

# Administration of Companies Income Tax in Nigeria: Issues of Compliance and Enforcement

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## Abstract

All companies in Nigeria are required by the Companies Income Tax Act 2007, to pay tax to the federal government on incomes or profits made by them; however, Nigeria's economy is characterized by low tax compliance and enforcement. Low tax compliance is a matter of grave concern in many countries especially developing ones like Nigeria because it limits the capacity of their respective governments to raise revenues for development purposes. In the same vein, There is no gainsaying the fact 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 many Nigerians ask is, is there strict enforcement of corporate tax laws in Nigeria considering the low level of corporate compliance? This paper examines compliance and enforcement issues in corporate Tax administration in Nigeria. The paper suggests ways of addressing problems of low tax compliance and enforcement in Nigeria.

## INTRODUCTION

The whole essence of good governance is to improve the welfare of the generality of the populace which is carried out with resources raised through taxation. Taxes build capacity, legitimacy and consent. Thus, the imposition of tax is statutory to enable government meet its obligations. The Constitution of the federal Republic of Nigeria 1999 (as amended) under Section 24(f) stipulates that, *"it shall be the duty of every citizen to declare his income honestly to appropriate and lawful agencies and pay his tax promptly"*.

Companies also fall within the categories of persons that are taxable in Nigeria. Companies are taxed under the companies income tax introduced in 1961 with modification in 2007. The administration of the companies' income tax in Nigeria is vested on the Federal Inland Revenue Services. The tax is payable by all companies at the rate defined by the Companies Income Tax Act (CITA)<sup>1</sup>. However despite there being regulation on Companies Income Tax in Nigeria, low tax compliance has become a matter of grave concern in Nigeria because it limits the capacity of the governments to raise revenues for development purposes. This paper examines and analyses compliance and enforcement issues in Tax administration in Nigeria. In the final analysis the paper also goes on to examine how to address the problem of compliance and enforcement of companies' tax in Nigeria.

## MEANING OF TAX

One of the simplest definitions of tax is the one offered by the New Webster Dictionary of the English Language. It describes 'tax' simply as "a charge imposed by governmental authority upon property, individuals or transactions to raise money for public purposes".<sup>2</sup> The Black's law Dictionary defines it as "Monetary charge imposed by the government on person's entities or property, levied to yield public revenue".<sup>3</sup> Soyode and Kajola<sup>4</sup> in their text on taxation define tax as a 'compulsory exaction of money by a public authority for public purposes' and taxation as 'a system of raising money for the purposes of government by means of contributions from individual person or corporate body' Ola also similarly defined taxation as the demand made by the government of a country for a compulsory payment of money by the citizens of the country.<sup>5</sup>

Summing up definitions of tax as offered by various other sources, Ayua<sup>6</sup> concludes that:

"The most important thing is a pecuniary burden laid upon individuals or persons or property to support the government and is a payment exacted by legislative authority"

A tax may be direct or indirect. It is direct where it is levied on the person who is intended, should pay

<sup>1</sup> Companies Income Tax (Amendment) Act No. 56 (2007)

<sup>2</sup> The New Webster's Dictionary of the English Language, International Edition, (Delair Publishing Co USA,1993) p.1064

<sup>3</sup> Bryan A. Garner - Black's Law Dictionary, 8th edition, (West Publishing Co., USA, 2004) p. 1500

<sup>4</sup> Soyode, L, and Kajola, s., *Taxation: Principles and Practice in Nigeria*. (Ibadan: Silicon Publishing Co., 2006)p.3

<sup>5</sup> Ola, C. S. *Income Tax Law and Practice in Nigeria*. (Ibadan: Heinemann Educational Publishing Company, 2004) p. 237.

<sup>6</sup> Ayua, I.A., *Nigerian Tax Law* (Ibadan: Spectrum Law Publishing, 1996) p.4

the tax. This is usually the case in the taxation of income. For example companies' income tax and personal income tax are direct taxes. It is indirect if the levy is imposed on one person who pays with the expectation to pass the burden unto third parties. Custom duties and value added tax are example of indirect taxes because the levy imposed by the government is factored into the price of the item upon which they are levied and passed unto the consumer.<sup>1</sup>

### 2.3 LEGAL HISTORY OF COMPANIES INCOME TAX

The history of Taxation in Nigeria started with personal income tax in 1904, when Lord Lugard introduced income tax to northern Nigeria. Community tax became operative through the revenue ordinance of 1904. In 1917, after the amalgamation of the northern and southern protectorates, the 1904 Revenue Ordinance was replaced by the native Revenue Ordinance of 1917. Furthermore, the provision of the 1917 Ordinance was amended in 1918 and extended to southern Nigeria particularly, the West and the Mid-West and subsequently to Eastern Nigeria in 1928. Under the Direct Taxation Ordinance of 1940, the assessment and collection of taxes were the primary responsibilities of the native administration /authorities throughout the country and taxes so collected were their main sources of revenue.<sup>2</sup>

The first legislative enactment on Companies Income Tax in Nigeria was introduced in 1939 through the instrumentality of the Companies Income Tax Ordinance.<sup>3</sup> Before the law came into effect, the regulation of both personal and business taxation was vested in one and the same legal regime.<sup>4</sup> The Companies Income tax Ordinance vested administration of the tax in a commissioner to be appointed for that purpose by the Governor and the proceeds from the tax were to be remitted to the government treasury to form part of the general revenue of Nigeria. This ordinance was however found to be ineffective as it failed to bring individuals into tax net. Due to this weakness, The Companies Income Tax Ordinance 1939 was repealed a year after its passage by the Income Tax Ordinance 1940<sup>5</sup> the Ordinance regulated both personal and business taxation and carried on for 21 years when the second separate enactment on companies income tax was again enacted.

The second time a law was passed aimed at the exclusive taxation of companies income was in 1961. This was the Companies Income Tax Act No. 22 1961 which was landmark legislation, first, because from the date it came into force, the provisions of the Income Tax Ordinance<sup>6</sup> and the Income Tax Administration Ordinance<sup>7</sup> together with all rules made thereunder ceased to have effect with respect to companies income tax.<sup>8</sup> Second the Act established the Federal Board Revenue as a statutory body and vested it with the power to administer companies Income Tax.<sup>9</sup> - as well as all federal taxes. Tax on the Income of companies was imposed by section 17 in respect of profits accruing in, received from, brought into or received in Nigeria from:

- a. Any trade or business;
- b. Rent or any premium arising from a right granted to any other person for the use or occupation of any property;
- c. Dividends interest, discounts, charges or annuities;
- d. Any other amount not falling within the above categories but qualifying as annual profits or gains or any amount deemed to be income or profits under the Act or arising from a person or provident fund under the Income Tax Management Act 1961.

The Companies Income Tax act 1961 was in force until 1979 when it was repealed by the Companies Income Tax Act No.28 1979. During its eighteen years it underwent series of amendments. For example, in 1967, a new section 30A was introduced which empowered the Federal Board of Inland Revenue to assess and charge a company on a fair and reasonable percentage of the turnover of its business within or outside Nigeria in the case of resident companies, and its turnover of business carried on within Nigeria in the case of a non – Nigerian company, where in the opinion of the Board, the assessable profits of the company were not readily ascertainable.<sup>10</sup>

In 1974, the Companies' Income Tax Act 1961 was further amended. First, a new source of chargeable income which included fees, dues and allowances (wherever paid) for services rendered was earmarked by section 17(f). Second a company entering into an agreement in respect of any service under paragraph (f) was

<sup>1</sup> FIRS, *A Comprehensive Tax History of Nigeria* (Ibadan: Safari books Ltd, 2012) p.201

<sup>2</sup> FIRS, *A Comprehensive Tax History of Nigeria* (Ibadan: Safari books Ltd, 2012) p.201

<sup>3</sup> Ordinance No. 14 1939

<sup>4</sup> FIRS, *A Comprehensive Tax History of Nigeria* (Ibadan: Safari books Ltd, 2012) p.201

<sup>5</sup> FIRS, *A Comprehensive Tax History of Nigeria* ((Ibadan: Safari books Ltd, 2012) p.201

<sup>6</sup> Cap 85,1958

<sup>7</sup> Ordinance No. 39 1958

<sup>8</sup> FIRS, *A Comprehensive Tax History of Nigeria* (Ibadan: Safari books Ltd, 2012) p.201

<sup>9</sup> FIRS, *A Comprehensive Tax History of Nigeria* (Ibadan: Safari books Ltd, 2012) p.201

<sup>10</sup> Section 1 Income Tax (Amendment) Decree No. 45 (1967)

required to make full written disclosure to the Board of the terms of such agreement. Third, tax relief was granted to every company which had suffered damage in respect of its trade or operations during the civil war but no deduction was allowable to such a company in respect of assets damaged or destroyed during the same period.<sup>1</sup>

Fourthly, a company paying another company any sum of money by way of interest, management fee or royalty was required to deduct tax at the rate of one shilling per every pound as prescribed by section 32 of the principal Act and pay the amount so deducted to the board.<sup>2</sup> Finally, a new expense item was listed as a non-allowable deduction and included as section 28(g).<sup>3</sup>

The Companies income tax 1979 originally promulgated as decree No.28 of 1979 repealed the Companies Income tax Act 1961 and all the amendments thereto<sup>4</sup> and is the current law providing a legal framework for the taxation of companies income in Nigeria. The administration of the tax was vested in the then Federal Inland Revenue which was established under section 1 of the decree. The duties and powers of the Board included the assessment, collection and accounting for all taxes under the Act, the power to hold and dispose property, the power to delegate some of its powers to another person to exercise on its behalf and the power to sue and be sued in its official name.<sup>5</sup>

The Companies Income Tax Act 1979 has been amended severally by various Finance (Miscellaneous Taxation Provisions) Decrees.<sup>6</sup> In 2007, CITA 1979 was further amended by the Companies Income Tax (Amendment) Act<sup>7</sup> to reflect some of the recommendations of the 2002 Study Group. The following changes were inter alia introduced in the 2007 amendment:

- a. Section 1 to 8 of the principal Act relating to the establishment, powers and proceedings of the Federal Board of Inland Revenue have been repealed by section 2 (1) of the 2007 Amendment Act. This repeal is consistent with the establishment of the Federal Inland Revenue service as the successor to the defunct Federal Board of Inland Revenue (FBIR)
- b. Section 4 of the 2007 Amendment Act requires an insurance company that engages the service of an insurance agent, loss adjuster or broker to include a schedule in its annual returns showing details of name, address, duration of employment and payments made to such agent, adjuster or broker
- c. Section 5 of the Amendment Act exempts profits of companies operating in Export Processing Zone (EPZ) or Free Trade Zones from tax under the Act, 100 percent of the company's production is for export otherwise proportionate tax is payable on local sales.
- d. Section 14 of the amendment repealed section 56 of the principal Act which provided for one percent bonus of payable tax to a company that filed its return within the stipulated time.
- e. The fine payable as a general penalty has been increased from 200 naira to 20,000 naira while the fine payable for failure to furnish statement or keep records has been increased from 40 naira to 2000 naira<sup>8</sup>
- f. The power to vary or revoke the rate of companies income tax earlier vested in the president by section 100 is now vested in the National Assembly, on the proposal.<sup>9</sup>

## THE MEANING OF COMPANY FOR TAX PURPOSE

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. The question is what is a company for the purpose of tax?

A company duly registered in accordance with the provision of the Companies and Allied Matters Act (hereinafter referred to as CAMA) or any enactment replaced by it is what the Act recognizes as a company in Nigeria<sup>10</sup>. Although CAMA defines a foreign company to mean company incorporated elsewhere than in Nigeria, it does not recognize its existence in Nigeria for business activities. It only defines it for the purpose of identifying it to comply with the mandatory incorporation processes before carrying on business in Nigeria<sup>11</sup> and to benefit from exemption from registration<sup>12</sup>.

<sup>1</sup> FIRS, *A Comprehensive Tax History of Nigeria* (Ibadan: Safari books Ltd, 2012) p.201

<sup>2</sup> FIRS, *A Comprehensive Tax History of Nigeria* (Ibadan: Safari books Ltd, 2012) p.201

<sup>3</sup> FIRS, *A Comprehensive Tax History of Nigeria* (Ibadan: Safari books Ltd, 2012) p.207

<sup>4</sup> FIRS, *A Comprehensive Tax History of Nigeria* (Ibadan: Safari books Ltd, 2012) p.208

<sup>5</sup> Section 2 of the Companies Income Tax Act 1979

<sup>6</sup> Some of the decrees include Nos. 21 of 1991, 30, 31 and 32 of 1996, 18 and 19 of 1998 and 30 of 1999.

<sup>7</sup> No. 11 2007

<sup>8</sup> See section 21 (a) (i) and (ii) of CITA 2007

<sup>9</sup> Section 23 Companies Income Tax (Amendment) Act No. 56 2007

<sup>10</sup> CAMA CAP 20, LFN, 2004, Section 54

<sup>11</sup> CAMA CAP 20, LFN, 2004, Section 54

<sup>12</sup> CAMA Section 56 and 59

Section 54(1) CAMA provides that:

*Subject to Sections 56 - 59 of this Act, every foreign company which, before or after the commencement of this Act, was incorporated outside Nigeria, and having the intention of carrying on business in Nigeria shall take all steps necessary to obtain incorporation as a separate entity in Nigeria for that purpose, but until so incorporated the foreign company shall not carry on business in Nigeria or exercise any of the powers of a registered company and shall not have a place of business or an address for service of documents or processes in Nigeria for any purpose other than the receipt of notices and other documents as matters preliminary to incorporation under this Act.*

However, the Companies Income Tax Act (CITA)<sup>1</sup> defines 'company' in a broader sense.<sup>2</sup> It defines a company as: "any company or corporation (other than corporation sole) established by or under any law in force in *Nigeria or elsewhere*"<sup>3</sup>.

Looking at this definition, the CITA recognises both Nigerian companies and foreign companies for the purpose of tax though on different basis. It should however be noted that the mandatory statutory provision of CAMA is clearly unambiguous in prohibiting the existence of a foreign company in Nigeria for any purpose (including carrying on business to make profit.<sup>4</sup> In fact, any violation of the provision is banded with a penalty<sup>5</sup>. The CITA on the other hand permits the existence of foreign companies and charge their profits derived from Nigeria to tax<sup>6</sup>. These enactments as rightly argued by John<sup>7</sup> are both Acts of the National Assembly made to serve economic and fiscal purposes. While CAMA regulates incorporation, control and management of companies, CITA charges to tax the profits of these companies. Before CITA can be effective, there must be in existence companies brought into being by CAMA.<sup>8</sup> When CAMA prohibits the existence of a class of company can CITA permit or legalize it? This question according to John D.C.<sup>9</sup> brings about two conflicting public interest. He said:

"One is the prevention of proliferation of foreign companies, unless registered as Nigerian company. The second is the revenue generation from the profits of companies including foreign companies." The two according to John constitute key components of Nigerian economic policy and needs to be reconciled and harmonized.<sup>10</sup> It is important to state that the definition of company above analysed is the same under the Petroleum Profit Tax Act<sup>11</sup>.

It is submitted that Nigerian system of taxation does not operate in isolation from the rest of the world. Some foreign companies operate globally and render returns on global basis. The profits made by these foreign companies cannot be ignored. In this regard, the definition of 'company' by CAMA cannot be accurate for tax purposes.<sup>12</sup>

The CITA however, exempts the profits of any company engaged in ecclesiastical, charitable or educational activities of a public character in so far as such profits are not derived from a *trade or business* (italics for emphasis) carried on by such company;<sup>13</sup> What constitutes a 'trade or business' is however, not defined or described in the CITA (as amended) because of this difficulty Orojo<sup>14</sup> referred to the decision in *Arbisco v FBIR*<sup>15</sup> where the Supreme court applied the dictionary meaning which is that a trade or business is

<sup>1</sup> 2007 as amended

<sup>2</sup> CITA, Section 105 and Petroleum Profit Tax Act (PPTA), CAP LFN, 2004, Section 2

<sup>3</sup> Section 105 of the Act, see also Petroleum Profit Tax Act, CAP P13, LFN, 2004 Section 2

<sup>4</sup> CAMA Section 55

<sup>5</sup> CAMA Section 55

<sup>6</sup> CITA, Section 13(2).

<sup>7</sup> John, D.C. 'Corporate Taxation in Nigeria: A Review' (2011) Vol. 2. No. 1 *International Journal of Advanced Legal Studies and Governance* p.238

<sup>8</sup> John, D.C. 'Corporate Taxation in Nigeria: A Review' (2011) Vol. 2. No. 1 *International Journal of Advanced Legal Studies and Governance* p. 238

<sup>9</sup> John, D.C. 'Corporate Taxation in Nigeria: A Review' (2011) Vol. 2. No. 1 *International Journal of Advanced Legal Studies and Governance* p.238

<sup>10</sup> John, D.C. 'Corporate Taxation in Nigeria: A Review' (2011) Vol. 2. No. 1 *International Journal of Advanced Legal Studies and Governance* p.236

<sup>11</sup> See section 50 of the Petroleum Profit Tax Act

<sup>12</sup> John, D.C. 'Corporate Taxation in Nigeria: A Review' (2011) Vol. 2. No. 1 *International Journal of Advanced Legal Studies and Governance* p.236

<sup>13</sup> Section 23 of the Companies Income Tax Act 2007

<sup>14</sup> Orojo *Company Law and Practice in Nigeria* 5<sup>ed</sup> (London: Sweet and Maxwell, 2005) p367

<sup>15</sup> (1966) NCLR 401 at 410

‘.....The practice of some occupation, business or profession habitually carried on especially when practiced as a means of livelihood’ It was also decided in this case that the question of whether the activity in question is a trade or business is a matter of fact and not of law’.

CITA also exempts the profits from taxation of any company formed for the purpose of promoting sporting activities where such profits are wholly expendable for such purpose.<sup>1</sup> Company limited by guarantee may be exempted upon an application to the president for an order for exemption.<sup>2</sup>

### **IMPOSITION OF COMPANIES INCOME TAX**

Company income tax is imposed on the income of all companies operating in the country except those specifically exempted under the Act. Companies are taxed at a rate of 30%. The income tax is imposed on;

1. The profits of Nigerian companies irrespective of whether or not they are bought into or relieved in Nigeria being Nigerian company incorporated under Companies and Allied Matters Act.<sup>3</sup>
2. The profit of non-Nigeria companies operating in Nigeria. Non-Nigerian companies are foreign companies as defined by section 54 of the Companies and Allied Matter Act as “any companies or corporation established by or under the law in force in any territory or country outside Nigeria” This means such company is not incorporated under the Companies and Allied Matters Act.
3. Dividend, interest or royalties due to non-Nigerian companies which are assessed at 10% (withholding tax rate) on the net is payable to the respective companies.

On the tax chargeable, section 9 (1) of the Companies Income Tax Act 2007 provides that 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<sup>4</sup> upon the profits of any 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 to 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 of a company, then, so much of the payment as relates to any period beginning with the date on which the payment is made shall be treated for these purposes as accruing to the company proportionately from day to day over the last - mentioned period or over the five years beginning with that date, whichever is the shorter;
- (c) dividends, interests, 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 profit 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;
- (f) fees, dues and allowances (wherever paid) for services 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 certificates or treasury bills, treasury or savings certificates, debenture certificates or treasury bonds.

### **Penalties for Violations**

Certain offences have been created by the CITA the breach of which makes a company liable to stated penalties. The offences and penalties are as follows:

(1) 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 thereunder for which no other penalty is specifically provided, shall be liable on conviction to a fine of N20,000.00, and without prejudice to section 55 (4) or (5), where such offence is the failure to furnish a statement or information or to keep records required, a further sum of N 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.<sup>5</sup>

(2) Any person who -

- (a) fails to comply with the requirements of a notice to pay his tax served on him under this Act; or
- (b) without sufficient cause fails to attend in answer to a notice or summons served on him under this Act or

<sup>1</sup> See CITA section 23(1)(c) and (d) 2007

<sup>2</sup> See section 23(2) CITA 2007

<sup>3</sup> CAMA CAP 20, LFN, 2004

<sup>4</sup> There shall be levied and paid for each year of assessment in respect of the total profits of every company, tax at the rate of thirty kobo for every naira.

<sup>5</sup> See section 92 CITA 2007



having attended fails to answer any question lawfully put to him, shall be guilty of an offence against this Act.<sup>1</sup> Section 86 of the Companies Income Tax Act 2007 has conferred on the Federal Inland Revenue Service (FIRS) the power to seize and sell defaulting taxpayers' goods, chattels as well as their premises in extreme cases in order to recover the amount of tax owned by such taxpayers. The Act also subsequently provides for penalties for making false statement and returns under section 94 and for offences by authorised and unauthorised persons under section 95.

Generally, however, offenders are liable to pay the original tax payable irrespective of proceedings for imposition of fine, penalty or terms of imprisonment. The provisions of the Act do not also affect independent criminal proceedings under any other law against the offenders.<sup>2</sup> With respect to offences created under sections 93, 94 or 95 of the Act no proceedings may be commenced without the sanction or at the instance of the Board.<sup>3</sup>

### ENFORCEMENT OF COMPANIES INCOME TAX IN NIGERIA

Certainly, the mere existence of provisions on imposition of tax by CITA is not sufficient; strict enforcement of the regulation is the key. According to the Federal Inland revenue service about 30 per cent of companies in Nigeria are involved in tax evasion and also 25 per cent of registered companies in the country are not paying tax<sup>4</sup> when this is quantified in terms of revenue loss it is worrisome. Ajayi Bamidele<sup>5</sup> acknowledges that the challenges of the service include ensuring strict enforcement of the extant law and capturing the remaining 45 percent of Nigerians who are supposed to pay tax but are not. On paper, the taxation system established under the Act is a workable and effective one irrespective of certain inadequacies. In practice however, it has had to contend with the Nigerian factors of strict enforcement problems, corruption and evasion.<sup>6</sup> The Act, in its provisions, has made available to the FBIR, a manageable system of tax collection. Regrettably however, the typical Nigerian taxpayer, in an attempt to continue operating in business, would rather short-circuit tax laws in any way feasible. The taxpayer often opts to negotiate with corrupt staff in return for some gratification and pay a minimal sum to the coffers of the government.<sup>7</sup> This is despite the sanctions imposed by the same Act for such conduct. The problem here seems not to be lack of adequate provisions deterring such conduct, but rather the lack of enforcement machinery for the provisions of the Act.

The Act simply defined offences but failed to provide machinery for detection of offenders. A well-functioning body of tax investigation is essential for the detection and prosecution of cases of tax fraud. The lack of sufficient capacities in tax administrations reduce the probability of detection that again influences the decision of a taxpayer as to whether to evade or not. Additionally, the legal framework is an important prerequisite for any enforcement activity. For example, the size and nature of penalties that are incurred after evasion have been detected is directly connected to the level of tax compliance<sup>8</sup>

There is no check and balance system that could have given effect to the provisions of the Act considering the generally corrupt nature of Nigerian officials with respect to government property.<sup>9</sup> Who is to check whether the accounts, statements returns and information supplied by companies and certified to be correct by the FBIR staff are indeed correct? It is arguable that the free hand given to companies to submit information comprising accounts, returns, schedules, report of asset base, balance sheet of profits and losses etc. on the basis of which the FBIR works out the tax payable is fatal to the purpose and intent of the CITA. Even the fines and terms of imprisonment prescribed for different categories of offences under the Act are so inadequate in contemporary Nigeria that they tend to encourage rather than discourage the commission of these offences.<sup>10</sup>

The Act, as it is presently, gives a lot of room for tax evasion and many companies have exploited it to their own advantage. Also the failure of the FBIR to indict and prosecute companies for the offences stated under the Act has further exacerbated the problem. Infact, Sanni argued that no tax payer has been successfully

<sup>1</sup> See section 92 CITA 2007

<sup>2</sup> Abdulrazak M.T. *Nigerian Revenue Law* (Malhouse Press Limited,2005) p.159

<sup>3</sup> See section 97 CITA 2007

<sup>4</sup> FIRS: 30 of Firms in Nigeria evading tax daily trust newspaper of 03/09/2014

<sup>5</sup> Coordinating director Field Operation Group of Federal Inland Revenue Service (FIRS)

<sup>6</sup> Victoria E.K. 'Nigeria's Petroleum Profits Tax Act: An Assessment' available at <http://www.nigerianlawguru.com> assessed on 31/01/2015

<sup>7</sup> Victoria E.K. 'Nigeria's Petroleum Profits Tax Act: An Assessment' available at <http://www.nigerianlawguru.com> assessed on 31/01/2015

<sup>8</sup> Fishlow, A. and J. Friedman 'Tax evasion, inflation and stabilization', (1994) Vol. 43, No. 1 *Journal of Development Economics* pp. 105-123

<sup>9</sup> Victoria E.K. 'Nigeria's Petroleum Profits Tax Act: An Assessment' available at <http://www.nigerianlawguru.com> assessed on 31/01/2015. Victoria made the argument while assessing the Petroleum Profit Tax Act which shares similar problem with the CITA 2007

<sup>10</sup> Victoria E.K. 'Nigeria's Petroleum Profits Tax Act: An Assessment' Available at <http://www.nigerianlawguru.com> assessed on 31/01/2015

prosecuted for tax evasion in Nigeria.<sup>1</sup> This is largely because tax authorities at the federal and state levels prefer to institute civil actions to recover any tax due with interest and penalty ostensibly with the aim of meeting their revenue target.<sup>2</sup>

### **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. The following has been attributed for low corporate tax compliance in Nigeria:

#### **(a) Low transparency and accountability of public institutions**

Lack of transparency and accountability in the use of public funds contributes to public distrust both with respect to the tax system as well as the government. This, in turn, increases the willingness to evade taxes<sup>3</sup>

#### **(b) High level of corruption**

If due to high levels of corruption, citizens cannot be certain whether their paid taxes are used to finance public goods and services their willingness to pay suffers 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.<sup>4</sup>

#### **(c) Low quality of the service in return for taxes**

In general, Nigerians expect some kind of service or benefit in return for the taxes paid. If the government fails to provide basic public goods and services or provides them insufficiently, both corporate and individual citizens may not be willing to pay taxes and tax evasion and avoidance will be the consequence.<sup>5</sup>

#### **(d) Lack of rule of law and weak fiscal jurisdiction**

The Nigerian tax laws are replete with punitive momentary measures as well as criminal sanctions but these laws are not strictly enforced. Strong fiscal courts are also essential to protect taxpayer's rights and safeguard them from arbitrariness. The lack of rule of law reduces transparency of public action and fosters distrust among citizens. As a result, citizens may not be willing to finance the state through taxes, and decide to evade these liabilities

### **ADDRESSING LOW TAX COMPLIANCE AND ENFORCEMENT IN NIGERIA**

Having discussed the constraints/challenges for effective tax compliance and enforcement in Nigeria, the paper suggests the following for the purpose of addressing low tax compliance and enforcement in Nigeria:

- (a) Stiffer Penalties for Non-Compliance: If the consequences of failure to comply with any of the provisions of the tax laws are made stiffer, more tax payers will be willing to comply with little or no stress on the part of the revenue authorities.
- (b) Effective Utilization of Tax Revenue: Improvement in the level of basic infrastructural facilities will encourage voluntary compliance with the provisions of the tax laws as they will show that the Revenue is being utilized effectively. In Nigeria today, it is no news that the level of decay in basic infrastructure is alarming. If government effectively utilizes tax revenue for the provision of infrastructure, the citizenry will be motivated to pay taxes.
- (c) Promulgation of Anti-Avoidance Provision: Making provisions to block the several loopholes in the tax laws will enhance further compliance with the tax laws and increase tax revenue. The two possible forms of anti-avoidance legislation are specific legislation to block voluntary avoidance device and general anti-avoidance legislation which vests the revenue authority with power to disregard all transactions entered into that could be proved to have been entered into solely for tax avoidance purposes.
- (d) Empowerment of Investigation and Intelligence Unit: The investigation and intelligence unit of the Revenue authorities should be empowered and made vibrant and effective.
- (e) Regular Amendment to the Tax/Laws: The tax laws should be regularly up-dated and provision should be such that are reasonable and easy to comply with. So also a well-articulated and harmonised Information and Communication Technology (ICT) driven tax-enforcement regime has become imperative as a source of

<sup>1</sup> Abiola S, 'The Power To Prosecute Tax Offences: A Critique of *Unipetrol Nigeria Plc V. Edo State Board of Internal Revenue*' (2011) Vol. 1 *NIALS Journal on Criminal Law and Justice* p. 201

<sup>2</sup> Abiola S, 'The Power To Prosecute Tax Offences: A Critique of *Unipetrol Nigeria Plc V. Edo State Board of Internal Revenue*' (2011) Vol. 1 *NIALS Journal on Criminal Law and Justice* p. 201

<sup>3</sup> GIZ, Addressing Tax Evasion and Tax Avoidance in Developing Countries available at <http://www.taxcompact.net> accessed on 30/01/2015

<sup>4</sup> GIZ, Addressing Tax Evasion and Tax Avoidance in Developing Countries available at <http://www.taxcompact.net> accessed on 30/01/2015

<sup>5</sup> Everest-Phillips, M. 'Business Tax as State-building in Developing Countries: Applying Governance Principles in Private Sector Development' *International Journal of Regulation and Governance* (2008), vol. 8(2), pp. 123–154

revenue generation since the nation cannot eternally depend on revenue from oil and gas which are exhaustible resources. Besides, the growing needs of the people in areas such as power, infrastructural development, health-care, education and indeed security among many others require improved revenue generation to address.

(f) High transparency and accountability of public institutions

Lack of transparency and accountability in the use of public funds contributes to public distrust both with respect to the tax system as well as the government. This, in turn, increases the willingness to evade taxes. If due to high levels of corruption, citizens cannot be certain whether their paid taxes are used to finance public goods and services their willingness to pay suffers 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.

## CONCLUSION

For there to be effective enforcement and compliance of tax laws in Nigeria, there is the need for a virile tax culture to be instituted in Nigeria and to enforce the laws governing taxation to the letter. In decent climes where things work, governments are run by tax payers' money, which confers on the citizenry the legitimacy and stake in public governance. Nigeria cannot and should not be an exception in this regard. This can only be done when corporate citizens pay their taxes and live up to their corporate responsibilities.

For FIRS, the regulatory body for tax practice and administration, there is a clear challenge to evaluate strategies adopted thus far in order to plug loopholes in enforcement. Government too, needs to ensure utmost prudence in the utilization of revenues of whatever description to instil confidence in the system. When resources are effectively managed to meet the basic needs of the citizenry in employment, health, education, roads, electricity, security etc the compliance level is bound to take a cue. Citizens and not just corporate organisation would willingly do what is right



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