

## Tax Law Enforcement: Practice and Procedure

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### Abstract

Tax Law Enforcement in the Nigerian Tax system has become one of the integral parts of the tax administration given the ingenuity of taxpayers, individual and corporate bodies, in keeping aside part of what is due to the government as taxes or not remitting same at all. By enforcing tax laws, tax authority not only catches tax cheats, but also promotes broader compliance by giving taxpayers confidence that others are paying their fair share. Tax enforcement has become imperative given the low level of voluntary compliance and the dire need to surge government's dwindling revenue through taxation. It is only through tax enforcement that the offences of tax evasion, non-compliance and corruption in the tax system are detected and the taxpayers are brought into the tax net.

### Introduction

Enforcement is a key issue in enhancing tax compliance. It involves compelling taxpayers to adhere or obey the provisions of the relevant tax Laws. It is directed at taxpayers who fall short of their tax responsibilities. It includes levies, search and seizures, fines, seeking information from third parties such as banks and court actions. Enforcement is define as the act of making sure that people obey a particular law or rule ; or the act of making sure that something happen or force somebody to do something. Enforcement is of two types: enforcement of tax laws and enforcement of judgment. Enforcement of tax laws involves the use or application of all those relevant laws that will aid and assist the tax man in the performance of his duties; laws not necessarily relating to the taxation but are relevant to the enforcement of tax laws.

Tax Enforcement is inevitable in the Nigerian tax system and administration; this is because of the ingenuity of the taxpayers in keeping what is due to the government or not paying their complete tax due to the tax authority.

### The Revenue Authorities in Nigerian Tax System

The Revenue Authorities are bodies who are responsible for the collection, assessment and enforcement of tax in Nigeria. Section 2<sup>(1)</sup> states interalia that "notwithstanding anything contained in the constitution of the federal republic of Nigeria 1979, as amended, or any other enactment or law, no person, other than the appropriate tax authority, shall assess or collect, on behalf of the government, any tax or levy listed in the schedule to this Act." The finance (miscellaneous Taxation Provisions) Decree 1998 No. 18 amended section 100 of the Personal Income Tax

Act 1993, and states tax authority to mean the federal Board of Inland Revenue, the state Board of Internal Revenue or Local Government Revenue Committee.<sup>(2)</sup> Regulation 35(1)(f) Tax Administration (Self Assessment) Regulations, 2011 defines relevant tax Authority to mean the federal Inland Revenue Service or the State Internal Revenue Service.....<sup>(3)</sup>

To assess, collect or enforce tax in the Nigerian tax system, the collector must be an authorize officer of the federal Inland Revenue Service or State Board of Internal Revenue or Local Government Revenue Committee.

### Procedure for Enforcement of Tax in Nigeria

Citizens and other corporate bodies or organizations are expected to voluntarily comply with the payment of taxes and also to pay the correct amount of taxes. Where the said expectations by the Revenue Authorities from the taxpayers are not achieved, the next question will be how to enforce compliance. The procedure is as follows:

#### 1. Filling of Returns/Self-Assessment

Self-Assessment tax regime was introduced into the Nigerian tax system in 1991 by Finance Miscellaneous Taxation Decree No. 2 of 1991 which enjoined companies to file self-assessment returns.<sup>(4)</sup> It was then made optional with some attractive incentives attached to elicit compliance. Self-Assessment became mandatory with great emphasis from the tax authorities in the year 2011. A self-assessment regime requires the concurrent filling of tax returns and payment of tax due on or before the due date. A Taxpayer completes his/her tax liabilities, pay the taxes due and file the relevant returns with evidence of payment of the tax/taxes on or before the due date.<sup>(5)</sup> The relevant tax authority accepts all tax returns submitted by taxpayers, then carry out necessary checks to ensure that all required information have been appropriately entered into the tax return forms.<sup>(6)</sup>

Failure by the taxpayer to submit the tax returns forms on or before the due date is a breach of the Self-

Assessment Regulations and the taxpayer shall be liable to pay such fines, penalties and interests as may be prescribed in the applicable tax laws.<sup>(7)</sup>

It is hereby important to state that registration of taxpayers and creating a database is very essential in any tax system. The tax authorities should carry out the registration of all eligible taxpayers in order to bring them into the tax net. The first step in tax administration is the preparation of an inventory of taxpayers. The taxpayers' registry is the backbone of all tax administrations. National Tax Policy (2008) states that in order to have an effective tax system in which all taxpayers are covered, there is need to register every taxable person which includes companies, enterprises, partnerships and other business entities for tax purposes.<sup>(8)</sup> Registration is a fundamental step in the tax administration process hence the National Tax Policy (2008) requires tax authorities at federal and state levels to register all taxpayers and issue Unique Tax Identification Number (U-TIN) and this shall be unique to a taxpayer. It is the bases upon which the tax administration communicates with a taxpayers and advises and maintains tax filling and tax payment records.<sup>(9)</sup> The Act requires that every taxable person to file a return of his income 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 containing:-

- (a) The amount of income from every source of the year preceding the year of assessment computed in accordance with the provisions of this Act and rules or regulations made thereunder; and
- (b) Such particulars as by the return may be required for the purpose of this Act and rules or regulations made thereunder with respect to any such income, allowance, relief, deduction or otherwise as may be material for that purpose.
- (c) The return shall, according to section 41(2) contains a declaration which shall state that the context of the return is true and correct.<sup>(10)</sup>

The due date for the filling of self assessment returns under the Personal Income Tax Act shall be on or before 31<sup>st</sup> day of March of every year. While for Companies Income Tax Act shall be six months from the end of the accounting year.<sup>(11)</sup>

## **2. Assessment by the Tax Authority:**

Section 32(1) (d) FIRS(Establishment) Act, 2007 empowers the service to serve a Demand Notice on the Company or Person in whose name a tax is chargeable and if payment is not made within one month from the date of the service of such demand notice, the service may proceed to enforce payment under this Act. Also section 65 Companies Income Tax Act empowers the Board to assess every company chargeable with tax after expiration of period allowed for delivery of audited accounts and return provided for in section 55 of this Act. According to the Hand Book on Self-Assessment issued in 2011 by the Federal Inland Revenue Service, the tax administrators are expected:

- To issue Reminder letters to taxpayers within two(2) months to expected due dates
- To issue a letter of demand/call for returns on or before the due date in compliance with the provisions of CITA and FIRS (Establishment) Act, which provisions empowers the Service to call for returns, books and documents of a defaulting company.<sup>(12)</sup>

Assessment for taxes is raised on income /profit of individuals /companies resident in Nigeria and/or earned in Nigeria. Assessment involves the computation or ascertainment of the tax liability of eligible taxpayers. There are two Schemes of assessment; the government assessment scheme (GAS) and self assessment scheme (SAS).<sup>(13)</sup> While the latter was explained earlier, the former is an assessment where all taxpayers are statutorily enjoined under the tax Laws to file their returns which include capital allowance computation and a true and audited financial statement containing the amount of profit from all sources and thereafter awaits the appropriate assessment from tax authority. When the returns of the taxpayer are filled in the tax office, the assessment officer assesses the accounts of the taxpayer to determine the tax liability and proceeds to register the assessed account. He endorses the document and sends it to the taxpayers, who finally becomes aware of tax liability and proceed to make payment at the appropriate designation.<sup>(14)</sup>

By the provision of section 26 Federal Inland Revenue Service (Establishment) Act, 2007 the service, for the purpose of obtaining full information in respect of the profits or income of any person, body corporate or organization, may give notice to that person requiring him to-

- (a) Complete and deliver to the service any return specified in such notice;
- (b) Appear personally before an officer of the service for examination with respect to any matter relating to such profits or income;
- (c) Produce or cause to be produced for examination books, documents and any other information at the place and time stated in the notice, which time may be from day-to-day, for such period as the service may deem necessary; or
- (d) Give orally or in writing any other information including a name and address specified in such notice.<sup>(15)</sup>

Sec. 57 Personal Income Tax Act,(2011 as amended) requires the relevant tax authority to prepare a notice of assessment of chargeable income of a taxpayer, the tax charged, the place at which payment should be made, and the right of the taxpayer for revision in case of objection. Section 68 Companies Income Tax Act

also requires the Board to prepare a notice of assessment of total profits, the tax payable, the place of the payment and the right of the company for revision in case of objection.

For the Tax Authority to ascertain a proper assessment on the chargeable income of a company or individual, the Law allows the tax authority to enter into premises of a taxpayer and conduct search with a warrant to recover books, records and documents found on that premises, it may also seek for information with respect to the taxpayer from the taxpayers' bank who must deliver all required information on the transaction of the taxpayer to the tax authority.<sup>(16)</sup>

### **3 Power to distraint by Revenue Authorities:**

The Personal Income Tax Act empowers the State Board of Internal Revenue to distraint; while the Companies Income Tax Act and Federal Inland Revenue Service (Establishment) Act 2007 empower the federal inland revenue service to exercise the power to distraint.<sup>(17)</sup> Personal Income Tax Act states:

Without prejudice to any other power conferred on the relevant tax authority for the enforcement of payment of tax due from a taxable person that has been properly served with an assessment which has become final and conclusive and a demand notice has been served upon the person in accordance with the provisions of this part of this Act, or has been served upon the taxable person, then, if payment of tax is not made within the time specified by the demand notice, the relevant tax authority may, in the prescribed form, for the purpose of enforcing payment of tax due-

- (a) Distrain the taxpayer by his goods, other chattels, bonds or other securities; or
- (b) Distrain upon any land, premises or places in respect of which the taxpayer is the owner and, subject to the following provisions of this section, recover the amount of tax due by sale of anything so distrained.<sup>(18)</sup>

For the tax authority to exercise the power of distraint, requisite conditions must be complied with as follows:

Firstly, the power becomes exercisable only when assessment raised against the taxpayer becomes final and conclusive. That is, when the tax payable has been decisively determined; and no valid objection or appeal has been lodged against the assessment within the time limited by the Act; and no further notice has been given of a further appeal against a decision of the appeal commissioner (now Tax Appeal Tribunal) or a judge.<sup>(19)</sup>

Secondly, to levy distress, tax authority must serve a demand notice. Where an assessment is made without a demand for a return of income, such an assessment is made without jurisdiction and would therefore be ultra vires, null and void. The demand note must be served in accordance with the provision of the Act. In other words, the request for a demand is a condition precedent for assessment; the waiting for the time allowed in the demand to pass is also a condition precedent. Both conditions are intended to protect a person by affording him an opportunity of stating his income and other relevant matters.<sup>(20)</sup>

Note, apart from the demand notice served on the taxpayer, there are reminder and final demand notices usually the tax authorities served on the taxpayers to comply and avoid distraint of their organization.

Thirdly, Tax Authority must authorize distraint officer: for the distraint of an organization or individual, the tax authority must authorize an officer to be in charge of distraint with a warrant approved by the Executive Chairman of the tax authority. Section 33(2) FIRS (Establishment) Act, 2007 provides that the authority to distraint under this section shall be in the form contained in the fourth schedule to this Act and such authority shall be sufficient warrant and authority to levy by distraint the amount of any tax due.<sup>(21)</sup> However, under the Personal Income Tax Act, the authorize officer must obtain a warrant of distraint at the High Court of a state before levy a distraint through a motion ex parte. Section 104(4) states that the judge may, on application made ex parte, authorize such officer, referred to in sub-section (3), in writing execute any warrant of distress....<sup>(22)</sup>

Fifthly, the goods distrained may be kept at the cost of the taxpayer for 14 days and at the end of that time if the amount due in respect of the tax and the cost and charges of and incidental to the distress are not paid, they may be sold at anytime thereafter. Section 33(4) & (6) FIRS (Establishment) Act, 2007 provides that distrained things may be kept for 14 days at the expense of the taxpayer and thereafter sold to settle the cost, charges and the tax due.<sup>(23)</sup>

In levying distraint by the tax authority against the taxpayer; assistance may be called of a police officer in the execution of the warrant of distress. Section 86(3) Companies Income Tax Act provides that for the purpose of levying any distress, the authorized officer may call to his assistance any police officer and it shall be the duty of that police officer when so required to aid and assist in the execution of any warrant of distress and in levying the distress.<sup>(24)</sup> Use of Law Enforcement Agencies such as police, state security service, customs, immigration etc in the discharge of any of the duties of the tax authorities is allowed by the law.<sup>(25)</sup>

### **4. Prosecution of Tax Defaulters for recovery of Tax:**

Tax may be sued for and recovered in a court of competent jurisdiction with full cost of action from the taxpayer as a debt due to the government. Section 87(2) Companies Income Tax Act provides that a court of competent jurisdiction shall include a magistrate's court, which court is hereby vested with the necessary jurisdiction,

provided that the amount claimed in any action does not exceed the amount of the jurisdiction of the magistrate concerned with respect to action for debt.<sup>(26)</sup> Because of the limitation of jurisdiction of magistrates/districts courts on monetary matters, most state of the federation make law empowering the chief magistrates in the state with an unlimited jurisdiction on Revenue matters in the state.<sup>(27)</sup> Such chief magistrate sitting on revenue matters as Revenue Court. Appeal from such revenue court lie to the High Court of the state against any decision, order, conviction or sentence.<sup>(28)</sup> However, in a state where the magistrate's court is not clothed with the status of revenue court vested with unlimited monetary jurisdiction, once the amount claimed exceeds the amount of jurisdiction with which the magistrate concerned is vested, the state High Court will have jurisdiction since the expression in the Act 'a court of competent jurisdiction shall include a magistrate's court' indicates that the court of competent jurisdiction is not limited to magistrate's court alone.<sup>(29)</sup>

**Tax Appeal Tribunal:** The TAT came to replace Body of Appeal Commissioners (BAC) and Value Added Tax Tribunal, (VATT) and also to handle cases of income tax and value added tax. The Federal Inland Revenue Service (Establishment) Act, 2007 establishes the Tax Appeal Tribunal under section 59 to settle disputes arising from the operations of the Act as well as the administration of the legislations listed in the First Schedule to the Act. The Tribunal has power to adjudicate on disputes and controversies arising from the following legislation:

- (a) The Companies Income Tax Act;
- (b) Personal Income Tax Act;
- (c) Petroleum Profits Tax Act;
- (d) Capital Gains Tax Act;
- (e) Stamp Duties Tax Act; and
- (f) Value Added Tax Act.<sup>(30)</sup>

Both the Tax Authorities and the taxpayers may appeal to the tribunal; on the part of the tax authority for the non-compliance of the taxpayer with the provisions of the tax Laws and on the part of the taxpayer on the assessment, demand notice or any action made against him by the tax authority with respect to payment of tax.<sup>(31)</sup> After judgment the tax authority is required to served on the taxpayer notice of the amount of the tax chargeable as determined by the tribunal and the award or judgment of the tribunal shall be enforced as if it were judgment of the Federal High Court upon registration of a copy of such judgment with the chief Registrar of the court and an appeal from the decision of the tribunal on point of Law goes to the federal High Court and notwithstanding the pendency of the appeal, tax shall be paid in accordance with the decision of the tribunal within one month of the notification of the amount of the tax payable.<sup>(32)</sup>

**Federal High Court:** Is established by section 249 of the 1999 constitution of the federal republic of Nigeria (as amended). It is constituted by a chief judge of the court and such other number of judges as may be prescribed by an Act of the National Assembly. By virtue of the provisions of section 251 of the constitution of Nigeria (as amended) the Federal High Court is conferred with exclusive civil jurisdiction on matters:

- (a) Relating to the revenue of the federal government or any organ thereof or a person suing or being sued on behalf of the said government is a party;
- (b) Connected with or pertaining to taxation of companies and other bodies established or carrying on business in Nigeria and all other persons to federal taxation;<sup>(33)</sup>

The federal High Court has an appellate jurisdiction by virtue of Paragraph 17 fifth schedule to the Federal Inland Revenue Service (Establishment) Act, 2007 which provides that any person dissatisfied with a decision of the tribunal constituted under this schedule may appeal against such decision on a point of Law to the federal High Court upon giving notice in writing to the secretary to the tribunal within 30 days after the date on which such decision was given.<sup>(34)</sup> Upon receipt of the notice of appeal, the secretary to the TAT shall compile the record of proceedings of the tribunal and transmit them to the Registrar of the Federal High Court along with all the exhibits tendered thereat. When the appeal is entered, hearing date will be given and thereafter judgment. Appeal against the judgment of the federal High Court goes to Court of Appeal and finally to the Supreme Court.<sup>(35)</sup>

## Conclusion

To sum it up, tax law enforcement remains inevitable in the tax system and administration in an effort to administer all the tax laws in Nigeria because it has the effect of punishing offenders by either distraintment or prosecution and act as a deterrence for other members of the public while engendering voluntary compliance to the tax laws.

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- (19) Adeyimika, A.K., (2010) op. cit., p. 6
- (20) Ibid p.9
- (21) See also section 104(3) Personal Income Tax Act and sec. 86(2) Companies Income Tax Act.
- (22) However, this is not applicable under FIRS(Establishment)Act, 2007 and Companies Income Tax Act
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