Journal of Law, Policy and Globalization
ISSN 2224-3240 (Paper) ISSN 2224-3259 (Online)
Vol.37, 2015

An Appraisal of the Law Regulating the Assessment and Collection of Personal Income Tax in Nigeria

DR. (MRS.) JOSEPHINE A. A. AGBONIKA
Senior Lecturer, Faculty of Law Kogi State University,Anyigba; Also Commissioner, Tax Appeal Tribunal, South-East Zone, Nigeria

Abstract
The article examined the fact an effective tax system largely depends on the administrative procedures that lead to its ultimate collection. Therefore, before taxes are eventually collected from taxable persons, the persons must first and fore-most, be assessed to tax based on their estimated earnings for the year under assessment. In lucid preparation, case laws, reported and unreported cases, textbooks, and internet materials were consulted. It posited that such assessments may be conceded or disputed by the taxable person. Such disputes are adjudicated in a judicial or quasi-judicial manner before the tax assessed is ultimately paid.
KEYWORDS: Assessment, effective tax system, taxable persons, collection of taxes, earnings.

Introduction

The various tax laws have made elaborate provisions for the assessment of persons adjudged to be taxable under such laws, the modes of assessment, the process of objection which may culminate into an appeal or the collection of the tax. It may be repetitive and indeed an endless endeavor to fully navigate into the waters of all statutorily recognized taxes in Nigeria, therefore, for the purpose of this article, I shall restrict the details within the confines of personal income tax which is regulated by the Personal Income Tax Act, 1993[1]. This endeavor is aimed at evaluating the present regulatory regime with a view to expose the salient defects that will lead to under assessment or fraudulent assessment thereby leading to loss of revenue by the government. Since independence, there has been a progressive proliferation of taxes established by various legislations either by civilian or military administrations. Initially the tax base was narrow due to the level of economic development in the country. Income from agriculture and other small-scale businesses and a number of mercantile activities then formed the bulk of the tax base. With the expansion of activities in the country, the progression in taxation has been from personal income tax to taxation of other sources such as companies, gains, petroleum etc. This has been followed by a mass of taxes and tax legislation. These include:

i. The Petroleum Profit Tax Act (PPT) – of 1959, LFN CAP 354 as adopted by Laws of the Federation of Nigeria 2004 CAP 13.
ii. The Companies Income Tax Act No. 10 of 1995 (taxation of companies was formerly regulated by a generic legislation, being,the Income Tax Management Act of 1961, now LFN 2004, CAP C20. There is now a Companies Income Tax Amendment Act, 2007.
iii. The Capital Gains Tax introduced in 1967, was Adopted by LFN 1990and subsequently by LFN 2004 CAP B3
iv. The Capital Transfer Tax – now abrogated by the Finance (Miscellaneous taxation provision) Decree No. 30 of 1996
v. The Value Added Tax Act No. 102 of 1993 which replaced the Sales Tax Decree of 1986, now LFN 2004 CAP T7. There is now a Value Added Tax Amendment Act, 2007.
vi. The Education Tax Act No. 7 of 1993; adopted by LFN 2004 CAP 49 now replaced by the Tertiary Education Trust Fund (establishment)Act of 2011.
vii. The Personal Income Tax Act of 1993 which repealed the various income tax legislations before it, thereby synchronizing the various states and federal tax legislations. It has now been adopted by LFN 2004 CAP 02 and has been amended by the Personal Income Tax (Amendment) Act of 2011.
viii. The Federal Inland Revenue Service (Establishment) Act, 2007. This Act repealed Part1 of CITA, 1990 and replaced FBIR with FIRS and has now made it an autonomous body like the CBN. The Federal Ministry of Finance retains its over-sight functions. The FIRS Act, by Sections 2, 25 and 68 as well as its First Schedule, seek to Harmonies administration and enforcement of Taxes. To this end section 15 PITAA. Amendment Act hasdeletedsections 61 to 67 PITA so as to give way for the operation of the FIRS Act.

[1] This has been adopted by Laws of the Federation of Nigeria 2004 Cap 02 and amended by Personal Income Tax Amended Act 2011.

Journal of Law, Policy and Globalization www.iiste.org
ISSN 2224-3240 (Paper) ISSN 2224-3259 (Online)
Vol.37, 2015

Mode of Assessment

Basically, the mode of assessment under the Personal Income Tax Act 2004, is self-assessment.[2]However government assessment only comes in when there is failure or lateness in filing a return or where the information filed by the taxpayer in his return is adjudged by the tax authority to be incorrect or fraudulent.[3] Section 41 of the PITA provides that:

> For each year of assessment, a taxable person shall without notice or demand, file a return of income in the prescribed form and containing the prescribed information with the tax authority of the state in which the taxable person is deemed to be a resident, together with a true and correct statement in writing.

Section 44 PITA goes further to say that a taxable person required to file a return of income shall in the return calculate the amount of tax payable. These are the statutory provisions that guarantee self-assessment.

Upon the receipt of such return prescribed by section 41, the relevant tax authority shall proceed to assess the taxable person chargeable with income tax as soon as may be possible after the time allowed to the person for the delivery of the return.[4] On the other hand, where a taxable person fails to deliver the return or fails to deliver it within the prescribed time, the relevant tax authority shall use its discretionary judgment to assess the person, but that assessment shall not affect any liability otherwise incurred by such person by reason of his failure or neglect to deliver a return. The implication is that the self-assessment afforded a taxpayer can only be defeated by his failure to file the returns correctly or total failure to file the returns.[5]

Where a taxable person has delivered a return, the relevant tax authority has the option to reject and return the assessment to the tax payer and proceed to assess it on the best of its judgment or accepting the returns and assessing the tax payer on the basis of the returns made.[66]

Under the British tax system, all the taxes are scheduled, with each schedule having its own tax rate, basis of assessment, reliefs, appeal system etc. The management and administration is however regulated by the British Taxes Management Act (TMA 1970).

Schedule 'D' deals with taxation of business, trades and vocations, while schedule 'E' deals with taxation of employments/emoluments.[7] Despite the various distinctions by way of schedules, the mode of assessment is equally self-assessment. For the PAYE, the taxable person makes a return of income. On the basis of such information, the revenue will issue a 'notice of coding' to the taxpayer and to his employer. The employer now deducts tax in the light of the coding using tax tables with which he is supplied.[7]The self-assessment scheme is equally applicable to other schedules. The universality of the self-assessment scheme shows its effectiveness and suitability. However, the scheme afforded taxpayers is usually subject to abuse, as taxpayers (especially high-income earners) see it as an opportunity to reduce their liability to tax by way of avoidance. Frivolous claims by way of allowances and reliefs are usually falsely claimed.

The question however, is how such fraudulent claims be can averted? The answer is a long and complex one. First the entirety of the machines of administration (i.e. the F.I.R.S & S.B.I.R.) must be fully computerized. Secondly, the entirety of organizations subject to the PAYE and the entire civil service has to be computerized.

This will create an avenue for easy access to information on employees and their emoluments and also avail the revenue an opportunity of knowing the legitimate deductible expenses. The consolidation of existing allowances helps to avert having several sub heads of frivolous claims by self-assessment filler's

Furthermore, there must be a machinery for ascertaining taxable trades or businesses. The extant position is an amorphous one, where people engage in enterprises without registration. It is therefore difficult in the circumstance to subject such black economy activities to taxation let alone assess them. It is suggested that the Corporate Affairs Commission in collaboration with the ministries (both federal and states) of commerce should devise means of identifying and registering all business enterprises. A review or an amendment of the Companies and Allied Matters Act (2004) compelling registration of all business enterprises and imposing severe sanctions for default could also be a step towards the realization of the afore-mentioned goal.

[2]Sections 41 (1) – (3) and 44 PITA
[3] Section 54 (1) & (2) (b) & (3)
[4] Ibid (1)
[5]Section 54 (3) PITA
[6] Ibid.

[7]Kay & King The British Tax System. (1986) Oxford University Press (London) Fourth Ed. Pgs. 28-29

The Process of Assessment

As stated above, the collection of taxes begins with a process. The Personal Income Tax Act makes provision for assessment of taxable income by the taxable persons themselves; this is known as self- assessment.

Invariably, tax cannot just be paid unless it is first assessed either by the taxpayers or in case of their default by the relevant tax authority[8] This is necessary because if appropriate measures are not laid to ensure proper assessment, there is a tendency of taxable persons furnishing false assessment records thereby defeating the whole essence of the self-assessment system and consequently defrauding the government.

Although assessment under the Personal Income Tax Act (PITA) is essentially self-assessment, there are provisions to prevent the risk of taking assessments fraudulently or falsely filed by taxable persons.[9] In this regard,S.46 of the Act providesthat for the purpose of obtaining full information the relevant tax authority may require further and better particulars by way of returns from a taxpayer who has already filed the requisite return of assessment.

Furthermore, the relevant tax authority may give notice to a taxable person requiring him – within the time specified in the notice – to:[10]

(a) complete and deliver to the relevant tax authority any return specified in the notice;

(b) attend personally before an officer of the relevant authority for examination with respect to any matter relating to such income or gains;

(c) produce or cause to be produced for examination at the place and time stated in the notice which time may be from day –today for such period as the relevant tax authority may consider necessary, for the purpose of the examination of any book, document, account and return which the relevant tax authority may deem necessary; or

(d) give orally or in writing any other information including name and address specified in the notice. However, for persons engaged in banking or those charged with the administration of the Federal Saving Bank, they are exempted from disclosing any such information mentioned above unless upon a letter signed by the chairman of the relevant tax authority requiring otherwise.

Any person who contravenes the provisions stated above shall be guilty of an offence and upon conviction, be liable to a fine of Five Hundred Naira(₦500.00) in respect of each offence if such person is an individual or five thousand naira (₦5,000) if a corporate body.

The essence of the provision is to ensure that all particulars relating to assessment to tax are reasonably accurate and devoid of fraud. If all information relating to a person's business is properly studied, the relevant tax authority shall have an insight into the taxable gains or profit of such person and compare it with the return of assessment made by the taxable person. Thus it can be said that within the liberty afforded a taxpayer vide self – assessment lie provisions at the disposal of the tax authorities to check any incidence of fraud or under-assessment.

Unfortunately, the punishment prescribed under section 47 (3) of the Act is too insignificant to compel compliance by taxpayers. For instance, imposing a fine of five hundred Naira on UNILEVER (Nig.) Plc. for failure to avail the F.I.R.S with relevant information and books of account may not really bother the company. In respect of the returns specified under section 41[11]of the Personal Income Tax Act (PITA), the relevant authority may under subsection (2) give notice for the supply of information specified under subsection (1). Failure to deliver such information at the specified time is an offence punishable with a fine of Five Hundred Thousand Naira (₦5,000) in the case of a body corporate and Five Hundred Naira (₦500.00) in the case of an individual.[12]The Personal Income Tax Amendment Act of 2011 has by section 10 increased these sums to Fifty Thousand Naira (₦50,000) and Five Hundred Thousand Naira (₦500,000) for individuals and corporate persons respectively. Although this may seem to be a drastic increase it would become insignificant with passage of time due to economic realities. An increment on percentage basis seems to be more realistic. Note also that S. 26(3), FIRS Act, 2007 has addressed this shortcoming by making the fine an equivalent of 100% of the amount of tax liability. This it would seem is capable of discouraging this nature of offence.

This notice shall be complied with subject however, to the person's right to object or appeal provided under the Act.

From the totality of the above provisions, it is obvious that the process of assessment under the Personal Income Tax Act is very complex, time consuming and expensive to manage. The procedure involves the filing of many

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[8] Section 54 (3) PITA

[9]Unless under circumstances stated under section 54 of the PITA.

[10]Section 47 (1) PITA

[11] This return is required from a person engaged in banking including a person charged with the administration of the Federal Savings Bank

[12]Section 43 (3) PITA

forms; for instance self-assessment filers are required to file a tax return FORM IR 3C – 4COY, the relevant financial statement for that year and detailed schedules[13]
Non-self-assessment filers on the other hand are required to complete tax FORM IR 3C which is a declaration of income and other relevant information by the taxpayer, the audited accounts of the business for the year preceding the relevant year of assessment, and the capital allowance computation and tax liability[14].
The effect of this complex process is that taxpayers and the tax collectors themselves often do not comprehend the procedure. Considering the level of literacy in Nigeria, this could become a real problem[15]. For the illiterate, the task is almost impossible.
The question that comes to mind therefore, is whether the provisions of the Illiterates Protection Act would be applicable to assessments made on behalf of illiterate taxpayers. It is suggested that the provisions of the Act be applicable to such assessments in order to protect illiterate persons from fraud when they are being assisted by third parties to fill their forms. Furthermore, the tax offices should train their officers to assist taxpayers who are unable to fill their forms on the basis of illiteracy.
Tax assessment is the determination of what a person or company owes in taxes. It is the process of determining the taxable income of a person and applying the statutory rates to compute the tax.

Types of Assessment
There are various types of assessments:

a. **Original Assessment**: This is the first assessment raised on a taxpayer in a particular year of assessment when he files his returns. An original assessment may be acceptable to a taxpayer, or may be the subject of an objection and appeal procedure.
b. **Revised/Amended Assessment**: where accounts are submitted and the basis of such assessment is faulted because of new information disclosed to the Tax authority, the original assessment earlier made is revised or amended in line with the new position. This is the assessment that is raised by the relevant tax authority to replace an original assessment in respect to the taxpayer's objection. The replacement usually arises from either a notice of objection or appeal that is successful.
c. **Additional Assessment**: An additional assessment usually arises from a back-duty assessment. The additional assessment is to cover a shortfall in tax that was previously paid. The Board is empowered to examine the returns submitted by the taxpayerin orderto ensure that the presentationsof the accounting details conform with the provisions of the relevant Act. Unapproved claims and allowances discovered are disallowed and added back to profit.This, in addition to other information will form the basis for additional assessment.It is raised when through a fresh audit exercise it is revealed that the taxpayer underpaid tax to the authority. This must be within a period of 6 months
d. **Provisional Assessment**: This is a traditional assessment because it is chiefly an estimate of tax payable based on the tax paid by the tax payer in the previous year. A provisional assessment is subject to the objection and appeal procedures.
e. **Jeopardy Assessment -** Thisis raised where there is an extreme urgency or emergency which could include any of the following; possibility that the taxpayer could leave the jurisdiction of the tax authority, about to go into bankruptcy or liquidation, imminent sale or transfer of trade or business to another, escape to a foreign country, etc.
f. **Best of Judgment Assessment(BOJ)**:This ispopularly known as the **Government Assessment** and is raised by the tax authority when the taxpayer fails to file returns. Section 53 of Personal Income Tax Act (as amended), section 40A of Companies Income Tax Act as amended. Section 12 of the VAT Act etc all deal with this. It will usually arise where the taxpayer has either not filed returns or is not even registered for tax purpose. Where this occurs, the inspector of taxes will simply use the best of his judgment to estimate the assessable profit, capital allowance claimable and tax payable. A Best of Judgment assessment (BOJ) is also subject to objection and appeal procedure.
g. **Self- Assessment**: This requires the taxpayer to display some level of trust. This is because the taxpayer is expected to complete a standard Self- Assessment Form. The typical Self- Assessment form should contain all the information expected to be found in a normal notice of assessment and should contain all the information that would assist the revenue to arrive at an accurate assessment of the taxpayer. To encourage taxpayers to file their returns by self- assessment two advantages accrue to the taxpayer. The first is that payment can be effected by installment in such a way as to allow the taxpayer to pay by six equal installments over six months. The second is that where all the installments are paid on due dates,

[13]Section Ola, C.S. P.96
[14]Ibid. P. 97
[15] The Nation News paperThusday September 6th 2011 records the Minister of Education as saying that there are over 50 Million illiterates in Nigeria and that 35% of the children population do not go to school

1% bonus is deductible from the total tax. This may encourage voluntary compliance by the taxpayers as it acts as an incentive to them.This is a method that allows the taxpayer to accurately calculate his tax liability, file self-assessment return on or before the statutory (due) date for filing such tax returns and pays the tax at a designated bank.

Procedure for self- Assessment:
The self-assessment tax system was introduced in to the Nigerian tax laws in 1991 with operational effect in 1992 and was initially restricted to a threshold of taxpayers but was extended to the rest in 1998. The 1999 Constitution of the Federal Republic of Nigeria has provided for implementation of self- assessment, in section 24 (f).The section states: "It shall be duty of every citizen to declare his income honestly to appropriate and lawful agencies and pay his tax promptly."
The filing and payment requirements of the different tax types are as follows;-Taxpayers filing petroleum profit tax returns are expected to do so not later than five months after end of accounting year.[16]In the case of companies income tax, returns are due within six months of the end of the accounting year.Where a company fails to file returns FIRS can raise an administrative Assessment known as best of judgment (BOJ) and serve on him under section 47 of Companies Income Tax Act. Every company filing tax shall compute the tax payable by the company for the year of assessment and forward this with the evidence of payment.[17]
Tax returns for value added tax are due for filing within 21 days following the month in which the transaction was made by virtue of section 12 of the VAT Act. Individuals filing personal income tax returns do so on or before the 31st ofMarch each year (that is, 90 days from the commencement of every year of assessment)[18].
Section 44 of the PITA provides for self-assessment by individual where a taxpayer calculates the amount of tax payable and files his returns.
Thus under the self -assessment regime, the taxpayer accurately calculates his tax liability, pays the tax due at a designated bank to collect e-ticket and file assessment returns on or before the statutory (due) date for filing such tax return;
The implementation of self-assessment tax system has re-invigorated since 2011 with the promulgation of the Tax Administration (Self-Assessment) Regulations, 2011.
Best of judgment Assessment is sometimes referred to as Administrative Assessment,or Government Assessment.
The FIRS shall assess a company chargeable to tax after the expiration of the time allowed under section 41 for filing returns.[19]
The assessment shall be served on the taxpayer or sent by registered post under section 50 of CITA. The Assessment shall contain the name of the company, amount of total profit, tax payable, the place which such payment shall be made and the rights of the taxpayer.[20]
An assessment becomes final and conclusive where the taxpayer fails to raise an objection within 30days of the service of such assessment on it.[21]
Where an Assessment is objected to by the Taxpayer under section 51 of CITA, the relevant tax authority may issue a Notice to review the assessment or give notice of Refusal to amend as it deems fit.[20]
The self-assessment system guarantees payment of tax on due date in concurrence with filing of tax returns thereby ending the era of bogus "best of Judgment" assessments. This has reduced the accumulation of uncollectable outrageous arrears and builds mutual trust/effective partnership between taxpayers and tax officers**.**
The use of spot audit and third party information to expose taxpayersform the basis of administrative assessment, t and increases income generation at reduced cost.
Self-assessment system re-defines and introduces new methods like the risk profiling technique for all cases, therefore, necessitating the building of new capacities and realignment of personnel to areas of their optimum capability and competence.
The risk assessment and risk profilingof all caseshas eliminated subjective selection of cases for audit and has replaced it with risk based audit case selection, as audits are to be done in line with time reporting systemwhich is in use by the Service.

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[16]See Section 30 of the Petroleum Profit Tax Act.
[17]See section 40 B of CITA
[18]See section 41 of the Personal Income tax Act (as amended)
[19]See section 53 of PITA for a similar provision of PIT.
[20]See section 56 of PITA on a similar provision
[21]See section 58 of CITA.
[20]See section 57 of PITA

Requirement for filing Tax Returns

All taxpayers, including those granted exemption from tax, are required to file their tax returns to the relevant Tax authority every year. The audited account of the business for the proceeding accounting year must be accompanied by:

- Income Tax computation
- Capital allowance computations
- Schedule of fixed assets, trade debtors and trade creditors and
- Evidence of payment (whole or part) of tax being assessed.
- The Act also prescribes the time within which the returns must be submitted to include, evidence of such compliance
- All companies must submit their audited accounts not later than six (6) months after the end of the company's accounting date.
- A newly incorporated business is allowed to submit its returns within 18 months from the date of its incorporation, or not later that six (6) months after the end of its first accounting period, whichever is earlier.
- A company may request in writing for approval to submit accounts at a later date, in view of any peculiar circumstances E.g fire disaster or need to obtain prior approval before submission. This must be specifically approved in writing by the relevant Tax Authority

Contents of Notice Of Assessment

A notice of assessment is a statement of tax payable, sent to the taxpayer by the relevant tax authority. One of the duties of the administration of taxes is to raise notices of assessment.

A typical assessment should contain the following information:

- The tax file number of the taxpayer- Taxpayers Identification Number (TIN).
- The name and address of the taxpayer
- The nature of business the taxpayer is involved in.
- The address of the tax office from which assessment has been raised.
- The date and signature of a responsible tax officer.
- The relevant tax year.
- The turnover.
- The assessable profit.
- The capital allowance claimed, if any.
- The loss relief, if any.
- The taxable profit.
- The tax payable.

Rate of Personal Income Tax

By virtue of section 37 of the PITA, the chargeable income of an individual may be assessed at the rates specified in the sixth schedule to the Personal Income Tax Act as follows:

₦	%
First ₦ 10,000	10%
Next ₦ 10,000	15%
Next ₦ 10,000	20%
Next ₦ 30,000	25%
Next ₦ 40,000	30%
Next ₦ 40,000	35%

The above table was substituted by the Finance (Miscellaneous taxation provisions) Decree No. 19 of 1998 as follows:

₦	%
First ₦ 20,000	5%
Next ₦ 20,000	10%
Next ₦ 40,000	15%
Next ₦ 40, 000	20%
Above ₦ 120,000	25%

This was meant to reduce the burden or incidence of tax in order to encourage voluntary patronage or tax payment. As at 1st January 2002, the Joint Tax Board adopted for implementation the rates of personal income tax announced by the Honourable Minister of Finance for 2001 in 2002.

The rates were further amended as follows:

~~N~~	%
N 30, 000	5%
N30, 001 to N 60, 00 (Next 30, 000)	10%
N60, 001 to 110, 000 (Next 50,000)	15%
N110,001 to 60,000 (Next 50,000)	20%
N160, 001 and above (above 160, 000)	25%

By virtue of section 34 PITAA, the said sixth schedule of the principal Act is substituted with a new sixth schedule which now increases the tax threshold to N300, 000 as opposed to N30, 000.

Amendment:

Section 7 PITAA amends section 37 by substituting 0.5 with 1% wherever it appears. By this, the minimum tax rate is increased from 0.5% to 1%. The threshold is also increased from N30,000 to N 300,000 in conformity with the tax table in the schedule to the Act. According to the sixth schedule to PITAA, the tax table is graduated as follows:

1. First N300,000 @ 7 percent
2. Next N300, 000 @ 11 percent
3. Next N500, 000 @ 15 percent
4. Next N500,000 @ 19 percent
5. Next 1600,000 @ 21 percent
6. Next N3, 200, 000 @ 24 percent

CHART SHOWING OLD AND NEW RATES

Old Rates	Cumulative income	Cumulative Tax	New Rates	Cumulative income	Cumulative tax
First N30,000 @ 5%	30,000	1,500	First N300, 000 @ 7%	300, 000	21, 000
Next N30, 000 @ 10%	60,000	4,500	Next N300, 000 @ 11%	500, 000	54, 000
Next N50, 000 @ 15 %	110,000	12, 000	Next N500, 000 @ 15%	1, 100, 000	129, 000
Next N50, 000 @ 20%	160,000	22, 000	Next N500, 000 @ 19%	1, 600, 000	224, 000
Next M160,000 @ 25%			Next N1,600, 000 @ 21%		
			Next N3, 200,000 @ 24%		

The rates are applicable to all employees of the Federal, State and Local governments as well as employees of the private sector[21] This was a further reduction of tax rate availed to the Nigerian taxpayers as a facility to encourage voluntary payment and reduce the incidence of tax avoidance.

The rebounding effect however will be compensated by an increase in revenues from other taxes as recommended by the Report of the study Group in areas such as VAT, expansion of tax net to self-employed earners, etc. To this end, the Committee recommended inter alia the issue of introducingthe minimum personal income tax.

It is worthy of note that while the attitude of successive Nigerian government is to reduce the tax burden of taxable persons by reducing the rate of tax, the British system negatives this attitude.

Nigerian taxpayers have a deep-rooted apathy or even disgust for tax payment,[22] thus any attempt to increase the rate of tax will normally be further rmet withpreponderous protests.

A comparison of the British tax rate shown below will clearly testify to the assertion that the Nigerian tax rate is low enough to encourage voluntary compliance. In Britain, income tax is charged on an individual's taxable income at the following rate:[23]

Income Band (in Pounds)

On the first 3, 200 pounds at 20 % (lower rate)	1-3,200`
On the 21,100 pounds at 25% (Basic rate)	3,200-24,300
On the remainder at 40% (higher rate)	excess over 24, 300

[21] Federal Inland Revenue Services, General Tax Guide for Administrators and practitioners (June 2002)

[22]Agbonika J.A.A, Problems of Personal Income Tax Administration in Nigeria (2012), Ababa Press Publication, Ibadan p.52-25

[23] This rate is based on the 1995 finance Act. Since the British tax system is subject to annual review, this position may have been charged by now.

According to Whitehouse,[24] since 1982-83, increases in the tax rate bands have been linked to increases in the retail prices index before the year of assessment and the previous December. The indexed rises are, however, subject to a negative resolution of parliament (i.e. they occur unless parliament otherwise determine)[25] this implies that unless the parliament otherwise determines, increase in the rate of tax is an annual phenomenon.
On the contrary, the Nigerian trend is towards reduction of the tax rate aimed at encouraging voluntary payment and reducing the incidence of tax evasion and avoidance.
Despite this gesture, the Nigerian taxpayer still resists tax payment or at most gradually pays tax with many attempts at reducing his liability.
This goes down to the root of the problem of tax payment, which has earlier been identified as corruption. Had the taxpayer been convinced of the judicious use of his tax for public purposes, such incentives would encourage him to pay tax without misgivings

Allowable Deductions
It is not the entirety of a persons earned income that is assessed to tax. It is the residue that remains after all the statutory deductions, allowances and/or incentives have been subtracted that is assessed for the purpose of taxation. The deductions under the personal income tax as contained under the legislation however vary from taxation of business and employment tax. We shall therefore discuss these deductions under these two headings.

1. **Allowable deduction under Taxation of Businesses/Trades**: for trading or business expenses to be deducted, the following conditions must be satisfied:
    a) The expenses must be of revenue and not of a capital nature
    b) The expenses must be incurred wholly, exclusively and necessarily for the production of the trading income including those specifically prohibited by legislation.

The scope of these two conditions are subject to varying judicial interpretations.[26] However, this is not of immediate concern to us. These deductions are contained under S. 20 of the PITA as follows:

i. Interest on borrowed money employed as capital in acquiring income
ii. Rent premiums in respect of land and buildings occupied for the purpose of acquiring profits
iii. Expenditure on repair of premium, plant, machinery and fixtures and for the renewal, repair, alteration of such items used in acquiring income
iv. Bad and doubtful debts, any recoveries being treated as income when reviewed,
v. Contribution to persons, provident or other retirement benefit funds, society or scheme approved by the board and
vi. Expenses not deductible under the above paragraph but incurred wholly and exclusively for the purpose of trade or business.

The basic rule for allowing deductions under taxation of business/trade is that the expenditure must be "wholly and exclusively for the purpose of trade or business".
Such expenses must first be deducted before a person's remaining income or profit can be charged to tax.
This is in pari-materia with section 130 of the British Taxes Management Act 1970. This condition is interpreted strictly.
In **Strong & Co of Romssey v. Woodfield**(1906)[27] Lord Davy said that it was not just sufficient that the expenses was incurred for the purpose of the trade; it must be incurred; "for the purposes of enabling a person to … earn profits"
The words "wholly and exclusively" are also interpreted strictly. Thus in **Mallalieu v. Drummond** (1983)[28], a lady barrister bought dark clothing for her use in court. If she had not worn suitable clothing in court, she would not have been allowed to appear as an advocate. This was held not to be enough, she needed the clothes for other purposes.
However, whenever expenditure is incurred exclusively for business purposes but gives a co-in-cidental private advantage to the trader, then it will not necessarily preclude the exclusivity of the business purpose.[29]

[24] Whitehouse C, (op.cit) at 56
[25] Tax Act 1988, section 1
[26] Ayua I. A. The Nigerian Tax Law (1996) Spectrum Law Publishing, Ibadan. PP116-125

[27] (1906) AC 448, STC 215 HL
[28] (1983) 1 ALL ER 801, (1983) STC 665, HL
[29] Wolfe E. (et all) (op.cit) pg 33

2. Allowable deductions under employment tax

All expenses and outgoings are deductible from the gains from employment (emoluments) for each fiscal year. However, for such deductions to be made, the following conditions must be established that is the expenses were incurred:

a. in the production of income, that is in the performance of duties, and
b. Wholly exclusively necessarily and reasonably.[30]

Just like the observation under taxation of trade and business, the allowable deduction must be channeled towards the performance of duties by the employee, which will culminate into the production of income for the employer. Secondly, the expenses must be exclusively necessary for the purpose of production of income from such employment.

The PITA identifies specific allowable deductions, however, only a few relate to employment. The deductions that relate to employment tax are contained under section 3(1) (b) of the Act. These include:

i. Sums allowed by the taxing authority of a state to represent reimbursement to the employees of expenses incurred by him in the performance of his duties and from which it is not intended that the employee should make any profit or gains,
ii. Medical or dental expenses incurred by the employee
iii. The cost of any passage to or from Nigeria incurred by the employee
iv. The cost of maintenance of education of a child where the income tax law of a state allows it as deduction
v. Any compensation for loss of employment
vi. Any rent the employee is treated as being in receipt equal to the amount deemed to be incurred by the employer under section 4 of this Act, which provides for deemed emoluments other than living accommodation.
vii. So much of any amount of rent the employee is treated as having received under the provision of section 5 of the Act relating to deemed emoluments of employee's living accommodation.

Section 5 of the Act contains special provision that apply where an employee or their spouses' living accommodation is at a nil or less than the annual value, the employee shall be treated as being in receipt of emoluments at an annual rate equal to the annual value of the premises as determined by section 3 (2) reduced by the annual amount of rent which the occupier pays for the premises. Section 3 (2) PITA provides that the rate or amount of rent allowable in lien of rent shall be 28 percent of annual basic salary subject to a maximum of ten thousand naira (N10,000.00) for Lagos, the FCT Abuja, Six thousand Naira (N6,000.00) for state capitals and four thousand naira (N4,000.00) for other areas

viii. The amount for rent allowance paid by the employee to or an account for the employee not exceeding in amount the rate prescribed under subsection (2) of the section, and
ix. The amount not exceeding N2,435 per annum vehicle allowance.
x. Other allowances exist as follows; Transport not exceeding N15,000 per annum, meal subsidy N5,000, Utility allowance, entertainment allowance, N6, 000 and leave grant of 10% of annual basic salary.

Expenses for provision of benefit

Where an employer incurs any expenses in the provision of benefits or perquisite other than living accommodation, the following provision shall apply[31].

a) Where any asset which continues to belong to an employer is used wholly or partly in the making of such provisions, he shall be deemed to incur annual expenses in connection therewith of an amount equal to 5 per centum of the amount expended by him in acquiring the assets, but if that amount cannot be ascertained, 5 percent of the market value of the asset at the time of the acquisition as determined by the relevant tax authority.
b) The employee shall be treated as being in receipt of emolument equal to the annual amount so deemed to be incurred by the employer, reduced by so much (if any) of the annual expenses as is made good to the employer by the employee,
c) The section shall not be applied to expenses incurred by the employer in respect of:
    i. Provision of meals in any canteen in which meals are provided for the staff generally or of lunche on vouchers for his employees if those vouchers are not assignable by an employee to whom they are issued.
    ii. Provision of uniforms, overall or other protective clothing

[30]Section 20 (1) PITA

[31] Section 4 (1) PITA

iii. Reasonable removal expenses which may or may not include a temporary subsistence allowance incurred by the employer by reason of a change in the employee's employment which requires such employee to change his place of residence and the employee shall not be treated as being in receipt of any remuneration in respect of allowance.

d) Reference to anything provided for an employee shall be construed as including a reference to anything provided for the spouse, family, servant, dependant or guest of that employee by the employer.

Although the deductions provide some palliatives to the employer/employee, it is my opinion that a good number of expenses which would have been subject to deductions are not included under section 20 of the Act. It is hereby suggested that the following expenses should also come under deductions in respect of employment tax:

(a) Employer/employee expenditure on training and development,
(b) Expenditure on research; and
(c) Necessary traveling expenses.

This is termed necessary because the conceived traveling expenditure should be in respect of the performance of duties and production of income in the establishment, and not merely pleasure travels or holidays.

Personal Income Tax Relief[32]. The PITA, also provides a number personal reliefs to an individual taxpayer. These reliefs are deducted from the gross income of a individual taxpayer in each year of assessment before determining his taxable income. The relief is available to individuals resident in Nigeria only. However, in the U.K. a limited category of non-UK residents (as set out in TA 1988 S. 278) may claim personal relief in respect of U. K. income[33]

It is noteworthy that the reliefs are not given as a matter of course; a taxpayer must claim them by filing a formal return.[34]The following are some of the reliefs:

i. Personal Allowance

A personal relief of N5,000 or 20% of a taxpayer's earned income is granted under S. 33 (1) PITA. Earned income includes income from trade, business, employment, profession or vocation but does not include investment income such as rents, dividend interest or royalties. by virtue of section 5 PITAA the personal relief has been changed to a consolidated amount of N200,000 or 1 percent of a taxpayer's gross income whichever is higher. This section conflicts with the Sixth Schedule to the PITAA which grants a flat rate allowance of N200,000 plus 20% of gross income. While section 5 limits the consolidated relief allowance to N200,000, it could be more if considered under the 6th Schedule.

ii. Wife's allowances

A deduction or allowance of N300 is made in respect of a wife maintained by a taxpayer or a former wife who has been granted alimony by a court of competent jurisdiction.

This is quite unrealistic in the face of current economic realities especially when the same legislation provides the sum of N2,500 as child allowance up to a maximum of four children. If a legislation can make an allowance of N10,000in respect of children, it is mockery to assume that N300.00 would be reasonable as wife's allowance.

iii. Children allowances

A deduction of N2,500 is relieved for each unmarried child maintained by the taxpayer in the year preceding the year of assessment. However, the child must be below 16years of age or if more than 16years, must be receiving full time instruction in a recognized educational establishment or was under article of indenture in a trade or profession. More over the number of children must not exceed four. This remains the same under PITA 2011.

iv. Dependant relative allowance

An allowance of N2,000.00 is allowed as deduction for the maintenance of a dependent relative who is either the widowed mother of a taxpayer or the widowed mother of his spouse. Secondly, the dependent must be incapacitated by old age or infirmity as to be incapable of taking care of herself. This fact must be proved by evidence of a medical doctor. If the claim is in respect of a widowed mother, it must be proved by evidence that the husband is dead and there is no other male relative who is below the age of 63. In addition, the aggregate of deductions to be allowed to two or more individuals in respect of any one relative shall not exceed N2,000. This has not been altered by PITAA 2011.

v. Disabled Person's Allowance

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32 Provided under Section 33 of PITA

33 Whitehouse C. Butterworths, Revenue Law Principles and Practice.(1995) Butterworths, London (thirteenth Ed.) Pg. 54 Section 34 PITA

34 Ayua A.I. (OP.CIT) at p.83

Journal of Law, Policy and Globalization www.iiste.org
ISSN 2224-3240 (Paper) ISSN 2224-3259 (Online)
Vol.37, 2015

A deduction of N3,000 or 20% of the earned income of a disabled person (whichever is higher) is allowed under section 33 (3) (c) for disabled persons who uses special equipment's for the services of an attendant in the course of a paid employment.[35]

To establish the appropriateness or otherwise of these reliefs, it is apt to compare them with those of other jurisdictions

A summary of the Nigerian and U. K Tax reliefs would show some similarities and dissimilarities:

A COMPARATIVE SUMMARY OF NIGERIAN AND U.K. TAX RELIEFS

NIGERIA	₦
Wife's allowance	300.00
Personal allowance	200 000 plus20% of Taxpayers' earned income
Children allowance	2, 500.00 per child up to a maximum of 4
Dependant relative allowance	2, 000 or
	3, 000 or 20% of Taxpayers' earned income
Disable person's allowance	

UNITED KINGDOM (as at 1996)		**(Pounds)**	**Naira Equivalent@ 260 per £**
1.	Personal allowance	3,525	916500
2.	Personal allowance (age 65-74)	4,800	1,248,000
3.	Personal allowance (age 75 and over)	4,800	1,248,000
4.	Married couple's allowance	1,720	447,200
5.	Married couple's allowance (age 65-74)	2,995	778,700
6.	Married couple's allowance (age 75 and over)	3,035	789,100
7.	Additional personal allowance (for single persons who has responsibility for a child)	1,720	447,200
8.	Widow's bereavement allowance	1,720	447,200
9.	Blind persons' relief	1,200	312,000

It is noteworthy that in the U.K, the income limit for age-related allowances is fourteen thousand and six hundred pounds. In other words, any aged person whose income exceeds that sum shall be excluded from the enjoyment of such allowance.[36]

A critical look at the two-some reliefs reveals the following:

(a) That the U.K. allowances are categorized into "general" and "aged". This approach is preferable as it affords higher reliefs for those advanced in age.

(b) While the U.K. package has widow's bereavement allowance, the Nigerian relief package does not have.

(c) The U. K package only has blind persons' relief while the Nigerian package provides a wider relief for disabled persons generally.

(d) The Naira equivalent of the U.K. reliefs shows that there is a wide margin of difference.

The Nigerian reliefs seem very low in the face of economic changes

Furthermore, it is observed that the allowances and reliefs under the Personal Income Tax Act are too many and capable of being explored by tax planners to avoid tax. Most taxpayers explore the multiple allowances and reliefs to unjustly reduce their tax liability. It is therefore suggested that they should be a further consolidation of all the reliefs and allowances so that a uniform allowance or relief could be given to taxpayers on a percentage basis. This would assist the Revenue in stemming the tide of tax avoidance. Once a person claims a consolidated relief, all other reliefs under section 33 PITA should be disregarded.

vi. Capital Allowances.

Capital allowances are granted to traders, businessmen or self employed persons in respect of capital assets (like building machinery, liquid cash e.t.c.) used in the business[37]The allowances are granted to encourage private entrepreneurs to expand or develop and equip their business.

[35] Section 33 (3) (C)

[36]Whitehouse C. (op.cit) at 54

[37] See the Fifth Schedule to the PITA 1993

The types of capital allowances granted by the Act include, initial allowance, annual allowance, Investment allowance and balancing allowance. For a taxpayer to qualify for the allowance, the following conditions must be met:-

a. The Capital expenditure must be incurred in the basis period,
b. The Capital expenditure incurred must be the qualifying expenditure as defined under paragraph 2 of the schedule to the P.I.T.A.1993; and
C. The Capital expenditure incurred must be for the purpose of the trade orbusiness.

The Computation of Capital expenditure is by reference to the basis period (i.e. the year the expenditure was made) and is clearly laid down in the fifth schedule to the Act. Other allowances allowed by the Act are:

(i)	Motor Vehicle Allowance	-	A Maximum of N 2,435 Per annum
(ii)	Rent allowance	-	Limited to 28% of annual basic salary subject to the followingamounts for -
		-	Lagos and Abuja N 10,000
		-	State Capitals N 6,000
		-	Other parts N 4,000
(iii)	A re-married widow's allowance	-	N 2,500 per child up to a maximum of 4 for her deceased husband
(iv)	A life Assurance Allowance		The annual amount of premium paid by the individual in respect of Insurance on his life or the Life of his spouse.

(v) Nigerian Social Insurance Trust Fund (NSITF)1 percent of employees wage paid by employer to NSITF

(vi)Other allowances other allowances which used to exist under PITA but have now beenremoved by PITAA;

-	Meals allowance – N5,000-	Housing allowance – N150,000
-	Cost of passage	- Transport allowance – N20,000
-	Medical or dental expenses	- Leave of 10% of basic salary
		- Entertainment – N6,000
		- Utility allowance – N10,000

INCENTIVES AND DISINCENTIVES

Apart from allowances and reliefs, incentives are also offered to encourage certain activities. Incentives are deliberate reductions in tax liability in order to encourage specified desirable economic activities such as savings, investment, export, certain sectorial activities etc.

Disincentives on the other hand are unintended negative aspects of taxation which discourage socio-economic behaviours.

While tax incentives are unnecessary for tax purpose of economic development, tax disincentives can slowly and silently kill development effort.

In Nigeria, there is a considerable volume of incentives in the various statutes to encourage and attract local and foreign investors. Altogether, Nigeria offers about one hundred different kinds of incentives to corporate and individual taxpayers. These incentives, whatever their nature, be they waivers, exemptions tax holidays, tax free allowance, tax free status, etc. are not the major considerations for investors wishing to take investment decisions.

Apart from tax concessions, other factors they consider are:

i. Stability and economic growth,
ii. political stability,
iii. Infrastructural development and facilities,
iv. Good governance
v. Law and order in the country so as to ensure security of life and property
vi. Cost of adequate personnel.

These items must therefore be taken care of by any country wishing to encourage investment. Some of the major incentive schemes may be classified as follows;

1. INCENTIVES FOR INDIVIDUALS

a. **Minimum Tax**: Tax incentives for individuals are mostly contained in personal allowances and reliefs as well as minimum tax rates which can be as low as 0.5% of the total income where the individual has no chargeable income or where the tax payable on the chargeable income is less than 0.5% of the total income.

b. **Bonus**: Section 44A of PITA allows individuals 1% tax bonus for filing self-assessment return and paying income tax within the time stipulated by law.

c. **Retirement benefits:-**Before 1996 N 1,000 was allowed as exemption from tax in respect of retirement benefits but since January 1st 1996, all retirement gratuities are exempted from income tax.

d. **Compensation for loss of office:-**Payment for loss of office or employment is completely exempted from income tax.

e. **Pensions for self-employed individuals:-**The pensions or annuities of self-employed individuals are exempted from tax, provided that such amount does not exceed 10%of the taxpayer's total income. This is in addition to any premium in respect of life assurance scheme the self-employed tax payer may have.

f. **Dividends, Interest, Rent, Royalties, Fees, Commissionetc from foreign countries:-**These category of income earned abroad and brought into Nigeria by a person resident in Nigeria is to enjoy 100% tax exemption provided, they are received in convertible currency and paid into a domiciliary account in a bank approved by the federal government. This incentive is a step in the right direction since the taxpayer would be subjected to double taxation should he pay tax on those income earned abroad and subjected to tax there. Any domestic taxation of such income will amount to double jeopardy.

g. Remuneration or Salaries Payable to Temporary guest - lecturers, teachers, Nurses, Doctors and other professionals outsideNigeria enjoys 100% tax exemption .These categories of income is exempted from tax if earned by Nigerians abroad and brought into Nigeria provided that such foreign Income are deposited in a domiciliary account with a bank in Nigeria.

h. Withholding tax on dividend and interest carried from any shareholding or investment in Nigeria is now a final tax in the hands of the recipient[38]

2. INCENTIVES TO MANUFACTURER

Manufacturing companies enjoy almost all incentives approved for companies. Some of them are as follows;

a. Capital allowance: This is an amount allowed by the Government in respect of companies before arriving at taxable profit. These could comprise of the following;
   I. Initial allowance,
   II. Annual allowance,
   III. Investment allowance at the rate of 10% on plant and equipment.

The effect is that these allowances are written off or deducted before tax is charged on the remaining profits.

b. Rural Investment allowances, S. 34(1), CITA; This is granted to companies sited at least 20 KM away from Government facilities such as electricity, tarred road, telephone or water if they provide such facilities for the purpose of their trade. It can be claimed in addition to the initial allowance on such capital expenditure as follows;
   i. No telephone, 51% of capital expenditure on asset in use
   ii. No tarred road, 15%
   iii. No water, 30%
   iv. No electricity, 50%
   v. No facility at all, 100%.

Where rural investment allowance is claimed, investment allowance cannot be claimed on the same assets and the claim can only be made in the year the capital expenditure is incurred since it cannot be carried forward. There are many other such incentives under various taxes.

[38]see Federal Inland Revenue Administrators and Practitioner (2002 pp.21-22) See Sections 41 (1) (2), (3) & 44 PITA

Summary of the Reliefs and Allowance Under the Old PIT New PITAA

RELIEF AND ALLOWANCES –OLD PIT LAW

Relief/ Allowance	Description
Personal Relief	20% of Earned Income + N5000
Children Allowance	N2,500 per child for Max of 4
Dependant Relative	N2,500 per dependant for Max of 2
Leave Allowance	Maximum of 10% of annual basic
Housing Allowance	Maximum of N150,00 per Annum
Transport Allowance	Maximum of N20,000 per Annum
Meal	Maximum of N5,000 per Annum
Utility	Maximum of N10,000 per Annum
Entertainment	Maximum of N6,000 per Annum
Pension	Transport 2.5% of Basic Salary
National Housing Fund	Minimum of 7.5% of basic, housing and
Cost of Passage to from Nigeria	Fully non-taxable income subject to proof
Life Insurance Premium	Fully deductable expense subject to proof

RELIEF AND ALLOWANCES – NEW PIT LAW GAZETTE

Relief Allowance	Description
Consolidation Relief Allowance	20% of Gross Income + (higher of N200,00 and 1% of Gross Income)
Children Allowance	N2,500 per child for Max. of 2
Dependant Relative	N2000 per dependant.Mximum of 2
Pension	Minimum of 7.5% of Basic, Housing and Transport 2.5 of Basic
National Housing Fund	Salary
Life Insurance Premium	Fully deductable expenses subject to proof
National Health Insurance Scheme	Fully deductable expenses subject to proof
Gratuities	Fully deductable expenses subject to proof.

PITTA 2011 – Tax Calculation Issues

Effects of PITTA:

The effects of PITAA 2011 in relation to the table are as follows:

a. Benefits in kind (BIK) are now fully taxable in the hands of employees.
b. The rate for high income earners have marginally reduced from 25% to 24% of gross income and from 15% to 5.6% for income earners initially at the level of N160, 000 under PITA 2004. PITAA 2011 has therefore shifted the burden from low income earners to high income earners.
c. Amendment of section 3 (1) (b) to include "temporary employees"; and increase in minimum tax income from N30, 000 to N300, 000 and increase in minimum tax rate from 0.5% to 1% will definitely have implications for contact staff, National Youth Service Corps (NYSC) staff, IT staff, and interns.
d. Removal of leave allowance of 10% of basic pay and other items such as passage to and from Nigeria will increase taxable income when compared to the consolidated Relief Allowance (CRA) granted under PITAA 2011.
e. Personal allowance of N5000 + 20% of income provided under s.33 (1) is amended by a substitution of CRA of N200, 000 or 1%of gross income whichever is higher, plus 20% of gross income. Thus, where gross income is N20, 000, 000, 1% will be N200, 000 + 20% of gross income. All allowances which were not taxable previously will now be considered in computation.
f. The CRA indicated under section 33 (1) is at variance with that under the 6th schedule.
g. Children's allowance and dependent relative's allowance still stand at N10, 000 and N4,000 per year respectively despite current cost of maintaining them.
h. Tax exempt deductions specifically mentioned by PITAA in the 6th Schedule include National Housing Fund, Life Assurance Premium and National Health Insurance Scheme.

On the whole, PITAA 2011 has not really met the enthusiasm of taxpayers but has shifted tax burden from low income earners to high income earners instead of reducing the tax burden for all. The law as amended, addressed the issue of all unrealistic reliefs and allowances for individuals by consolidating the relief. It has also addressed all unrealistic penalties by raising the penalties from N500 and N5, 000 for individuals and companies respectively to N50, 000 and N500, 000 as the case may be. The new law also made the incomes of temporary and political employees like the President, the Vice President, Governors and their Deputes taxable. The new legislation also provides for presumptive tax in Section 6 (b) relating to where income of the tax payer cannot be ascertained or where records are not kept. In such a situation, the tax authority may apply a pre-determined tax using relevant indices for some categories of tax payers, especially those in the informal sector

3.1.7 COLLECTION OF PERSONAL INCOME TAX

Basically, there are two methods of collecting personal income tax under the Act. These are the direct assessment revenue and the pay as you earn (PAYE) scheme.

I. DIRECTASSESSMENT

The Personal Income Tax Act has made provision for payment and recovery of tax after assessment. Under this method, tax is collected based on the assessment directly made on the taxpayer after filing his return before the relevant tax authority where he is resident. Accordingly, income tax charged by an assessment which is not subject of an objection or appeal shall be payable after the notice of assessment[39]. The relevant tax authority may in its own discretion extend the time within which payment is to be made.

Where there has been a valid objection or appeal pending, payment of such tax shall remain in abeyance until such objection or appeal is determined, though the relevant tax authority may enforce payment of the portion, (if any) of tax which is not in dispute[40].

On the determination of an objection or appeal, the relevant tax authority shall serve notice on the taxable person of the tax chargeable as so determined and that tax shall be payable within one month of the date of service of the notice. However if this period of one month ends before the fourteenth of December within the year of assessment for which tax has been charged, any balance of such tax may be payable not later than that day, in bank draft to FIRS Account.

Notwithstanding, the provisions concerning dates above, where the relevant tax authority has reason to believe that any income tax charged by an assessment may not be recovered, by reason of the taxpayer leaving the country or otherwise, it may disregard those dates and collect the tax forthwith and the provisions of the Act dealing with collection and recovery of tax unpaid will apply.

Late payment of tax (i.e. after the stipulated statutory dates) attracts the penalty of 10% per annum of the unpaid tax added unto the amount of tax due[41]. In addition, the relevant tax authority may sue for the recovery of personal income tax payable, in a court of competent jurisdiction with full cost of action from the defaulting taxpayer as a debt due to government of the Federation or to the relevant tax authority[42.]

Despite the detailed provision for the payment of income tax made by the statute, there are incidences of corruption within the administering body. One would have expected that the provisions of the Act are tidy enough to guarantee a corrupt free tax collection.

It is hereby suggested that the Banks designated for the payment of income tax should be mandated by legislation to make monthly or quarterly publication of the account and make copies available to Senate and House Committees on public account. Such statements of account could also be published in National dailies to ensure probity and transparency.

II. PAY AS YOU EARN

The PAYE scheme is provided for under sections 81 - 82 of the Act. Under this scheme, tax is deducted from source by authorized employers. The scheme is applicable to employees resident in Nigeria and employees of Nigerian government oversea. The employer is required under this scheme to deduct an appropriate amount from the weekly or monthly salary of the employee in anticipation of the employee’s tax liability for the whole year. An employer will be given a tax table to assist in the calculation by the relevant tax authority upon request.

The authorized employers who so deduct the PAYE taxes will make regular returns to the relevant tax authorities in such manner as the relevant tax authority may prefer for the deductions so made, and in the event of failure by the employer to make the deduction or properly to account thereof, the amount thereof together with a penalty of ten percentum per annum of the amount plus interest at the prevailing commercial rate shall be recoverable as a debt by the employer to the relevant tax authority.

In arriving at the amount of tax to be deducted, the relevant tax authority shall ensure that the aggregate amount of all deductions made during the year of assessment shall equal the income tax chargeable on him in respect of his emoluments for the year. Notwithstanding the above, the relevant tax authority may take in to account an

[39] Section 68 PITA
[40] Ibid (2)
[41] Section 76
[42] Section 77

assessable income of the employee for the same year arising from any other source (outside his emoluments) chargeable with income tax under the Act.

For the purpose of computation, the rate approved by the Joint Tax Board[43] is used in determining the amount payable as tax. Any employee whose income was less than ₦30,000 was previously taxed at the minimum rate of 5%. With the amendment of thesixth schedule by section 7, and section 34 PITAA, the minimum is now 1% of gross income while the threshold has jumped from N30,000 to ₦300,000.For tax computation therefore, the total tax payable in accordance with the above rate wil be divided by 12 to obtain the monthly tax payable.

Tax payers under the PAYE scheme are the most vulnerable to tax; it is usually very difficult for this category of taxpayers to conceal information leading to their assessment to tax just as it is difficult for them to evade or avoid tax.

What makes this effective is the availability of information on the taxpayers.

As earlier suggested, only an effective and efficient information technology system can guarantee information bank for effective assessment of other taxable persons under taxation of business, trades and vocations.

ADMINISTRATIVE PROCEDURE OF PAYE

The employee must file returns at the beginning of the year. The appropriate form is FORM A. The appropriate tax authority issues a notice of free pay and allowances and tax deduction cards.

The tax to be deducted will be in accordance with the tax deduction card issued by the revenue.

Tax deducted is to be remitted as follows:

i. Covering letter
ii. Tax FORM G; (that is the employee remittance card)

By the end of the year, the employer files returns on tax FORM H indicating the taxes deducted and remitted to the revenue. In addition the tax FORM G and tax deduction card be returned to the revenue.

The penalty for late payment of taxes is 10% of the tax remitted late and interest at commercial rate.

Nature of Payment

All payments must be made by bank draft and cheques could made payable to the State Board of Internal Revenue that the employee is resident or the Federal Inland Revenue Service as the case may be.

Calculation of Total Tax Due to Date:

In calculating a taxpayer tax liability regard shall be had to the following;

a. the estimated income for the year is ascertained by adding the total income due to the employee.
b. The non-taxable portion is then deducted.
c. The admissible contribution is subtracted from the taxable income.
d. Personal relief as approved by the revenue is then deducted.
e. The balance replaces income subject to rate on which the tax rates will be applied to arrive at the tax due for the year.
f. The tax due for the year is then apportioned evenly over the year by dividing the total balance by 12 months

Tax Clearance Certificate for PAYE

A tax clearance certificate certifies that the employee has paid tax for the preceding three years of assessment.

Application for a tax clearance certificate is made by the taxpayer completing a tax FORM H2.

The employer certifies that tax has been deducted and paid for in the preceding three years of assessment.

The revenue can issue the tax clearance certificate within two weeks[44].

Tax Clearance Certificate Generally

Section 85 of the PITA provides that:-

Whenever the relevant tax authority is of the opinion that tax assessed on the income of a person for the three years immediately preceding the current year of assessment has been fully paid or that the person is not liable to tax for any of those three years, it shall issue a tax clearance certificate to the person within 2 weeks.

This implies that the authority is under obligation to deliver to a tax payer a clearance certificate once tax has been paid. On the other hand, the Act provides that no Ministry, Department, Agency of Government or Commercial bank shall deal with any person in respect of transactions mentioned under subsection (4) of section

[43] Ibid

[44] See a Review of the Nigerian Law; Report on withholding Tax and Personal Income Tax (2002) Morotop Consult pp. 21-23.

85 unless that person produces a tax clearance certificate for three years immediately preceding the current year of assessment.[45]

Under employment tax especially where the PAYE scheme is used, application for tax clearance certificates is made by the taxpayer completing a tax form H2. The employer certifies that taxes have been deducted and paid from the preceding three years of assessment. The Revenue should issue the tax clearance certificate within two weeks. With the advent of electronic payment of taxation, forgeries of certificates of tax clearance have been reduced and where they occur, the police are beaming their search light on discovering such fake certificates[46] failure to demand and verify tax clearance certificate attracts a fine of N5, 000, 000 or a term of three years in jail or both, while failure to comply with the above provisions where there is no specific penalty attracts N5, 000 in the first instance and N100 for everyday of default. This is against the position in the old Act which provided for N200 in the first instance and N40.00 for every other day of default.

TAXABLE PERSONS UNDER PERSONAL INCOME TAX

Personal Income Tax is regulated by the Personal Income Tax Act of 1993 now contained in laws of the Federation of Nigeria (LFN) 2004, CAP 02 As amended. The Act identifies taxable persons[47], chargeable income[48], determine assessable income and tax that income[49]. The tax also determines the residence of the tax payer[50]for the purpose of payment and or collection of personal income tax.

All the indices identified above shall be discussed collectively, since one cannot assess a tax when he does not know the taxable persons, nor would he assess when he does not know the income that is assessable. Since residence is pivotal to assessment and collection of income tax, its discussion will also be inevitable. A discussion on the deductible expenses, allowances and incentives would also be necessary since it is not the entirety of a personsincome that is chargeable to tax but the residue of his earned income after all the statutory deductions and incentives/relief's have been subtracted.

4.1.1 Taxable Persons

Section 2 of the Personal Income Tax Act identifies the persons chargeable to personal income tax. These could be categorized into three

1st category

a. Any individual or body of individuals such as communities, families
b. Any corporation sole; and
c. Executors of estates of a deceased person

The above listed are assessed by the State Boards of Internal Revenue Service in their respective states of residence

2nd category

a. Trustee of any settlement or trusts.

This category is assessed by either the State Internal Revenue Service or the Federal Inland Revenue Service (FIRS)

3rd category

b. Persons employed in the Nigerian Army, Navy, Airforce and the Nigerian Police Force other than in a civilian capacity
c. Officers of the Nigerian Foreign Service
d. Every resident of the federal capital territory Abuja and
e. A person resident outside Nigeria who derives income or profit in Nigeria.

Note that, the Act also identifies itinerant workers and families as taxable persons under sub-sections (3) and (5) respectively[51].This category is assessed exclusively by the FIRS.

Assessable/Chargeable Income

Personal income tax is charged on the income of every taxable person for the year from a source inside or outside Nigeria in respect of the following[52]:

[45] Liquor licensing and electoral contest was added to the list of items under section 5(4). Since these items are contained in the finance, (miscellaneous Taxation provisions) Decree No. 4 of 1985 & Electoral Act 2000.
[46] The Graphic Wednesday June 6 to Tuesday July 12, 2011 p.3Also see S.59 FIRS Act, 2007
[47] Section 2 PITA
[48] Section 3PITA
[49] Section 1 PITA
[50] First Schedule to the PITA
[51] Section 3 of PITA 1993
[52] Ibid

a. The gains or profit from any trade, business, profession or vocation for whatsoever period of time such may have been carried out,
b. Any salary, wages, fees, allowances or other gains or profits from an employment including gratuities, compensations, bonuses, premiums, benefits or other perquisites allowed, given or granted by any person to an employee
c. Gain or profit including any premiums arising from a right granted to any other person for the use or occupation of any property,
d. Dividends, interest or discount
e. Any pension, charge or annuity

It is worthy of note that these categories of chargeable income enumerated above are not closed. The combined reading of the last phrase in section 3 (1) and paragraph (f) of subsection 1 clearly testifies to the above assertion. By way of comparism, the income liable to tax under the United Kingdom tax system is all-inclusive. In other words, the statute makes all income subject to tax while exempting other specific sources. According to Wolf E. (et all)[53] income is liable to income tax with the exception of the following:

(a) National saving bank ordinary account interest not exceeding seventy pounds;
(b) National Saving Certificate interest;
(c) PAYE interest;
(d) Certain benefits in kind to employees, other than directors, earning less that eight thousand and five hundred pounds; per annum provides the benefit cannot be converted into money or money's worth;
(e) Certain scholarships
(f) Death grant and maternity grant;
(g) Supplementary benefit and family income supplements;
(h) War-widow's pensions; and
(i) Annuities to holders of the George Cross, Victoria Cross, Edward Medal or Albert Medal, and additional pensions payable to the holders of such awards.

What can be seen from the above provision is that apart from income specifically exempted, all income is liable to Income Tax Act while leaving a residue of other income undetermined and only ascertainable by the tax officials. This may create obvious problems of assessment and rates of tax, as those sources are not subject to any specification. Another problem associated with this situation is that the taxpayer is left at the mercy of the corrupt tax officers who may exploit the situation to extort the taxpayer.

The adoption of the British approach is hereby suggested since it has the effect of making all income taxable except those specifically exempted.

Taxable Persons and Determination of Residence

A person pays tax in his State of residence except those living in the Federal Capital Territory, or those in any of the Nigerian Armed Forces or foreign services who will be subject to the Jurisdiction of the FIRS rather than the State Board of Internal Revenue.

Residence means living or dwelling in a particular place. For taxation purposes the dwelling must be for a continuous period of twelve months commencing from 1st January to 31st December of a particular year under consideration.[54] The determination of residence of an individual is very important in order to ascertain his liability to personal income tax and also ascertain the relevant tax authority that has jurisdiction over such individual. Nigeria consist of 36 states and the Federal Capital Territory (FCT), each of these states as well as the FCT Abuja have their respective tax assessment and collection authorities. Therefore a tax authority of one state cannot have administrative power over a person who is neither resident nor deemed to be resident within that state. Residence is therefore, essential in the assessment and collection of personal income tax.

Individuals

Paragraph 1 of the first Schedule to the Personal Income Tax Decree 1993 defines residence in relation to an individual to mean a place available for his domestic use in Nigeria on a relevant day, and does not include residence in hotel, rest house or other places at which he is temporarily lodging unless no more permanent place is available for his use on that day.

[53] Wolfe, E. (et all) M &E Professional Studies on Taxation (1986) Pittman Publishing Ltd, 128 Long Acre London WC2E 9AN (2nd Ed.) Pgs 11-12

[54] Section 100 PITA

In a situation where an individual has two or more places of residence in a relevant year not being both within the same state, Section 2 (3) provides that such assessment will be on the basis of his principal place of resident, which will be ascertained as follows:

(a) In the case of an individual with no source of earned income, other than a pension in Nigeria, that place or those places in which he resides.

(b) In the case of an individual who has a source of earned income other than a pension in Nigeria, that place or those places, which on a relevant day is nearest to his usual place of work.

(c) In the case of an individual who has a source of unearned income in Nigeria, that place or those places in which he usually resides.

An individual is therefore resident or deemed to be resident in a state if on the 1st day of January in a year of assessment, he has a place or principal place of residence in that state.

In order to determine residence of a person, the first schedule to PITA 2004 provides for the rules to use based on the following groupings:

(a) Foreign employment

An individual whose duties on 1st January are wholly performed outside Nigeria in the territory in which the employer's principal office is situated on 1st January in the year of assessment.

Note that under S.2 of the first schedule, income on foreign employment is not liable to tax in Nigeria except to the extent;

i. To which the duties are performed in Nigeria;
ii. It is paid in Nigeria
iii. It is accruable to government office
iv. It is brought into Nigeria

(b) Nigerian Employment

The First Schedule to PITAA defines Nigerian Employment to mean any employment not being a foreign employment, the duties of which are wholly or partially performed in Nigeria.

It States further that an individual who holds Nigerian employment on the 1st day of January in the year of assessment or who first becomes liable to income tax in Nigeria for that year by reason of his entering that employment during that year, shall be deemed to be resident for that year in the territory in which he has a place or principal place of residence on that day, or, as the case may be, on the day which he enters upon the full duties of that employment in Nigeria, provided that, if the individual is on leave from a Nigerian employment on the 1st day of January in the year of assessment, he shall be deemed to be resident for that year by reference to his place or principal place of residence immediately his leave begins.

Itinerant Worker

Section 108 of the Personal Income Tax Decree defines an itinerant worker as an individual who works at anytime during a year of assessment (other than as a member of the armed forces) for a daily wage or customarily earns his livelihood in more than one place in Nigeria and whose total income does not exceed Six Hundred Naira (₦600).

Tax is imposed on an itinerant worker in any year by the state in which he is found during the year. This is further buttressed by the newly inserted section 2(1) (a) PITAA 2011.

The meaning of the word 'place' used in the statute (in the definition of an itinerant worker) has not been given and there is nothing to show that it is synonymous with 'territory', which has been defined to mean a state or the FederalCapitalTerritory. The meaning is therefore left to the imagination since place can be construed to mean State, town, Village, Spot or place within a state.

In the absence of such definition, one can say since an itinerant worker is taxed by the state in which he is found, the necessary intendment is that the word 'place' is synonymous with 'territory'[55].

Partnership

The income of partnership for a year of assessment is taxed by the tax authority of the territory in which the principal office or place of business of the partnership in Nigeria is situated on the first day of that year or is first established during that year[56].

[55]Ayua I. A. (op cit) at 66
[56] Section 100 PITA, 1993

Ayua observed that since it is not the income of the partnership as a growing concern that is taxed but the income of the individual partners that is taxed, it is doubtful, in the ascertainment of residence for the purpose of taxation of partnership to say whether it is the residence of the individual partners that is taken into cognizance or the place where the principal place of business or office is situated[57]. Secondly, he also observed that the expressions 'principal place of business' or 'principal office' is not defined by section 100 (d) of the Personal Income Tax Decree so that the position is not clear where a partnership has places of business in two or more states with a 'principal office' in each.[58]

With due respect to the learned professor and Senior Advocate of Nigeria, it is humbly submitted in respect of his second observation that, partnerships are registrable under part B of the Companies and Allied Matters Act, Cap C20 LFN; 2004 (i.e. registration of business names). Consequently the Charter or partnership agreement of each partnership has its principal office or registered office. That office then becomes the 'principal place of business' for the purpose of determining residence for partnership taxation.
If the first sceptism raised by the learned professor is resolved to the effect that it is the principal place of business of a partnership that is used for the purpose of determining residence, then the second problem would have been solved by this submission.

COMMUNITIES
Tax may be imposed on communities, income for any year by the income tax law of the state in which that community is to be found[59]such tax may be charged on either:

(1) The estimated total income of all the members of the community, or
(2) The estimated total income of those of its members whose income it is impracticable in the opinion of the relevant state tax authority to assess individually or
(3) The amount of any communal income, which in the opinion of the relevant state tax authority in relation to such community, is impracticable to apportion with certainty between its members.

Community tax cannot therefore be charged on the basis of personal income tax decree since the decree does not recognise 'communities' as taxable persons. In fact section 100 Personal Income Tax Decree that define individuals for tax purposes expressly excludes communities. Accordingly each state wishing to charge community tax must specifically impose tax on them as taxable persons vide state legislation

FAMILY
The income of a family recognized under any law or custom in Nigeria in which the several interest of individual members of the family are in determinate or uncertain may be taxed only by the state in which the member of the family who customarily receives that income in the first instance resides. For tax to be imposed on a family therefore, the following conditions must exist:

a. The family must be recognized under any law or custom in Nigeria
b. The interest of the several members of the family must not be distinctly identifiable or determinable and
c. The taxing authority must be the state where the principal member of the family resides.

Following the indices above, the following observations are identifiable:

(i) we are not aware of any such family, which is so recognized by any state legislation or custom for the purpose of tax;
(ii) even if there is , such recognition may create the problem of double taxation among the members of the family or encourage tax evasion, as taxable persons composed in the family may hide under the guise of the family to avoid tax payment;
(iii) in contemporary times, it is very difficult, if not impossible for the interest of various members of a family to be pooled such that it would not be distinctly identifiable;
(iv) the principal member of the family can therefore, be taxed in respect of income derived from the family business whereas other members who also have a distinct source of income either by virtue of being employed in the family business or otherwise will be equally taxed;
(v) with respect to the last condition , it may be difficult to confine the taxation of such a family to the state where the principal member of the family resides. For instance if the family is engaged in petroleum exploration or if it has its business scattered all over Nigeria, it would be inappropriate to make the

[57]Ayua I. A. (loccit)
[58] Ibid
[59] Section 2(4) PITA 1993

S.B.I.R. to assess and demand petroleum tax or stray into the jurisdiction of other states to collect tax on incomes the family derives from another state.

Accordingly, it is suggested that the 'family' should be removed from the conception of taxable persons.

TRUSTEES, EXECUTORS AND SETTLEMENT

The income arising to a trustee of any estate of a deceased person is taxed by the state authority where the administration of the trust takes place or where the deceased was last resident as the case may be.[60]

Although the Personal Income Tax Act makes trustees and executors taxable persons, it does not do so to settlements, settlers and beneficiaries. Schedule 2 paragraph 8 of the Personal Income Tax Act 2004 defines settlement to include any disposition, trust, covenant, agreement or transfer of asset. An individual taxpayer that transfers properties to his infant children under a family arrangement will come under this definition and the income from that arrangement is deemed to be the income of the settler or transferor for income tax purposes.

TAXATION OF PERSONS WHOSE INCOME CANNOT BE DETERMINED

Where the residence of a person cannot be determined for the purposes of taxation, the Federal Inland Revenue Service (FIRS) steps in to impose tax on such person.

The FIRS, is therefore responsible for the following category of persons whose residence cannot be determined under section 2 (1) of the Personal Income Tax Act. These include:

a) Persons employed in the Nigerian Army, the Nigerian Navy, the Nigerian Air Force, the Nigerian Police force other than in a civilian capacity
b) Officers of the Nigerian foreign service
c) Persons resident in the Federal Capital Territory Abuja and
d) A person resident outside Nigeria who derives income or profit from Nigeria.

Amendment of Principal Place of Business

Under the First Schedule to PITA, the relevant tax authority may be the FIRS or the SBIR. Section 32 PITAA 2011 amends the definition of principal place of business in the 1st Schedule to the Act by stating that in relation to an individual to with two or more places of residence on a relevant date, both not being within any territory to mean:

(a) In the case of an individual with no source of income other than a pension in Nigeria, that place or those places in which he usually resides.
(b) In the case of an individual who has a source of unearned income other than a pension in Nigeria, that place or those places which on a relevant day is nearest to his usual place of work.
(c) In the case of an individual who has a source or sources of unearned income in Nigeria, that place or those places in which he usually resides.
(d) In the case of an individual who works in the branch office or operational site of a company or other body corporate, the principal place of business shall be the place at which the branch office or the operational site is situated provided that operational site shall include oil terminals, oil platforms, flow stations, factories, quarries, construction site with a minimum of fifty workers, etc.

Would it, therefore, be correct to say that taxes of all employees in a branch are to be remitted to the tax authority of the State where the branch is situated without qualification? I guess not.

It is pertinent to note that section 32 is a specific amendment of paragraph 1 of the First Schedule as it relates to the definition of the phrase "principal place of business". This comes in to play when the taxpayer has two or more places of residence, both of which are not in the same state. Where the taxpayer has only one place of residence, therefore, this amendment does not apply.

The section also does not amend paragraph 3 of the First Schedule relating to an individual who holds a Nigerian employment as he shall be deemed to be resident for that year, in the territory in which he has a place or principal place of residence. Employers still owe a duty to remit taxes based on residence of each employee. Inter-governmental friction as to the issueof residence can, therefore, not be ruled out in the near future.

OBJECTIONS TO ASSESSMENT

If a taxable person disputes an assessment made by the tax authority (i.e. in the event where the revenue disregards his returns and makes its assessment *suomotu*) he may apply to the relevant tax authority by notice of

[60] Section 2(6) PITA1993

objection in writing to review and or revise the assessment and the application shall state the specific grounds of objection and shall be made within 30 days from the date of service of the notice of assessment.[61]
On receipt of a notice of objection, the relevant tax authority may require the person giving that notice to furnish such particulars and to produce such books or other documents as the relevant tax authority may deem necessary and may summon any person who may be able to give information which is material to the determination of the objection to attend for examination by any officer of the relevant tax authority on oath or otherwise. If a person objecting to the assessment agrees with the relevant tax authority as to the correct amount of the chargeable tax, the assessment shall be amended accordingly and notice of the tax chargeable shall be served on the taxpayer. On the other hand if an applicant for revision fails to agree with the relevant tax authority on the amount of tax chargeable, the relevant tax authority shall give notice of refusal to amend assessment as desired by that person and may revise the assessment to such amount as the relevant tax authority may determine by the best of its judgment and give notice of the revised assessment and of the tax payable together with notice of refusal to amend the revised assessment.

APPEALS

When a notice of refusal to amend an assessment is given to a taxpayer, he may if he is dissatisfied, appeal against the assessments before the body of appeal commissioners within 30 days from the date of service of that notice.[62] A notice of appeal is given to the appropriate tax authority setting out the following:

a. The name and address of the applicant
b. The official number and the date of the relevant notice of assessment
c. The amount of the assessable total or chargeable income and of the tax charged as shown by that notice and the year of assessment concerned.
d. The precise grounds of appeal against the assessment
e. The address for service of any notice of other documents to be given to the applicant and
f. The date on which the applicant was served notice of refusal by the relevant tax authority to amend the assessment ad desired.[64]

It is pertinent to note that sections 61 to 67 PITA have been deleted by section 15PITAA, 2011, but pursuant to section 59 (1) FIRSA, the Fifth schedule has created rules for the jurisdiction authority and procedure of the Tax Appeal Tribunal (TAT).Paragraph 15 of the said fifth schedule replicates these procedures. The Tax Appeal Tribunal (Procedures) Rules, 2010 have also been made to guide the operations of the TAT.
The FIRS (Establishment) Act by virtue of S.59 empowers the Minister of Finance to set up the Tax Appeal Tribunal (TAT) with power to adjudicate on disputes, and controversies arising from all the various tax types[54]. The TAT by this Act has taken over the functions of both the Body of Appeal Commissioners and the Value Added Tax Tribunal which have now become defunct. The TAT shall comprise of five members knowledgeable in tax matters to be appointed by the Minister of Finance.[65]
The panel is to be presided over by a chairman who shall be a lawyer with a cognate experience of not less than 15 years in tax matters.[66] The TAT is the appropriate judicial body of first instance whereby the FIRS and aggrieved taxpayers have recourse to for settlement of tax disputes. Members of TAT shall hold office for a term of 3years renewable for another term or 3 years and the retirement age is 70 years.[67]
Where in the course of the TAT's proceeding it discovers that there exists evidence of possible criminality it shall pass such information to the Attorney General of the Federation or the Attorney General of the relevant State or any relevant Law enforcement agency.[68] Appeal shall lie from the TAT within 3o days of the decision of the TAT to the Federal High Court where they are on points of law, upon giving notice to the Secretary of the TAT by the aggrieved party.[69]The Minister of Finance has the overriding power to make rules prescribing the procedure to be followed in the conduct of appeals before the Tribunal. Further appeal shall lie to the Court of Appeal from the Federal High Court[70]

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[61] Section 57 PITA

[62] Section 64 (1) PITA
[64] Section 61 (1) PITA
[54] Section 59 and fifth schedule of the FIRS Act, 2007
[65]Section 2 (1) of the fifth schedule of the FIRS Act.
[66]Section 2 (2) of the fifth schedule.
[67] Section 4 of the fifth schedule
[68]Section 12 of the fifth schedule.
[69]Section 17 (3) of the fifth schedule.
[70]Section 23 of the fifth schedule.

However, the court of Appeal in the case of **StabiliniVisinoni Ltd v. FBIR**[71] held that section 251 (1) of 1999 Constitution has conferred exclusive jurisdiction on the Federal High Court and it is specific as to the subject matters. Hence. Section 20 (2) of the 2nd Schedule of the VAT Actwhich confers jurisdiction on the VAT Tribunals was held to be inconsistent with the Constitution and void to the extent of its inconsistency. This decision has been appealed to the Supreme Court.

While tax recoveries and enforcements at Federal level can be carried out at the Federal High Court by virtue of Section 251 of the 1999 Constitution, where it is a Federally administered Tax such as, Personal Income Tax, Companies Income Tax, Petroleum Profit Tax, Etc., it would seem that the proper venue for the State Board of Internal Revenue and Local Government Revenue is the relevant State High Court and other relevant State Revenue Court.

The CITA, PITA, PPTA and FIRS Act, 2007 all provide that suits can be filed in Courts of competent jurisdiction for the recovery of taxes. The FIRS is empowered to prosecute any of the offences under the FIRS Act subject to the power of the Attorney General of the Federation.

However, it should be noted that the 1999 Constitution provides that the Federal High Court shall be vested with the exclusive jurisdiction in matters of Federal Revenue. Where there is inconsistency between any legislation and the Constitution, the Constitution being the grund norm by virtue of S.1 takes precedence.

There is need for a constitutional amendment to make the TAT a constitutionally recognized court so as to avoid a future recurrence of the StablinVisioni situation.

The secretary of the appeal commissioner shall cause the notice to be delivered to the relevant tax authority and list the appeal for hearing appropriately.

A taxpayer may discontinue an appeal by him under this section on giving notice to the secretary to the appeal commissioner in writing at anytime before the hearing of the appeal. On the other hand, the relevant tax authority may after the delivery of notice upon it by a taxpayer, revise the assessment in agreement with the taxpayer and on notice of the agreement being given in writing by the relevant tax authority to the secretary to the Tax Appeal Tribunal at any time before the hearing of the appeal, the appeal shall be treated as having been discontinued.

An appeal against the decision of the appeal commissioners shall lie to the high court of a state in which the taxpayer is resident. Thereafter, if either the relevant tax authority or the taxpayer is dissatisfied, a further appeal shall lie to the Court of Appeal and finally to the Supreme Court.

CONCLUSION

Taxation is a progressive enterprise; it moves with time. This explains why the English Financial Services Act is reviewed annually to conform with changing situations in the economy. Unfortunately, the Nigerian tax laws are hardly reviewed even with changing social and economic indices. It took almost two decades after PITA 1993 for fines and penalties to be reviewed in PITAA 2011

This paper analyzed the provisions of the Personal Income Tax Act with the aim of exposing salient provisions that require some review. The aim is to provide an insight into the proliferation of Nigerian tax legislations, but as earlier discussed, this article concentrates on Personal Income Tax with a view to exposing its modes of assessment, rates and collection process.

Most importantly, it is opined that the Self-Assessment system which was borrowed from England is inappropriate for a developing economy like Nigeria especially in the face of our level of literacy. However, if reverting to the old regime of direct assessment is considered retrogressive, then more work needs to be done to educate the masses on calculation of their liabilities and use of computer technology. This will not only aid taxable persons and traders but will also aid the tax authorities to avert loss of revenue.

Among many other criticisms, the provisions relating to appeal are to recommended for review in order to give the Tribunal a judicial statusavoid conflict with section 251 of the constitutions. In the present disposition, although the body carries out a magnitude of judicial functions conferred on it by the Act, it has no criminal jurisdiction. Most tax appeals present both criminal and civil flavours.

It is hoped that the stakeholders in our tax administration will make concerted efforts towards securing an amendment to the Constitution and the Act to give it a judicial status and also encourage a financial policy of annual review of tax laws.

[71]All FWLR (pt. 602) 1735 C.A.

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