC	50
6.	Capital Oil PLC	50
7.	Charms PLC	50
8.	Cornerstone Insurance PLC	50
9.	Conoil PLC	50
10.	Custodian Investment PLC	50
11.	Dangote Cement PLC	50
12.	Evans Medical PLC	50
13.	Fidelity Bank PLC	50
14.	Fidson Healthcare PLC	50
15.	Hardy Oil and Gas PLC	50
16.	Julius Berger PLC	50
17.	Lafarge Africa PLC	50
18.	Unilever Nigeria PLC	50
19.	Union Bank PLC	50
20.	Zenith Bank PLC	50
21.	Bank of Agriculture Limited	50
22.	First Bank of Nigeria Limited	50
23.	First City Monument Bank Limited	50
24.	Globacom Nigeria Limited	50
25.	Keystone Bank Limited	50
26.	Leadway Assurance Company Limited	50
27.	Microvis Microfinance Bank Limited	50
28.	Mikano International Limited	50
	Total	1400

Source: Field Survey, 2021

The sample size of the study is calculated using the “Taro Yamane formula” in arriving at the sample size as stated below

$$n = \frac{N}{\dots}$$

Where $(1 + N(e)^2)$

n = Sample size

N = Finite population

1 = Constant

E = Level of significance taken to be 0.05

n = 1400

$$n = \frac{1+1400(0.05)^2}{1+1400(0.0025)}$$

Sample size (n) = 300

Based on the size sample above, the 300 questionnaires were administered, from which 287 were retrieved representing 96%, while 13 or 4% were not retrieved due to logistics reasons. The retrieved questionnaires covered to a large extent the scope that gives the research the required data needed to arrive at a logical conclusion. Table and Figure 5.1 below show a graphic representation of the retrieval rate.

Table 6.2: Analysis of Response Rate

Administered Questionnaire to Corporate entities/Stakeholders	Frequency	Percentage
Retrieved	287	96%
Not Retrieved	13	4%
Total	300	100%

Source: Field Survey, 2019.

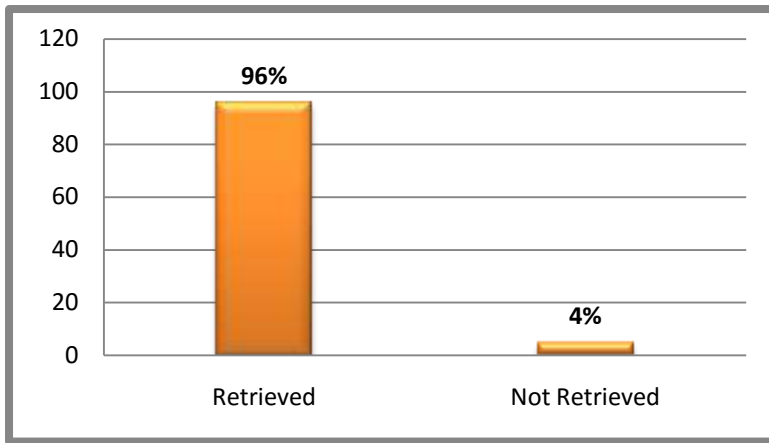


Figure 6.1: Analysis of response rate
Source: Field Survey, 2019

6.4. Analysis of Socio-Demographic Characteristics of the Respondents

This section summarises socio-demographic profile of respondents at the helm of affairs of corporate entities and or organisations. These criteria are vital to this study because it gives import and credibility to the source of information and validate the opinions of the respondents.

Figure 6.2 below revealed that majority of the respondents fall within the age brackets of 40 – 60 years. This implied that the respondents are old enough to draw logical conclusions on issues relating to Corporate Income Tax Legislation, and its impact on revenue generation in Nigeria and enforcement of corporate tax under investigation.

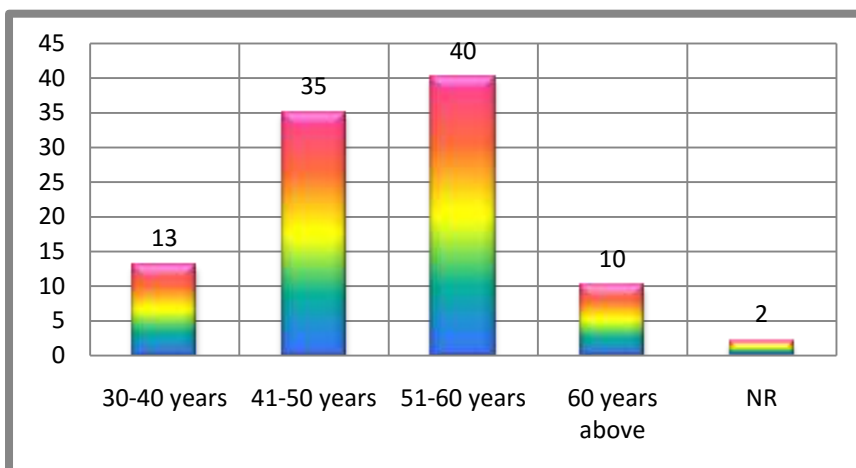


Figure 6.2: Analysis of age distribution of the Respondents.
Source: Field Survey, 2019

Figure 6.3 below shows that majority of the respondents ranking 77% are Degree/HND holders, 14% possess PhD/Masters, 9% possess OND or its equivalent. It can therefore, be deduced that respondents for this study are well educated and therefore, able to comprehend the subject matter being interrogated and make valuable contributions, as their responsibilities in their offices includes administration of corporate tax

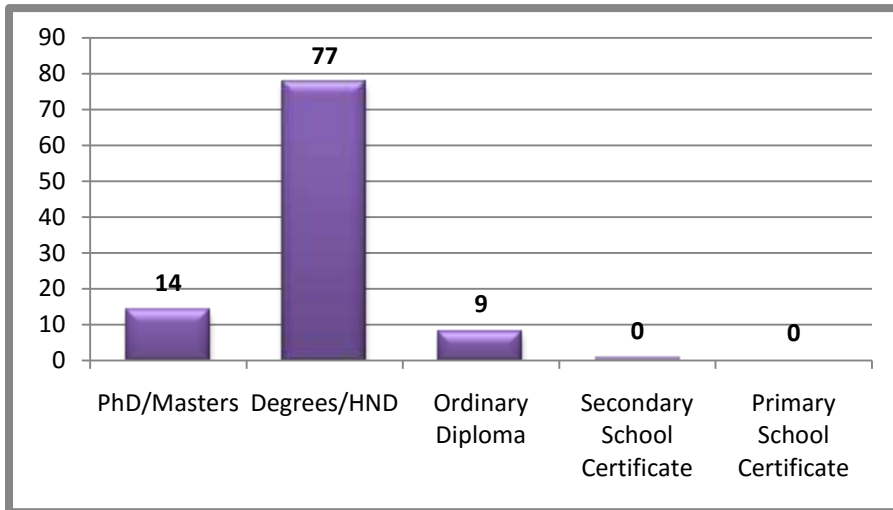


Figure 6.3: Highest Educational Qualification of the respondents.

Source: Field Survey, 2019

Figure 6.4 below shows the work experience of respondents with respect to taxation of corporate institutions in Nigeria. From the foregoing, it can be deduced that respondents for the study have enough experience to contribute meaningfully from their wealth of experience which enriched the research.

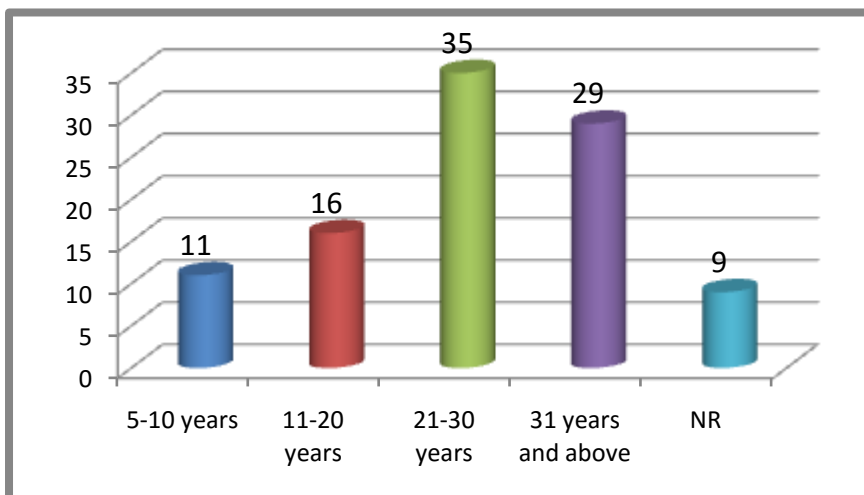


Figure 6.4: Respondents Work Experience on Taxation of Companies

Source: Field Survey, 2019

6.5. Empirical Analysis of Field Data

This section of the research attempted to answer the questions posed by the researcher via the administered questionnaires. All the responses are tailored towards answering the research questions with a view to finding answers to the issues raised by the researcher.

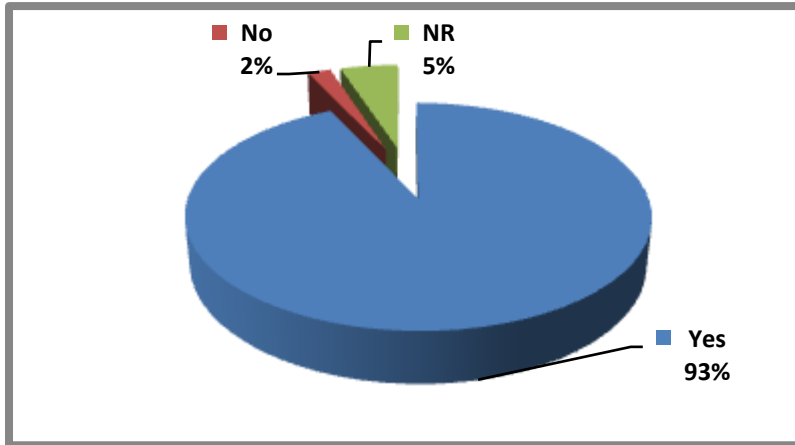


Figure 6.5: Do you have Knowledge on Corporate Income Tax?

Source: Field Survey, 2019

Figure 6.5 above shows respondent level of awareness on Corporate Income Tax. From the foregoing, majority of the respondents ranking 93% were of the opinion that they are aware of what Corporate Income Tax is all about. This inferred that their opinions can be relied upon to draw conclusion on the subject under discussion.

In an attempt to find out who administers and enforced Corporate Income Tax Law in Nigeria, an overwhelming number of the respondents (100%) opined that Corporate Income Tax Act in Nigeria is administered and enforced by Federal Inland Revenue Service. Figure 5.6 below also presented a pictorial representation of the respondent's opinions.

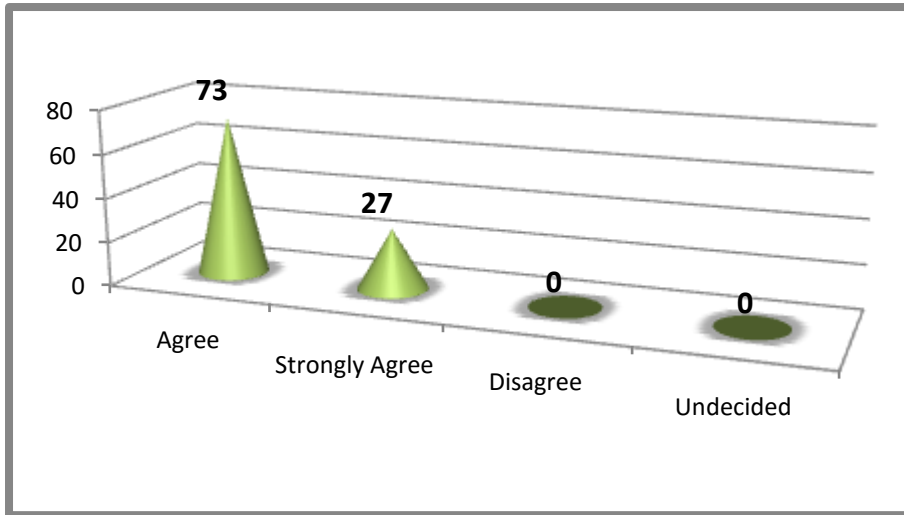


Figure 6.6: Tax Regime Availability and its enforcement

Source: Field Survey, 2019

In an attempt to find out whether the Federal Inland Revenue Service is not properly equipped materially (i.e) technological equipment's and manpower to effectively discharge her functions as asserted, respondents ranking 69% (cumulative) agreed that the Federal Inland Revenue Service is not properly equipped to effectively discharge her functions. However, a significant minority of the respondents ranking 25% opined the contrary. Analytically, while it can be deduced that the Federal Inland Revenue Service is not properly equipped to effectively discharge her functions, this does not rule out the fact that a significant success has been recorded. Figure 6.7 below show a graphic representation of this assertion.

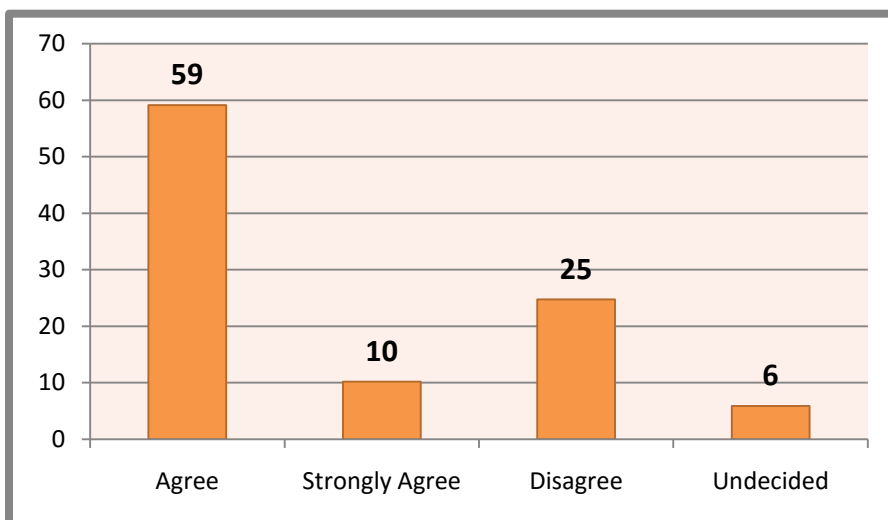


Figure 6.7: The Federal Inland Revenue Service is not properly equipped to effectively discharge her functions. Hence loss of revenue

Source: Field Survey, 2019

An overwhelming number of the respondents ranking 91% (cumulative) agreed that the collusion of staff of F.I.R.S with some companies in order to pay less tax, has affected the competence and integrity of Federal Inland Revenue Service. This deduction is as shown on figure 6.8 below.

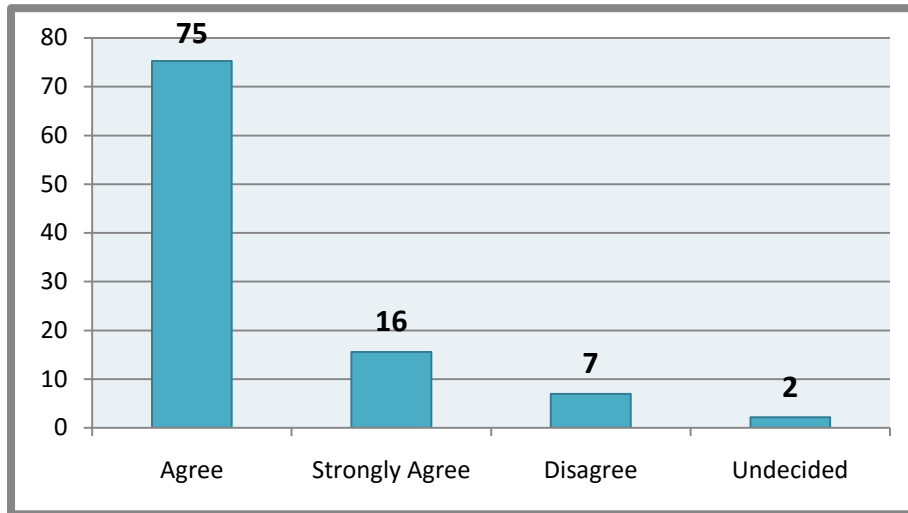


Figure 6.8: The collusion of staff of F.I.R.S with some companies in order to pay less tax has affected the competence and integrity of Federal Inland Revenue Service

Source: Field Survey, 2019

The figure 6.9 below shows respondents opinion on the effect of unqualified staff on the operational effectiveness of the FIRS. From the foregoing, it is clear that employment of unqualified personnel by F.I.R.S has adverse effect in terms of loss of revenue and proper discharge of her responsibilities.

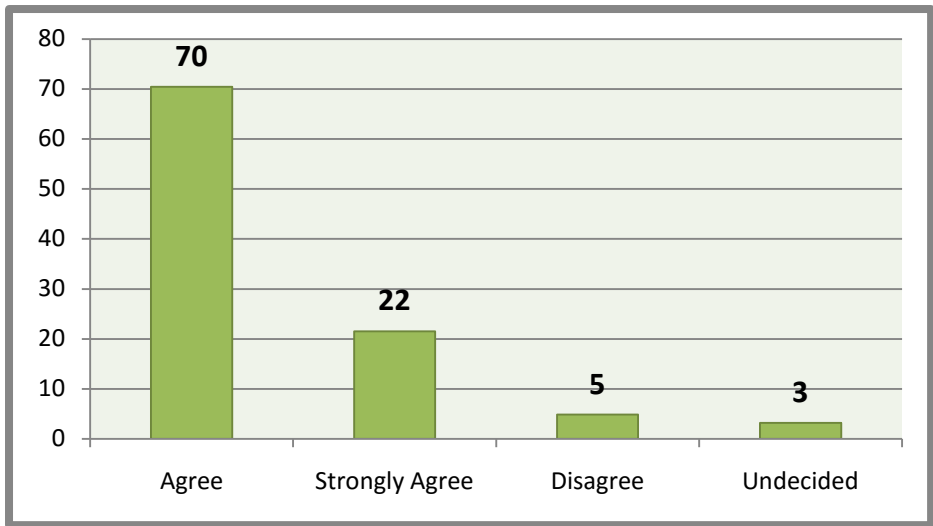


Figure 6.9: Employment of unqualified personnel by F.I.R.S is a challenge and affects her competence to effectively discharge her responsibilities

Source: Field Survey, 2019

Figure 6.10 below shows that 85% (cumulative) of the respondents opined that lack of adequate motivation of the workforce of Federal Inland Revenue Service affects corporate tax collection and enforcement in Nigeria.

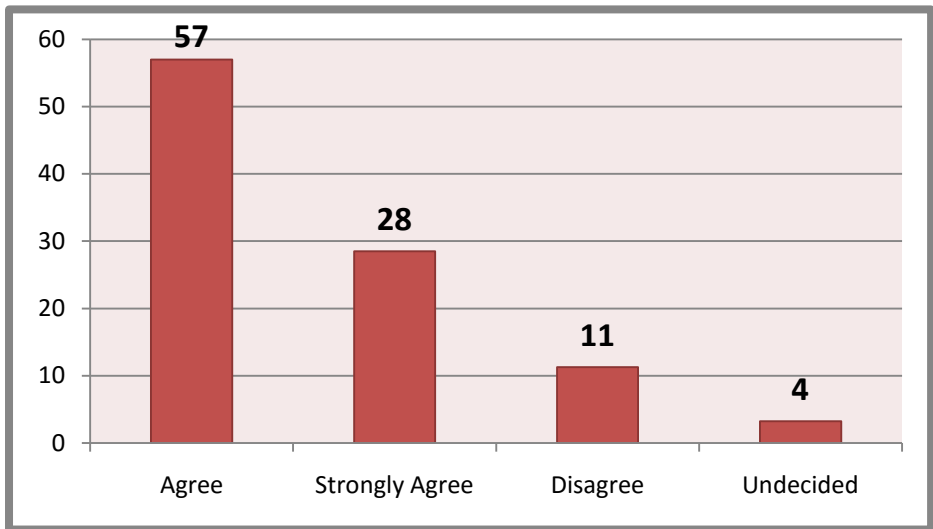


Figure 6.10: Lack of adequate motivation of the workforce of Federal Inland Revenue Service affects corporate tax collection and enforcement in Nigeria

Source: Field Survey, 2019

Table 6.2: Contribution of Corporate Taxation as Major Source of Economic Wealth of Nigeria for Provision of Infrastructural Facilities.

Options	Frequency	Percentage
Agree	226	85
Strongly Agree	32	11
Disagree	21	7
Undecided	8	3
Total	287	100

Source: Field Survey, 2019

Table 6.2 above shows that majority of the respondents ranking 85% opined that corporate taxation is a major source of economic wealth of Nigeria and it is used for provision of infrastructural facilities for economic development.

Figure 6.11 below shows that insufficient or inadequate training contributes to lack of knowledge of corporate tax and practice in Nigeria tax regime. This was the opinion of majority of the respondents ranking 86% (cumulative) and was buttressed by the past Vice Chairman of Institute of Taxation of Nigeria, Kaduna State Branch. In his interview, the vice chairman reiterated that inadequate training of personnel constitutes a major setback in the organization²⁴.

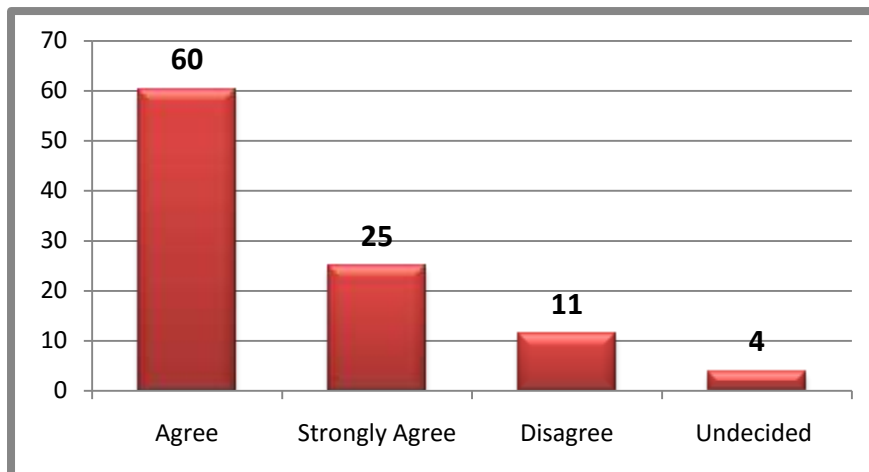


Figure 6.11: Lack of sufficient knowledge of Corporate Tax Laws and Practice.

Source: Field Survey, 2019

Figure 6.12 below shows that respondent ranking 95% (cumulative) agree that lack of provision of basic infrastructural facilities, gives room for incessant corporate tax crimes, which account for some of the reasons why corporate tax collection is very low in Nigeria.

²⁴Eze, P.C , P. C Eze & Associate, Kaduna (July 5, 2019)

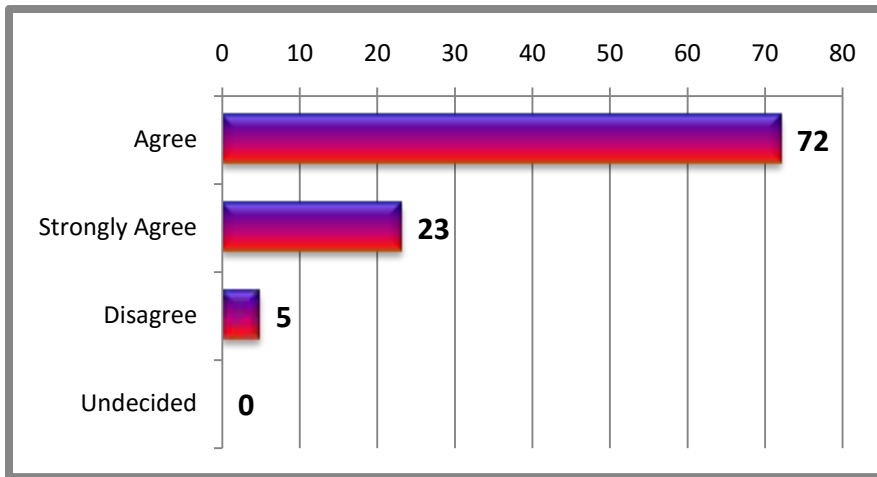


Figure 6.12: Lack of provision of basic infrastructural facilities by government, gives room for incessant corporate tax crimes, i.e tax evasion and late payment of taxes by tax payers.

Source: Field Survey, 2019

In an attempt to find out the effectiveness of the application of Corporate Tax Laws in Nigeria, respondents ranking 85% (cumulative) agree that Corporate Tax Laws in Nigeria are not sufficient to effectively and efficiently manage the collection of taxes. This is as obtained in the figure 6.13 below.

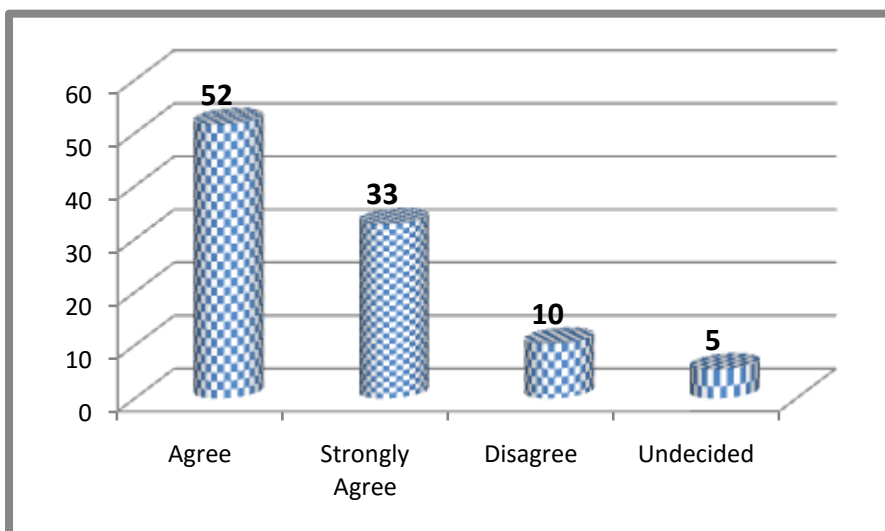


Figure 6.13: The Corporate Tax Laws in Nigeria are not efficient and effective to administer corporate tax.

Source: Field Survey, 2019

The penalty provisions in the Corporate Tax Acts for different categories of offences are inadequate in contemporary Nigeria to punish or to serve as a deterrence to tax defaulters. This opinion is agreed by majority of the respondents ranking 82% (cumulative) as shown on figure 6.14 below

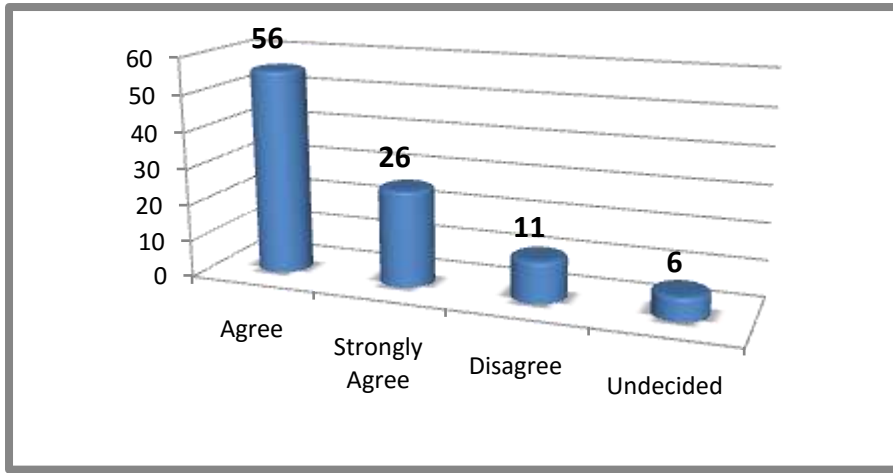


Figure 6.14: The penalty provisions in the Corporate Tax Acts for different categories of offences are inadequate in contemporary Nigeria to punish or to serve as a deterrence to tax defaulters.

Source: Field Survey, 2019

The Internal Auditor/Control Officer of First Bank of Nigeria Limited, Kaduna Main branch²⁵ expressed his opinion in an interview that some of the major setbacks in the financial and regulatory bodies in Nigeria and which explains why corporate tax collection is low are:-

- i. the inability to checkmate and ensure that tax defaulters and perpetrators of financial misappropriation are punished or brought to book in accordance with tax statutes and constitutional provisions;
- ii. inability of security operatives to bring tax offenders and perpetrators of financial misappropriation to book;
- iii. lack of sufficient knowledge of Corporate Tax Laws and Practice;
- iv. corruption by tax officials and taxpayers;
- v. lack of proper accountability by the government and/or public office holders and
- vi. punishment prescribed by Tax Laws are inadequate.

From the respondent point of view, it is glaring that the inadequacies of offences and penalty provisions in the Corporate Tax Acts tend to encourage commission of tax crimes.

²⁵Ojaogo, A., First Bank of Nigeria Limited Main Branch, Kaduna (July 15, 2019)

Figure 6.15 below depicts this assertion by a significant majority of respondents ranking 84% (cumulative).

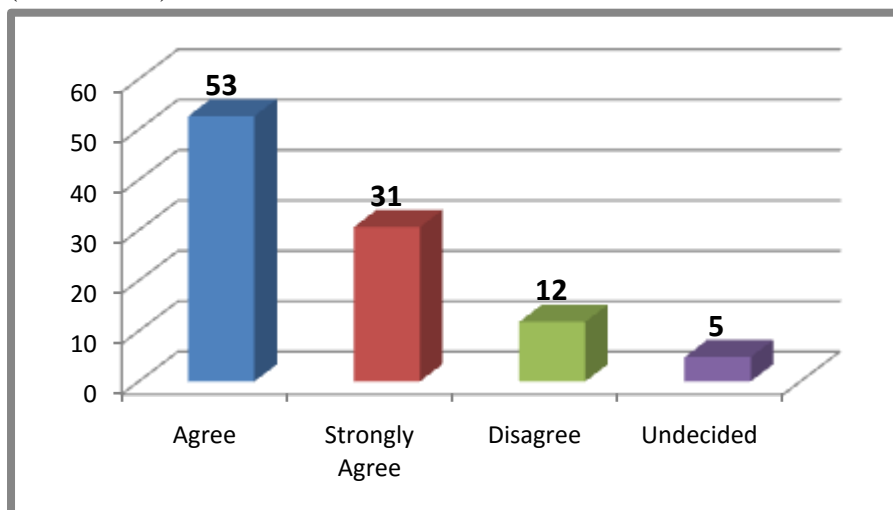


Figure 6.15: The inadequacies of offences and penalty provisions in the Corporate Tax Acts tends to encourage commission of tax crimes.

Source: Field Survey, 2019

Figure 6.16 below shows that majority of the respondents ranking 92% (cumulative) were of the opinion that the obvious resultant effect of the flaws in the Corporate Tax Acts is loss of revenue.

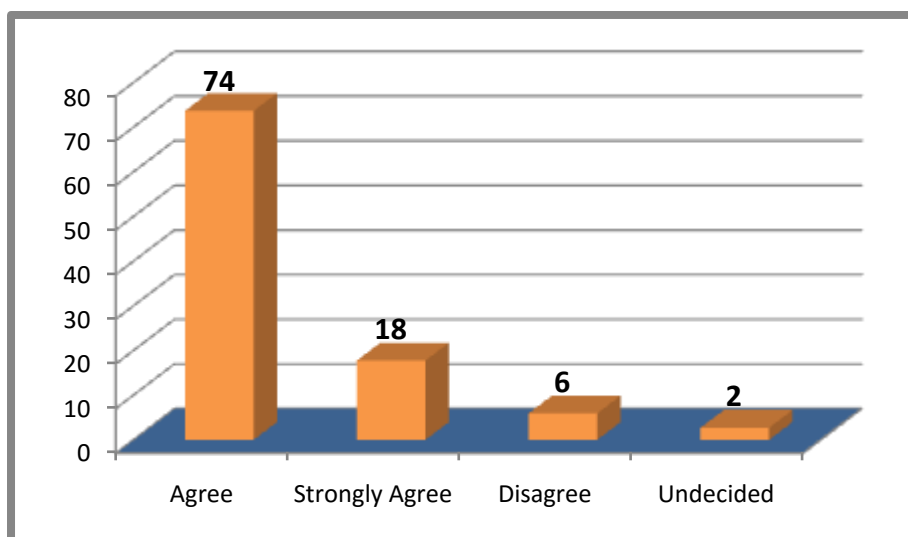


Figure 6.16: The obvious resultant effect of the flaws in the Corporate Tax Acts is loss of revenue

Source: Field Survey, 2019.

Respondents ranking 82% as shown at figure 6.17 below agreed that the Corporate Tax Acts are filled with uncertainty and vagueness. It can therefore, be deduced that Corporate Tax Acts are filled with uncertainty and vagueness which leads to loss of corporate tax revenue.

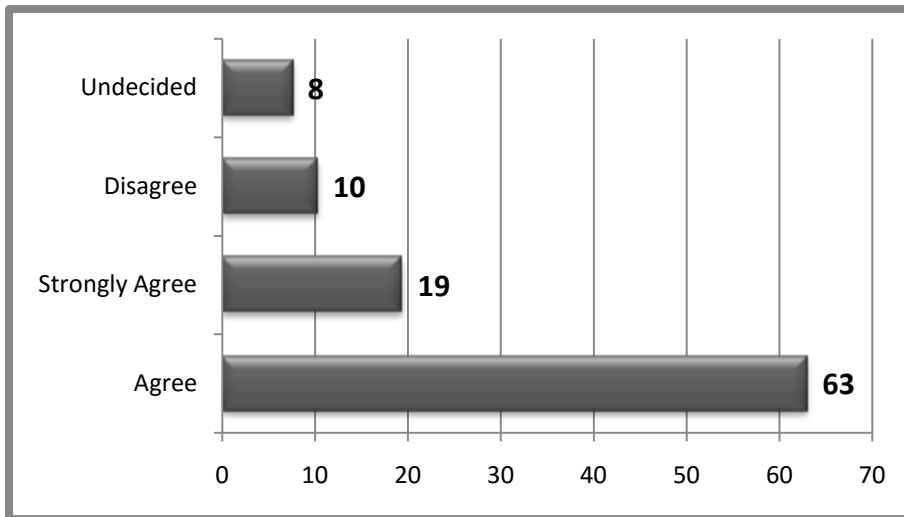


Figure 6.17: The Corporate Tax Acts are filled with uncertainty and vagueness

Source: Field Survey, 2019

In assessing some of the militating factors against payment of taxes by the Public/Corporate Organizations, majority of the respondents as shown in figure 6.18 below, agree that lack of basic infrastructural facilities discourages corporate organizations from payment of taxes.

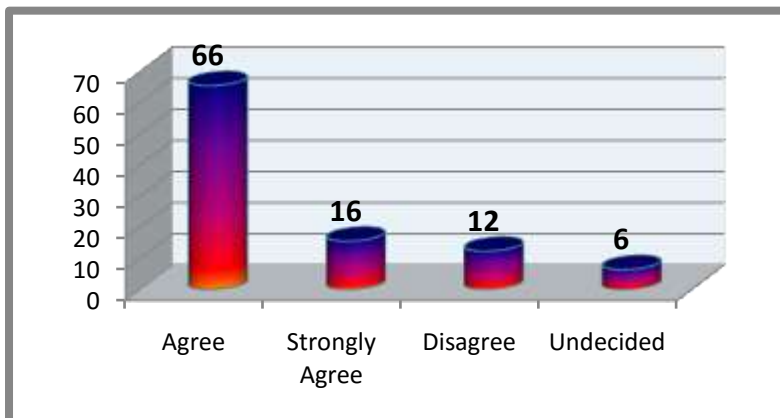


Figure 6.18: Lack of basic infrastructural facilities discourages corporate organizations from payment of taxes.

Source: Field Survey, 2019.

Figure 6.19 below shows that 93% (cumulative) of the respondents were of the opinion that the collapse of many companies is as a result of unfavorable economic conditions (i.e) high rate of corporate taxes, deterioration in the standards of living, inadequate public welfare, poor social service delivery, epileptic power supply, and poor road network , which affects revenue collections from corporate taxes in Nigeria.

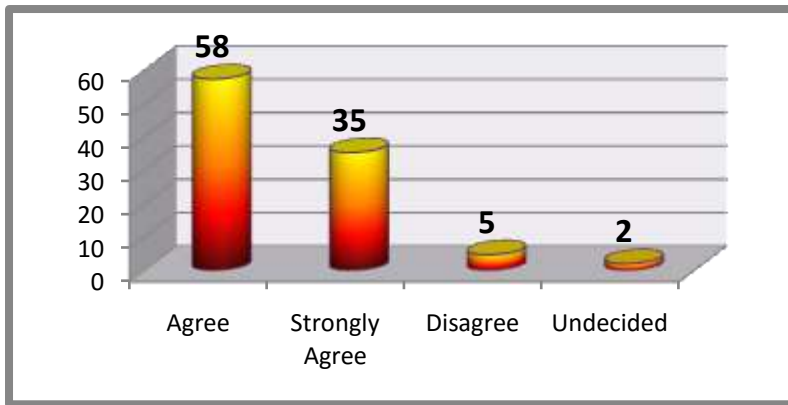


Figure 6.19: The collapse of many companies as a result of unfavourable economic conditions (i.e) high rate of corporate taxes and epileptic power supply affects payment of corporate taxes in Nigeria.

Source: Field Survey, 2019.

The figure 6.20 below shows that an overwhelming number of respondents ranking 98% were of the opinion that lack of proper accountability by public office holders in Nigeria discourages taxpayers from payment of corporate taxes.

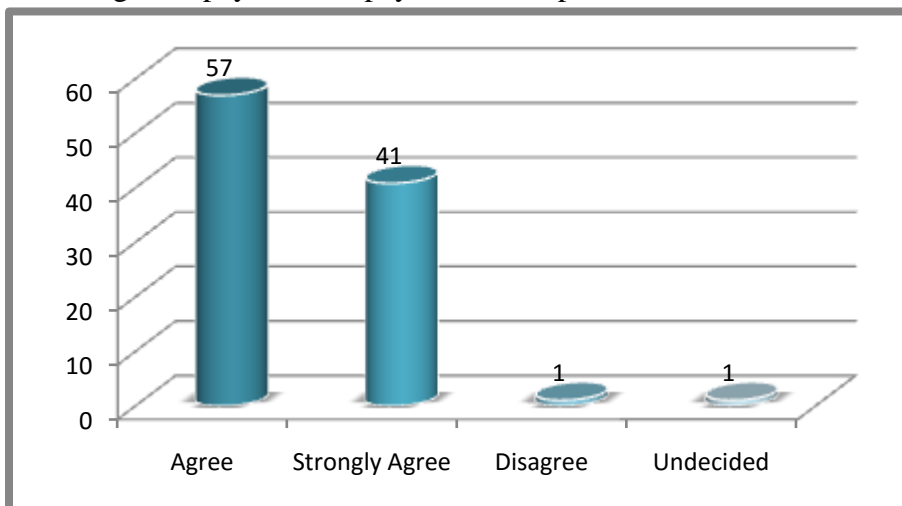


Figure 6.20: Lack of proper accountability and corruption by public office holders is a challenge in Nigeria and discourages taxpayers from payment of corporate taxes

Source: Field Survey, 2019.

Also, majority of the respondents agreed that high level of illiteracy among tax payers' affects the efficient collection of taxes as indicated in figure 6.21 below.

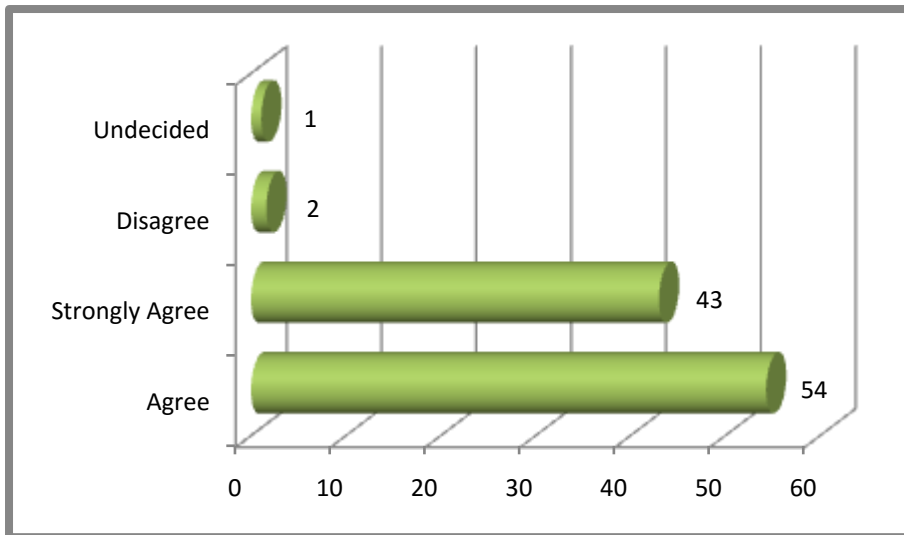


Figure 6.21: High level of illiteracy among tax payers is a challenge and affects the efficient collection of taxes.

Source: Field Survey, 2019

Figure 6.22 below shows the respondents opinion on the complexity of Corporate Tax Laws in Nigeria. From the foregoing, majority of the respondents opined that Corporate Tax Laws in Nigeria are complex and difficult to understand and in some cases constitute a problem even for the literate tax officials.

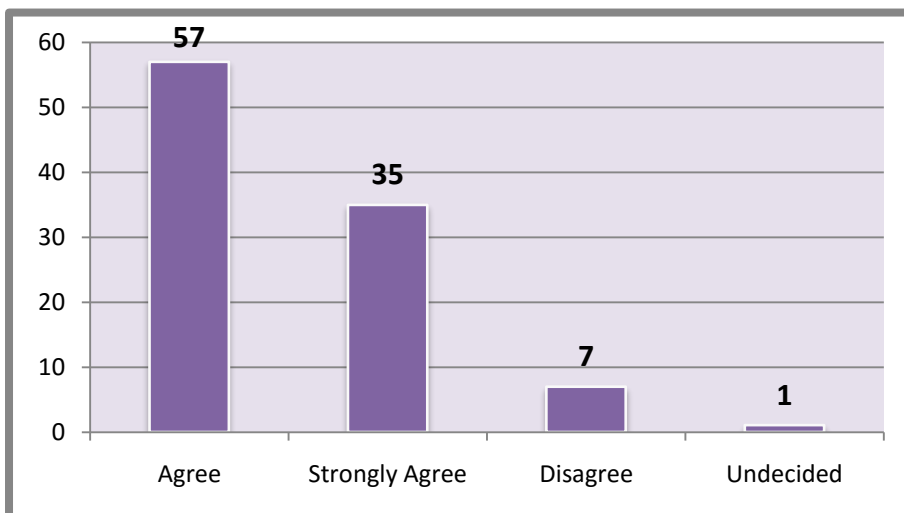


Figure 6.22: Corporate Tax Laws in Nigeria are complex and difficult to understand and in some cases are problematic even for the literate tax officials

Source: Field Survey, 2019

In assessing the challenges affecting corporate tax compliance and enforcement in Nigeria, respondents ranking 95% (cumulatively) agree that corporate tax evasion constitutes

a problem and challenge in tax administration in Nigeria. This is as indicated in figure 6.23 below.

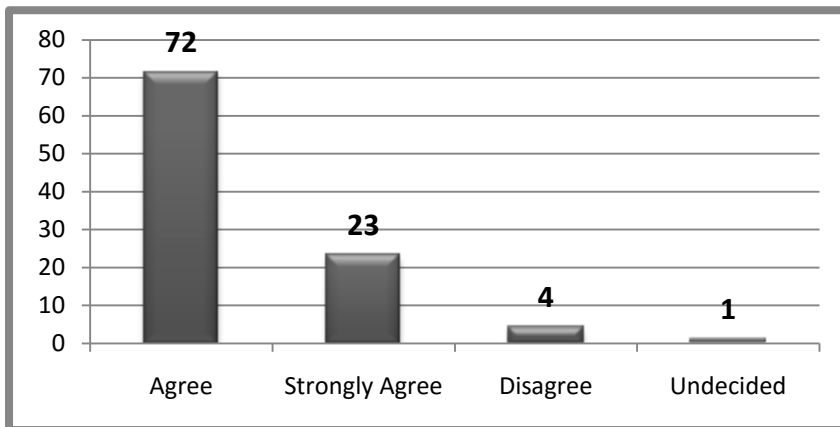


Figure 6.23: Corporate tax evasion constitutes a problem/challenge in tax administration in Nigeria
Source: Field Survey, 2019

Majority of the respondents in figure 6.24 below agree that multiplicity of taxes affects tax compliance and enforcement in Nigeria

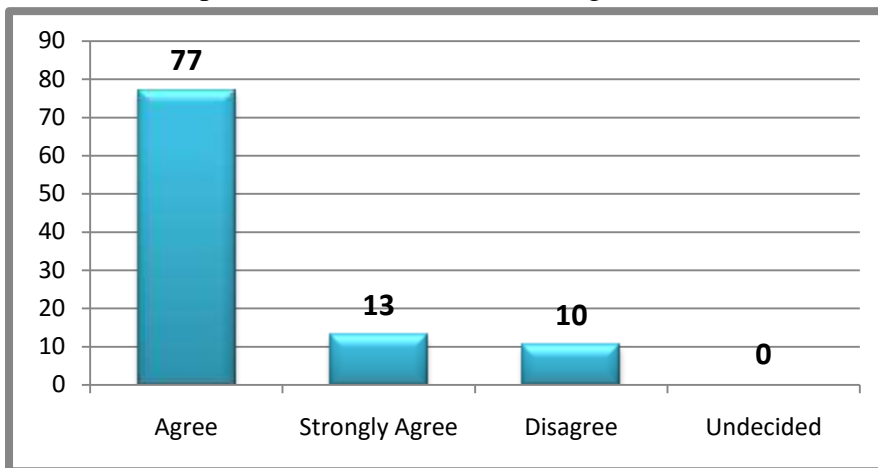


Figure 6.24: Multiplicity of taxes is a challenge and affects tax compliance and enforcement in Nigeria.

Source: Field Survey, 2019

Figure 6.25 below shows that majority of the respondents agree that the low level of tax payers' education and enlightenment affect tax compliance in Nigeria.

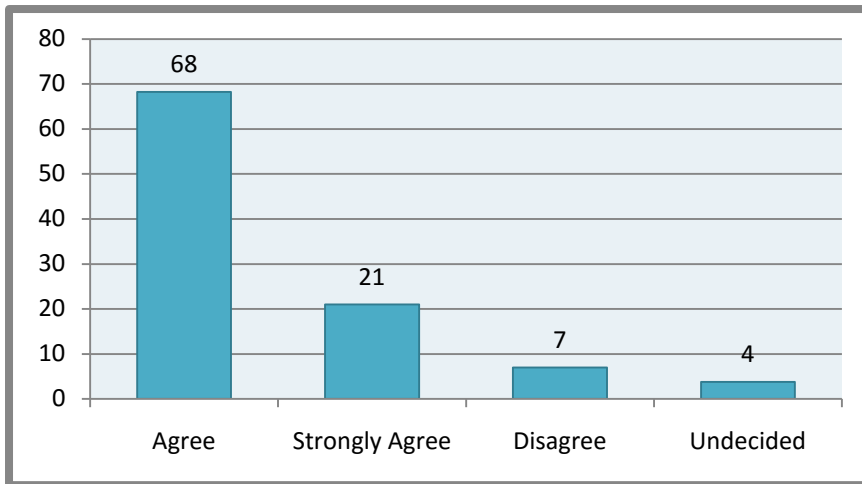


Figure 6.25: Low level of tax payers’ education and enlightenment is a challenge and affect tax compliance in Nigeria.

Source: Field Survey, 2019

In an attempt to ascertain the effect of inadequate tax personnel /manpower with regard to corporate tax enforcement in Nigeria, the question was posed to find out whether inadequate tax personnel /manpower affect corporate tax enforcement in Nigeria. From the foregoing, the analysis of the question shows that majority of the respondents ranking 91% (cumulative) agreed that inadequate tax personnel /manpower affect corporate tax enforcement in Nigeria, and therefore, constitutes a challenge. This assertion is as shown on the figure 6.26 below.

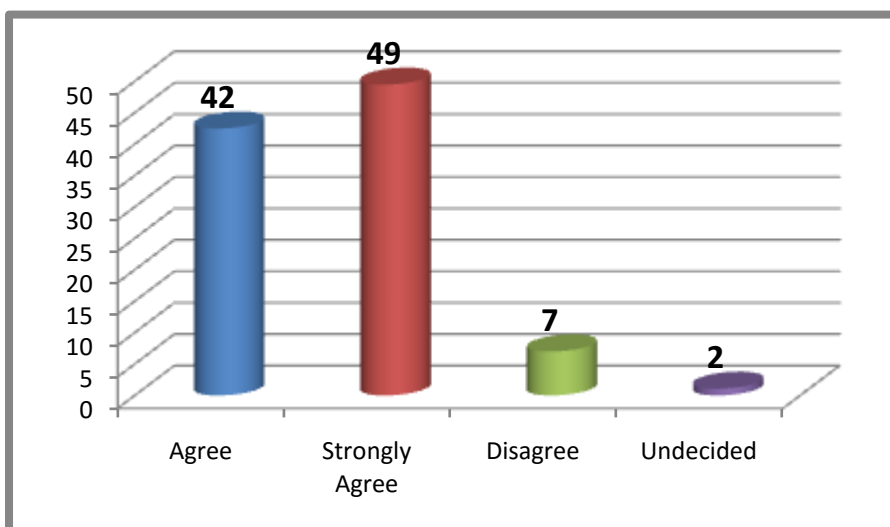


Figure 6.26: Inadequate tax personnel /manpower is a challenge and affect corporatetax enforcement in Nigeria.

Source: Field Survey, 2019.

Other challenges highlighted in an in-depth interview with major stakeholders amongst which included the past Vice Chairman of Institute of Taxation of Nigeria, Kaduna State Branch, Chairman, NBA Barnawa Branch Kaduna State, Hon Judge of Kaduna State High Court No.11, and some Students of Nigeria Law School, were endemic corruption in the taxation system, administrative bottleneck, God-fatherism, policy inconsistency and the present insurgency and security challenges in the country.

These challenges highlighted above constitute a major setback to the operational effectiveness of corporate income tax and its impact on the revenue generation of Nigeria. Unless a proactive measure is taken to combat these menace, the needed resources to move the economy of Nigeria to the next level will remain a mirage.

CHAPTER SEVEN

SUMMARY AND CONCLUSION

7.1 Summary

The role of corporate income tax and its impact under the contemporary Nigeria is very important, because of its prosperity and economic development potentiality of Nigeria. It is an effective instrument for generating revenue for development of Nigeria. In this work the taxation of income of companies in Nigeria has been examined and analyzed. The various loopholes in the Corporate Income Tax Acts and/or legislation, such as Companies Income Tax Act¹, Petroleum Profits Tax Act², Value Added Tax Act³, Capital Gains Tax Act⁴ and Federal Inland Revenue Service (Establishment) Act⁵ have been identified. Suggestions and/or recommendations aimed at plugging them have been made. To this end, this chapter summarizes the discussions made so far in this thesis. The summary finally highlights the findings and recommendations as contained below.

Corporate taxation is a tax on the income or profits of the corporation or company. The corporation or the company in question is that established by or any law in force in Nigeria or elsewhere⁶. By this definition the Act⁷ recognizes both Nigeria and foreign companies. All companies in Nigeria are required to pay their taxes by virtue of section 24(f) of Constitution of Federal Republic of Nigeria 1999 (as amended)⁸ which provides that “It shall be the duty of every citizen to declare his income honestly to appropriate and lawful agencies and pay his tax promptly.”By extension this include corporations or companies, as

¹ Cap. C21, Laws of Federation of Nigeria, 2004

² Cap. P13, Ibid

³ Cap. VI, Ibid

⁴ Cap. CI, Ibid

⁵ No. 13, 2007

⁶ Section 105 Companies Income Tax Act, Cap. C21 Laws of Federation of Nigeria 2004.

⁷ Companies Income Tax Act, Cap. C21 Laws of Federation of Nigeria 2004.

⁸ Cap C23 Laws of Federation of Nigeria 2004.

they are legal personality in law⁹. All registered companies in Nigeria are required by Companies Income Tax Act¹⁰ to pay tax to the federal government on income or profits made by them through the Federal Inland Revenue Service (FIRS) that is vested with the administration of companies income tax in Nigeria. Taxation is also “the one great power upon which the whole national fabric is based. It is necessary to the natural man. It is the power to keep alive a nation, country or state”¹¹.

It is arguable that tax is the price or consideration of the social contract between the government and the governed in modern democracies¹². There is hardly any government today that does not rely on taxation measures to provide the much needed revenue for socio-economic development and amelioration of inequalities of wealth in the society. Currently in Nigeria and by virtue of the Finance Act 2019¹³, which came into effect on January 14, 2020, a company for purposes of its payment of taxes is classified into three; (i) Large Companies, this means any company which is not a small or medium-sized company; (ii) Medium Sized Company. This means a company that earns gross turnover greater than ₦25,000,000.00 (Twenty Five Million Naira), but less than ₦100,000,000.00 (One Hundred Million Naira), (iii) Small Company. This means a company that earns gross turnover of ₦25,000,000.00 (Twenty Five Million Naira) or less.

Prior to the colonial administration in Nigeria, an effective tax system was reportedly in operation and notable companies or corporations like the U.K Royal Niger Company and United African Company were in operations and were instrumental in the formation of

⁹*Salomon vs. Salomon & Co. Ltd.*(1897) AC 22

¹⁰ Cap C21 Laws of Federation of Nigeria 2004.

¹¹*Nicholes vs. Ames* 173 U.S. 509 (1899) at p. 515

¹²Sani, A.M, (2015) An Appraisal of the Legal Framework for Taxation in Nigeria. *Journal of Law, Policy and Globalization*. Vol. 34 p.82

¹³Section 22(c) Finance Act 2019 (Amendment to section 105 CITA)

colonial Nigeria¹⁴. In 1904 a tax legislation which harmonized the various traditional taxes was issued, called the Land Revenue Proclamation Law of 1904. This law had effect in the Northern Protectorate of Nigeria until the amalgamation of the North and Southern Protectorates in 1914 when the Native Revenue Ordinance of 1917 was enacted to cover the areas of the Western Region of Nigeria¹⁵.

Over the years, the Nigerian corporate tax system has undergone tremendous changes. The tax laws have been reviewed with the aim of repealing the obsolete tax laws to enhance effective means for procedure of enforcing the payments of corporate taxation to meet up with the current demands of the Nigeria fiscal programmes and to reduce the wide spread of economic and financial crimes such as corruption, among tax payers and tax authorities; tax evasion and avoidance in the Nigerian tax system.

The general administration of corporate income tax in Nigeria is the responsibility of the Federal Inland Revenue Service established under section 1(1) of Federal Inland Revenue Service (Establishment) Act¹⁶, and by virtue of the combined effects of the provisions of sections 2, 8 and 25 of the Federal Inland Revenue Service (Establishment) Act¹⁷, the Act effectively vested the F.I.R.S with powers to control and administer the different taxes and laws specified in the First Schedule to the FIRS Act or other laws or regulations such as ;

- (1) Companies Income Tax Act¹⁸ which regulates the tax on the income and profits of incorporated entities in Nigeria. It also includes the tax on the profits of non-resident companies carrying on business in Nigeria

¹⁴Baker, G.L, (1996). *Trade Winds on the Niger.Saga of the Royal Niger company 1830-1971* Radcliff Press London. p. 82

¹⁵Sani, A.M. (2015) An Appraisal of the Legal Framework for Taxation in Nigeria. *Journal of Law, Policy and Globalization*. Vol. 34 p.82.

¹⁶No. 13, 2007

¹⁷Ibid

¹⁸Cap. C21 Laws of Federation of Nigeria 2004

- (2) Petroleum Profits Tax Act¹⁹ deals with the tax on the income of companies engaged in upstream petroleum operations (that is operation stages in the oil and gas industry that involve exploration and production)
- (3) Capital Gains Tax Act²⁰ deals with tax on the profit realized from the sale of stocks, bonds, precious metals, real estate, and property.
- (4) Value Added Tax Act²¹. This is the law that regulates consumption tax placed on a product whenever value is added at each stage of the supply chain, from production to the point of sale.
- (5) All regulations, proclamation, government notices or rules issued in terms of these legislations.
- (6) Any other law for the assessment, collection and accounting of revenue accruable to the government of the federation as may be made by the National Assembly from time to time or regulation incidental to those laws conferring any power, duty and obligation on the Service. The Federal Inland Revenue Service is also vested with powers to assess, collect, account and enforce payment of taxes as may be due to the government or any of its agencies. The Federal Inland Revenue Services is aided by the Tax Appeal Tribunal (TAT) and Joint Tax Board (JTB). By virtue of section 59(1) of FIRS Act., the Tax Appeal Tribunal is established as provided for in the Fifth Schedule to the Act²² to adjudicate on the disputes, and controversies arising from the following tax laws (hereinafter referred to as ‘the tax laws’) ²³

¹⁹Cap. P13, Ibid

²⁰Cap. CI, Ibid

²¹Cap. VI, Ibid

56.FIRS (Establishment) Act No. 13, 2007

57.Section 11 of the Fifth Schedule to FIRS (Establishment) Act No.13, 2007

- I. Companies Income Tax Act.²⁴
- II. Petroleum Profits Tax Act²⁵
- III. Value Added Tax Act.²⁶
- IV. Capital Gains Tax Act²⁷
- V. Any other law contained or specified in the First Schedule to this Act or other laws made or to be made from time to time by the National Assembly.

Where the Tax Appeal Tribunal in the course of its adjudication, discovers evidence of possible criminality, the Tribunal shall be obliged to pass such information to the appropriate criminal prosecuting authorities, such as Economic Financial and Crimes Commission (EFCC), the office of the Attorney General of the Federation or the Attorney General of any State of the Federation or any other relevant enforcement agency. The Joint Tax Board is created by virtue of section 86(1) of the Personal Income Tax Act²⁸ to exercise the powers or duties conferred on it by express provisions of this Act, and to exercise powers and performs such duties conferred by any enactment of the federal government imposing tax on the income and profits of companies or which may be agreed by the ministry to be exercised or performed by it, under the enactment in place of the Federal Board of Inland Revenue²⁹.

No tax law, no matter how sophisticated and progressive can be effective unless it is administered with competence and integrity that could ensure tax compliance. The principal objective of any revenue authority is to collect taxes and duties payable in accordance with the Tax Statutes. However, many taxpayers' are not always willing and ready to comply, when it comes to fulfilling their tax obligations imposed on them by the law, which

58. Cap. C21 Laws of Federation of Nigeria 2004.

59. Cap.P13 Ibid.

60. Cap. V1. Ibid.

²⁷ Cap. C1.Ibid.

60.Cap. P8, Laws of Federation of Nigeria 2004

²⁹Section 86(9) (b) Personal Income Tax Act Cap.P8 Laws of Federation of Nigeria 2004

specifically provides that it shall be duty of every citizen, inclusive of corporate organizations to declare their income honestly to the appropriate and lawful agencies and pay their taxes promptly³⁰.

Tax compliance refers to taxpayer's decision to comply with tax laws and regulations by paying tax timely and accurately³¹. Anderoni³², simply put tax compliance as the willingness to obey tax laws in order to attain economic development and goal. Corporate tax system depends largely on strict compliance with laws. Voluntary tax compliance in most cases is not always achievable hence the need for the enforcement strategy.

Company tax law enforcement in Nigeria tax system is one of the integral parts of the tax administration given the ability of corporate bodies awareness in keeping aside part of what is due to federal government as taxes or refusing to remit same at all. Tax enforcement is necessary given the low level of corporate tax compliance in Nigeria and the urgent need to improve government dwindling revenue, through taxation. Effective and efficient tax enforcement strategy can assist the federal government to generate enough revenue and to care for its estimated expenditure and/or budget in order to provide good governance. Good governance on the other hand, simply means provision of basic social amenities, to meet the aspirations and essential needs of citizens in an environment devoid of acrimony and where security of lives and properties are guaranteed. Revenue generated through corporate taxation enables the government to preserve law and order and provision of other socio-economic, political and cultural activities and/or facilities. In order to achieve these, government must ensure that every revenue generated through corporate income tax must be properly accounted for, and judiciously used for the welfare of her citizens, economic growth and development.

³⁰ Section 24(f) Constitution of Federal Republic of Nigeria 1999 (as amended) Cap C 23 Laws of Federation of Nigeria 2004.

³¹ Tax Compliance: <https://link.springer.com> (Accessed on December 10, 2019. 11.30am)

³² Adreoni, E.B. (1998) Tax Compliance. *Journal of Economic Literature*. Vol.36 Pp.818-860

Economic growth and development through revenue generated from taxation can only be seen and sustained if there are effective policies, through skillful economic management. In this case, there is need to utilize the service of tax professionals, lawyers, accountants and economists in the formulation and implementation of tax policies and guidelines in Nigeria. This will bring respect to the tax system and enhancement, if the taxpayers' begin to see some tangible developments in their localities, such as improved health care delivery, educational facilities, and provision of good road network etc. it is only when these basic amenities are provided that the tax payers will feel the positive impact of payment of their taxes and will be inspired to pay more.

7.2 Findings

Summary of finding's from the research, based on the doctrinal and empirical methods used are as follows.

1. Inadequate Monetary Fines and/or Penalties.

The penalties in terms of monetary fines prescribed in some penalty sections of Corporate Income Tax Legislation, in most cases are grossly inadequate and not commensurate or sufficient for the type of offences they are designed to deter and to manage collection of taxes. For example section 95(b) of Companies Income Tax Act stipulates a fine of ₦600 (Six Hundred Naira) for offences by authorized and unauthorized persons not being authorized under this Act to collect or attempts to collect the tax under this Act or where a person duly authorized to act or appointed for the due administration of the Act or employed in connections with the assessment and collection of the tax, demands from any company an amount in excess of the authorized assessment of the tax. Similarly, section 55(b) of Petroleum Profits Tax Act also stipulates a fine of ₦600.00 (Six Hundred Naira) for the same offences. This amount, in the present day Nigeria, is very ridiculous and small to serve as a punishment for tax offenders of such grave offences or to serve as a deterrence.

2. High Rate of Companies Income Tax.

The present company's income Tax rate of 30 percent for large companies in Nigeria is very high. This will discourage potential investors from investing in Nigeria. It will also discourage local companies from paying the correct tax. Furthermore, it encourages companies to resort in conspiring with tax officials to pay less or evade payment of taxes.

3. Conflicts Between CITA and CAMA 2020 in the Classification of Companies in Nigeria

CAMA 2020³³ classifies companies to small and others using a combination of different parameters, whereas the Finance Act 2019 and 2020 (amending the Companies Income Tax Act) introduced the classification of companies into small, medium-sized and large companies. The variances in the basis of determining small companies under the CAMA and CITA have created ambiguities. For instance, while a company with a turnover of ₦110 million qualifies as a large company under CITA for tax purposes, the same company may qualify as a small company under CAMA 2020

4. Exclusive Original Jurisdictional Power of Federal High Court over Tax Appeal Tribunal

Section 11(1) (i) – (v) of the Fifth Schedule of Federal Inland Revenue Service (Establishment) Act, conferred the Tax Appeal Tribunal with the jurisdiction to adjudicate over disputes and controversies arising from Corporate Tax Acts. This is wrong also. It is a flagrant breach of the provisions of section 251 (1) (a) and (b) of the Constitution of Federal Republic of Nigeria 1999 (as amended) which vested the original exclusive jurisdiction to

³³Section 394(3) Companies and Allied Matters Act 2020.

Federal High Court to adjudicate on issues relating to the revenue of the Government of the Federation in which the said Government or any organ thereof or a person suing or being sued on behalf of the said Government is a party, and/or matters connected with or pertaining to the taxation of companies and other bodies established or carrying on business in Nigeria and all other persons subject to federal taxation.

5. Lack of Skilled Manpower and Modern Technology

The Federal Inland Revenue Service (FIRS) being the collector and regulator of corporate income tax legislation in Nigeria is not properly equipped with skilled manpower and modern technology. For example, some of their zonal offices lack, Close Circuit Television (CCTV), internet services and human resources to effectively manage the collections and enforcement of taxes, as the manual compilation of tax assessment, filling system and enforcement procedures can no longer meet up with the rapid changing commercial activities of some corporate organizations in Nigeria, this however, does not rule out the fact that FIRS has recorded some remarkable successes, but a lot needs to be done to ensure operational effectiveness.

6. Integrity Question on the Ways and Manners of how Tax Monies are spent

Many Nigerians do not believe that government officials utilize the funds/and or revenue generated through taxation for the development of the economy and running of government judiciously. This is because they believe that the amount of revenue generated through taxation by tax authorities is by far at variance with what they can see the government has done with the money as there are paucity of infrastructural facilities, non-payment of wages and salaries of civil servants and pensioners, that could inspire corporate taxpayers' or individuals to pay more tax.

7.3 Recommendations

Based on the findings of the research, the following recommendations are made.

1. Adequate Monetary Fines and/or Penalties

The monetary penalty of the sum of ₦600.00 (Six Hundred Naira) provided in sections 95(b) of Companies Income Tax Act³⁴ and 55(1)(b) of Petroleum Profits Tax Act³⁵ is too small, insignificant and inadequate to deter such offences. The penalty/fine should be increased from ₦600.00 (Six Hundred Naira) to ₦50,000.00 (Fifty Thousand Naira) considering the nature of the offence, which is a serious economic crime that has continued to eat deep into the fabric of Nigeria society, and also to serve as a deterrence.

2. Reduction of Companies Income Tax Rate

The tax rate imposed upon the profits of any large company in Nigeria is 30 percent³⁶. This rate is on the high side and has negative impact on the flow of foreign investment in Nigeria. The high rate of 30 percent will discourage tax payment and will likely promote corruption as taxpayers are likely to bribe the tax officials in order to reduce their tax liabilities.

The tax rate for a large company should be reduced to 23 percent, considering the tax rate of 20 percent provided for medium-sized companies.³⁷ The reduction will attract prospective investors and retain the existing one's. The reduction will also encourage the local companies to pay their taxes as and when due and also improve the tax revenue generation of the government. In a bid to mobilize revenue to meet up with government commitment, caution must be taken so as not to discourage investors, potential businessmen and industrialists, that act as catalysts for economic growth with high rate of corporate tax.

³⁴ Cap. C21, Ibid.

³⁵ Cap.P13 Laws of Federation of Nigeria 2004

³⁶ Section 24 Finance Act 2020

³⁷ Section 16(b) Ibid.

3. Harmonization of Conflicts between CITA and CAMA 2020 in the Classification of Companies in Nigeria.

The harmonization of conflict in what constitute a small company in Nigeria under CAMA 2020 and CITA is necessary to ensure uniformity and confidence of taxpayers and stakeholders and to eliminate resultant conflicts.

4. The Federal High court should have Original Jurisdiction over Tax Appeal Tribunal.

The provisions of section 11 (1) (i)-(v) to the Fifth Schedule of the Federal Inland Revenue Service (Establishment) Act, vests Tax Appeal Tribunal with the jurisdiction to entertain or adjudicate over disputes and controversies arising from Corporate Tax Acts against the Constitutional provision of section 251 (1) (a) and (b) which conferred Federal High Court with exclusive original jurisdiction to determine matters relating to the revenue of the government of the federation and also matters connected with or pertaining to the taxation of companies and other bodies established or carrying on business in Nigeria and all other persons subject to Federal Taxation. It does not matter whether issues relating companies taxation will be tried expeditiously by Tax Appeal Tribunal quicker than Federal High Court in view of its workload, but by virtue of sections 1 (3) of the Constitution of Federal Republic of Nigeria 1999 (as amended), which provides that “if any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistency be void. This being the case, the Federal High Court is a creation of the Constitution and the provisions of sections 251 (1) (a) and (b) which gave exclusive original jurisdiction to Federal high Court to adjudicate on matters relating to taxation of companies shall prevail or take precedence over the provisions of section 11 (1)(i) – (v) of the Fifth Schedule of F.I.R.S Act, which becomes void to the extent of the inconsistency.

5. Provision of Adequate Skilled Manpower and Modern Technology

The Federal Inland Revenue Service should fully embrace the use of modern information technology/technological innovations. For example, computers, close circuit television (C.C.T.V) internet services and social media should be provided in all its regional offices in the thirty (36) States of the Federation. This is to ensure increase in tax revenue collected by FIRS and to create public awareness of importance of taxation and activities of Federal Inland Revenue Service. Data base of taxpayers and filling of tax returns should be done electronically rather than using manual compilation of tax assessment and filling system, which involves the use of files/folders for data storage, and manual fillings, as records stored or filed in this manner can be very unreliable as those records are easily prone to manipulations. Qualified personnel, especially those with knowledge of accounting and taxation should be employed to enhance the operational efficiency and effectiveness of Federal Inland Revenue Service.

6. Accountability and Integrity for all Public Officers

Many taxpayers' in Nigeria do not believe that collections from taxation are judiciously used by the federal government, as government over the years has been guilty of neglecting or underfunding infrastructural development due to either poor budgeting, estimation, maintenance cost, or sheer mismanagement of taxpayers' money in the hands of the government. To this end, government should endeavour to provide adequate basic amenities and/or infrastructural facilities that will better the lives of a common man and to create conducive business environment that will give room for corporate institutions and business men to operate. It is by doing these that the taxpayers will have confidence in the government that their tax payment is being judiciously used by the government.

In conclusion, these recommendations, if accepted and implemented, will go a long way in repositioning the legislation in the area of corporate income tax in Nigeria and enhance revenue generation.

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APPENDIX A

INTERVIEW QUESTIONS

1. Does inadequate or insufficient training of FIRS personnel constitute a major setback in the administration of corporate tax in Nigeria?
2. What are the challenges in collection of corporate taxes from some financial institutions in Nigeria?
3. What are the causes of low revenue from corporate taxes in Nigeria?
4. What are the administrative bottlenecks in the corporate tax system in Nigeria?

APPENDIX B

INTERVIEWEES

1. Chief Pius C. Eze
Vice-Chairman
Institute of Taxation of Nigeria, Kaduna Branch

2. Hon. Justice Dairus Khobo
Kaduna State High Court of Justice
Bida Road, Kaduna

3. Mr Abel Ojaogo
Internal Auditor/Control Officer
First Bank of Nigeria Limited
Kaduna Main Branch

4. Mr Michael Emeka Ogbonaya
Past Chairman
NBA Barnawa Branch

APPENDIX C



AHMADU BELLO UNIVERSITY, ZARIA

**QUESTIONNAIRE ON CORPORATE INCOME TAX LEGISLATION,
AND ITS IMPACT ON REVENUE GENERATION IN NIGERIA**

Dear Respondent,

My name is Emmanuel Uzoma Nwokenekwu, Esq. a legal practitioner and currently a postgraduate student of Ahmadu Bello University, Zaria. I am conducting a research on the topic: “An Examination of Corporate Income Tax Legislation and its Impact on Revenue Generation in Nigeria” as a requirement for the award of degree of Doctor of Philosophy (Ph.D) in - Law

It would be most appreciated if you could, please, contribute to the research by completing the attached questionnaire which will enhance the quality of my research work.

Please, be assured that your responses will be treated with utmost confidentiality and will be used only for the purpose of this research.

Your cooperation is highly solicited.

Yours faithfully,

Emmanuel U. Nwokenekwu, Esq.

GENERAL INFORMATION

Please carefully read the questions below and objectively respond by ticking the appropriate boxes.

PART I: DEMOGRAPHY OF RESPONDENTS

- 1. **Age of Respondents**
 - 30 – 40 years
 - 41 – 50 years
 - 51 – 60 years
 - Above 60years

- 2. **Highest Educational Qualification:**
 - PhD/Masters
 - Degrees/HND
 - Ordinary Diploma
 - Secondary School Certificate
 - Primary School Certificate
 - Others (Specify)

- 3. **WORK EXPERIENCE**
 - 5 – 10 years
 - 11 –20 years
 - 21 –30 years
 - 31 years and above

PART II: RESEARCH QUESTIONS

SECTION 1: ASSESSMENT OF THE KNOWLEDGE ON CORPORATE TAX IN NIGERIA TAX REGIME

- 1. Are you aware of Corporate Income Tax? Yes No

- 2. Corporate Income Tax in Nigeria is administered and enforced by Federal Inland Revenue Service
Agree Strongly Agree Disagree Undecided

3. Insufficient or inadequate training contributes to lack of knowledge of Corporate Tax in Nigeria tax regime.

Agree Strongly Agree Disagree Undecided

4. Lack of provision of basic infrastructural facilities, corruption and inability of government to give proper account of revenue generated, gives room for incessant corporate tax crimes.

Agree Strongly Agree Disagree Undecided

SECTION 2: ASSESSMENT OF THE COMPETENCE OR OTHERWISE OF FEDERAL INLAND REVENUE SERVICE IN THE DISCHARGE OF HER FUNCTIONS

5. The Federal Inland Revenue Service is not properly equipped to effectively discharge her functions

Agree Strongly Agree Disagree Undecided

6. The collusion of staff of F.I.R.S with some companies in order to pay less tax has affected the competence and integrity of Federal Inland Revenue Service

Agree Strongly Agree Disagree Undecided

7. Employment of unqualified personnel by F.I.R.S has adverse effect in its operations and competence to effectively discharge her responsibilities

Agree Strongly Agree Disagree Undecided

8. Lack of adequate motivation of the workforce of Federal Inland Revenue Service affects corporate tax collection and enforcement in Nigeria

Agree Strongly Agree Disagree Undecided

SECTION 3: ASSESSMENT OF THE CONTRIBUTION OF CORPORATE INCOME TAX TO REVENUE GENERATION AND ECONOMIC DEVELOPMENT OF NIGERIA

9. Corporate Taxation is the major source of Economic Wealth of Nigeria

Agree Strongly Agree Disagree Undecided

SECTION 4: ASSESSMENT OF CORPORATE TAX ACTS FOR EFFICIENT MANAGEMENT AND COLLECTION OF TAXES IN NIGERIA

10. The Corporate Tax Laws in Nigeria as presently constituted are not sufficient to effectively and efficiently administer or manage the collection of taxes

Agree Strongly Agree Disagree Undecided

11. The penalty provisions in the Corporate Tax Acts for different categories of offences are inadequate in contemporary Nigeria to punish or to serve as a deterrence to tax defaulters

Agree Strongly Agree Disagree Undecided

12. The inadequacies of offences and penalty provisions in the Corporate Tax Acts tends to encourage commission of tax crimes

Agree Strongly Agree Disagree Undecided

13. The obvious resultant effect of the flaws in the Corporate Tax Acts is loss of revenue

Agree Strongly Agree Disagree Undecided

14. The Corporate Tax Acts are filled with uncertainty and vagueness

Agree Strongly Agree Disagree Undecided

SECTION5: APPRAISAL OF THE FACTORS MILITATING AGAINST PAYMENT OF TAXES BY THE PUBLIC/CORPORATE ORGANISATIONS

15. Lack of basic infrastructural facilities discourages corporate organizations from payment of taxes

Agree Strongly Agree Disagree Undecided

16. Poor service delivery i.e epileptic power supply and poor road network by the Federal Government of Nigeria is responsible for non- payment of taxes by the public.

Agree Strongly Agree Disagree Undecided

17. The collapse of many companies as a result of unfavourable economic conditions (i.e) high rate of corporate taxes, and poor public welfare affects payment of corporate taxes in Nigeria.

Agree Strongly Agree Disagree Undecided

18. Lack of proper accountability and corruption by public office holders in Nigeria discourages taxpayers from payment of taxes

Agree Strongly Agree Disagree Undecided

19. High level of illiteracy among tax payers affects the efficient collection of taxes

Agree Strongly Agree Disagree Undecided

20. Corporate Tax Laws in Nigeria are complex and difficult to understand and in some cases are problematic even for the literate officials

Agree Strongly Agree Disagree Undecided

SECTION 6: ASSESSMENT OF THE CHALLENGES AFFECTING CORPORATE TAX COMPLIANCE AND ENFORCEMENT IN NIGERIA

21. Corporate tax evasion constitutes a problem/challenge in tax administration in Nigeria

Agree Strongly Agree Disagree Undecided

22. Multiplicity of taxes is a challenge and affects tax compliance and enforcement in Nigeria

Agree Strongly Agree Disagree Undecided

23. Low level of tax payer education and enlightenment affect tax compliance in Nigeria.

Agree Strongly Agree Disagree Undecided

24. Inadequate tax personnel /manpower affect corporate tax enforcement in Nigeria .

Agree Strongly Agree Disagree Undecided

SECTION 7: RECOMMENDATIONS ON THE WAY FORWARD ON CORPORATE INCOME TAXATION, AND REVENUE GENERATION IN NIGERIA

25. There is need to carry out a reform on corporate income tax Act in Nigeria.

Agree Strongly Agree Disagree Undecided

26. Efficient and effective service delivery by the Federal Government of Nigeria will improve corporate tax collection and enforcement.

Agree Strongly Agree Disagree Undecided

27. There should be proper coordination between the Federal Inland Revenue Service and Corporate Affairs Commission in order to have an accurate data of companies that are dully registered in Nigeria for tax compliance and enforcement.

Agree Strongly Agree Disagree Undecided

28. Adequate and constant publicity should be made in the print and electronic media on the importance of payment of corporate taxes.

Agree Strongly Agree Disagree Undecided

29. . What would you suggest by way of recommendation on the ways to combat tax related crimes in corporate organizations?-----
