

Fiscal Federalism Within the Context of Personal Income Tax in Nigeria

By

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Abstract

The fiscal challenges facing Nigeria as a nation is one relating to allocation, revenue rights and jurisdiction of the component levels of the Nigerian federal set-up. This in turn has led to agitations for resource control and fiscal federalism. It has remained the most dominant and contentious issue in the relationship between the Government at the centre and the federating states. The objective of this paper is to x-ray the vexed issue of fiscal federalism within the context of personal income tax. There is litany of challenges with respect to its administration, imposition and ownership of the tax collected amongst the federating states. The doctrinal research methodology which is paying attention to theory as opposed to practice was adopted. This paper contains primary and secondary sourced materials, such as laws, statutes, conventions as well as other resource materials such as decided cases, journals, books, newspapers, magazines internet. This paper reveals the perennial challenges associated with the administration of personal income tax which include but not limited to corruption amongst tax officials, identification of enterprises within the formal and informal sectors of the economy, money laundering and allied matters. Given the submissions that have been made in this paper it is strongly suggested that there should be a review of the formula used for revenue allocation which have consistently increased the financial powers of the Federal Government against the other levels of Government, The allocation of the most productive income-elastic taxes to the Federal Government have made the centre financially stronger than the States and Local Governments. The principal effect of this is the increasing fiscal dependence of the lower Governments on federally collected revenue (both statutory and non-statutory), and their inability to meet the cost of functions assigned to them. Over-dependence on oil revenue has impacted negatively and posed serious challenges to the issues of fiscal federalism in the country.

Keywords: Allowance, Fiscal Federalism, Government, Tax, Income, Revenue, Taxable,

DEFINITION OF KEY TERMS

Fiscal: This is a financial term relating to public revenues (taxation), public spending, debt, and finance. In comparison, the term 'monetary' relates to money and how it is supplied to, and circulates in, an economy.

Federalism: Federalism is a political concept in which power to govern is shared between national, and sub-national Governments creating what is often called a federation.¹ In Nigeria the power to govern is shared between Federal, States and Local Governments, to create a federation.

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¹ Federalism in Nigeria-Wikipedia. Available at https://en.wikipedia.org/wiki/Federalism_in_Nigeria. accessed on 30/6/2019.

Personal Income: Total compensation received by an individual from his employment or service. Personal income includes compensation from a number of sources such as, salaries, wages and bonuses received from employment or self-employment; dividends and distributions received from investments.

Tax: a monetary charge imposed by the Government on persons, entities, transactions, or property to yield public revenue.

Government: A government is the system or group of people governing an organized community, often a State in the case of its broad associative definition, government normally consists of legislature, executive, and judiciary. Government is a means by which organizational policies are enforced, as well as a mechanism for determining policy. Each government has a kind of constitution, a statement of its governing principles and philosophy. Typically the philosophy chosen creates some balance between the principle of individual freedom and the idea of absolute state authority (tyranny).

Policy: A policy is a deliberate system of principles to guide decisions and achieve rational outcomes. A policy is a statement of intent and is implemented as a procedure or protocol. Policies are generally adopted by a governance body within an organization. Policies can assist in both *subjective* and *objective* decision making. Policies to assist in subjective decision making usually assist senior management with decisions that must be based on the relative merits of several factors.

INTRODUCTION

Fiscal federalism, which mirrors the amount of fiscal autonomy and responsibility accorded to sub-national Government, has been an important subject in the policy equation of many developing, transition, and developed countries. Fiscal decentralization has become fashionable regardless of levels of development and civilization of societies. Nations are turning to devolution to improve the performance of their public sectors.² Fiscal federalism is essentially about the allocation of Government resources and spending to the various tiers of Government.³ In general the intensification of the clamour for greater decentralization is informed by a combination of people desiring to get more involved in Government, and the inability of the Central Government to deliver quality services.⁴ Decentralized systems of Government give rise to a set of fiscal exigencies referred to as fiscal federalism also known as fiscal decentralization. It refers to the scope and structure of the tiers of governmental responsibilities and functions, and the allocation of resources among the tiers of Government to cope with respective functions.⁵ A federation implies the existence of different tiers of government in one country. In Nigeria, this consists of the Federal government, 36 States, the federal capital territory and 774 local governments.⁶

Fiscal federalism is a by-product of federalism. Federalism is a political concept in which power to govern is shared between national, and sub-national Governments creating what is

² B.E., Aigbokhan, "Fiscal federalism and economic growth in Nigeria", in *Fiscal Federalism and Nigeria's Economic Development 1999 proceedings of the Annual Conference of the Nigerian Economic Society, Nigerian Economic Society*, Ibadan, 333-352.

³ *Ibid.*

⁴ D., Arowolo, "Fiscal federalism in Nigeria: Theory and dimensions", *Afro Asian Journal of Social Sciences*, 2011, Vol. 2 No. 2.2, 1-22.

⁵ S.T., Akindele and K. Olaopa, "Fiscal Federalism and Local Government Finance in Nigeria: An Examination of Revenue, Rights and Fiscal Jurisdiction", in F. Omotoso, (ed.), *Journal of Contemporary issues in Public Administration*, Bolabay Publications, 2002, Lagos, 46-64.

⁶ Constitution of the Federal Republic of Nigeria, 1999 (as amended), section 2(1)3(1) and 3(6).

often called a federation.⁷ The power to govern is shared between Federal, States and Local Governments, to create what is often called a federation. Fiscal federalism is characterized by fiscal relations between central and lower levels of Government. Each tier of Government is seen as seeking to maximize the social welfare of the citizens within its jurisdiction.⁸

The issue of fiscal federalism is a unique one as it has generated intense debate in Nigeria. It is characterized by constant struggle, clamour for change, and very recently, violence in the form of agitation for resource control in the Niger-Delta.⁹

Agitations for more decentralized fiscal arrangement by lower tiers of Government have continued to be resisted by a leviathan Federal Government. Various commissions and committees have been set up to address this issue over the years. These committees will be examined under three phases of Revenue Allocation in Nigeria.¹⁰

PHASES OF REVENUE ALLOCATION

First Phase, 1946-1964

The task of the early Fiscal Commissions, from Phillipson Commission of 1946 to Sir Louis Chicks Commission of 1954 was limited to allocating equitably to the Regional Governments total “non-declared” revenue (consisting mainly of import and export duties and excise and company taxes) which, under the Constitution, was determined by the Central Government. Phillipson Commission recommended the use of derivation and even development as criteria for distribution of revenue. Each region’s share was as follows: North, 46 per cent; west, 30 per cent and East, 24 per cent. The Hick-Phillipson Commission of 1950 recommended need, derivation, independent revenue or fiscal autonomy and national interest as the criteria for revenue sharing. Chicks Commission of 1954 recommended derivation.¹¹

The Raisman Commission in 1957 recommended a Distributable Pool Account (DPA) shared among the regions as follows: North, 40%; East, 31%; West, 24% and Southern Cameroun, 5%. In 1961, Southern Cameroun left the federation, and the DPA was redistributed as follows: North, 42%; East, 33% and West, 25%. In 1963, when the Mid-West was created the share of the then Western Region was divided between it and the new region in the ratio of 3:1.¹²

The Binns Commission of 1964 rejected the principles of need and derivation. In its place, it suggested regional financial responsibility and percentage division of 42% to the north, 30% to the east, 20% to the west, and 8% to the mid-west.¹³

The Second Phase, 1967-1979

Following the creation of 12 States in May, 1967 the Constitutional (Financial Provisions) Decree No. 15 of 1967 was promulgated to share the revenue in the Distributable Pool Account

⁷ *Ibid.*

⁸ E.O., Akpan, “Fiscal Decentralization and Social Outcomes in Nigeria”, *European Journal of Business and Management*, 2011, Vol. 2 No. 4, 167-183.

⁹ D.N., Ike, “Towards an optimal formula for revenue allocation in Nigeria”, *The Nigerian Journal of Development Studies*, 1981 Vol. 1 No. 2, pp. 104-109 cited in *International Journal of Development and Sustainability* Vol.1 No.3 (2012), 1075-1087

¹⁰ W.E., Oates, “An Essay on Fiscal Federalism”, *Journal of Economic Literature*, JSTOR, 1999, Vol. 37 No. 3, 1120-49.

¹¹ *Ibid*

¹² O.O., Ewetan, “Fiscal federalism and Macroeconomic performance in Nigeria”, *Unpublished Ph.D. thesis*, Covenant University, Ota, Ogun State., 2011, 98-99.

¹³ D., Arowolo, *supra note 4*.

(DPA) among the new States as follows: East Central, 17.5 per cent; Lagos, 2 per cent; Mid-West, 8 per cent; the six Northern, states 7 per cent; South Eastern, 7.5 per cent; Rivers, 5 per cent; West, 18 per cent. The decree did not apply any uniform principle to all States. In particular, it failed to take cognizance of the key elements which formed the basis of the previous allocations of revenue among the regions, namely, population, derivation, consumption, among others.¹⁴

The Dina Commission of 1969 recommended national minimum standards, balanced development in the allocation of the States joint account and basic need¹⁵

Subsequent decrees between 1970 and 1975 aimed at correcting the anomalies of Decree No. 15 of 1967, by reallocating revenue to States on a more equitable basis¹⁶ Aboyade Technical Committee in 1977 recommended a national minimum standard for national integration 22%, equality of access to development opportunities 25%, absorptive capacity 21%, fiscal efficiency 15% and independent revenue effort 18%. Other criteria are 57% to Federal Government, 30% to State Governments, 10% to Local Governments, and 3% to a special fund.¹⁷

The Third Phase, 1979-1999

In 1979, the Federal Government set up a six-man Revenue Allocation Commission under the chairmanship of Dr. P.N.C Okigbo. The Commission recommended percentages on principles: population 40%, equality 40%, social development 15%, and internal revenue effort 5%. Percentages for Government: Federal 53%, States 30%, Local Governments 10%, Special Fund 7%.¹⁸

The 1979 Constitution had four important consequences on revenue sharing. First, the Federal Government ceased to monopolize the retention of fast-growing revenues such as company income tax and petroleum profit tax. Second, the proportionate share of each level of Government was fixed and made more certain. Third, the Local Governments hitherto regarded as arms of their respective State Governments were recognized as an independent revenue sharing unit in the federation. Finally, the derivation criterion almost disappeared as an important principle for revenue sharing.¹⁹

The legal basis of fiscal federalism is derived from the past Constitutional arrangements and, hence, in any true federalism the fiscal powers of all tiers of Government must be related to the functions and responsibilities assigned to them by the Constitution. Constitutionally, Nigeria is a federation, but in practice, and with the assumption of power by successive military administrations, the Constitution has always been suspended and the country ruled more or less like a Unitary State. The imposition of a Centralized Unitary System on a federal structure under the military administration partly explains our experience of poor fiscal management and low economic performance which, over the years, had adversely inhibited the true practice of fiscal federalism.²⁰

The establishment of the federal system in Nigeria was based on rounds of Constitutional Conferences in England prior to the grant of independence by the British Government.

¹⁴ O.O., Ewetan, *supra note 12*, p. 90.

¹⁵ D., Arowolo, *supra note 4*, p.10.

¹⁶ O.O., Ewetan, *supra note 12*, p. 99.

¹⁷D., Arowolo, *supra note 4*, p. 11.

¹⁸*Ibid.*

¹⁹ *Ibid.*

²⁰ L.N., Chete, "Fiscal Decentralization and Macroeconomic Management in Nigeria", *Journal of Economic Management*, 1998, Vol. 6 No. 1, 91-114.

Constitutions delineated the functions to be performed by each tier of Government. The importance of these constitutional arrangements was to ensure that the statutory fiscal functions and the financial resources to be applied for effective performance of these functions by each tier of Government was explicitly stated under the Constitution and were to be enforced judiciously. Unfortunately, the statutory shares of State and Local Governments were reduced through ad hoc fiscal measures such as the stabilization fund, dedication of crude petroleum for expenditure on special federal projects, Petroleum (Special) Trust Fund (PTF), upfront deduction of external debt obligations among others.²¹ The overall effect of this on the nation was that the disguised movement towards a Unitary State under military administration did not advance the practice of fiscal federalism as the federal system was replaced by an ineffective Unitary State.²²

The different formulae that have been used for revenue allocation have consistently increased the financial powers of the Federal Government against the other levels of Government, the allocation of the most productive income-elastic taxes to the Federal Government have made the center financially stronger than the States and Local Governments. The principal effect of this is the increasing fiscal dependence of the lower Governments on federally collected revenue (both statutory and non-statutory), and their inability to meet the cost of functions assigned to them. Over-dependence on oil revenue has impacted negatively and posed serious challenges to the issues of fiscal federalism in the country. It has created the leech syndrome whereby the States have become economic appendage of the Federal Government and eroded the fiscal autonomy of the federating units. Thus, it has created a master servant relationship in which the sub-national Governments are at the mercy of the Federal Government. As long as States and Local Governments continue to depend on the Federal Government for their economic development and survival, the wrangling and controversy surrounding the issue of revenue allocation will remain persistent and a recurrent problem in Nigerian fiscal federalism.²³

Nigeria as a country had her independence in 1960 and became a Republic in 1963, ever since then; there have been progressive proliferation of taxes established by various legislation by both civilian and military regimes. At the onset, the tax base was narrow consequent upon the economic development at that time. Income and profits from small scale business, agriculture and a number of mercantile activities formed the bulk of the tax base. The progression in taxation therefore is from personal income tax to taxation on other sources such as petroleum, companies etc.²⁴

PERSONAL INCOME TAX IN NIGERIA

Personal income tax is regulated by the Personal Income Tax Act of 1993.²⁵ The Act identifies taxable persons,²⁶ Chargeable income,²⁷ determines assessable income and tax that income.²⁸ The Act also determines the residence of the taxpayer²⁹ for the purpose of payment and or collection of personal income tax. All the indices identified above shall be considered

²¹ T.O., Okunroumu, "Policy Issues in Fiscal Federalism and National Development", in *Fiscal Federalism and Nigeria's Economic Development 1999 proceedings of the Annual Conference of the Nigerian Economic Society, Nigerian Economic Society, Ibadan, 453-475.*

²² *Ibid.*

²³ *Ibid.*

²⁴ J. A. A., Agbonika, *Problems of Personal Income Tax in Nigeria* (Ibadan: Ababa Press Ltd., 2012) 57.

²⁵ As adopted by the laws of the Federation of Nigeria (LFN) 2004 now 2011. CAP.P8.

²⁶ Section 2 of Personal Income Tax Act later referred to as PITA, 1993.

²⁷ Section 3 PITA, 1993.

²⁸ Section 1 PITA, 1993.

²⁹ First Schedule to the PITA.

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.

Section 4 of the 1999 Constitution³⁰ addresses the division of taxing powers between the Federal, State and the Local Government Councils while the second schedule to the Constitution discusses taxing powers and revenue sharing. Under these provisions, functions assigned to the States are residual powers not explicitly assigned to the Federal Government. Section 4³¹ which gave the Federal Government powers to make tax laws through the National Assembly, also gave State Governments the same powers to enact laws through their State Assembly in the interest of peace and good Government, with the proviso that where there is conflict, the law enacted by the Federal Government prevails.³²

It is therefore the constitutional responsibility of the National Assembly to make tax laws or amend existing laws as provided in the second schedule to the Constitution, and as may be required under section 4 of the Constitution.

The Nigerian Constitution also provides the powers of the State Houses of Assembly in relation to imposition of Federal, State and Local Government taxes. With regard to Federal taxes specifically stated in item D part II of the Nigerian Constitution, the powers of the State Houses of Assembly are restricted to collection and administration of certain taxes subject to authorization by the National Assembly, the State Houses of Assembly of each 36 States are expected to work closely with their respective State Executive Councils in exercising their responsibilities for the collection and administration of the taxes. The State Houses of Assembly should also liaise with the National Assembly where required to facilitate changes in relevant legislation that will assist the State House of Assembly to effectively discharge its duties.³³

The various State Houses of Assembly are responsible for legislation that will enable the Local Governments in the State effectively discharge their duties with respect to the collection of rates, fees and levies which are within their jurisdiction. In this regard and in order to harmonize rates, levies, fines, tolls and charges collectible by the Local Government authorities, the Joint Tax Board shall advise on the proposed changes for enactment by the State Houses of Assembly.³⁴

It is pertinent to note that taxing power operates at two levels: the first is as to imposition by legislating a tax and prescribing rules as to collection and administration of the tax by a Government, while the other is as to implementation by merely collecting a tax with no legislating powers.³⁵ This latter authorization is purely executive or administrative as evidenced by the Taxes and Levies (Approved List for Collection) Act.³⁶ This Act merely authorizes the collection of taxes, it does not permit legislating. It is questionable however, whether this Act conforms to the 1999 Constitution.³⁷

³⁰ The Constitution of the Federal Republic of Nigeria, 1999.

³¹ *Ibid*

³² Section 4 (5) of the Constitution. of the Federal Republic of Nigeria, 1999.

³³ A., Sanni-*Division of Taxing Powers* in M.T. Abdulrazaq (ed.) *CITN Nigerian Tax Guide and Statutes* (The Chartered Institute of Taxation of Nigeria:) Lagos 2002, at 651.

³⁴ *Ibid*.

³⁵ *Ibid*.

³⁶ Cap. T2, Laws of the Federation of Nigeria 2004.

³⁷ B.B., Kanyip, *The Taxes and Levies (Approved List for Collection) Decree 1998 and the 1999 Constitution- An Appraisal, a paper presented at the Joint Workshop for Local Government Chairmen, Chairmen Boards of*

In a Federal System, a Constitution may distribute taxing powers among the federating units using a number of expedients.³⁸ The distribution, for example may follow the general distribution of legislative powers, or specific taxes may be named and allocated to a tier of Government while the power to collect goes to another or there may even be three levels where one tier legislates another collects and the third is actually the beneficiary of the tax. What the 1999 Constitution has done is to utilize these different modes of allocating taxing power.

A look at the Second Schedule to the 1999 Constitution reveals that, in the Exclusive Legislative List in Part 1, the Federal Government has authority to legislate on certain named taxes such as, customs and excise duties, export, stamp duties, taxation of incomes, profit and capital gains except as otherwise prescribed by the Constitution. It is on the strength of this provision that the Federal Government promulgated the respective tax laws on capital gains, companies' income, petroleum profits and personal income. To the extent that the Federal Government has been given legislative powers in respect of specific taxes, the State Governments have what is technically called the residuary taxing powers.³⁹ In other words, States can legislate on any taxing item not specifically given to the Federal Government.⁴⁰

But according to Abiola Sanni, taxing powers must broadly follow the division of legislative powers under the Constitution.⁴¹ Consequently, each level of Government can impose tax in respect of any of the items that it has power to legislate upon. To him, this is the product of the Supreme Court's holding in *Attorney-General, Ogun State v. Aberuagba*.⁴² What this means, for instance is that since the 1999 Constitution distributes legislative functions between the Federal and State Governments,⁴³ Local Governments have no legislative function and so cannot legislate on any taxing matter except if such were delegated to it by the State House of Assembly. In some respects, under item D of Part II of the Second Schedule to the 1999 Constitution, the Federal Government can delegate the collection of personal income tax, capital gains tax and stamp duties to State Governments subject to whatever conditions the National Assembly may choose to impose.

Local Governments do not have legislative powers under the 1999 Constitution. This remains so despite the provisions of the Fourth Schedule to the Constitution. The fourth Schedule lists out the functions of Local Governments, which include collection of rates, radio and television licenses; establishment and maintenance of cemeteries, burial grounds and homes for destitute or infirmed; licensing of bicycles, trucks (other than mechanically propelled trucks), canoes wheelbarrows and carts; establishment, maintenance and regulation of slaughter slaps, markets, motor parks⁴⁴ and public conveniences, naming of roads and street and numbering of houses, registration of all births, deaths and marriages; assessment of privately owned houses or tenement for the purpose of levying such rates as may be prescribed by the House of Assembly of a State; and control and regulation of outdoor advertising and hoarding, movement and keeping of pets of all description, shops and kiosks, restaurants, bakeries and

Internal Revenue throughout Nigeria and Others, organized by the Office of the Joint Tax Board, held at the National Centre for Women Development, Abuja, October 28, 2002.

³⁸ A., Sanni *supra* note 33, 14.

³⁹ Ayua I.A., *The Nigerian Tax Law* (Spectrum Law Publishing: Ibadan), 1996, at 46.

⁴⁰ A.G Ogun State v. A.G Federation (1982) 13 NSCC 1 at 28.

⁴¹ A., Sanni *supra* note 33, 19.

⁴² (1984) SC 20.

⁴³ Section 4 of the 1999 Constitution.

⁴⁴ It is important to note that the phrase 'motor park' is not known to the English language. The correct word is garage or vehicle garage.

other places for sale of food to the public, laundries, and licensing, regulation and control of the sale of liquor.

It has been argued that these provisions of the Fourth Schedule do not directly vest Local Governments with power to collect taxes.⁴⁵ Rather it is opined that a State Government must first enact appropriate enabling law, which will determine the taxable persons, assessment procedures and method of collection, recovery and penalties for tax delinquency. This is evident from paragraphs 9 and 10 of item D of Part II of the Second Schedule to the Constitution. Alternatively, specific provisions delegating such powers to the Local Government can be made by the State House of Assembly. In whatever event, the Local Government must act within the limits of the enabling laws. It has accordingly been held to be *ultra vires* for a Local Government to levy rates on oil storage tanks or tank farm and oil pipelines that are not privately owned.⁴⁶

From this holding, it can be stated that the current practices across the country where Local Governments impose levies on Government especially Federal Government instrumentalities is clearly null and void. According to Ayua⁴⁷, on the American doctrine of immunity of Government instrumentalities, neither the State Government nor Federal Government can tax the instrumentality of the other tier of Government. In 2009, a court stopped the attempt by Apapa Local Government to levy a mobile advertisement tax on companies for displaying their corporate names on vehicles. To the trial judge, the mere display of the companies' names on their vehicles for the purpose of identification, without advertising any product, does not amount to advertisement or signboard advertisement.⁴⁸ From all these, it may be asked whether the Taxes and Levies (Approved List for Collection) Act, 1998, is consistent with the 1999 Constitution. The answer is in the negative.

The general purport of the Act is to streamline taxing powers into the specific pigeonholes represented by the 39 items listed in the Schedule (8 for the Federal Government, 11 for State Governments and 20 for Local Governments). If the argument is accepted that taxing power follows legislative power, as the Supreme Court puts it in the case of *Attorney- General, Ogun State v. Aberuagba*, then Taxes and Levies (Approved List for Collection) Act is null and void to the extent that the Federal and State Governments cannot go beyond the items listed against them in the Act. Similarly, suggesting that the Local Governments have unfettered powers over the 20 items listed in the Act is also constitutionally null and void.

In any event, Part III of the Schedule to Taxes and Levies (Approved List for Collection) Act is in several respects at variance with the Fourth Schedule to the Constitution. For instance, right of occupancy fees on lands in rural areas is reflected in the Act but not the fourth Schedule to the 1999 Constitution, tenement rates are restricted to privately owned houses/facilities under the Fourth Schedule to the Constitution, but under the Taxes and Levies (Approved List for Collection) Act, it seems to be general.

Furthermore, to the extent that the Taxes and Levies (Approved List for Collection) Act is a Federal law that seeks to dictate to the States what taxes they are to collect, the legislation is constitutionally null and void. This means that it will be of no effect, at least in respect of taxes within the legislative competence of the State, if the Minister of Finance decides to amend the

⁴⁵ A., Sanni *supra* note 33.

⁴⁶ Shell Pet. Dev. Co. of Nig. Ltd. v. Burutu Local Government Council (1989) 9 NWLR PT. 165 P.318 CA.

⁴⁷ I.A., Ayua *supra* note 39, at 44.

⁴⁸ See SDV Nig. Ltd. & Ors v. Apapa Local Government Council as reported by *The Guardian Newspaper* of May 13, 2000 at p. 31.

Schedule to the Act as permitted by Section 1(2) of the legislation. This will remain the case even if it is on the advice of the Joint Tax Board (JTB).

For taxable persons, section 2 of the Personal Income Tax Act identifies the categories of persons chargeable to personal income tax.

- The first category of taxable persons includes; any individual or body of individuals such as communities, families etc. it also includes any corporation sole and Executors of estates of a deceased person. All the above listed are assessed by the respective States board of internal revenue in their respective States of residence.⁴⁹
- The second category of taxable persons includes trustee of any settlement or trusts. This category is assessed by either the State internal revenue or the Federal Inland Revenue service (FIRS).
- The third category of taxable persons includes persons employed in the Nigerian Army, Navy, Air force and the Nigerian Police Force other than in a civilian capacity. Also, it includes officers of the Nigerian Foreign Service, every resident of the Federal Capital Territory, Abuja and a person resident outside Nigeria who derive income or profit from Nigeria. It must be noted also that the Act identifies itinerant workers and families as taxable persons under subsection (3) and (5) respectively.⁵⁰ These categories above are assessed exclusively by the FIRS.

It must be noted that 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 but not limited to the following:⁵¹

- 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 prerequisites 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
- f. Any profit gain or other payments not falling within paragraphs a-e of this subsection.

Worthy of note is that 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,⁵² income is liable to tax with the exception of the following:

- a. National saving bank ordinary account interest not exceeding seventy pounds
- b. National savings certificate interest
- c. PAYE interest
- d. Certain benefits in kind to employees, other than directors, earning less than eight thousand and five hundred pounds per annum provided the benefits cannot be converted into money's worth
- e. Certain scholarships

⁴⁹ J. A. A., Agbonika, *supra* 24, 59.

⁵⁰ PITA 1993.

⁵¹ *Ibid.*

⁵² E., Wolfe, et al, *M & E Professional Studies on Taxation*, (London: Pittman Publishing Ltd., 1986), 128 Long Acre WC2E 9AN ,2nd (ed.).

- f. Death grant and maternity grant
- g. Supplementary benefit and family income supplements
- h. War-widows' 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 gleaned from the above provisions is that apart from incomes specifically exempted, all incomes are liable to the income tax while leaving a residue of other income undetermined and only ascertainable by the tax officials. This undoubtedly may create problems of assessment and the rate 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 from 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.

On the determination of the residence of taxable persons, the issue of residence is an important consideration when discussing personal income tax. Individuals pay tax in their States of residence except those living in the Federal Capital Territory or those in any of the Nigerian Armed Forces who are subject to the tax jurisdiction of the FIRS rather than the States. Residence means living or dwelling in a particular place. For taxation purposes, the dwelling for a year of assessment must be for a continuous period of twelve months commencing from 1st of January to 31st of December of a particular year under consideration.⁵³

The determination of residence of an individual is very important in order to ascertain the relevant tax authority that has jurisdiction over such individual. By virtue of the 1999 Constitution of Nigeria as (amended), Nigeria consists of 36 States and the Federal Capital Territory (FCT). Each of these States as well as the FCT Abuja has its own tax assessment and collection procedure. 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.

Paragraph 1 of the first schedule to the Personal Income Tax Act, 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. 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 residence, 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.

Personal Income Tax Reliefs

⁵³ Section 108 PITA, 1993.

The Personal Income Tax Act also provides a number of personal reliefs to an individual taxpayer. These reliefs are deducted from the gross income of an individual taxpayer in each year of assessment before determining his taxable income. The reliefs are available to individuals resident in Nigeria. However, in the United Kingdom residents may claim personal relief in respect of UK income.⁵⁴ It is noteworthy that the reliefs are not given as a matter of course; a taxpayer must claim them by filing a formal return.⁵⁵ The following are some of the reliefs:

- *Personal Allowance*

A personal relief of N5, 000 or 20, 000 of a taxpayer's earned income is granted.⁵⁶ Earned income includes income from trade, business, employment, profession or vocation but does not include investment income such as rents, dividend interest or royalties.⁵⁷ It must be noted that section 5 of the Personal Income Tax Act, 2011 has introduced the Consolidated Relief Allowance (CRA) into section 33 of the Personal Income Tax Act (PITA). By this amendment, the personal relief of N5, 000 is substituted with N200, 000 or 1 percent of the gross income whichever is higher. The exact computation of the CRA is not clear as the provisions of section 5(1) conflicts with paragraph (1) of the sixth schedule to the PITAA which grants a flat rate allowance of N200, 000 plus 20% of the gross income.

- *Wife's Allowance*

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 certainly is highly unrealistic considering the current economy especially where the same legislation recognizes that the sum of N2, 500 could be allowed for a child.

- *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 the age of sixteen years or if more than sixteen, must be receiving full-time instruction in a recognized educational establishment or was under article of indenture in a trade or profession. It is pertinent to note that the number of children must not exceed four.

- *Dependent Relative Allowance*

An allowance of N2, 000 is allowed as deduction for the maintenance of dependent relative who is either the widowed mother of a taxpayer or the widowed mother of his spouse. Also, the dependent must be incapacitated by old age or infirmity as to be incapable of taking care of herself and this fact must be proved by evidence of a medical doctor, the evidence must be proved that the husband of 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 provision is in tandem under PITAA 2011.

- *Disabled Person's Allowance*

A deduction of N3, 000 or 20% of the earned income of a disabled person is allowed.⁵⁸ These categories of disabled are people who use special equipment for the services of an attendant in

⁵⁴ W.C., Butterworth, *Revenue Law Principles and Practice*, (London: Butterworth Publishing Ltd., 1995), 13th edition, 54.

⁵⁵ Section 34 PITA 1993.

⁵⁶ Section 33(1) of Personal Income Tax Act, 1993.

⁵⁷ I.A., Ayua *supra* note 39, 83.

⁵⁸ Section 33(3) (c).

the course of a paid employment. In the United Kingdom, the relief is limited to blind people alone while it is wider here in Nigeria as it is for all categories of disabled.

- *Capital Allowances*

Capital allowances are granted to traders, business or self-employed persons in respect of capital assets like building, machinery, liquid cash etc. used in the businesses.⁵⁹ The allowances are granted to encourage private entrepreneurs to expand or develop and equip their business. This type of capital allowances granted by the Act includes initial allowance, annual allowance, investment allowance and balancing allowance. For a taxpayer to qualify for the allowance, the following conditions must be met:

- The capital expenditure must be incurred in the basis period
- The capital expenditure incurred must be the qualifying expenditure as defined under paragraph 2 of the schedule to the PITA 1993 and
- The capital expenditure incurred must be for the purpose of the trade or business.
- Other Allowances

Other allowances which used to exist under PITA, but which have been removed by the PITAA 2011 include:

- Housing allowances maximum of N150, 000
- Transport allowance N20, 000 per annum
- Leave allowance 10% of basic salary
- Entertainment allowance N6, 000
- Utility allowance N10,000
- Meals allowance of N5, 000 but if cash is paid it is deductible
- Cost of passage
- Medical or dental expenses both removed also.⁶⁰

Incentives and Disincentives

Apart from allowances and reliefs, incentives are also offered to encourage certain activities. Incentives are deliberate elimination or reductions in tax liability in order to encourage specified desirable economic activities such as savings, investments, export, certain sectoral activities etc.⁶¹ in developing countries, Governments sometimes reduce or eliminate corporation taxes for the purpose of attracting foreign direct investment or stimulating growth in selected industries.⁶²

Disincentives on the other hand are unintended negative aspects of taxation which discourages socio-economic behaviors. While tax incentives may be necessary for the purpose of economic development, tax disincentives can slowly and silently kill development efforts. 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.⁶³ These incentives, whatever is their nature be they waivers, exemptions, tax holidays, tax free allowance, tax free status etc. are part of considerations for investors wishing to take investment decisions. Apart from tax concessions or incentives, other factors they consider are:

⁵⁹ Fifth Schedule to PITA, 1993.

⁶⁰ J. A. A., Agbonika, *supra* note 24,80.

⁶¹ Nigerian Tax Reform (NTR) in 2003 and beyond, 40.

⁶² *Ibid.*

⁶³ *Ibid.*

- Stability and economic growth
- Political stability
- Infrastructural development and facilities
- Good governance
- Law and order in the country so as to ensure security of life and property
- Cost of adequate personnel.

The above items must be taken care of by any country that wishes to encourage investment. Incentives for individuals include the following:

- a. Personal allowances: Tax incentives for individuals are mostly contained in personal allowances and reliefs as well as minimum tax rates which can be as low 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. Both the personal allowance as well as minimum threshold have been amended⁶⁴ by substituting the personal relief N200, 000 or 1% of gross income plus 20% of gross income known as Consolidated Relief Allowance (CRA).
- b. Bonus: The Personal Income Tax Act allows individual 1% tax bonus for filing self-assessment return and paying income tax within the stipulated time by law.⁶⁵
- c. Retirement benefits: Before 1996, N1, 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 taxpayer may have.
- f. Dividends, interest, rent, royalties, fees, commission etc. from foreign countries: This category of income earned abroad and broad 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 such 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 outside Nigeria enjoys 100% tax exemption. These categories of incomes are exempted from tax if earned by Nigerians abroad and brought into Nigeria provided that such foreign incomes are deposited in a domiciliary account with a bank in Nigeria
- h. Withholding tax dividends: withholding tax on dividends and interest carried from any shareholding or investment in Nigeria is now a final tax in the hands of the recipient.⁶⁶

Mode of Assessment of Personal Income Tax

The mode of assessment under the Personal Income Tax Act 1993 is self-assessment.⁶⁷ However, Government assessment only comes in when there is failure or lateness in filling a

⁶⁴ Section 5 PITAA, 2011.

⁶⁵ Section 44(a) PITA, 1993.

⁶⁶ Federal Inland Revenue Services; *General Tax Guide for Administrators and Practitioners*, (2000), 21-22.

⁶⁷ Section 41 (1) (2) (3) & 44, PITA, 1993.

return or where the information filed by a taxpayer in his return is adjudged by the tax authority to be incorrect or fraudulent.⁶⁸ Section 41 of 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 of the 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.⁶⁹ 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. Where a taxable person has delivered a return, the relevant tax authority has the option to reject and return the assessment to the taxpayer and proceed to assess it on the basis of its judgment or accepting the returns and assessing the taxpayer on the basis of the returns made.⁷⁰

However, under the British tax system, all taxes are in the scheduler system, with each schedule having its own tax rate, basis of assessment, reliefs and appeal system. The self-assessment scheme in Nigeria is equally applicable to other schedules. The universality of the self-assessment scheme shows its effectiveness and sustainability. 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.

Objections to Assessments and Appeals.

It is imperative to state that if a taxable person disputes an assessment made by a tax authority i.e. where the revenue authority disregards his returns and makes its assessment, a taxpayer may apply to the relevant tax authority by notice of 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.⁷¹ 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 the applicant for revision fails to agree with the relevant tax authority on the amount of tax chargeable, the relevant tax authority shall give

⁶⁸ Section 53(1) & (2) (b) & (3)

⁶⁹ *Ibid* (1)

⁷⁰ Section 53 (3)

⁷¹ Section 57, PITA, 1993.

notice of refusal to amend assessment as desired by that person and may determine by the best of judgment and give notice of the revised assessment and of the tax payable together with notice of refusal to amend the revised assessment.

It is germane to note that when a notice of refusal to amend an assessment is given to a taxpayer, he may if dissatisfied appeal against the assessment before the Tax Appeal Tribunal within 30 days from the date of service of the notice.⁷² It must be noted that the body of Appeal Commissioners previously co-existed with the Value Added Tax Tribunal which has now been abolished. There is now the Tax Appeal Tribunal set up pursuant to section 59 of the Federal Inland Revenue Service Establishment Act, 2007 to deal with grievances on tax matters. In line with this, section 14 PITAA 2011 has amended Section 60 PITA to replace the Body of Appeal Commissioners with the Tax Appeal Tribunals. Also, sections 61-67 PITA which deals with appeal processes have been deleted by section 15 PITAA.

A notice of appeal is given to the appropriate tax authority setting out the following:⁷³

- a. The name and address of the applicant
- b. The official appeal number and 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
- f. The date on which the applicant was served notice of refusal by the relevant tax authority to amend the assessment as desired
- g. Grounds of appeal
- h. List of witnesses
- i. Written statements on oaths and
- j. Copies of documents sought to be relied on.

The secretary of the Tax Appeal Tribunal 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 tribunal in writing at any time before the hearing of the appeal.⁷⁴

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 tribunal at any time before hearing of the appeal, the appeal shall be treated as being discontinued.⁷⁵ An elaborate procedure to be followed at the hearing is laid out in Order XV of the TAT Rules.

Ownership of Funds Collected by States

What happens to the funds collected by State Governments through the State Boards of Internal Revenue under Personal Income Tax Regime? The Personal Income Tax Act being a Federal legislation delegates collection to States. Where does the money so collected go to? Can States

⁷² Section 64 (1) has now been deleted by Section 15 PITAA, 2011 so as to give effect to the creation of the Tax Appeal Tribunal as a substitute for the Body of Appeal Commissioners.

⁷³ Order III Rules 4 and 5 *Tax Appeal Tribunal (Procedure) Rules*, 2010.

⁷⁴ *Ibid* xiv (1)

⁷⁵ *Ibid* XIV (1) and (2)

use the money without authorization of their principal i.e. the Federal Government?⁷⁶ There are two major positions on the above controversy. The first group is of the view that the Federal Government being the initiator of the PITA through section 4 of the Constitution owns the money collected under PITA by the States and can, at best, give State Governments a percentage of the collection pending division of money from the Federation Account.⁷⁷ The second group say that PITA is residence-based and belongs to collecting States even though they were acting as delegates of the Federal Government. To resolve the controversy, there is need to consider the clear provisions of the Constitution and the Personal Income Tax Act. There seem to be two separate consolidated revenue funds one being for the federation and the other for the States.⁷⁸ Section 80(1) of the 1999 Constitution provides that:

All revenues or other moneys raised or received by the Federation (not being revenues or other moneys payable under this Constitution or any Act of the National Assembly into any other public fund of the Federation established for a specific purpose) shall be paid into and form one Consolidated Revenue Fund of the Federation.

While Section 120(1) of the Constitution provides that:

All revenues or other moneys raised or received by the State (not being revenues or other moneys payable under this Constitution or any Law of a House of Assembly into any other public fund of the State established for a specific purpose) shall be paid into and form one Consolidated Revenue Fund of the State.

It can be seen from the two provisions above that the Constitution creates two special accounts for money or funds made and earned by the Federal and State Governments. While section 80(1) is in respect to the Federal Government, Section 120(1) applies to revenue made by the State Government. This Consolidated Revenue Fund is different from the Federation Account⁷⁹ and State Joint Local Government Account.⁸⁰ The Federation Account is a special account which all revenues collected by the Government of the Federation are paid into, except the proceeds from the personal income tax collected by the Federal Inland Revenue Service. The State Joint Local Government Account on the other hand is a special account which all allocations to the Local Government Councils of the State from the Federation Account and from the Government of the State are paid into i.e. excluding the proceeds or revenue internally generated by the State. Whereas funds in the Consolidated Revenue Fund of the Federation exclusively belongs to the Federation and is administered by the National Assembly to meet the administrative and other needs of the Federal Government and its agencies as they deem fit,⁸¹ funds in Consolidated Revenue Fund of the States belong to the State and is similarly utilized by the State, under the exclusive appropriation of the State House of Assembly, to

⁷⁶ J.A.M. Agbonika and J.A.A. Agbonika, Fiscal Federalism and the Challenges of Administration of Personal Income Tax in Nigeria, in Topical Issues on Nigerian Tax Laws and Related Areas ed. Josephine A.A. Agbonika, Press Ltd., Ibadan, 2015, pp 409-435 esp.428

⁷⁷ Section 162 of the 1999 Constitution of the Federal Republic of Nigeria.

⁷⁸ Section 80(1) and 120(1) *ibid*

⁷⁹ Section 162(1), 1999 *ibid*

⁸⁰ Section 162 (6) of the 1999 *ibid*

⁸¹ See sections 80-87 *ibid*

meet its needs.⁸² Save for taxes collected from personnel of the Armed Forces, Nigeria Police, Ministry or Department of Government charged with foreign affairs and the residents of FCT which by operation of Sections 80 and 162 of the Constitution go into the Consolidated Revenue Fund of the Federation and by implication belongs to the Federal Government, the rest enter the Federation Account⁸³ en route to its final destination which is the Consolidated Revenue Fund of the States. Section 163 of the Constitution was apt when it stated:

Where under an Act of the National Assembly, a tax or duty is imposed in respect of any of the items listed in item D part II of the Second Schedule to this Constitution (i.e. to say incomes or profits from persons other than companies/personal income tax, etc) the net proceeds of such tax shall be distributed amongst States on the bases of derivation and accordingly-

- (a) *where such tax or duty is collected by the Government of a state or other authority of the state, the net proceeds shall be treated as part of the consolidated revenue fund of that state.*
- (b) *Where such tax or duty is collected by the Government of the Federation or other authority of the Federation, there shall be paid to each state at such time the National Assembly may prescribe a sum equal to the proportion of the net proceeds of such tax or duty that are derived from the state.*

Therefore, the Federal Government is not a beneficiary of the personal income tax collected by the State Government. This is due to the combined provisions of sections 80(1), 120(1) and 163 of the Constitution which direct that the personal income tax collected by the State government be paid into the Consolidated Revenue Fund of the state and used for the benefit of the State.⁸⁴

CHALLENGES ASSOCIATED WITH PERSONAL INCOME TAX ENFORCEMENT⁸⁵

Corruption by Tax Officials

There are many unresolved problems in Nigeria, but the issue of the upsurge of corruption is troubling and the damage it has done to the polity is enormous. Corruption has become an endemic problem, both in the social and political life of the society. This means that corruption is found everywhere, at all sectors and levels and categories of governance.⁸⁶

The Transparency International Annual Perception Index report rated Nigeria as one of the most corrupt nations in the world.⁸⁷ Although, corruption is a worldwide phenomenon, its level

⁸² See sections 120-127 *ibid*

⁸³ See section 162 of the Constitution of the Federal Republic of Nigeria.

⁸⁴ See Section 120 (2) *ibid* which provides that 'No moneys shall be withdrawn from the Consolidated Revenue Fund of the State except to meet expenditure that is charged upon the Fund by this Constitution or where the issue of those moneys has been authorized by an Appropriation Law, Supplementary Appropriation Law or Law passed in pursuance of section 121 of this Constitution'.

⁸⁵ J.A.A. Agbonika, *Supra* 24 pp261-313

⁸⁶ E., Obaje, "Corruption and the Pariah Status of Nigerian Nation": The Legal Issues. *Kogi State University Bi-Annual Journal of Public Law*, (2009), Vol. 1, Pt 1, 2009. 93.

⁸⁷ Rated as the most corrupt Nation in 2000, in 2001 as the 2nd most corrupt, 2002 same, but in 2005 as No. 6 most corrupt in the world; in 2006, Nigeria was ranked No. 14 in 2010, out of the survey carried out on 180 countries, Nigeria was No. 130, in 2012, Nigeria was ranked 35th in the world. Available at [www.Transparency International.Org](http://www.TransparencyInternational.Org). (Last visited in 21/12/12).

in Nigeria has negatively impacted on the country's development. The problem is further compounded by the fact that corruption exists in many forms. There is a world-wide campaign to instil integrity into governance through zero level tolerance for corruption. It is asserted that corruption and unethical practices are responsible for the loss of over Three Hundred Million US dollars (\$300,000 000) world-wide. As posited by Mallam Nuhu Ribadu, the former EFCC boss over 25% of Nigeria's budget is lost to corruption; the resultant effect being a systematic reduction in the quality of life in societies where practices are endemic.⁸⁸ High level corruption manifested by way of extortion, bribery, compromise and expropriation of tax revenue is rife among tax officials. This is occasioned by lack of effective monitoring mechanism, lack of motivation of tax officials and a general apathy by tax administrators.

The other reason is near neglect by Government. The revenue collectors turn out to be major actors in the depletion of State revenue. Some States have therefore devised means of curbing or reducing the incidence of corruption among its revenue Personnel. In Plateau State for example, the State Board of Internal Revenue made a policy that allows tax collectors to retain 5percent of the tax recovered by them, this has stimulated the tax drive by the officers and has reduced by 90percent the incidence of tax officers compromising tax revenue by arrangements with lax payers. Also, there is efficient system of collection as the officer's only issue assessment which the taxpayers pay at designated banks or the revenue office.

The computerization of our tax system and a systemic electronic data management is an antidote to corruption. Lagos and Delta State Government have launched the e-Tax payment system and the result so far is incredible.⁸⁹ Delta House of Assembly has enacted the Delta State Internal Revenue Card Law 2001 to give legal backing to this system. In Lagos State, Electronic Tax Clearance Certificate has since been launched to replace the corrupt-ridden paper receipts. This is a laudable initiative as it has not only ensured prompt assessment, payment and documentation of tax, it will also computerize data of taxpayers and therefore make verification and updating better.⁹⁰ The tax stations have been linked to the internet where taxpayers can update their record of tax payments and validate their receipts.' It is conceded that this system is very expensive and may encounter some problems with implementation given our level of literacy.⁹¹ However, for the formal sector. It is very effective and the cost of establishing the system could be beneficial in the long run. The FIRS in its bid to expand the tax net has introduced the e- taxing system to all states through their zonal offices.

Identification of Enterprises in the Formal and Informal Sector

It is disturbing that most enterprises registered with the Corporate Affairs Commission (CAC) do not pay tax and those enterprises not registered simply pay some token to obtain Tax Clearance Certificate whenever the need for it arises. Most enterprises that ordinarily ought to be registered are not registered and that makes it difficult if not impossible to identify them for purposes of assessment and payment of tax. Consequently, a large chunk of enterprises go untaxed thereby occasioning huge revenue leakage. It is therefore suggested that trade associations like Bakers' Union, Hairdressers Union, and Union of Welders etc should be recognized by the taxing authorities.

⁸⁸ American Society of Civil Engineers Newsletter, Vol.30, 2005, p.1.

⁸⁹ Daily Sun (May 31, 2004) Lifted from www.lasg-eps-com/news/index. Cited in J.A.A., Agbonika, *Problems of Personal Income Tax in Nigeria* (Ibadan: Ababa Press Ltd., 2012) 272.

⁹⁰ See The Comet Sun, February 25, 2005 front page for more details. Cited in J.A.A., Agbonika, *Problems of Personal Income Tax in Nigeria* (Ibadan: Ababa Press Ltd., 2012), 272.

⁹¹ See Financial Standard (Dec. 20, 2004), This Day Newspaper (August 26, 2005), Financial Standard (Feb., 14, 2005) for details or visit <http://www.lasg-eps-rcm.com/news/index-content.asp>. Cited in J.A.A., Agbonika, *Problems of Personal Income Tax in Nigeria* (Ibadan: Ababa Press Ltd., 2012), 272.

These associations or unions should be encouraged to regulate the entry into or membership of their unions for purpose of effective record keeping. The unions would then forward the Register of Members to the tax authorities for purposes of taxation.

By virtue of section 8 of the FIRS Act, 2007 there should be collaboration or a recommended partnership between Corporate Affairs Commission and other credit agencies with the FIRS or SIRS. The partnership would enable the CAC to forward to the FIRS on a monthly basis the names and addresses of all companies registered with CAC. These measures would greatly enhance the extant difficulties faced by tax authorities in identifying taxable persons. In the same vein, the provision of Special Control Unit for Money Laundering, (SCULM) registration certificate⁹² and the Tax Identification Number (TIN) are now compulsory requirements for opening corporate accounts. As a further security measure to safeguard customer identify and reduce bank fraud, all account holders must fill an enrolment form to produce a bio-metric identification known as the bank verification number commonly called BVN. The BVN is then attached to all accounts held by the person. The number holds references to a person's bio-metric passport, fingerprints, name, date of birth and other details provided during registration.⁹³ It is an eleven-digit number which serves as your universal identity in all banks. It is a modern security measure in line with the 1958 Central Bank of Nigeria (CBN) to curb theft and fraud in the banking system.⁹⁴

Money Laundering

Money laundering can be said to be a process whereby the origin of funds generated by illegal means is -concealed, thereby rendering such funds not taxable.⁹⁵ Such illegal activities include smuggling, fraud, theft, drug dealing and tax evasion. Ashang⁹⁶ likened the techniques used to commit the crime of tax evasion to that-employed in laundering, the proceeds of other crimes and further stated that money laundering offences actually started with tax evasion and tax schemes. The FIRS has a duty to discover and tax such laundered money in a bid to recover all taxes lost since it is empowered to tax all income both legal and illegal.⁹⁷

However, a steady progress foundation of interagency collaboration of FIRS with Economic and Financial Crimes Commission (EFCC), Independent Corrupt Practices and other related Offences Commission (ICPC), Police and other law Enforcement Agents is seen. It must be stressed that tax authorities lack the machinery for tracing and detecting this money laundered with the purpose of taxing them, this is largely due to the sophistication employed by launderers, thereby occasioning loss in revenue to government. A treaty with such countries may yield fruitful results as they will then be under obligation to disclose any such hidden wealth.

High Cost of Prosecuting Tax Defaulters

Due to lengthy court proceedings as it is typical of most litigation, there would invariably be a high cost of prosecution. An efficient tax system is that where the cost of tax enforcement

⁹² SCULM registration is done by the Economic & Financial Crimes Commission EFCC.

⁹³ Ibukun Taiwo. All you need to know about Bank Verification Numbers

⁹⁴ Pursuant to powers conferred on the CBN by s.2(d) and 47(2) of the CBN Act, 2007 the CBN by a directive in 2015, required all banks in Nigeria to enrol and customers for BVN and that all accounts were liable to be closed without it.

⁹⁵ T., Ashang, *The FIRS Anti-Money Laundering Strategy, being a paper presented at the FIRS Enlarged Management meeting held on May 2007*, 2.

⁹⁶ *Ibid.*

⁹⁷ T., Amoman, *FIRS in Anti-Money Laundering Regime- The Journey so far, presented at the FIRS enlarged Management meeting held on May 2006*, 7

should not be more than the outstanding tax liability. Tax offenders or defaulters spread over the federation. For instance, where a taxpayer company in Enugu fails to pay its taxes i.e. Value Added Tax, Education Tax now TETFUND and Companies Income Tax and it is to be proceeded against in court for the enforcement of such outstanding tax liabilities, a legal officer has to travel from Abuja to attend court in Enugu. This could be cumbersome. Court proceedings are usually lengthy owing to several factors such as delays on the part of either the Prosecuting or the Defence Counsel or the Court. Undue technicalities occasioning frequent adjournments.

In view of the forgoing, the cumbersome procedure and bottlenecks tends to slow down the pace of implementation/enforcement of tax liabilities. The creation of the Tax Appeal Tribunal pursuant to s.59 of the FIRS Act has brought about eight zones of the Tax Appeal Tribunal with each of the geopolitical zones having one each as well as Abuja and Lagos. This has brought the litigation process close to home.

Arbitrary Use of Tax Consultants to Ensure Compliance

Once taxes are assessed and they are not paid on time, they become overdue. This could occasion huge revenue loss to Government. Most State board resort to use consultants for as tax collections and have generally been frowned at. This act would now appear to be illegal by reason of Section 12(4) of the FIRS Act since the use of consultants by some States and Local Governments was one of the factors that leads to multiple taxation of citizens and organization. Nobody, other than appropriate Government agency and officials shall on behalf of Government, contrary to section 2 of the Taxes and Levies Approved List for Collection collect tax or levy as listed in the Schedule to this Act. Sub-section 2 States that no person, including a tax authority, shall mount a roadblock in any part of the federation for the purpose of collecting any tax or levy. The Act provides that the Board of Internal Revenue in a State could delegate some of its non-core advisory functions to tax consultants, but not for the assessment and actual collection.

Revenue consultants are multi-disciplinary professionals with expertise and resources in revenue generation, financial, taxation, management and advisory services. There is nothing in the tax laws that empowers tax consultants to collect, administer, and enforce taxes on behalf of the tax authorities. If at all the services of tax consultants would be employed by the tax authorities, it should not be such that it would take over functions of the tax authorities.⁹⁸

Tax Evasion and Tax Avoidance

Neither the Personal Income Tax Act nor any other tax legislation directly defines tax evasion. All tax statutes however enumerate acts that constitute tax evasion. We shall therefore consider definitions given by text writers before looking at statutory provisions. H.L. Bhatia⁹⁹ defines tax evasion as an illegal way of avoiding tax liability and further describes it as a fraudulent practice. Ayua¹⁰⁰ says it denotes activities which are responsible for a taxable person not paying the tax which he is under legal duty to pay. These definitions could create confusion as the act of avoiding tax could also pass under this definition, since the avoider also emerges in the acts that would lead to not paying tax which would ordinarily be paid.

⁹⁸ In a paper titled, Strategies for Increasing Tax Collection by N., Cole at the *FIRS enlarged Management meeting & Annual Conference*, FIRS Abuja, Jan. 2006, p.20. Cited in J.A.A., Agbonika, *Problems of Personal Income Tax in Nigeria* (Ibadan: Ababa Press Ltd., 2012) 289.

⁹⁹ H.L., Bhatia, *Public Finance* 5th Edition (London: Oxford University Press, 1980), 4

¹⁰⁰ I.A., Ayua, *The Nigerian Tax Law* (Ibadan: Spectrum Law Publishing, 1996), at 89.

The Black's Law Dictionary¹⁰¹ defines tax evasion as the act of illegally paying less in taxes than the law permits, committing fraud in filling or paying tax. The term is also described as any form of fraud, willful default or neglect to reduce the tax liability or escape the payment of tax altogether.¹⁰² Tax evasion therefore connotes willful neglect or refusal to pay the tax due or reduction of tax liability in apparent violation of the provisions of the law. Tax evasion entails a taxpayer deliberately misrepresenting or concealing the true state of affairs to the tax authorities to reduce their tax liabilities and this include dishonest tax filing called cooking the books e.g. by under declaring income, profits or gains or overstating deductions. In *Bullen v. Eiscosin*,¹⁰³ Justice Holmes defined tax evasion as the illegal or fraudulent attempts to escape or avoid the payment of their dues.

From the foregoing, the following elements are deductible as the basis for determining liability for tax evasion:

1. The statute must have stipulated payment of tax
2. The tax has become due on the taxpayer
3. He has completely and deliberately ignored it or has under-declared his income so as to enable him to pay less tax
4. The act is illegal and punishable.

The PITA does not define tax evasion but rather enumerates acts that constitute tax evasion. For instance, Section 95 of the PITA makes it an offence for any person to make an incorrect return by understating or concealing any income liable to tax or gives incorrect information in relation to a matter or thing affecting the liability to tax.¹⁰⁴ The statute does not therefore provide any classic definition of what constitutes tax evasion but has merely identified activities or acts that may be classified as tax evasion.

It has been observed that the problem of tax evasion is a "cankermorm" which eats fast into the fabric of the Nigerian revenue yield from personal taxation. It is however pertinent to examine the factors that encourage tax evasion and proffer solutions that may discourage and consequently reduce its incidence. It is crucial to note that there is a plethora of reasons for wanting to evade tax. These reasons cud be social, economic or political, but will all contribute to the problems of tax administration.

The social factors include:

i. Lack of justification for Taxpayers Money

Failure on the part of Government to justify the huge sums collected as taxes from Nigerians has been identified as the major factor that encourages tax evasion.¹⁰⁵ There is an abysmal failure on the part of Government to provide social and other amenities which is the principal reason why taxes are collected. The existing public utilities are epileptic while there is apathy on the part of Government to make them functional. The recommendation here is that government should combat corruption in public places so that taxpayers enjoy the benefit of paying tax.

¹⁰¹ 8th Edition

¹⁰² J.A., Arohundade, *Nigerian Income Tax and its International Dimension*. (Ibadan: Spectrum Books Limited, 2005), 74.

¹⁰³ (1927) 275 U.S 100.

¹⁰⁴ See Sections 48 (3), 52 (1), 76 (1), (4), 77, 94 (11) (a) (b), 96, 97 etc all dealing with acts that constitute tax evasion.

¹⁰⁵ This has already been discussed.

ii. *Inequitable Distribution of Resources*

Infrastructural development and provision of amenities is usually politicized in Nigeria. Communities that have representatives serving in Government benefit from amenities while those that do not have political office holders are bereft of such facilities. Provision of social amenities is based on nepotism rather than equity.

This creates tax apathy from communities that feel marginalized. Also, it is observed that social amenities are concentrated in cities at the expense of towns and villages where more than 70% of individual's taxable persons reside. Accordingly, the virtual absence of amenities creates the tendency to evade tax since the rural folks feel they do not benefit from Government in any way. It is suggested that social services be extended to rural communities and that the legislature properly oversees the executive arm to ensure that money is applied for what it was appropriated.

iii. *Inefficient Tax Administration Machinery*

The statistics or records of businesses or taxable persons available are inadequate to know who pay tax or evade tax. This is due largely to our crude tax administrative system and manual handling of assessment and collection of taxes as against the computerization system in other jurisdictions. Also, tax officials are ill-informed and ill-equipped thereby rendering the entire mediocre.

2. Economic factors responsible for tax evasion include:

i. *Poverty*

Because of the high level of poverty in the country, where scarce resources compete with legion of needs, people are increasingly finding it difficult to feed properly let alone pay tax.

ii. *Evasion by Rich persons*

It is true that wealthy persons hardly pay tax in Nigeria. Whenever a wealthy person evades tax with impunity, the poorer taxable persons become discouraged and he devises means of saving his lean resources compared to the wealthy man who has beaten the revenue to the game.

iii. *High rates of taxes*

This may also encourage evasion. However, the rate of Personal Income Tax in Nigeria is considered rather too low. This factor is therefore inapplicable under Personal Income Tax, while the upper limit of personal income tax is 25% both in Nigeria and Ghana; it is 30% in Kenya and 40% in South Africa.¹⁰⁶

3. Political reasons for tax evasion include:

It unusual to evade tax for political reasons; however, there are rare instances where tax is evaded for political considerations. For instance, where political office holders come from a community, there is the likelihood that people from other communities not so represented in Government may refuse to pay tax in order to frustrate the Government. Also, if a part of the country, State or Local Government feels marginalized, the tendency is that they may refuse or neglect to pay tax. It must be stressed that whatever is the reason for refusal to pay tax, it remains an offence once that person can be brought within the tax provisions. The provisions of the new Personal Income Tax (Amendment) Act now make it compulsory for the personal incomes of all categories of workers, including the President,

¹⁰⁶ National Tax Policy, 28.

Governors and their Deputies as well as Ministers and other top political office holders to be liable to taxation.

With the review of income exempted from tax, the President, Vice president, Governors and Deputy Governors of State and other categories of political office holders will now pay tax on all their income as is done by every other taxpayer, the amendments were coming more than 19 years after a similar exercise was carried out on the Personal Income Tax Act (PITA) in 1993, pointing out that under the new law, it is obligatory for all political office holders hitherto exempted from taxes on their incomes to pay.¹⁰⁷

4. On the other hand, Tax avoidance and tax planning are used interchangeably.

What the tax authorities call avoidance is referred to by taxpayers and consultants as 'planning'. Tax planning does not have any statutory definition and expectedly so, because it is a scheme that the legislature does not encourage or contemplate. Tax planning has been defined as a deliberate arrangement of the taxpayer's financial affairs in such a way to take advantage of the fiscal opportunities presented by relief provisions and/or loopholes in tax legislation.¹⁰⁸

In the case of *IRC v. Willoughby*,¹⁰⁹ Lord Nolan adopted the definition of counsel to the Inland Revenue who said:

"Tax avoidance is a situation when a taxpayer reduces his liability to tax without incurring the economic consequences that parliament intended to be suffered by any taxpayer qualifying for such reduction in tax liability. In effect the act of dodging tax without breaking the law."

Tax avoidance is a transaction in which the taxpayer;

- a. Avoids tax by tax planning in taking advantage of provisions for deductions and reliefs.
- b. Adopts some artificial unusual means for the purpose of avoiding tax.
- c. Is carried out lawfully, and
- d. Is not a transaction which the legislation had intended to encourage, it has failed to clearly outlaw it?

The fundamental differences between tax evasion and avoidance therefore are that while tax evasion denotes the violation of the law and therefore criminal, tax avoidance does not denote the transgression of the law and may be considered legal¹¹⁰ even though it was never the intention of the legislature to create that loophole.

The various types of tax avoidance include several devices used by taxable persons to avoid payment of Personal Income Tax. The devices are infinite, since tax planners are continuously in search of ingeniously in search of ingenious and sophisticated means of avoiding tax. The devices are classified into legitimate measures and illegitimate measure with the primary intent to defeat the intention of the legislature.

i. Legitimate Avoidance

This is done by a taxpayer taking advantage of the tax reliefs or exemptions created by the

¹⁰⁷ O.O., Ifueko, President, Governors now liable to pay tax on Personal Income, *Premium Times*, Tuesday, November 2015, 1.

¹⁰⁸ A.A., Olowofoyeku, J., Kirbridge, and D., Butler, Revenue Law: *Principles and Practice* (Liverpool: Liverpool Academic Press, 2003), 663.

¹⁰⁹ (2001) All ER 865 at 889.

¹¹⁰ I.A., Ayua, *The Nigerian Tax Law* (Ibadan: Spectrum Law Publishing, 1996), at 246.

Act so as to encourage taxpayers to engage in certain ventures which are likely to be profitable to the country at large or to resist individuals from suffering undue hardship, e. g wife, children, dependents disabled allowance etc. A legitimate claim of these allowances would constitute legitimate tax avoidance.

ii. Illegitimate Avoidance

This is expressed by taking advantage of the provision of the Act providing allowances and reliefs or by using loopholes in the Act with the aim of reducing one's tax liability in a way that the Act would not have encouraged. These schemes are legion. They include¹¹¹ capitalization of profits, e.g. converting dividend into shares or debentures with primary aim of avoiding tax being charged on dividends, selling of property to connected persons at a lower price than market value so as to claim trade losses, transfer of assets from residents to non-residents who are not liable to income tax, conversion of a one man business into a limited liability company or partnership so as to split tax liability between the members or partners and also enable each member or partner to claim allowances and reliefs etc.

Unfortunately, the PITA does not have a residual provision conferring powers on the Minister or FIRS to make regulations for the effective administration of the Act. We hereby suggest the amendment of the Act to include a provision delegating the aforesaid power of either by itself or through the FIRS make *ad hoc* regulations that would curb avoidance devices as they are discovered. This will help the tax office to tighten its anti-avoidance rules.

Strategy for Reducing Revenue Leakages in Nigeria

Tax leakage is not a popular phrase in taxation literature; it connotes all those statutory and administrative avenues that let out the amount of tax which ordinarily ought to accrue to the revenue authority. The huge loss in tax revenue accruable to Government because tax authorities face enormous challenges in collecting taxes from those who owe them. The combined effects of information technology and the ever-increasing e-commerce transactions allow those who have been able to hide in the cash based or shadow economy to evade paying taxes or disappear altogether.¹¹² In order to reduce tax leakages, the following strategies can be adopted.¹¹³

Identifying Taxpayers

This undoubtedly is critical and effective to tax administration that every individual and business taxpayer has unique tax identification number. Measures and control must be in place to ensure that only one tax numbers are assigned to each taxpayer. Also, registering businesses in the informal economy could pose a challenge. The Federal Inland Revenue Service in a bid to improve identification of taxpayers introduced the mandatory use of Tax Identification Number (TIN) which commenced from 1st February 2008.¹¹⁴

Hence, all taxpayers dealing with FIRS must obtain TIN from the FIRS integrated Tax Office nearest to them. TIN is a 14-digit sequential unique number assigned to all corporate and individual taxpayers as part of registration process for ease identification.¹¹⁵ The State boards and Local Government tax revenues are equally enjoined to follow suit. Section 8 (1) (q) of the FIRS (Establishment) Act, 2007 enjoins FIRS to issue TIN to every company, enterprises

¹¹¹ *Ibid.*

¹¹² N., Brooks, Key Issues in Income Tax: Challenges of Tax Administration and Compliance, a paper presented at the National Conference on State Taxation under the auspices of the Institute of Administration, ABU Zaria, 1984, 12.

¹¹³ J.A.A. Agbonika Supra note 21, p.330-351

¹¹⁴ Guage, A *Quarterly Publication of the Federal Inland Revenue Service*, April- June 2009, 11.

¹¹⁵ *Ibid.*

and individuals in collaboration with the State Boards of Internal Revenue and Local Government Revenue Committee.

Tracking Tax Defaulters

The FIRS Act provides for Tax Identification Number (TIN) to be assigned to every taxpayer.¹¹⁶ This will enable easy tracking of taxpayers and tax defaulters as is the practice in several jurisdictions where tax identification number is used on driving licenses, passports and other personal documentation. It is suggested that this method should be adopted in Nigeria so that all forms of documentation would have the bearer's TIN. The Joint Tax Board (JTB) is working on institutionalizing TIN to be tagged as U-TIN (Unique Tax Identification Number) to be used nationwide and to be part of every documented transactions.¹¹⁷

Curbing Corruption and Sharp Practices

There is an imminent need to devise strategies for curbing or reducing loss in tax revenue occasioned mainly by tax evasion and corrupt practices. The FIRS has declared a war on corruption by employing the role of 'whistle blowers' who would raise alarm by reporting to FIRS management on any perceived act of corruption.¹¹⁸ Some of the corrupt practices may include; failure to charge correct rates of Withholding Tax (WHT), Personal Income Tax (PIT) and Value Added Tax (VAT) on transactions, misclassification of transactions resulting in under-remittance, illegal retention of WHT, VAT and PAYE funds after deduction have been duly made, practical non-remittance of PAYE deduction made from employees' salaries/emoluments.

True Federalism, Resource Control and Security Challenges

There can be no effective collection of taxes in an environment of crisis, rebellion or grave insecurity resulting in persistent destruction of farm crops and homes, kidnapping, mass killings, displacement of people from their habitat and sacking of whole communities. In the North, we have had the challenge of the terrorist group *Jama'atu Ahlis Sunna Lidda'awati wal-Jihad*, which in Arabic means "People Committed to the Propagation of the Prophet's Teachings and Jihad" (generally referred to as Boko Haram)¹¹⁹. In the South-South, there are the Niger Delta Militants seeking natural resource control and political restructuring and other deals. The Fulani nomads and farmers clashes and mass killings in Benue, Nasarawa and Zamfara States and the introduction of the controversial Ruga Settlements¹²⁰ are some of the issues further aggravating the economic and security challenges. The nomads have escalated the insecurity situation as far as the South-South, and South-West parts of the country as they continue to graze their cattle along farmlands and waterways, and in the process converting

¹¹⁶ Section 8 (1) of the FIRS Act, 2007.

¹¹⁷ *The Guardian*, Wednesday July 15, 2009.

¹¹⁸ Guage, *A quarterly Publication of FIRS*, June 2008, 10.

¹¹⁹ Nigeria's militant Islamist group **Boko Haram** is **fighting** to overthrow the government and create an Islamic state. The group has caused havoc in the country through a campaign of bombings and attacks. Founded by Mohammed Yusuf in 2002, the group has been led by Abubakar Shekau since 2009. When **Boko Haram** first formed, their actions were nonviolent. Their main **goal** was to "purify Islam in northern Nigeria." From March 2015 to August 2016, the group was aligned with the Islamic State of Iraq and the Levant. The name of the group means "Western" or "non-Islamic" education is a sin. They follow Sunni Islam:

https://en.wikipedia.org/wiki/Boko_Haram (Accessed on 28/08/2019)

¹²⁰ The Federal Government of Nigeria explained that Ruga Settlement "... seeks to settle migrant pastoral families in ... rural settlement in which animal farmers, not just cattle herders, will be settled in an organized place with provision of necessary and adequate basic amenities such as schools, hospitals, road networks, vet clinics, markets and manufacturing entities that will process and add value to meats and animal products. Beneficiaries will include all persons in animal husbandry, not only Fulani herders." Garba Shehu, Chief Press Secretary to the President of Nigeria. <https://allafrica.com/stories/201907010022.html>, accessed on 24/08/2019

the farms into grazing fields for their cattle and sometimes going into unnecessary battles that leave many communities in pain of death of loved ones or loss of property.¹²¹ Properly structured fiscal federalism may help to abate the menace

CONCLUSION

Total compliance with the relevant provisions of tax laws are meant to serve as safeguards against the unnecessary leakages. For instance, while section 40 of the FIRS Act imposes a general obligation on agents to deduct and remit taxes in accordance with specific provisions of the various tax laws, it is an offence to deduct and fail to remit to the FIRS within 30days. Such an offender is to be charged to court to account for tax withheld or not remitted in addition to a penalty of 10% per annum and interest at the prevailing Central Bank of Nigeria rate, or a jail term of 3 years.¹²²

The challenge of corruption, fraud and tax evasion is a potential problem and seems to take place practically in every country but these phenomenon hits developing countries the hardest.¹²³ Therefore, we submit in conclusion that the different formulae that have been used for revenue allocation have consistently and unduly increased the financial powers of the Federal Government against the other levels of Government. The allocation of the most productive income-elastic taxes to the Federal Government has made the centre financially stronger than the States and Local Governments. The principal effect of this is the increasing fiscal dependence of the States and Local Governments on federally collected revenue (both statutory and non-statutory), and their inability to meet the cost of functions assigned to them by the constitution.

Over-dependence on oil revenue has impacted negatively and posed serious challenges to the issues of fiscal federalism in the country. The resultant effect is that various states have had uprising seeking better consideration from the “national cake” which would have been enjoyed if fiscal federalism was fairly and effectively practised.

¹²¹ However, the federal government claims to be planning RUGA Settlements “... in order to curb open grazing of animals that continue to pose security threats to farmers and herders.” “The overall benefit to the nation” according to the government “includes a drastic reduction in conflicts between herders and farmers, a boost in animal protection complete with a value chain that will increase the quality and hygiene of livestock in terms of beef and milk production, increased quality of feeding and access to animal care and private sector participation in commercial pasture production by way of investments. Other gains are job creation, access to credit facilities, security for pastoral families and curtailment of cattle rustling.” Garba Shehu, *ibid*.

¹²² Section 40 of the FIRS Act, 2007.

¹²³ R., Kitgaard, A framework for a country program against corruption, *occasional working paper* No.4 (1994), Berlin: Transparency International, 23.