

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Study

Before the introduction of self-assessment regime in different tax jurisdictions globally, it has been the growing concern of tax administrators throughout the world to simplify tax assessment system to encourage voluntary compliance and many countries, developed and developing alike including Nigeria, have adopted the self-assessment system as a solution.

Self assessment system (SAS) is one of the measures implemented by many countries in order to increase revenue collection. This involves the change of the assessment system from direct assessment to self assessment system. The main difference between direct assessment and self assessment systems is that, in direct assessment, it is a taxpayer's statutory duty to declare all the necessary particulars pertaining to his/her income and expenses for that particular year of assessment and submit the necessary returns together with all required supporting documents to the tax administrator. It is then the tax administrator's duty to assess all tax returns and issue a demand notice stating the tax liability. However, under the SAS, the tax authority's responsibilities, particularly when it comes to assessing tax return and determining tax liabilities, have been shifted to taxpayers.

Objectives supporting SAS are mostly:

1. To reduce tax authorities' burden of assessing tax returns.
2. To minimize the cost of collecting taxes and
3. To encourage voluntary compliance.

Being guided by some of these objectives, the researcher is of the view that SAS in tax administration has not succeeded in encouraging voluntary compliance by

taxpayers in Nigeria as compared with some developed countries that practice the system. This work is centered on the third objective which is encouraging voluntary compliance of tax. Moreover, the change to SAS in Nigeria has raised such issues as the competence, capability and readiness of taxpayers to carry the huge burden of calculating and assuring the accuracy of tax returns. For example, under the former assessment method, it is assumed that individual taxpayers might not possess the sufficient knowledge to compute their due tax but in SAS, tax knowledge is important because insufficient level of knowledge of taxation may result in inaccurate tax returns and this affects the overall goal of voluntary compliance.

Against this background the research question arises: has the adoption of self assessment system in tax administration in Nigeria achieve a desirable increase in the rate of voluntary compliance and also succeeded in reducing tax collection cost?

I think otherwise and recommend ways to make SAS achieve a high level of voluntary compliance which in turn brings in huge revenue as is currently experienced in developed countries such as USA, UK and Japan.

1.2 **Statement of the Problem**

There is no doubt that voluntary compliance is a major problem confronting all Nigeria tax authorities. The adoption of self assessment regime in Nigeria has not brought about any major improvement in the area of voluntary compliance. Compared with some developed countries which adopted the system, Nigeria has not been able to achieve the objective of voluntary tax compliance. There has been massive amelioration in revenue collection for the advancement of the economy as obtained in these nations.

This study's primary objective is to see to what extent self-assessment regime adopted in Nigeria for voluntary tax compliance has succeeded in achieving its

objectives, as compared with what is obtainable in some developed countries. In as much as this work does not denounce the adoption of self assessment system in Nigeria, it is my view that a number of measures have to be in place for the system to be successful. This work will therefore proffer means to achieving a high level of voluntary compliance under self assessment regime.

It is observed that Nigerian tax administration is fraught with many problems and challenges and needs good modification strategies. The basic line of these problems lies on approaches to increase tax revenues and some of these challenges will be analyzed in this study and adequate solutions proffered for resolution of the same. The researcher will tackle the following problems:

1. Analyze and compare the Nigerian tax system with those of other countries (The United Kingdom, the United States of America, Australia) in regards to voluntary tax compliance under self assessment system.
2. What is the extent of voluntary fulfillment of tax obligations under the self assessment system in Nigeria?
3. If the answer to the question no.2 is in the negative, what then are measures to be adopted in order for taxpayers to voluntarily comply with their tax obligations under the self assessment regime?

These and other related problems will be grappled with in this work.

1.3 Purpose of the Study

It is indisputably the truth that in both developed and developing economies, the primary purpose of taxation is to generate revenue for settling government expenditure, and for the provision of social amenities and the general wellbeing of the populace. This does not belie the fact that taxation is also used as an instrument of

economic regulation for the purpose of discouraging or encouraging certain forms of social behavior.

This means that for economies to thrive, taxation will subsist with man and will continue to be with him. Countries of the world have different fiscal policies and systems which facilitate them to explore various types of taxation and impose them on their citizens for the purpose of enhancing revenue and for the regulation and governance of the economy. The government of Nigeria has the legislative powers to adopt any system that it deems fit to enhance its tax revenue. The issue of self assessment system is clearly one of such system that was adopted to facilitate citizens voluntary compliance which as seen, has not aided it.

On this wise, this study therefore comparatively analyses the self assessment regime as was adopted in Nigeria with some other countries and brings to the fore that the system has not massively aided the generation of funds for development of the economy as compared with some other jurisdictions that have successfully adopted same.

The purpose of the study is, therefore, to proffer measures that will make the self assessment regime triumph in Nigeria and bring about the much needed revenue. This objective is also most essential now that Nigeria's Tax to Gross Domestic Product (GDP) Ratio is just 6%,¹ which is a dismal figure when compared to 15% tax to GDP ratio which the International Monetary fund (IMF) considers to be the threshold of tax adequacy.²

1. Basse Udo, 'Why Nigeria's tax-to-GDP ratio is low-Adeosun', Premium Times, <https://www.businesspost.ng/2018/20/03/20/nigerias-debt-gdp-ratio-stands-at-21-adeosun/> accessed on 4th June, 2018.

2. M A Umah, N F Tusubira, 'Challenges of Tax Administration in Developing Countries: Insights From the 5th Annual Tax Administration Research Centre Workshop' (2017) *Journal of Tax Administration* Vol. 3:2.

The work, will achieve its purpose through the following means:

1. Analyzing the meaning of self assessment regime in taxation. Thereafter, examine the adoption of this in developed and developing countries, and comparing these with what obtains in Nigeria.
2. Examining whether taxpayers in Nigeria fulfill their tax obligations under the SAS and if not, show why they do not.
3. Proffering measures that will lead to voluntary compliance under the self assessment regime here in Nigeria in order to generate funds for the economy.

1.4 Scope of the Study

This work analyses the SAS in tax administration. It resounds that the SAS which was adopted in Nigeria chiefly to aid in revenue generation has not lived up to the expectation as compared with some other countries. The work states that under the SAS, there has not been much voluntary compliance by the Nigerian taxpayers when compared to the former official system. The scope of this study is generally on the SAS in tax administration in Nigeria, the issues, principles and its application thereof. The research also highlights the challenges of SAS compared with what is obtainable in some jurisdictions and thereafter proffered measures that will aid voluntary compliance under the self assessment regime in Nigeria.

1.5 Significance of Study

The barrier in implementing SAS is achieving acceptable levels of voluntary compliance. Findings under this work indicate that in a SAS, taxpayers tend to comply less as compared with direct or formal assessment. This could be due to unintentional non-compliance especially in the dawning years of SAS. The objective of the self assessment regime set by the Nigerian Government is to collect taxes in an

efficient manner which postulates collecting taxes at the lowest costs and encouraging voluntary compliance. The salient question now is has SAS asides other tax administration reforms, improved voluntary compliance as to generate sufficient resources for the government. It is submitted that the answer is in the negative. The study focuses on twenty-five years post SAS introduction in Nigeria which is a reasonable period of time to evaluate its achievement. The researcher by the above findings will posit some measures that will encourage voluntary compliance under the self assessment regime and will introduce other measures to increase the generation of revenues under the self assessment regime. The result of this study will contribute to tax literature not only in Nigeria but also internationally by enabling both a comparison of the Nigerian system with other more established self assessment regimes and also provide pointers for development of voluntary tax compliance in any other developing country's use of such tax administrative systems.

1.6 Research Methodology

The methodology used in this work is doctrinal because it asks what the law is on the particular issue of self assessment regime in Nigeria. The approach adopted under the doctrinal methodology is comparative and as such provides a unique understanding of how the SAS developed and works in several other jurisdictions or countries thereby facilitating a better understanding of the system. The study also uses the analytical and expository approaches as it sets forth the facts, the holdings and the court analysis of certain cases as it is while at the same time being explanatory showing why the laws used extensively under this study was made by the authorities.

The researcher in accomplishing this study also relied on primary sources and secondary sources. The primary sources relied on include relevant case laws and statutes. While the secondary sources relied upon are journal articles, textbooks,

scholarly articles, legal encyclopedias, law reviews, newspapers and information sourced from the internet.

1.7 Literature Review

In reviewing some of the existing literature, an attempt is made to explore the extent of the existing knowledge on self- assessment system in tax administration. The first point to be noted is that while there are many materials on tax assessments generally, there is not much literature specific to self assessments in taxation. The second point is that written materials on self assessments have not adequately addressed the issue of voluntary tax compliance as relates to taxation and as a result does not address the issue of means or ways to increase voluntary tax compliance. This *lacuna* is addressed by this study. It is posited here that to achieve a high level of voluntary tax compliance, some voluntary tax compliance measures have to be in place for self assessment system to work in Nigeria.

To address these linkages, we explore the level of voluntary tax compliance under self assessment regime in Nigeria. We note that the level of voluntary tax compliance is still low. Despite the introduction of the SAS, tax evasion and avoidance is still rife in Nigeria. There are several authors who have written on the issues of tax compliance but many look at the subject from the area of taxpayer behaviour.

On improving tax administration in developing countries, Bird opined that three key ingredients seem essential for effective tax administration in any country³. They include the political will to implement the tax system effectively, a clear strategy as to how to achieve the goal and adequate resources for the task at hand. He stressed that it helps if the tax system is well designed, appropriate for the country in question, and relatively simple. In his opinion, even the best-designed tax system is unlikely to be properly implemented unless these three conditions are satisfied. However, his work failed to address the issues as it relates to self assessment system, and this is addressed in this study.

³ R M Bird, 'Improving Tax Administration in Developing Countries' (1992) *Journal of Tax Administration* Vol. 1, 1.

Agbonika pointed out that the Personal Income Tax makes provision for assessment of taxable income by the taxable persons themselves which is known as self-assessment⁴. She noted that tax cannot just be paid unless it is first assessed either by the taxpayers or in case of their default by the relevant tax authority.⁵ She also noted that this is necessary because if appropriate measures are not taken to ensure proper assessment, there is usually a tendency of taxable persons furnishing false assessment records thereby defeating the whole essence of the self-assessment system and consequently defrauding the government. She further recommended that under a self-assessment system, taxpayers should have a duty to report the facts on which their liability for tax is computed, compute their liability for tax, file a return showing the result of that computation and pay tax at the time of filing the amount owed. This will enhance voluntary compliance. She however failed to address any measures by which such voluntary compliance can be increased save for taxpayers having a moral duty to do so. This gap will however be addressed by this study.

James acknowledged the view that the adoption of SAS is a reform which can simplify the payment of taxes and literally improve compliance. He stated that the goal of simplifying a tax system which includes the adoption of SAS is to increase the ease of compliance reflected in the costs and time saved⁶. He posited that an efficient tax system should allow the taxpayers to calculate their tax liability easily, pay their taxes and file their tax returns, and redress their grievances with limited cost. He also stated that in addition, it should include taxpayer – friendly methods for tax administrators to verify tax liability and ensure that correct taxes have been paid. The learned author in his book stated that Egypt embarked upon a tax reform that included many of the good practices of a simplified tax system which includes replacing tax administrative assessment with self assessment. The impact of the tax simplification process was immediate as the number of tax returns filed

⁴ J A A Agbonika, *Problems of Personal Income Tax in Nigeria* (Ibadan: Ababa Press, 2012) P. 168, 415.

⁵ Personal Income Tax Act (PITA), Cap P8, Laws of the Federation on Nigeria 2010 (As Amended) S. 54(3).

⁶ S S James, *A Handbook for Tax Simplification* (USA: International Finance Corporation, 2009) P. 6.

jumped by 50 percent in just one year⁷. However, the work which obviously was premised on an environment highly sophisticated as it relates to data compilations in tax failed to address the means to make the system work in developing economies such as Nigeria. This dissertation tends to close that gap by considering the means to facilitate citizens' voluntary compliance.

In this study, the concept of SAS cannot be adequately addressed without the issue of voluntary tax compliance which is obviously the essence of adopting the SAR in the first place. Taxpayer compliance literatures at the global level seem unanimous in treating voluntary tax compliance as being important. The reason for this priority status is premised on the cost of non-compliance. Graetz, Reinganum and Wilde,⁸ point to three reasons why non-compliance is costly. The first is the significant revenue losses that occur from non-compliance. The second is the real risk that the disrespect for tax laws which breeds non-compliance can quickly extend to widespread disrespect for other laws. The third is that non-compliance undermines the fairness of the tax system that requires that equals should pay equal taxes. The issues considered by the learned author though highly commendable failed to address the measures to be adopted to encourage voluntary tax compliance.

Given the importance which the promotion of voluntary compliance has occupied in developing efficient tax systems, Smith has identified a number of incentives which drive voluntary tax compliance⁹. He points to responsive service and procedural fairness as key incentives for voluntary taxpayer compliance. He also acknowledged the need for an adequate balance between enforcement and cooperative strategies to reinforce voluntary taxpayer compliance. In addition, he stressed the need for effective detection and punishment of non-compliance as both a deterrent and an incentive for compliance. Finally, he argues that legitimacy and/or allegiance to authority reinforce voluntary taxpayer compliance. However,

⁷ This is a term used in the book to encompass all the processes that can be used to reform or simplify tax.

⁸ M Graetz *et al*, 'The Tax Compliance Game: Towards an Interactive Theory of Law Enforcement' (1986) *Journal of Law, Economics and Organisation*, 1.

⁹ K W Smith, 'Reciprocity and Fairness: Positive Incentives for Tax Compliance' (1990) *Office of Tax Policy Research, School of Business Administration, The University of Michigan*, 1.

the examination of voluntary taxpayer compliance in a jurisdiction which operates a self assessment regime was non-existent in his work. This gap the researcher has filled in her work.

McGee¹⁰ in his work opined a linkage between bureaucracy, corruption and tax compliance. The findings of a research by Riahi-Belkaoui¹¹ in 30 developed and developing countries show that tax compliance is highest in countries with least corruption and smaller bureaucracy. For him, tax compliance and morale is higher when citizens are protected from official corruption and bloated bureaucracy. This work in addition considered the issue of active participation of the citizens in the informal sectors as a means of curbing corruption in Nigeria and ensuring tax compliance.

Bassey,¹² acknowledges that under the self assessment system, the taxable person assesses himself to tax instead of waiting for the tax authority to raise the assessment. He noted that the taxpayer files his tax return together with his computation of the tax payable for the year of assessment and makes payment of the tax liability accordingly. He however pointed out that the tax authority will still have to verify the tax assessment computed by the taxpayer with the supporting documents to ensure that the taxpayer has assessed himself correctly. According to the author, the SAS brings the tax into the government treasury sooner than would be the case under the government assessment thereby eliminating the long time-lag between the submission of returns and the service of the notices of assessment. He however opined that the SAS also has its drawbacks which include the propensity to evade tax and high rate of illiteracy. The work by the author however failed to address the self assessment regime in-depth as it merely addresses the SAS procedurally and ‘as it is’ instead of “as it should be’.

¹⁰ R W McGee (ed) *Taxation and Public Finance in Transition and Developing Economies* (Mianu: Springer science + Business Media, 2008) P.6.

¹¹ A Riahi-Belkaoui, Bureaucracy, *Corruption and Tax Compliance*, in R W McGee (ed) *Ibid*.

¹² O U Bassey, *Personal Income TAX in Nigeria* (Lagos: The CIBN press, 2013) P. 490.

The learned author, Umenweke addressed the issue in assessments generally¹³. He reiterated that assessment is the process by which the tax liability of a taxpayer is quantified.¹⁴ He explains that the determination of the tax due is typically carried out by a tax inspector after examining the information provided in the returns submitted by the taxpayer, but that if the taxpayer fails to submit a return or the inspector is not satisfied that the return is true and complete a 'best of judgment' or 'estimated' assessment can be made.

The learned author in his work addressed adequately the procedural aspect of tax assessments relying majorly on statutes laws and case laws to drive home his arguments. He further addressed the defects that can render an assessment void and the defects that do not affect it as to render it void. Also dealt with by him in his book are the consequences of an assessment being declared void, objections and appeals, the procedures for objections and appeals amongst other related procedural aspects of tax assessments. The work however did not deal with self assessment system generally. This gap the researcher has filled in this work.

Hobson¹⁵ suggests that self-assessment requires individuals to be wholly responsible for practices and knowledge over which they have little control or access. According to her, self- assessment has been often framed as a value-neutral policy tool that either does or does not encourage compliance but she argued in her article that it amounts to much more. That it is a form of self-regulation, in which the individual has to seek and acquire knowledge and skills, to ensure their compliance is both legal and personally advantageous. She opined that rather than the onus being on the government agency to collect taxes efficiently, the responsibility is transferred to the individual to be the agent of tax collection and that even if individuals seek out and trust an 'expert', such as a tax agent, to act in their best interests, they are still ultimately responsible for all outcomes. Even though this view seems

¹³ M N Umenweke, *Tax Law And Its Implications for Foreign Investments in Nigeria* (Enugu: Nolix Educational publications, 2008) P. 246-285.

¹⁴ J M Elegido, 'Void Assessments to Income Tax in Nigeria' (1988) *JAL* vol 32, No 1, P. 45.

¹⁵ K Hobson, 'Technologies of the Self and Some Contradictions of the Enabling state: The Case of Tax Effective Schemes in Australia' (2004) *Regulatory Institutions Network Journal*, 9.

commendable, it failed to address means of encouraging such individual responsibly. This gap is tackled in this work.

The learned author Inglis¹⁶ in his opinion on the challenges and difficulties presented by self-assessment in Australia opined that serious simplification of the rest of the tax system is required. According to him, the income tax legislation is so poorly drafted as to be incomprehensible even to tax experts (let alone anyone else). According to him, the legislation is in some cases unintelligible that without commerce or law degree the ordinary taxpayer stands no chance of finding his way through the morass and even with these qualifications his advisers will of necessity have to struggle to make sense of language that is as convoluted as it is confusing. He further opined that the task of the taxation officers is not even easier as many provisions in the legislation are not applied for the simple reason that no one is able to comprehend them. This work agrees with that opinion but however proposes that not only the tax legislations, but also every aspect of the tax structures need to be simplified.

1.8 Organizational Layout

The study is arranged in eight chapters. Chapter one of the study is a general introduction of the work which encompasses the background to the study, statement of problem, purpose of the study, scope of the study, the significance of the study, the methodology, literature review and definition of terms.

Chapter two analyses the historical evolution of Nigerian tax system. Under this chapter such terms as the concept of tax, objectives and benefits of tax, the basic principles of tax are discussed. Chapter three will discuss the Administration of taxation in Nigeria and the Nigerian tax system. Under this chapter, such issues as

¹⁶ M Inglis, 'Taxing times: Is Self Assessment working' (2002) *Australian Tax Review*, 5.

Delegation of powers to make tax laws in Nigeria, Division of tax powers between the Federal, State and Local government will be considered.

Chapter four analyses the Self Assessment Regime. On this chapter, the principles, issue and administration of the self assessment system or regime is addressed. Chapter five examines the self assessment provisions under Nigerian tax laws. Under this head, such statutes like the Personal Income Tax Act, Companies Income tax Act and the provisions under which self assessment system is hinged will be discussed.

Chapter six will do a comparative analysis of self assessment as operated in different countries. Chapter seven will address self assessment regime and voluntary compliance. This chapter will elaborate on the concept of tax compliance as it relates to SAS. As tax compliance goes hand in hand with SAS, the measure of national tax compliance will be looked into. Further under this chapter, suggestions will be proffered on ways to increase voluntary tax compliance under the SAR. Chapter eight encompasses the conclusion and recommendations.

1.9 Definition of Terms

1.9.1 Tax

The term “tax” means a charge, usually monetary, imposed by the government on persons, entities, transactions or property to yield public revenue. Most broadly, the term embraces all governmental impositions on the person, property, privileges, occupation and enjoyment of the people, and includes duties, imposts and excises. Although a tax is often thought of as being pecuniary in nature, it is not necessarily payable in money.¹⁷ Also tax means enforced proportional contributions from

¹⁷ B A Garner (ed), *Black's Law Dictionary* (10th edn, USA: Thomson Reuters, 2014) P. 1685.

persons and property, levied by the state by virtue of its sovereignty for the support of government and for all public needs.¹⁸

Again the word “tax” has been defined as money that is paid to the government so that it can pay for public services. People pay tax according to their profits. Tax is often paid on goods and services.¹⁹

Other definitions of the word “tax” can be gleaned from judicial precedents. In *Mathew v Chicory Marketing Board (V) of Victoria Australia* Latham CJ defined tax as a compulsory exaction of money by a public authority for public purposes, or raising money for the purpose of government by means of contribution from the individual persons.²⁰

Another definition of tax was coined by Ray Sommerfield years ago. According to him, a tax is a non penal yet compulsory transfer remitted for the public good.²¹

Furthermore, in the American case of *United States v Butler*, Mr. Justice Robert stated thus “A tax in the general understanding of the term and as used in the constitution signifies an exaction for the support of the government”.²²

From the above definitions, tax has three basic features, namely: a compulsory levy, imposed by government or local authority, and for public purposes or to encourage social justice. A tax is therefore not a voluntary payment but a compulsory pecuniary burden placed on taxpayers for the good of the society.

¹⁸T M Cooley, *The Law of Taxation* (4th edn, London: Sweet and Maxwell, 1924) P.61.

¹⁹ A S Hornby, *Oxford Advanced Learners' Dictionary* (9th edn, United Kingdom: Oxford University Press, 2015) P.1605.

²⁰ (1938) 60 CLR 263, P. 276.

²¹ R Sommerfield *et al*, *An Introduction to Taxation* (USA: Harcourt Brace Jovanovich Inc, 1967) P. 2.

²² (1936) 2276 US1, 61.

1.9.2 Self-Assessment Regime

Under this head, we start by defining the word ‘assessment’. The term assessment as it relates to tax is defined as an amount that has been calculated and that must be paid.²³ Assessment however as defined in the *Black’s Laws Dictionary* means determination of the rate or amount of something, such as tax or damages, imposition of something such as a tax or fine, according to an establishment rate, the tax or fine so imposed.²⁴

Self assessment regime on the other hand was described in the *Tax Administration (Self Assessment) Regulations 2011*²⁵ as a tax regime whereby taxpayers are required to compute their tax liabilities, file and make payment concurrently on or before the due dates. Any breach is liable to fines and interest as prescribed under the Regulations or the applicable relevant laws.

The Self-Assessment Regime therefore requires the concurrent filing of returns and payment of tax due on or before the due date. A taxpayer must file returns under the Self-Assessment Regime in person or engage the services of accredited agents to file returns on his behalf. The return must be signed by the taxpayer or his appointed agent.²⁶ In simple terms, a taxpayer is required to assess his tax liability using a tax return form in which he declares his gross income, allowable deductions, etc. This tax return must then be filed with the tax authority together with a payment for the tax liability computed in the said return. The basic feature of a SAR is that it is the taxpayer rather than the tax authority that is responsible for assessment of tax liability.

²³ A S Hornby *op cit*, P.1.

²⁴ B A Garner *op cit*, P.139.

²⁵ *Tax Administration (Self Assessment) Regulations*, Regulations (1) (2) (3) (4).

²⁶ FIRS, *Preparation and Processing of Best of Judgment (BOJ) Assessments Information Circular*, P.1.

1.9.3 Tax Administration

The Oxford Advanced Learners' Dictionary defined the term “administration” as the process or act of organizing the way that something is done.²⁷ In other words, tax administration simply means the process or act of organizing the way that taxation is practiced or done. Tax administration can be defined as the implementation of the tax laws in order to achieve their objectives.²⁸ The importance of tax administration has been stressed where it was stated thus:

No tax can conform with expected standard or equity if it cannot be administered with a high degree of effectiveness. If persons are able to escape, by legal or illegal means, the tax to which they should logically be subject under the general scope of the tax, the theoretical equity of the tax is to a large measure lost.²⁹

A tax administration is the whole organizational set-up for the management of the tax system. The tax administrative set-up is a department of government and works under regulations prescribed by tax legislation. Tax administration is the process of assessing and collecting taxes from tax individuals and companies by authorities in such a way that correct amount is collected efficiently and effectively with minimum tax avoidance or tax evasion.³⁰

Presently, there are three tiers of government charged with the administration of tax in Nigeria; the Federal, State and the Local governments. Each tier of government has its own tax authority, created by Federal laws.

²⁷ A S Hornby, *op cit*, P.

²⁸ T S Somorin, ‘*Structural Reforms in Tax Administration in Nigeria MPTP 2014 8/5/14 Structure of a Typical FIRS Tax Office*’, Academia, <https://www.academia.edu/9017F91/> accessed on 4th June, 2013.

²⁹ J F Due, ‘Government Finance: An Economic analysis’, (1964) *Journal of Finance*, 7.

³⁰ D Afuberoh & E Okoye, ‘The Impact of Taxation on Revenue Generation in Nigeria: A Study of Federal Capital Territory and Selected States’, *IJPAMR*, 26.

1.9.4 Tax Compliance

Tax compliance is the obedience to the provisions of the tax law.³¹ Tax compliance can further be defined as the degree to which a taxpayer complies or fails to comply with the tax rules of his country. It is widely accepted that the goal of an efficient tax administration is to foster voluntary tax compliance using all possible methods including penalties.

In other words, compliance with the tax law typically means (i) true reporting of the tax base (ii) correct computation of the liability, (iii) timely filing of the return, and (iv) timely payment of the amounts due.³² Tax compliance has also been defined as an issue of reporting an actual Income.³³ It is voluntary action without having to wait for follow up actions from tax authority. It is the most neutral term to describe taxpayers' willingness to pay their taxes.³⁴

From a combination of all the above definitions, tax compliance can therefore be defined as taxpayers' willingness to comply with tax laws, declare the correct income, claim the correct deductions, relief and rebates and pay all taxes on time.

1.9.5 Income

Income has been defined as money or any form of payment that one receives, usually, periodically, from employment, business, investments, royalties, gifts and the like.³⁵

Income generally includes most types of receipts that enrich the taxpayer, including compensation for services, gains from sale of goods or other property, interest, dividends, rents, royalties, annuities, pensions and all manner of other items. There is no complete definition of income to be found anywhere in the Nigerian legislation but various rules are laid down for computing receipts liable to tax, and the decisions of the courts contribute to the

³¹ A S Sanni, 'Multiplicity of Taxes as a Bane of Tax Compliance and Yield' (2012) *TLJN* Vol. 1, 90.

³² L A Franzoni, 'Tax Evasion and Tax Compliance' (1998) *E.L.E.*, 5.

³³ M G Allingham and A Sandmo, 'Income Tax Evasion: A Theoretical Analysis' (1972) *JPE*, 1, 323.

³⁴ J Andreoni, 'Tax Compliance' (1998) *JEL*, Vol. 36, 818.

³⁵ B A Garner, *op cit*, P. 880.

law on the subject.³⁶ Income tax is not a tax on capital and thus one of the major concerns of the Acts and of the tax cases is the distinguishing of capital from income.³⁷

However income has been defined in the Personal Income Tax Act (PITA)³⁸ to include ‘Any amount deemed to be income under this Act. Section 3 (1) of the PITA defined Income chargeable as the income of a person ‘from a source inside or outside Nigeria’ and it includes any gain, profit, salary, wages, fee, compensation, bonus, premium and almost all conceivable allowances but excluding some reimbursable expenses and compensation for loss of office.

The definition of the word ‘income’ in Section 3(2)(b) imports that whatever the Act refers to as income automatically becomes income and is treated as one³⁹ and it is worthy of note that these categories of chargeable income enumerated in the above section are not closed.

³⁶ M T Abdulrazaq *op cit*, P.35.

³⁷ *Aderawos Timber Trading Co. Ltd. v. Federal Board of Inland Revenue* (1966) LLR, 195.

³⁸ S. 3(2) (b) PITA *supra*.

³⁹ M N Umenweke *op cit*, 91.

CHAPTER TWO

HISTORICAL EVOLUTION OF NIGERIA TAX SYSTEM

2.1 The Concept of Tax

There is hardly any government today that does not rely on tax measures to provide the much needed revenue for socio-economic development and amelioration of inequalities of wealth in society.⁴⁰ Nigerian tax statute is silent about a definite definition or meaning of tax. However, different scholars, dictionaries, economists and text writers have offered their insight on the meaning of tax. It is often difficult to get one's head round the idea of what a tax actually is, as it comes in many guises, it is rather like an elephant-difficult to define or even describe, but you know it when you see it. Several attempts have been made to define what a tax actually is, and the definitions stated here is by no means exhaustive. First of all, tax is defined as a compulsory levy made by public authorities for which nothing is received directly in return.⁴¹ This particular definition suggests that the nature of a tax is that it is a payment made, (a cost incurred) without the usual associated receipt, normal to other transactions, of any consideration in return.⁴²

Each phrase in this definition is important. Firstly, a tax is not a penalty. In theory, taxpayers receive something of value in return, such as those elements of civilized society. Secondly, even though we describe our tax system as a "voluntary self-assessment system", in reality the system becomes rather involuntary by fines, jail sentences, etc. if one does not pay his or her share of taxes. Therefore one can say that taxes are indeed compulsory transfers. Finally, the exact use of taxes collected by

⁴⁰ A M Sani, 'An Appraisal of the Legal Framework for Taxation in Nigeria', (2015) *JLPG*, 82.

⁴¹ S James & C Nobles, *The Economic of Taxation: Principles, Policy and Practice* (7th edn, Great Britain: Henry Ling Ltd, 2007) P. 10.

⁴² A Lymer and J Hasseldine (eds), *The International Taxation System* (USA: Wuwer Academic Publishers, 2002) P.2.

the government is not specified in advance, rather such accumulation are used for the public good.⁴³ The limitation inherent in these definitions is that the objective of a tax may not necessarily be to fund the government as proposed. As H L A Hart noted as follows:

Taxes may be imposed not for revenue purposes, but to discourage the activities taxed, though the law gives no express indication that these are to be abandoned as it does when it makes them criminal.⁴⁴

Again, the objectives of some taxes may be to lessen the height of disparity in the social order if correctly managed. In the contemporary business dealings, taxes on special imports are essentially aimed at reducing the imbalance between imports and exports or even discourage the import of such goods thereby encouraging the local industries.

Therefore, if one is to stand on this definition, the impression may be that the sole purpose of tax is to fund the state.⁴⁵

The Nigerian author C S Ola also defined tax as a demand made by the government of a country for a compulsory payment of money by the citizens of that country.⁴⁶ His definition is also not adequate going by the aforementioned reasons already buttressed above. This definition can adequately cover for levy, capitation and any other demand imposed on citizens.⁴⁷

Words like ‘compulsory’, ‘exacted’ and ‘strain’ and the general tone of the definitions shows that there are characteristics or features that could be used to determine that an item is a tax. The number one feature of tax is that it is a

⁴³ J O Everett et al, *Contemporary Tax Practice* (USA: CCH, 2008) P. 5.

⁴⁴ H C A Hart, *The Concept Of Law: Revenue Law and Practice* (London: Butterworths, 1995) P. 6.

⁴⁵ J A A Agbonika, *Problems of Personal Income Tax in Nigeria* (Nigeria: Ababa Press, 2012) P. 13.

⁴⁶ C S Ola, *Nigerian Income Tax Law and Practice* (Nigeria: Macmillian Publishers, 1985) P. 1.

⁴⁷ J A A Agbonika, op cit, P. 15.

compulsory payment by persons. It is not a voluntary payment or donation.⁴⁸ The compulsory nature of taxation is underscored by many who attempt to define taxation. Given the compulsory character of taxes, it may seem odd that this study sets out to make a case for voluntary tax payment. However, even though taxes are compulsory, they are readily justified by many. There are those who justify taxation on account of the role government plays in sustaining the protection of life, liberty and the pursuit of happiness. There are others who justify taxation on account of the public services provided by the government such as education, health and security.⁴⁹ All of these are funded largely by revenues from taxation. Therefore the compulsory aspect of taxation is readily accepted and necessary.

The importance of government and the resulting need for taxation gives rise to a duty for the public to comply with tax payment. The obligation to pay tax is not only self evident, but should also be readily acceptable. Bird says that:

In an ideal law abiding society, people would pay taxes they owe, and tax administration would amount to little more than the provision of facilities for citizens to discharge this responsibility. No such country exists, or is likely ever to exist. Compliance with tax laws must be created, cultivated, monitored and enforced in all countries.⁵⁰

⁴⁸ M N Umenweke, *Tax law and its implications for Foreign Investments in Nigeria* (Nigeria: Nolix Educational, 2008) P. 6.

⁴⁹ K Ongwamuhana, *Tax Compliance in Tanzania: Analysis of Law and Policy Affecting Voluntary Taxpayer Compliance* (Tanzania: Mbuki na nyota, 2011) P. 2.

⁵⁰ R M Bird, 'An Economic Approach to Tax Administration Reform' (1995) *University of Toronto Faculty of Management, International Center for Tax Studies*, Discussion paper, No. 3.

However, voluntary payment of tax remains fallacious and as Broomberg and Kruger said ‘Most People at best of times, dislike paying tax’.⁵¹ This summarizes the compulsory nature of tax and why it can never be voluntary.

Again, all taxes are imposed by law.⁵² In other words, it is imposed by government. All taxation is based on law. Most constitutions forbid taxation except based with laws duly established by the legislature. In Nigeria, the Constitution of the Federal Republic of Nigeria provided for the payment of taxes by every citizen. It was stated as follows: ‘that it shall be the duty of every citizen to declare his income honestly to appropriate and lawful agencies and pay his tax promptly’.⁵³ It should be noteworthy that not all compulsory payments are taxes, for example, fines or penalties imposed to punish people for committing crimes are not regarded as taxes.⁵⁴ And while fines, fees, penalties and other categories of charge may be arbitrarily fixed, tax must pass through the process of law making in the state before it becomes a tax.

Furthermore, on the attributes of taxes, it should be noted that taxes are paid to the government and not individuals. A tax is not a price paid by the taxpayer for any definite service rendered or a commodity supplied by the government. For example, the charge made on consumers by Power Holding Company of Nigeria Plc (PHCN) for electricity consumed is not a tax. Individuals or companies are not under compulsion to use electricity supplied by PHCN. Fees can also be charged for registration of marriages and births. Unlike taxes which are paid for the provision of common benefits; fees and charges are for specific benefits.⁵⁵

⁵¹ E B Broomberg and D Kruger, *Tax Strategy*, (5th edn South Africa: Lexis Nexis, 2013) P. 1.

⁵² *Peace Mass Transit Limited v Federal Capital Territory & Others* (2014) LPELR-23740(CA).

⁵³ The Constitution of the Federal Republic of Nigeria 2004, S. 24 (C).

⁵⁴ O U Bassey, *Personal Income Tax in Nigeria* (Nigeria: CIBN Press 2013) P. 3.

⁵⁵ O U Bassey, *ibid.*

All the attributes of taxes examined and the general tone of the definitions suggest that even the idea of tax or taxation is unwelcome. This then leads us into considering the reasons for imposing tax, if the concept is so unpopular.⁵⁶

2.2 Objectives of Tax

The imposition of taxes by the government goes beyond the realization of funds for the satisfaction of government activities. Nowadays, taxes have an important role to play especially in any government's economic and social policy. The following are therefore the objectives of Taxation:

(a) Raising of Money to Meet Government Expenditure and Programmes.

The main objective of taxation is to raise sufficient money for government to finance its activities. Most governmental activities must be financed by taxation. The government expenditure which requires to be met is either the provision of services which the free market cannot provide such as defense, law and order and parks or the provision of services and education often called public goods.⁵⁷

The government requires carrying out various development and welfare activities in the country. For this, it needs a huge amount of funds. The government collects fund by imposing taxes. So, raising more and more revenues has been an important objective of tax.⁵⁸

The governments of most poor countries profess a desire to stimulate and guide the economic and social development of their nations. This aspiration can be found enshrined in the many hundreds of development plans which have gushed forth from the government printing offices of the underdeveloped world in the last thirty

⁵⁶ J Frecknall-Hughes, *The Theory, Principle and Management of Taxation* (London and New York: Routledge, 2015) P. 3.

⁵⁷ M T Abdulrazaq, *Revenue Law and Practice in Nigeria* (2nd Edn, Lagos: Malthouse Press, 2010) P. 2.

⁵⁸ [accountlearning.blogspot.com.ng, Objectives of tax, http://accountlearning.blogspot.com.ng/2012/01/objectives-of-tax.html?m=1](http://accountlearning.blogspot.com.ng/2012/01/objectives-of-tax.html?m=1) accessed on 7th July 2014.

years. Seemingly undeterred either by the enormity of their ambition or by the frequency of undeniable failure, many governments of poor countries like Nigeria continue to reach out for the goal of government promoted and directed development.⁵⁹ The tax system is often identified as one of the most powerful levers available to these governments to move their economies from their present states to the distinctly happier positions which invariably characterize the final year of a development plan.⁶⁰

Adam Smith, a writer whose insights into economic development and public finance make his work more relevant to current issues than is often supposed, identified three duties of the sovereign: national defense, the administration of justice, and erecting and maintaining those public institutions and those public works, which, though they may be on the highest degree advantageous to a great society, are, however, of such a nature, that the profit could never repay the expense to any individual or small number of individual and which it therefore cannot be expected that any individual or small number of individuals should erect or maintain.⁶¹ This characterization of the sovereign duties by Smith is broad enough to cover many, though not all, of the activities of governments in developing countries⁶² which also include taxation to finance its expenditures and programmes.

(b) Redistribution of Income or Wealth.

Taxes can be applied to reduce disproportion in the distribution of Income or Wealth. Elevated proportions of taxes can be imposed on wealthy individuals and the

⁵⁹ J F J Toye (ed), *Taxation and Economic Development, Twelve Critical Studies* (England: Frank Cass, 1978) P. 1.

⁶⁰ J F J Toye, *loc cit.*

⁶¹ E Cannan (ed), *An Inquiry into the Nature and causes of the Wealth of Nations*, (Modern Library, 1937) P. 681.

⁶² R Goode, *Government Finance in Developing countries* (Washington DC: The Brookings Institution, 1984) P. 1.

money realized is used to provide goods and services to the poor.⁶³ There are two extents to the achievement of these objectives; the first means is the imposition of proportional tax on the income of taxpayers. Proportional tax is the tax that is paid by each taxpayer premised on the same percentage regardless of their income. A proportional tax applies the same tax rate across low, middle and high income taxpayers.⁶⁴ Here heavy taxes are imposed on the poor. This principle is predicated on the ability to pay, that is, that taxes should be imposed at rates proportionate to taxpayer's income and his ability to pay.⁶⁵

The second means is to impose taxes on the rich at punitive rates in favour of the indigent. Progressive tax system reduce tax burdens on people who can least afford to pay them and these systems leave more money in the pockets of low-wage earners who are likely to spend all of their money and stimulate the economy.⁶⁶

From the foregoing, it can be said that a good tax system, which adopts the above approaches, will achieve the outcome of reducing to some extent the inequality in the society thus ensuring distribution of wealth. Moreover, greater equality in income distribution might be advocated on the ground of fairness and equity. This function of taxation has been hotly debated over time, and different theories of distributive justice can be used to affirm or deny its legitimacy as shown above. What cannot be denied, however, is that many developed nations in fact have sought to use taxation for redistributive purposes, although it also is debated how effective taxation was (or can be) in redistribution.⁶⁷

⁶³ O U Basse, *op cit* P. 8.

⁶⁴ Proportional tax, <http://www.Investopedia.com/terms/P/Proportionaltax.asp> accessed on 7th July, 2014.

⁶⁵ J A A Agbonika, *op cit* P. 18.

⁶⁶ D Siegel, <https://www.Investopedia.com/terms/p/Progressivetax.asp> accesses on 7th July, 2014.

⁶⁷ R M Bird & EM Zolt, 'Redistribution via Taxation: The Limited Role of the Personal Income Tax in Developing Countries' (2005) 52 UCLA L. Rev, 1627.

In summary under this head, taxation follows simply the principle of equity; the direct taxes are progressive in nature. Also, certain indirect taxes, such as taxes on luxury goods are also progressive in nature. This means the rich class has to bear the higher incidence of taxes, whereas, the lower income group is either exempted from tax (direct taxes) or has to pay lower rate of duty (indirect taxes) on goods consumed by the masses. Thus, taxation helps to reduce inequalities of income and wealth.⁶⁸

(c) Management of the Economy.

Taxation is an important consideration in the planning of savings and investments and by harmonizing it with development strategy and changing economic structure, the government can use taxation as a powerful fiscal weapon to plan and direct the economy.⁶⁹ Tax also serves as an instrument for promoting economic growth, stability and efficiency. The government controls or expands the economic activities of the country by providing various concessions, rebates and other facilities. The effective tax system can boost up the economy. Similarly, taxes can correct externalities and other forms of market failure (such as monopoly). Import taxes may control imports and therefore help the country's international balance of payment and protect industries from overseas competition.

Again, regional disparity has been a chronic problem to the developing countries. Tax is one of the ways through which regional disparities can be minimized. The government provides tax exemptions or concessions for industries established or activities carried out in backward areas. This will greatly encourage

⁶⁸ Role of Taxation in Developing Countries like India, <http://Kalyan-city.blogspot.com/2010/12/role-of-taxation-in-developing.html?m=1> accessed on 15th July, 2014.

⁶⁹ J A A Agbonika, *op cit*, P. 19.

economic activities in those areas and ultimately regional disparity reduces to minimum.⁷⁰

Furthermore, taxation can be used to ensure price stability- a short run objective of taxation. Taxes are regarded as an effective means of controlling inflation. By raising the rate of direct taxes, private spending can be controlled. Naturally, the pressure on the commodity market is reduced. But indirect taxes imposed on commodities fuel inflationary tendencies. High commodity prices, on the one hand, discourage consumption and, on the other hand, encourage savings. Opposite effect will occur when taxes are lowered down during deflation.⁷¹

Finally, taxes can be imposed to reduce the consumption of certain goods and services considered to be harmful or non-essential. For example, if the government wants to discourage the consumption of alcohol and smoking of cigarettes, it can impose heavy taxes on those items. Consequently, their prices will increase and they will become less attractive to their consumers. The government can also impose taxes on imported foods to make them very expensive so that Nigerians will patronize made-in-Nigeria goods.⁷²

2.3 **The Basic Principles of Taxation/ Characteristics of a Good Tax System**

The principles of taxation are a set of criteria which act as a guide to the government when designing and implementing a new tax. The principles of taxation are used by legislatures in the design of taxation. The principles are those formal guidelines which are widely accepted and/or discussed and should be considered whenever specific tax laws are proposed, discussed and implemented.

⁷⁰Account Learning [blogspot.com.ng, http://accountlearning .blogspot.com.ng/2012/01/objectives-of-tax.html?m=1](http://accountlearning.blogspot.com.ng/2012/01/objectives-of-tax.html?m=1) accessed on 21st July, 2014.

⁷¹R Muley, <http://www.economicdiscussion.net/government/taxation/taxation-objectives-top-6-objectives-of-taxation-discussed/17450> accessed on 21st July, 2014.

⁷² O U Bassey, *op cit*, P. 5.

An early categorization of taxation principles which is still influential up to the present day, were first originally laid down by Adam Smith's famous book of 1776 'The wealth of nation'.⁷³ In this work, Book V especially is of importance. There he explains in part I that the sovereign/commonwealth needs revenue to finance a standing army, in part II, a system of justice (separated from the executive), in part III, Art 1, revenue for paying infrastructural ("public works and institutions to facilitate commerce"); in Art 2, institutions for the education of youth; in Art 3, institutions for the instruction of people of all ages, and in part IV, expenses of supporting the dignity of the sovereign. In the conclusion, he emphasizes a federal principle, that is, that expenses done by a province or local authorities should not be put at the expense of the general public.

In Chapter 2 of Book V,⁷⁴ Adam Smith developed four cardinal principles of fair taxation, namely:

1. The subjects of every state ought to contribute towards the support of the government, as nearly as possible in proportion to the revenue which they respectively enjoy under the protection of the state.
2. The tax which each individual is bound to pay ought to be certain, and not arbitrary. The time of payment, the manner of payment, the quantity to be paid, ought all to be clear and plain to the contributor, and to every other person. Where it is otherwise, every person subject to the tax is put more or less in the power of the tax-gatherer, who can either aggravate the tax upon any obnoxious contributor, or extort, by the terror of such aggravation, some present or perquisite to himself.

⁷³A Smith, *Simpler Taxes: Tax Simplification as a systematic Tax Policy*, Briefing paper, <http://www.adamsmith.org/sites/default/files/images/stories/simpler-taxes.pdf> accessed on 25th August, 2014.

⁷⁴ *Ibid.*

3. Every tax ought to be levied at the time, or in the manner, in which it is mostly likely to be convenient for the contributor to pay it.
4. Every tax ought to be so contrived as both to take out and keep out of the pockets of the people as little as possible, over and above what it brings into the public treasury of the state.

In summary on the above four main principles, it can be said as follows:

1. Taxes should be proportional to people's income.
2. Taxes should be certain, not arbitrary.
3. Taxes should be levied at a convenient time.
4. The cost of the collection of the tax should be as low as possible.⁷⁵

Commonly, these four principles will be discussed afterwards under the catchwords: Equity, Certainty, Flexibility and Efficiency.

These are regarded as the characteristics of a good tax system. However, there have been significant developments in economic theory and policy since Adam Smith wrote his book 'The Wealth of Nation'.⁷⁶ Activities and functions of government have enormously increased. Now the governments are expected to maintain economic stability at full employment level, they are to reduce inequalities in the income distribution, and they are also to perform the functions of a welfare state. Above all, they are to promote economic growth and development, especially in developing countries like Nigeria, not only through encouraging private enterprise but to undertake the task of production in some strategic

⁷⁵ A Chamberlain, Principles of Taxation, <http://taxfoundation.org/blog/ten-principles-sound-tax-policy> accessed on 25th August, 2014.

⁷⁶ A Smith, E Cannan, *The Wealth of Nations* (18th edn, New York, N.Y: Bantam Classic, 2003)

industries. Thus, in order to devise a good tax system, these objectives and functions of government's economic policy must be kept in view.⁷⁷

It may be noted that Adam Smith was basically concerned with how the wealth of nations, or in other words, production capacity of the economy can be increased and he thought that private enterprise working on the basis of free market mechanism would ensure efficient use of resources and if left unfettered would bring about rapid economic growth. His ideas about public finance were influenced by his economic philosophy of virtues of free private enterprise. In proposing the above mentioned canons of taxation, he was guided only by the sole objective that a government should be able to raise sufficient revenue to discharge its limited functions of providing for defense, maintaining law and order, and public utility services.⁷⁸

Both the objectives and functions of modern governments have increased necessitating large resources. Therefore, the modern economists have added other principles or characteristics which taxation system of a country must satisfy if the objectives of modern government are to be achieved. In what follows, will be spelt out in detail the principles and characteristics of 'Smith's canons or principles of taxation.

1. The Principle of Equity.

The first canon or principle of a good tax system emphasized by Adam Smith is of equality. According to the canon of equality, every person should pay to the government according to his ability to pay. Equity has two main elements; horizontal equity and vertical equity. Horizontal equity suggests that taxpayers with the same income should pay equal amounts of tax⁷⁹ while vertical equity is a normative concept, whose definition

⁷⁷S Guru, <http://www.Yourarticlelibrary.com/tax/canons-of-taxation-and-equity-in-taxation-explained/26284> accessed on 30th August, 2014.

⁷⁸ *Ibid.*

⁷⁹ JAA Agbonika, *op cit*, P. 20.

can differ from one user to another. According to some, it suggests that taxpayers in better circumstances should bear a larger part of the tax burden as a proportion of their income or those with different income should pay different amounts of tax.

In other words, taxation should be governed by people's ability to pay, that is wealthier individuals or firms with greater incomes should pay more in tax while those with lower incomes should pay comparatively less. Taxes should be allocated among individuals fairly and reasonably. In taxation systems, the principle of equality is considered as the most important. As Adam Smith stated 'the subject of every state ought to contribute towards the support of the government, as nearly as possible in proportion to the revenue which they respectively enjoy under the protection of the state'

This implies that every person should pay the tax according to his ability and not the same amount. It further means that every taxpayer should not pay at the same rate; rather every taxpayer should pay the tax proportion to his income of the taxpayer blanket. This principle has brought progressive taxation system in various countries⁸⁰ and it simply means that the rate or percentage of taxation should increase with the increase in income and decrease with the decrease in income.⁸¹ Now, in most of the countries, progressive system of income and other direct taxes have been adopted to ensure equality in the tax system.

Regarding progressive taxation, two important factors need to be noted: Firstly, when governments tax the rich more heavily and redistribute income to the poor, the poor benefit through public spending by government. Secondly, when the poor are taxed less as compared to the rich, they are able to save or invest in order to improve their

⁸⁰ VTN, [http://www.veteranstodaymoney.com/2014/11/4-principles-of-taxation-you-should-know/Your taxes on time](http://www.veteranstodaymoney.com/2014/11/4-principles-of-taxation-you-should-know/Your%20taxes%20on%20time) accessed on 30th August, 2014.

⁸¹Economic Concept, <http://economicsconcepts.com/canons-of-taxation.html> accessed on 30th August, 2014.

livelihood. Therefore, in either way the poor benefits when taxation is used to promote equity.⁸²

2. The Principle of Certainty.

According to Adam Smith,⁸³ there should be certainty in taxation because uncertainty creates favourable climate for tax evasion hence compromising with taxation objectives. By this principle, it means that the tax which each individual taxpayer is bound to pay should be certain. The time, the manner of payment and the amount to be paid must be clear to the taxpayer. Thus, this requires that there should be no element of arbitrariness in a tax. It should be in relation to ascertaining as to when, what and where the tax is to be paid. The scope of tax, which every person is bound to pay, must be sufficiently clear and certain and cannot be charged arbitrarily. The taxpayer needs to know his tax liability and the entire administration of it. Our tax laws confirm substantially with this canon but not without some challenges.⁸⁴

Again, the principle of certainty implies that there should be certainty with regard to the amount which taxpayer is called upon to pay during the financial year. If the taxpayer is definite and certain about the amount of tax and its time of payment, he can adjust his income to his expenditure. The state also benefits from this principle, because it will be able know roughly in advance the total amount which it is going to obtain and the time when it will be as its disposal. If there is an element of arbitrariness in a tax, it will then encourage misuse of power and corruption. Adam Smith in this connection remarks:

The tax which each individual is bound to pay ought to be certain and not arbitrary. The time of payment, the manner of payment, the

⁸² M Kabinga, 'Principles of Taxation' (2016) Paper 5 of the Introduction to the Project. 'Tax, Justice & Poverty', 10.

⁸³ A Smith *Ibid.*

⁸⁴ J A A Agbonika *Ibid*, P. 20.

quantity to be paid all ought to be clear and plain to the contributor and to every person.⁸⁵

In other words, the time of payment, the manner of payment, the quantity to be paid ought all to be clear and plain to the contributor and to every other person. A successful function of an economy requires that the people, especially business class, must be certain about the sum of tax that they have to pay on their income from work or investment. The tax system should be such that the sum of tax should not be arbitrarily fixed by the income tax authorities.

Moreover, lack of certainty in the tax system, as pointed out by Smith, encourages corruption in the tax administration. Therefore in a good tax system, ‘individuals should be secure against unpredictable taxes levied on their wages or other incomes’. This also is one of the avenues to encourage voluntary tax compliance and self assessment in tax administration. The law should be clear and specific; and tax collectors should have little discretion about how much to assess taxpayers.⁸⁶

In the opinion of the researcher, the Nigerian tax system violates this canon of certainty as under the Nigerian Income Tax Law, a lot of discretionary powers have been given to the income tax officers, which have been abused with impunity. As a result, there is a lot of harassment of the taxpayers and corruption is rampant in the income tax development.

3. The Principle of Convenience.

The third canon of a good tax system emphasized by Adam Smith is the principle of convenience. The sum, time and/or manner of payment of a tax should not only be certain but the time and manner of its payment should also be convenient

⁸⁵Economic Concept, <http://Economicsconcept.com/canons-of-taxation.html> accessed on 30th August, 2014.

⁸⁶*Ibid.*

to the contributor. For example, if land revenue is collected at the time of harvest, it will be convenient since at this time farmers reap their crop and obtain income.⁸⁷ In other words, a tax should be levied at a time when certain revenue has been expected by the taxpayer. According to Smith, “Every tax ought to be levied at the time or in the manner in which it is most likely to be convenient for the contributor to pay”. For instance, the payment of Value Added Tax and Excise duty by the consumers in Nigeria is very convenient because the consumer pays the tax when he has the means to buy the product. Furthermore, the manner of payment is also convenient because these taxes are inclusive in the prices of the commodity.⁸⁸ Similarly property tax, house tax, income tax etc should be realized at a time when the taxpayer is expected to receive income. The manner of payment of tax should also be convenient. If the tax is payable by cheques, the contributor will be saved from much inconvenience.

In recent years, efforts have been made to make the Nigerian Income Tax convenient to the taxpayers by providing for installment payment at various times during the year.⁸⁹ Further, income tax in Nigeria is levied on the basis of income received rather than income accrued during a year. This also makes the income tax system convenient.

Furthermore as a measure to improve the convenience of taxpayers, the Federal Inland Revenue Service (FIRS) in 2008, in discharging its responsibility to issue taxpayer identification number (TIN) in order to have a reliable and centralized information on all taxpayers in the country, and also to create a platform for effective tax administration that operates on reliable taxpayer registration commenced a process

⁸⁷ <http://www.yourarticlelibrary.com/tax/canons-of-taxation-and-equity-in-taxation-explained/26284> accessed on 30th August, 2014.

⁸⁸ Economic Concept, <http://economicsconcepts.com/canons-of-taxation-html> *op cit* Accessed on 30th August, 2014.

⁸⁹ For example, S.77 of Companies Income Tax Act Cap C21, LFN 2010.

of assigning taxpayer identification numbers to taxpayers within its jurisdiction and in corroboration with state tax authorities, the Joint Tax Board (made up of the Federal Inland Revenue Service and the 36 State Board of Internal Revenue (SBIR) initiated a unique TIN program to uniquely identify and register taxpayers nationwide using ten fingers biometrics for individual taxpayers.⁹⁰

Despite the above welcoming development of which impact is yet to be seen, the researcher has noted that the Nigerian Tax Laws is not convenient for the taxpayers in that there is need to harmonize the different taxes that are being levied by the different tiers of government so as to reduce the negative impact on the taxpayer. A situation where an individual pays rates and licenses to local government, pays VAT and personal income to the state government and at the same time pays VAT again to the federal government is not one that is convenient and will encourage voluntary compliance.⁹¹

4. The Principle of Administrative Efficiency.

The canon of Administrative Efficiency implies that the expenses of collection of taxes should not be excessive. They should be kept as little as possible, consistent with administrative efficiency. If government appoints highly salaried staff and absorbs major portion of the yield, the tax will be considered uneconomical. Tax will also be regarded as uneconomical if it checks the growth of capital or causes it to immigrate to other countries. In the words of Adam Smith: ‘Every tax is to be contrived as both to take out

⁹⁰ I O Okauru (ed), *FIRS handbook on Reforms in the Tax System (2004-2011)*, (Ibadan: Safari Books Ltd, 2012) P. 23.

⁹¹ R G Asuquo, ‘Tax System In Nigeria: Issues and Challenges’ Vanguard, March 24, 2014, P. 20., see also, Taxes and Levies (Approved List For Collection Act), S. 5, Part 1, S. 1.

and keep out of the pockets of the people as little as possible over and above what it brings into the public treasury of the state”.⁹²

Again, the administrative costs of collecting and managing taxes should not be higher than the revenue to be raised. In other words, there must be an efficient administration of the tax system by trained tax personnel. Only those who regard the duty of the tax system as confiscation of wealth in order to provide employment would be happy with a tax whose administrative costs exceeded the tax yield. There is also the problem of compliance cost.⁹³

The government has to spend money on collecting taxes levied by it. Since collection costs of taxes add nothing to the national product, they should be minimized as far as possible. If the collection costs of a tax are more than the total revenue yield by it, it is not worthwhile to levy it. In other words, if for example, it cost N60 Million to collect a particular tax and the amount of tax collected is N50 Million, it means that the cost of collection has swallowed up the tax collected. It would be meaningless and a waste of public funds to continue with that type of tax.⁹⁴

However, the tax administration in Nigeria is not in all fours with this canon. Huge sums of money are used to consult tax experts or tax consultants at the expense of government revenue. The economy of administrative prudence is completely negative by this practice. For the revenue realized from such taxes is not usually proportionate to the huge sums expended as fees on consultants. These avoidable wastes can be avoided by

⁹²Economic Concept, <http://economicsconcepts.com/canons-of-taxation.htm.assessed> on 30th August 2014.

⁹³ M T Abdulrazaq, *Nigerian Tax Officers and Penalties* (Nigeria: Batay Law Publications, 1993) P. 5. See also, M. N. Umenweke *op cit* P. 24.

⁹⁴ OU Bassey *op cit*, P. 7.

using minimal sums to fully train and equip internal officers of the FIRS or SIRS to carry out such duties usually contracted to tax consultants.⁹⁵

In addition to the above mentioned and discussed basic principles of tax, there are other principles or characteristics of a good tax system that are of huge benefit in a tax administration like Nigeria. These include the canon of **Neutrality**. A tax is neutral if it avoids distortions of the market.⁹⁶ That is, if it does not discriminate between different activities in the economy. Taxation should seek to be neutral between forms of business activities. A neutral tax will contribute to efficiency by ensuring that optimal allocation of the means of production is achieved. A distortion, and the corresponding deadweight loss, will occur when changes in price trigger different changes in supply and demand than would occur in the absence of tax. In this sense, neutrality also entails that the tax system raises revenue while minimizing discrimination in favour of, or against, any particular economic choice.⁹⁷

Again taxation systems should be **Flexible** and dynamic enough to ensure they keep pace with technological and commercial developments. It is important that a tax system is dynamic and flexible enough to meet the current revenue needs of governments while adapting to changing needs on an ongoing basis.⁹⁸ The economy is not static; therefore, the tax system should not be rigid. The tax system should be capable of being quickly adjusted to meet the changing needs of the economy.⁹⁹

Furthermore, the tax system should be **Simple** to understand such that the taxpayer can even work out his tax liability. A simple tax system makes it easier for individuals and

⁹⁵ JAA Agbonika *op cit*, P. 21.

⁹⁶ M T Abdulrazaq *op cit*, P. 4.

⁹⁷ OECD, *Fundamental Principle of Taxation, in Addressing the Tax Challenges of Digital Economy* (Paris: OECD Publishing, 2014) P. 30.

⁹⁸ *Ibid* P. 30.

⁹⁹ OU Bassey *op cit*, P. 8.

businesses to understand their obligations and entitlements. It should not be complicated to understand how to calculate and ultimately ascertain. This principle is most especially beneficial in a Self Assessment Regime where taxpayers are ultimately expected to assess and honour their tax obligations without the prior intervention by the tax authorities.

When taxpayers for instance find it easy and convenient to make tax payment, the likelihood of voluntarily compliance is high. The opposite is true. The Nigerian tax laws are not simple to understand. For example, Section 77 of the Companies Income Tax Act (CITA)¹⁰⁰ makes specific provisions on time within which tax (including provisional tax) is to be paid. Section 77(5) expressly states that:

“A company filing self assessment shall pay the tax due within two months from the date of filing the assessment in one lump sum or such number of monthly installments (not being more than six) as may be approved by the Board.”

This subsection added two provisos. The first is that the last installment must be paid by 30th November of the year of assessment, and the second is that a request for installment payment must be made in writing. The Tax Administration (Self-Assessment) Regulations¹⁰¹ clearly contradict the above section which is contained in the principal Act (CITA). Regulation 18¹⁰² requires that a taxpayer should make installment payments by commencing payment in the relevant year of assessment such that the final installment is made by the due date of filing. In addition, the taxpayer must apply to exercise the right to file on installments and as well file by the due date.

¹⁰⁰ *Op cit.*

¹⁰¹ Tax Administrative (Self Assessment) Regulations, 2011.

¹⁰² *Ibid.*

This section is at variance with the CITA as Section 61 of the FIRS Establishment Act¹⁰³ empowers the FIRS Board, with the Approval of the Minister, to make rules and regulations as in its opinion are necessary or expedient for giving full effect to the provisions of this Act and for the administration of its provisions and may in particular, make regulations prescribing the form for return and other information required under that Act or any other enactment or law, etc However, this section does not in any way empower the FIRS to amend express provisions of the relevant laws as it would seem as done above and obviously negates the principle of simplicity in tax administration. Clearly, many taxpayers will be confused as to what and when taxes are to be paid since the Act and the Regulation is at variance with its provisions. Consequent upon this example shown, it has been observed that our tax laws are not simple to comprehend.

Finally, achieving simplicity in a tax system does not stop with legislation but extends to tax administration.¹⁰⁴ It would greatly require the continuous transformation or modernization of the revenue administration. By and large, it is the responsibility of each Revenue authority to not only collect revenue but to ensure that revenue is collected efficiently and does not burden taxpayers.

2.4 Sources of Tax Laws

The statute laws for a particular tax are found in the statute.¹⁰⁵ Taxes are backed by laws. Sometimes amendments are made to the text of the original Act and at other time a new provision is introduced to exist alongside the original Act.¹⁰⁶ The laws governing taxes include Companies Income Tax Act,¹⁰⁷ Stamp Duties Act,¹⁰⁸ Personal

¹⁰³ Federal Inland Revenue Service (Establishment) Act, 2007.

¹⁰⁴ M Kabinga *op cit*, P.10.

¹⁰⁵ M T Abdulrazaq *op cit*, P. 10.

¹⁰⁶ *Ibid* P. 11.

¹⁰⁷ *Supra*.

¹⁰⁸ *Supra*.

Income Tax Act¹⁰⁹ Education Tax Act,¹¹⁰ Value Added Tax Act,¹¹¹ Capital Gains Tax Act,¹¹² Petroleum Profits Tax Act¹¹³ etc. Only the National Assembly has the right to legislate on these taxes. Therefore, the various tax Acts issued by the National Assembly and their subsequent amendments are the most important sources of tax laws in Nigeria.

Tax Acts are not always easy to interpret and this often leads to disputes between the taxpayers and the tax authorities. Some of these disputes end up in the court. Sometimes up to the apex court being the Supreme Court. Court judgments on tax cases referred to it are also sources of tax laws. Decided cases can be referred to for precedents and interpretations.

Furthermore ,there are some instances that the tax Acts give the Minister of Finance or the tax authorities power to make certain regulations governing specific aspects of tax. for example, Section 61 of the FIRS Establishment Act¹¹⁴ which empowers the FIRS Board with the approval of the minister to make rules and regulations as in its opinion are necessary or expedient for giving full effect to the provisions of the Act.

Also booklets, pamphlets, circulars, guidelines and basic simple explanations clarifying ambiguities in tax laws, explaining basic principles of tax laws and how to apply certain provisions of the law have been issued by the Joint Tax Board and tax authorities. Some of the circulars and guidelines issued by the Federal Inland Revenue

¹⁰⁹ Supra.

¹¹⁰ Cap. E4 LFN 2004.

¹¹¹ Supra.

¹¹² Cap. C1, LFN 2004.

¹¹³ Cap. P13, LFN 2004.

¹¹⁴ Supra.

Service are the FIRS information circular No. 2006/6 on Assessment procedure,¹¹⁵ FIRS information circular No. 93/03 on collection procedure¹¹⁶ to mention but a few.

Also, the opinion of tax experts, relevant professional bodies for example, the Chartered Institute of Taxation of Nigeria, The Institute of Chartered Accountants of Nigeria etc and recommendations of commissions of enquiry are also relevant sources of tax laws. However, although the tax authorities would want to impose them on the taxpayers, it should be noted that none of these has the force of law and could be challenged in the appropriate court of law. However, these official statements or pronouncements, books and practices of tax authorities over the years provide sources of reference in the study of Nigerian constitution.¹¹⁷

Above all, the Nigerian Constitution is superior to all the laws in Nigeria. The Constitution contains certain provisions which relate to taxation. Therefore, the Constitution of the Federal Republic of Nigeria is also a source of tax laws albeit having supremacy over every other law.

2.5 Classification of Taxes.

Taxes are classified in various ways by various authors. Abdulrazaq¹¹⁸ classified taxes into two broad categories, namely Direct and Indirect taxes. This is also same as the learned author, Umenweke¹¹⁹ who went further to classify taxes by adding Proportional, Progressive and Regressive taxes. Most authors have generally towed this path in the classification of taxes. In this research work, taxes are generally classified into **Direct** and **Indirect** taxes as well as **Progressive, Proportional** and **Regressive taxes**.

¹¹⁵FIRS, www.Firsweb.tariatech.com.ng/./Tax%20circulars%20document%20library/Assessment accessed on 25th October, 2014.

¹¹⁶ *Ibid.*

¹¹⁷ O U Basse, *op cit*, P. 28.

¹¹⁸ M T Abdulrazaq *op cit* P. 5.

¹¹⁹ M N Umenweke *op cit* P. 25.

A) Direct and Indirect Taxes

The distinction between direct and indirect taxes which has generally been approved by authors was that given by Mill. According to Mill¹²⁰:-

A direct tax is one which is demanded from the very person who, it is intended or desired, should pay it. Indirect taxes are those, which are demanded from one person in the expectation and intention that he shall indemnify himself at the expense of the other; such as the excise or customs. The Producer or Importer of a commodity is called upon to pay a tax on it not with the intention to levy a particular contribution upon him, but a tax through him the consumers of the commodity, from whom it is supposed that he will recover the amount by means of an advance in price.

As the name implies, direct taxes are paid directly by the taxpayer on whom it is levied. There is a direct relationship between the tax authority and the taxpayer since the tax authority has to assess and collect the tax from the taxpayer.¹²¹ The incidence of tax is of vital essence in classifying tax into direct or indirect taxes. A direct tax, is one which is demanded from the very persons who it is intended or desired should pay it.¹²² In other words, the incidence of tax is borne entirely by the entity that pays it, and cannot be passed on to another entity. In direct taxes, the formal and economic incidences are essentially the same, i.e. the taxpayers are not able to pass the burden to someone else.

A direct tax cannot be shifted by the taxpayer to someone else. In this sense, indirect taxes such as a Sales Tax or Value Added Tax (VAT) are imposed only if and when a taxable transaction occurs. People have the freedom to engage in or refrain from such transaction. Therefore, direct tax is imposed upon a person, typically in an unconditional manner, such as

¹²⁰ J S Mill, *Principles of Political Economy with some of their Applications to Social Philosophy* (7th edn, London: Longmans, Green, Reader & Dyer, 1871) Book V, Chap.3.

¹²¹ O U Bassey *op cit*, P. 10.

¹²² I A Ayua, *The Nigerian Tax Law* (Ibadan: Spectrum Publication, 1996) P. 12.

on a person's income or property which is one that cannot be shifted by the taxpayer to someone else, where as an indirect tax can be.

Tax rate doesn't remain the same in case of direct tax. Each individual who is liable to pay tax has to pay as per his income or revenue.¹²³

Indirect Tax on the other hand is a type of tax whose impact passes on the other person. In this taxation system, the person who is selling the goods or product initially bears the burden of payment but the ultimate economic burden of tax is then shifted to the consumer by adding the paid amount of tax in the price of product. Indirect tax is the major source of government revenue in almost all the countries of the world. It is based on the principle of equity;¹²⁴ a person who will purchase or spend more will pay high. It is equally applied on the whole society whether rich or poor.

An Indirect tax such as Value Added Tax (VAT) is collected by an intermediary from the person who bears the ultimate economic burden of tax (such as the consumer). The intermediary later files a tax return and forward the tax proceeds to government with the return. In this sense, the term indirect tax is contrasted with a direct tax, which is collected directly by government for the persons (legal or natural) on whom it is imposed.

Again, it is noteworthy that an indirect tax may increase the price of a good to raise the price of the product for the consumers.¹²⁵ Example would be liquor and petroleum products. Another example is an excise duty on motor cars is paid in the first instance by the manufacturer of the cars; ultimately, the manufacturer transfers the burden of this duty to the buyer of the car in the form of a higher price. Thus as stated earlier, an indirect is one that can be shifted or passed on. The degree to which the burden of a tax is shifted determines whether

¹²³ Difference Between, Difference between Direct Tax and Indirect Tax, www.differencebtw.com/difference-between-direct-tax-and-Indirect-tax/ accessed on 7th September, 2014.

¹²⁴ As already discussed under the principles of tax/characteristics of a good tax system in this dissertation.

¹²⁵ As already discussed under impacts, incidences and effects of taxation in this dissertation.

a tax is primarily direct or primarily indirect. This is a function of the relative elasticity of the supply and demand of the goods or services being taxed. Under this definition, even income taxes may be indirect.¹²⁶

Indirect taxation is policy commonly used to generate tax revenue. It is so called as it is paid indirectly by the final consumer of goods and services while paying for the purchase of goods or for enjoying services. It is broadly based since it is applied to everyone in the society whether rich or poor. Since the cost of the tax does not vary according to income, indirect taxes are fixed. However, indirect taxation can be viewed as having the effect of a regressive tax as it imposes a greater burden (relative to resources) on the poor than on the rich, as both the rich and poor pay the same tax amount for consumption of a certain quantity of a specific good. The taxpayer who pays the tax does not bear the burden of tax; the burden is shifted to the ultimate consumers. In the case of a direct tax, the taxpayer has to bear the burden of tax personally. In the case of indirect tax, the taxpayer and the tax bearer are not the same person.¹²⁷

Indirect taxes are essentially fees that are levied equally upon taxpayers, no matter their income. As such, they are regressive taxes. For example, the import duty on a television imported from Japan will be the same amount, no matter what the income of the consumer purchasing the television is.¹²⁸

There are some other classifications of taxes as stated earlier under this head; first of all, we have **Proportional Tax**. A tax is proportional when the tax paid by each taxpayer takes a constant proportion of income and so can be said to be a neutral tax.¹²⁹ It is tax imposed so that the tax rate is fixed, with no change as the taxable base amount increases or

¹²⁶ *National Federation of Independent Business v Sebelins* (2012), 567 U.S, 41.

¹²⁷ *United States v Connor*, 898.F.2d 942, 90-1 U.S Tax Case (CCH) Para. 50, 166 (3rd.Cir.1990).

¹²⁸ D Siegel, Indirect tax, www.Investopedia.com/terms/i/Indirecttax.Gsp accessed on 7th September, 2014;

The VAT rate in Nigeria is 5 percent. Some supplies may be zero rated or completely exempt.

¹²⁹ M. T. Abdulrazaq *op cit*, P. 4.

decreases. The amount of the tax is in proportion to the amount subject to taxation. Proportional describes a distribution effect on income or expenditure, referring to the way the rate remains consistent (does not progress from 'low to high' or 'high to low' as income or consumption changes), where the marginal tax rate is equal to the average tax rate.¹³⁰

It can be applied to individual taxes or to a tax system as a whole; a year, multi-year, or lifetime. Proportional taxes maintain equal tax incidence regardless of the ability-to-pay and do not shift the incidence disproportionately to those with a higher or lower economic well-being.¹³¹ An example of proportional tax in Nigeria is the Companies Income Tax which is levied at the rate of 30 kobo for every naira on a company's profits.¹³²

Progressive Tax on the other hand, is one in which the rate of tax increases as the income of the taxpayer increases. In other words, the higher the income, the higher the rate of tax.¹³³ A progressive tax is a tax in which the tax rate increases as the taxable amount increases. The term 'progressive' refers to the way the tax rate progresses from low to high, with the result that a taxpayer's average tax rate is less than the person's marginal tax rate.¹³⁴ Progressive tax is imposed in an attempt to reduce the tax incidence of people with a lower ability to pay; as such taxes shift the incidence increasingly to those with higher ability-to-pay.

The term is frequently applied in reference to personal income taxes, in which people with lower income pay a lower percentage of that income in tax than do those with higher

¹³⁰ D M Hyman, *Public Finance: A Contemporary Application of Theory to Policy* (3rd edn, Chicago, IL: Dryden Press, 1990) P. 5.

¹³¹ S James, *A Dictionary of Taxation* (Northampton, MA: Edgar Elgar Publishing Limited, 1998) P. 115.

¹³² CITA *op.cit*, S.40(1).

¹³³ O U Bassey *op cit*, P.13.

¹³⁴ D. M. Hyman *op cit* P. 10.

income. It can also apply to adjustments of the tax base by using tax exemptions, tax credits, or selective taxation that creates progressive distribution effects e.g. property tax.¹³⁵

Progressive taxation is often suggested as a way to mitigate the societal ills associated with higher income inequality, as the tax structure reduces inequality,¹³⁶ but economists disagree on the tax policy's economic and long-term effects. Progressive taxation has also been positively associated with happiness, the subjective well-being of nations and citizens satisfaction with public goods, such as education and transportation.¹³⁷

Most systems around the world contain progressive aspects. That is when taxable income falls within a particular tax bracket; the individual pays the listed percentage of tax on each amount that falls within that monetary range. The personal income tax in Nigeria is an example of a progressive tax system. In Nigeria, there are six income tax bracket (income after adjustments, deductions and exemptions) ranging from 7% minimum tax rate to 24% maximum tax rate.¹³⁸

However, the progressive nature of PITA in Nigeria is doubtful. A relevant issue to how a particular tax regime could be evaluated as progressive is the minimum of income that is completely shielded from tax. In discussing the origin of advocacy for exemption for tax purposes, Hagopian¹³⁹ notes that it arises to protect the part of income that is required to meet subsistence or ensure survival. In Australia, for example, the non taxable minimum income is the same irrespective of the marginal tax rate bracket of the taxpayers which is 0% effective

¹³⁵ D B Suits, 'Measurement of Tax Progressivity' (1977) *American Economics Review* 67(4), 747.

¹³⁶ P Moyes, 'A note on minimally progressive taxation and absolute income inequality' (1988) *Social Choice and Welfare*, Vol. 5, Numbers 2-3, 227.

¹³⁷ O Shigehiro *et al*, 'Progressive Taxation and the Subjective Well Being of Nations' (2011) *Psychological Science* 23(i), 86.

¹³⁸ PITA *op.cit*, Sixth Schedule, S.3.

¹³⁹ K Hagopian, 'The Inequality of the Progressive Income Tax' (2011) *Policy Review*, 3.

up to \$18,200¹⁴⁰. The rationale behind this equal amount exempted from tax for all individuals is underpinned by the notion of shielding of income necessary for subsistence from tax. The assessment of progressive tax cannot necessarily be restricted to marginal tax rates but extended to include the non-taxable income minimum for such tax in order to satisfy income redistribution policy objective.¹⁴¹

In Nigeria, the current minimum tax is 1% of gross income, which arises when after tax assessment, the taxpayer has no taxable income or the taxable income will generate tax liability that is less than 1% of gross income. Indigent taxpayers thus endure double chastening for being precarious, firstly, they might not be able to use up all the reliefs and exemptions under the Act which of course lapses in that year of assessment. Secondly, they are obliged to pay tax on their insufficient income even when it is obvious that such income is below the minimum for meeting subsistence in the present day Nigeria. The inconsistency of the present non-taxable threshold which obviously benefits the rich more than the poor further suggests how non-progressive the Nigerian PITA is. For example, a taxpayer on annual income of N120, 000.00 is expected to pay N1, 200.00 as tax even though the individual is entitled to an abandoned unused up consolidated relief allowance of N220, 000.00.

In conclusion, it is generally believed that the PITA is progressive however it has no tax threshold and it is riddled with a myriad of inconsistencies which benefit the high income groups more than the low income earners which suggests that income tax progressivity in Nigeria that meets the canon of equality and simplicity is in doubt which obviously hinders voluntary tax compliance in Nigerian tax administration.

¹⁴⁰ Australian Taxation Office, Individual Income Tax Rates, <http://www.ato.gov.au> accessed on 30th September, 2014.

¹⁴¹ O Egbon and C O Mgbame, What Is Progressive About Nigerian Personal Income Tax? (2015) *JORIND*, 13.

Regressive Tax on the other hand is a tax imposed in such a manner that the tax rate decreases as the amount subject to taxation increases. This is a tax whose structure is such that the revenue yield becomes smaller as the value of the property taxed increases.¹⁴² It is a tax structured so that the effective tax rate decreases as the tax base increase. With this type of tax, the percentage of income paid in taxes decrease as the taxpayer's income increases.¹⁴³

A flat tax (such as the typical Sales Tax) is usually considered regressive despite its constant rate because it is more burdensome for low-income taxpayers than high-income taxpayers. A growing exemption also produces a regressive tax effect.¹⁴⁴ In terms of individual income and wealth, a regressive tax imposes a greater burden on the poor than on the rich. There is an inverse relationship between the tax rate and the taxpayer's ability to pay, as measured by assets, consumption, or income. These taxes tend to reduce the tax burden of the people with a higher ability to pay, as they shift the relative burden increasingly to those with a lower ability to pay.

The opposite of a regressive tax is a progressive tax, in which the average tax rate increases as the amount subject to taxation increases. The regressive tax is against the canons of or principles of a good tax system which primarily is against the principle of equality. Few people would consider a tax system to be fair if the poorer you are, the more of your income you pay in tax. But that is exactly what regressive taxes do. They require the middle and the low income earners to pay a much greater share of their incomes in taxes than the wealthy.

As stated earlier, the sales tax is a regressive tax. This is because sales taxes are levied at a flat rate, and because low-income taxpayers spend more of their income on items subject to the sales tax than do wealthier taxpayers, sales taxes inevitably takes a larger share of

¹⁴² M N Umenweke *op cit* , P. 26.

¹⁴³ B A Garner,*op cit* , P. 1687.

¹⁴⁴ *Ibid.*

income from low and middle-income taxpayers than they take from the wealthy.¹⁴⁵ Excise taxes on cigarettes, gasoline and alcohol are also quite regressive, and property taxes are generally somewhat regressive.

So the question that readily springs up is what is the best tax system in a Self Assessment Regime like Nigeria? This question has no straightforward answer because some believe that a proportional or ‘flat’ tax structure is fair. They argue that if everyone pays the same share of income in taxes, then everyone is treated equitably.¹⁴⁶ But this view ignores the fact that taking the same share of income from the middle or low income earners as from a rich taxpayer has vastly different consequences for each. Low-income earners must spend most (or all) of their income just to achieve the most basic level of comfort. Even the middle income earners spend most of what they earn to sustain only a modest standard of living. A tax on these taxpayers can cut directly on their ability to make ends meet. In contrast, the same tax will hardly affect the life style of the wealthiest families at all.

Progressive taxes are therefore the fairest taxes. Personal income taxes are the only major tax that can easily be designed to be progressive. Low income taxpayers can be exempted entirely as already suggested earlier when discussing progressive taxes and tax rates can be regulated with higher tax rates applying to higher income levels, so that the middle income and the rich income earners pay taxes fairly related to what they can afford.

2.6 Advantages and Disadvantages of Direct and Indirect Taxes.

Distinguishing between direct and indirect taxation and examining their advantages and disadvantages has been a major feature in economic, political and academic discussions on the choice between the two forms of taxation and their effects on the principles of equity and efficiency in the optimal design of tax structures. Discussions about these taxes are with

¹⁴⁵ *Ibid.*

¹⁴⁶ ITEP, Tax Fairness Fundamentals, <https://www.itep.org/pdf/guide1.pdf> accessed on 12th October, 2014.

regards to the effects of these two types of taxes on economic growth and flow of foreign direct investment in a country.

Taxes as already discussed can be classified as direct taxes and indirect taxes. Direct and indirect taxation have different impacts on the consumer, they have advantages and disadvantages at the same time. The terms direct and indirect taxation have been explained on the basis of tax incidence which measures the effects of tax policies on economic welfare in a society¹⁴⁷ and it is further described as a concept about who ultimately bears the economic burden of any imposed tax. With direct taxes, the tax burden is borne by the individual the tax is imposed on, whereas the burden of indirect taxes can be shifted by the tax liable individual or entity to another person or entity i.e. consumer of tax imposed goods and services.¹⁴⁸

According to Atkinson,¹⁴⁹ the essential aspect of indirect taxes is that the tax can be adjusted to the personal characteristics (i.e. ability to pay principle) of the individual or entity upon whom the tax is imposed and indirect taxes are levied on transactions irrespective of specific circumstances or characteristics of individuals, entities or households upon whom the tax liability is proposed or who ultimately bears the economic burden of the tax.

Atkinson's differentiation of the two types of taxes comes close to how countries categorize their tax structure. Today's income tax is a form of direct taxation, which is to say the government levies the tax directly on individuals and businesses.

Advantages of Direct Taxes

¹⁴⁷L J Kothkoff & LH Summers, *Tax Incidence Handbook of Public Economics* (Holland: North Holland, 1987) P. 1043.

¹⁴⁸D Fullerton & G E Metcalf, 'Tax Incidence' (2002) *NBER Working Paper Series, Working Paper No. 8829*.

¹⁴⁹A B Atkinson, 'Optimal Taxation and the Direct Versus Indirect Tax Controversy' (1977) *Canadian Journal of Economics*, 10, 590.

- a) **Equitable:** Direct taxes such as income tax, taxes on property, Capital Gains Tax are equitable because they are based on the principle of progression. Higher income are taxed more heavily and lower incomes slightly. The larger the income, the higher the rate of taxes. Direct taxes are taxed according to the ability to pay by the taxpayers and the ability to pay is interpreted as the money income of the taxpayers which means any person having a flow of income is expected to pay tax.¹⁵⁰ Taxes at high rate are paid by the richer section of the society and lower rates are paid by the poorer section of society.
- b) **Certainty:** Direct taxes satisfy the condition of certainty which involves the rate of taxes, such as personal income tax in Nigeria which is publicized. In other words, the taxpayer is certain as to how much he is expected to pay, and similarly the State is certain as to how much it has to receive income from direct taxes. There is also certainty about the time of payment and manner of payment. Therefore, taxpayers can plan their own budget and other economic activities in advance.¹⁵¹
- c) **Reduce Inequalities:** Direct taxes are progressive in nature,¹⁵² and rich people are subjected to higher rates of taxation, while poor people are exempted from direct tax obligations. Rates of taxes increase as the levels of income of persons rise. As they fall heavily on the rich, they take away a large part of their income by way of income and property taxes and the revenue collected is used for providing social amenities like food, clothing and housing facilities to the poor people. The real income of the poor rises and that of the rich falls. Therefore, direct taxes help to reduce inequalities in incomes and wealth.

¹⁵⁰N. Flynn and T. Allen, *Public Policy And Management: Revenue Study Guide* (London: University of London, 2012) P. 43.

¹⁵¹ O U Bassey *op cit*, P. 15.

¹⁵² *Ibid*.

- d) **Elasticity:** Elasticity in direct taxes implies that more revenue is collected by the government by simply raising the rates of taxation. In other words, revenue of government may be increased by increasing the taxable incomes of the people. Therefore, the income of the government from direct taxes may increase with the increase in the incomes of the people.
- e) **Civic Consciousness:** Direct taxes helps to bring the civic consciousness of the taxpayers in alert since direct taxes are certain, the taxpayers feel the pinch of such payment and are alert and take keen interest in the method of public expenditure on whether the revenue raised is properly utilized or not. In other words, people try to be vigilant about how much tax revenue is being raised by the government and to what use it is being put. Taxpayers become conscious of their rights and obligations. In a democratic country like Nigeria, this civil consciousness will check the wastage in the public expenditure.¹⁵³
- f) **Adverse effects of direct taxes can be avoided:** one of the merits of direct taxes is that their rates can be modified in time to avoid their adverse effects on willingness and ability to work, save and invest. In other words, reasonable rates of income tax and property tax may avoid adverse effects of direct taxes on taxpayers. Exemptions and concessions may also avoid their adverse effects on production.¹⁵⁴

2.6.1 Disadvantages of Direct Taxes

Direct taxes are not free from disadvantages, they are criticized in the following grounds:-

- a) **Possibility of Evasion:** A direct tax is said to be a tax on honesty, but it can be evaded through fraudulent practices. As stated above, direct taxes are certain and

¹⁵³ ES Esmaeel, 'The Impact of Direct-Indirect Taxation on Consumer' (2013) *IOSRJEN*, 12.

¹⁵⁴ *Ibid.*

taxpayers know the rate of tax they have to pay.¹⁵⁵ Therefore, awareness of tax liability tempts the taxpayer to evade tax. It is a fact that the people in the higher income groups do not reveal their full income and would not hesitate to fill up false returns concealing a considerable part of their income.¹⁵⁶ This is most especially in a SAR where taxpayers are expected to voluntarily assess and pay their tax liabilities themselves.

- b) **Inconvenience:** Direct taxes are inconvenient in nature because taxpayer has to submit the statement of his total income along with the source of income from which it is derived. Moreover, most direct taxes are paid in lump sum which causes inconvenience to the taxpayers.¹⁵⁷
- c) **Unpopular:** Direct taxes are unpopular because they are required to be paid in one lump sum which is inconvenient to the taxpayer. Direct taxes are generally not shifted; therefore, they are painful to the taxpayer. Hence such taxes are unpopular and are generally opposed by the taxpayers as they have to be borne by the taxpayers themselves.¹⁵⁸
- d) **Arbitrary:** Direct taxes are found to be arbitrary because there is no logical or scientific principle to determine the degree of progression in taxation. Rates of income tax and other direct taxes are determined according to the whims of taxation authorities i.e. if no self assessment is done by the taxpayer. They are likely to underestimate the taxable capacity of the people.¹⁵⁹
- e) **Disincentive to work and to invest:** In a progressive system of taxation where a high income is taxed at a higher rate than a lower income, people may be discouraged from working harder since they know that the more they earn, the

¹⁵⁵ *Ibid.*

¹⁵⁶ *Ibid.*

¹⁵⁷ *Ibid.*

¹⁵⁸ O U Bassey *op cit*, P. 15.

¹⁵⁹ ES Esmaeel *op cit*.

larger the proportion of their income that will be taken by the government through taxation. Again, where a high rate of tax is imposed on a firm's profits, entrepreneurs may be discouraged from establishing businesses in a country. This could lead to capital flight to other places where taxes are minimal (tax haven). Secondly, a high income tax will leave the firm with fewer profits to plough back into the business.¹⁶⁰

2.6.2 Advantages of Indirect Taxes

Some of the advantages of indirect taxes are as follows:-

- a) **Convenient:** Indirect taxes are paid when goods and services on which it is imposed are bought (example Pay-As-You-Buy). This means it is paid in installments depending on the value of each transaction unlike a direct tax which is usually paid in lump sum. Taxpayers do not feel much pain when paying an indirect tax as when paying a direct tax.¹⁶¹ They are convenient to both the taxpayer and the government which can collect the tax at the ports or at the factory.
- b) **Broad-based:** Indirect taxes can be spread over a wide range. Very heavy direct taxes at just one point may produce harmful effects on social and economic life. As indirect taxes can be spread widely, they are more beneficial and suitable. Indirect taxes are levied on a wide range of goods and services. Many of the people and organizations (e.g. children, students, unemployed, religious organization etc) which are usually exempted from income tax are required to pay indirect taxes in as much as they buy the goods and services on which they

¹⁶⁰ J Stiglitz, 'The Effects of Income, Wealth and Capital Gains Taxation on Risk-taking' (1969) *Quarterly Journal of Economics*, 24.

¹⁶¹ *Ibid.*

imposed. As a result the amount of revenue raised by the government through indirect taxes is very substantial.¹⁶²

- c) **Non-avoidable:** Because indirect taxes are hidden in the prices of goods and services, the consumer cannot evade payment of indirect taxes as long as he buys the goods and services on which they are imposed. The degree of voluntary compliance is high. They can be evaded only when the taxed article is not consumed and this may not always be possible.¹⁶³
- d) **Re-allocation of Resources:** As previously stated, indirect taxes can be imposed to reduce the consumption of harmful or non-essential commodities. This will promote savings and the money saved can be invested in a more productive ventures.¹⁶⁴ By being imposed on harmful products, they can check consumption of harmful commodities. That is why tobacco, wine and other intoxicants are taxed.
- e) **Equitable:** Indirect taxes can be made more equitable by imposing a higher rate of tax on goods and services consumed mostly by the rich (i.e. luxuries) and a lower rate of tax on goods and services consumed mainly by the precarious (that is, basic needs or necessities) or total exemption of such goods and services.¹⁶⁵

2.6.4 Disadvantages of Indirect Taxes

Indirect taxes have some disadvantages too, which are as follows:-

- a) **Inequitable:** An important argument against indirect taxes is that they tend to be regressive since each individual pays the same rate on their purchases, the poor pay a larger portion of their incomes in indirect taxes (in comparison with direct

¹⁶² O U Bassey *op cit*, P. 16.

¹⁶³ Economic Discussion, www.economicdiscussion.net/taxes/advantages-and-disadvantages-of-indirect-taxes/1944 accessed on 15th October, 2014.

¹⁶⁴ *Ibid.*

¹⁶⁵ *Ibid.*

taxes which tends to be progressive and are seen as more equitable).¹⁶⁶ Therefore, indirect taxes hit the poor harder than the rich. Indirect taxes violate the principle of ability to pay and are, therefore, unfair to the poor. The adverse effects of the indirect taxes can be corrected by imposing a higher rate of indirect taxes on luxury items consumed mostly by the rich and a low rate on necessities of life consumed mostly by the poor or complete exemption of necessities from indirect taxes.

- b) **Inflation:** Indirect taxes are added to the prices of goods and services so they end up increasing the price of goods and services.¹⁶⁷ In other words, they cause the price of an article to rise by more than the tax. A fraction of the money unit cannot be calculated, so every middleman tends to charge more than the tax. The process is cumulative.
- c) **Uneconomical:** There are many intermediaries involved in the collection of indirect taxes for the government. The cost of collection is quite heavy. Every source of production has to be guarded. Large administration staff is required to administer such taxes. This turns out to be a costly affair. Indirect taxes fail to satisfy the principle of economy. The government has to set up elaborate machinery to administer indirect taxes.¹⁶⁸
- d) **Possibility of tax evasion:** There is a possibility of evasion of indirect taxes. Some taxes are easily evaded. For example, smugglers of goods into or out of the country do not pay customs duties on such goods. Despite government spending of huge sums of money to maintain custom officials, police etc to check

¹⁶⁶Economic Discussion, www.economicdiscussion.net/taxes/advantages-and-disadvantages-of-indirect-taxes/1944 accessed on 15th October, 2014.

¹⁶⁷ *Ibid.*

¹⁶⁸ *Ibid.*

smuggling, some of these law enforcement agents aid and abet smuggling.¹⁶⁹ In the case of VAT, many businesses have not registered for VAT collection. Nigeria is the largest country in Africa and many small scale businesses are scattered all over the country. The tax authorities do not have the means to ensure that all these taxable persons are registered and account for VAT.

- e) **Uncertain:** Another disadvantage with indirect tax is the fact that it can be very difficult for tax authorities to project exactly how much they are going to get from tax proceeds since the amount of money that is generated from indirect tax largely depends on the strength of demand for the taxed commodities.¹⁷⁰ And of course as we might all know, it can be quite difficult to determine the strength of demand for certain commodities. Imposition of taxes or raising the rate of tax on certain goods may cause demand for such goods to drop to zero if the demand is perfectly elastic. Furthermore, revenue from indirect taxes may fall drastically during a period of depression.¹⁷¹

2.7 Historical Background of Taxation in Nigeria

Nigeria inherited the British model of tax administration at Independence in 1960. However prior to the Independence in Nigeria in 1960, taxation was not alien to Nigerians as it has always been the avenue by which villages and communities provide themselves with the basic facilities such as security, roads, drinking water etc.¹⁷² Although it was not in the formal codified form as used today. The earliest trace of any form of direct taxation in Nigeria even before the British Administration was in Northern Nigeria. The North was favoured for this because it had a form of organized central administration under the Emirs unlike the South which except in

¹⁶⁹ O U Bassey *op cit*, P. 19.

¹⁷⁰ *Ibid.*

¹⁷¹ *Ibid.*

¹⁷² E A Ogundele, *Element of taxation* (Nigeria: Libserve Nigeria Ltd, 1999) P. 20.

few places in the West was not as organized. Moreover, the Muslim religion adhered to by the people approved of taxation as being consistent with the demands of Islam. Therefore, taxes such as Zakka, Gada, Jangobi were typical forms of taxes on agricultural products and livestock.¹⁷³

In Yoruba land, taxation has always been in the form of 'ose' which is a compulsory community contribution collected for specific projects when occasion warrants it. However, in the Eastern provinces, there was no informal taxation in anyway. One significant difference in the political and social organization of the Igbo from the Hausa, Yoruba, Kanuri and Edo ethnic groups is that the Igbo did not develop monarchial forms of government. This means that they did not have Kings. The nucleus of their political and social unit was the lineage.¹⁷⁴ The absence of a monarchy or any form of central authority made it impossible for a standard form of taxation to be practiced in pre-colonial Igbo society. The closest approximation to a tax system could be said to be the contributions to or collective execution of projects such as community road carried out under the auspices of various social groups such as the age-grade associations.¹⁷⁵

With the coming of the British and their subsequent colonization of Nigeria, they took advantage of the native tax system that already existed in the Northern part of Nigeria to introduce direct taxation since that was the only existing option to raise funds to administer the region. Direct taxation was introduced in Northern Nigeria by Lord Lugard by virtue of the *Native Revenue Proclamation No. 2 of 1906* which actual collection started in 1907. Direct tax was imposed by the Central Government as the sovereign authority, and the native authorities were to collect and pay the whole

¹⁷³ FIRS, (ed) *A Comprehensive Tax History of Nigeria* (Ibadan: Safari Books, 2012) P. 68.

¹⁷⁴ T O Elias, *Nigerian Land, Law And Custom* (London: Routledge & Kegan Paul, 1962) P. 107.

¹⁷⁵ FIRS (ed) *op cit* P. 81.

to the government who would, in turn, return a large proportion of the collection to the native authorities for the administration of their services. The direct tax, as introduced in Northern Nigeria, was to replace the series of taxes, fares and other forms of irregular collections made by the Emirs before the British conquest.¹⁷⁶

In the western provinces, direct taxation was introduced by virtue of *the Native Revenue Ordinance of 1918*. The tax was also an income tax, based on the income from agricultural and other trades. This tax replaced a number of irregular collections of tributes and presents such as death duties, road tolls in Ijebu, annual levies in Oyo and the regular tribute in Ondo province. In 1918, after Lugard persuaded the colonial office to allow him to introduce taxation in western Nigeria, he was not aware that the Egba people were seething with discontent on other issues prior to the introduction of the new tax regime. In June, 1918 the Egba decided to 'go to war' with the British which resulted in the killing of no less than 500 Egba people.¹⁷⁷

In 1927, government imposed taxation on the Itsekiri and the Urhobo (of Asaba and Warri respectively) for road construction, hospitals and schools as was done elsewhere in Southern Nigeria. Consequently, the Native Revenue Ordinance was amended to make it applicable to Asaba Division and Warri Province. The British attempt to extend the direct tax system to these regions was met with series of protests, particularly in Warri Province.¹⁷⁸

In 1928, the system of direct tax was extended to the eastern provinces spurting off series of demonstrations in Calabar and Owerri Provinces but the serious

¹⁷⁶ *Ibid* P. 85.

¹⁷⁷ S Onabamiro, *Glimpses into Nigerian History: Historical Essays* (Lagos: Macmillian Publishers, 1983) P. 90.

¹⁷⁸ *Ibid* P. 93.

resistance to the introduction of direct taxation in the east was the Aba riot of 1929.¹⁷⁹ Despite the resentment and strong opposition to the issue of taxation, the colonial government in Nigeria remained undaunted and by the Macpherson Constitution of 1954, Nigeria became a Federation of three regions with each region having substantial measure of self-government.

Prior to 1960, the Raisman Commission was set up to review the existing taxing powers and revenue allocation formula as this had become an issue subsequent to Nigeria becoming a Federation in 1954.¹⁸⁰ Based on the recommendation of the commission, four tax legislations were enacted between 1959 and 1961. They are The Petroleum Profit Tax Act 1959, The Stamp Duties Act 1959, The Companies Income Tax Act 1961, and The Personal Income Tax (Lagos) Act 1961.

In the course of administering these principal Acts, each of them has undergone various amendments while new ones have equally been introduced.¹⁸¹ In addition to the amendments introduced to facilitate easy administration of the tax laws, various compliance measures have been introduced, the latest being the self-assessment system which was introduced in 1991. The system which has a lot of incentives was introduced to encourage voluntary tax compliance.¹⁸²

2.8 Impacts, Incidence and Effects of Taxation

The problem of the incidence of tax is the problem of who pays it. Taxes are not always borne by the people who pay them in the first instance.¹⁸³ The person who pays a tax in the first instance may not necessarily be the one who will end up bearing the full burden of the tax. It may be possible to shift the burden of the tax payment to

¹⁷⁹ *Ibid* P. 97.

¹⁸⁰ B J Dudley, *Parties and Politics in Northern Nigeria* (London: Routledge, 1968) P. 268.

¹⁸¹ I Olurunke, *Taxation in practice* (Benin: University Press, 2003). P.10.

¹⁸² I. K Naiyeju, *Improving the Nigerian Tax System for the Canadian Experience* (Nigeria: Words-Smiths Printing And Packaging Limited, 1996) P. 40.

¹⁸³ O U Bassey *op cit*, P. 9.

someone else. Incidence means the final resting place of a tax. The incidence is on the man who ultimately bears the money burden of the tax.

Impact and incidence is not the same. The impact of the tax is on the person who pays it in the first instance and the incidence is on who finally bears it. Again incidence is not shifting. Shifting means the process of transfer, i.e. the passing of the tax from the one who first pays it to the one who finally bears it. In other words, incidence is final resting place of the burden of a tax¹⁸⁴ while shifting is process of transferring money burden of tax to someone else. Shifting finally ends in incidence when a person on whom tax is levied tries to shift tax on the other; he may succeed in shifting tax completely, partly, or may not succeed at all. Shifting of tax can take place in two directions, forward and backward. If tax is shifted from seller to consumer, it is a case of forwarding shifting. Backward shifting takes place when consumers do not purchase commodities at increased prices, sellers are then forced to cut down prices and bear the burden of tax themselves.¹⁸⁵ Backward shifting is thus performed by buyers.

It is also necessary to distinguish the concept of incidence from effect. As stated earlier, incidence is direct money burden of a tax. Effect of taxation is repercussions or consequences of imposition of a tax on individuals and on community in general.¹⁸⁶ Thus the incidence of a tax is the final resting place of a tax after which further shifting is not possible. In case of a direct tax, the impact or the initial burden and the incidence or the ultimate burden is upon the same person. Thus, direct taxes are not shift-able. Such a tax is to be paid by the person on whom it is imposed. On the other hand, for an

¹⁸⁴ Lennox *et al* 'Administration of Local and Uses Taxes' (1961) *Municipal Finance Officers Association of the United States and Canada*, 16.

¹⁸⁵ Economic Concept , Impact and Incidence of Taxation, www.economicconcept.com./impacts-and-incidence-of-tax.html assessed on 4th September, 2014.

¹⁸⁶ *Ibid.*

indirect tax, impact and incidence are on different persons, thus an indirect tax is shift-able.¹⁸⁷

An example is when a tax is levied on say, match box; the initial burden of this tax is felt by the manufacturer. Thus the impact of the tax is on the manufacturer. But he is not supposed to pay the tax. By raising the price of the match box he ultimately succeeds in shifting the burden of this tax on the buyer. Thus, the incidence of an indirect tax is borne by the buyers of the taxed item.¹⁸⁸ However, the incidence of an indirect tax may be borne by buyer alone or seller alone or it may be divided between them depending on the elasticity of demand and the elasticity of supply for the taxed commodity.⁸²

Again, it is noteworthy that an effect of taxation is broader in term. It studies the changes that take place in an economy because of taxation. The changes may relate to production, consumption, localization of industry, etc.¹⁸⁹ Supposing the government imposes tax on the production of cloth. Its effect will not only be on the consumers in the form of increased prices, but also on the producers and workers. If the demand for cloth is elastic, the increase in the price of cloth due to the taxation will reduce its demand. The manufacturer will produce less cloth. Consequently, some workers may be retrenched from the factory. Fall in the demand for cloth will also affect the cotton producing farmers. Under the effects of taxation, we consider not only the economic effects, but also the political, social and other effects. As earlier stated, therefore, incidence of taxation and effect of taxation are two

¹⁸⁷ S Mukherjee, *Modern Economic Theory* (Kolkata: New Age International, 2002) P. 833.

¹⁸⁸ E D Fagun, 'Shifting of Sales Taxes under Joint Costs' (1953) *Public Finance*, Vol. 8, 338-554.

¹⁸⁹ T R Jain & O P Khanna, *Micro Economics: Money Banking and Public Finance* (New Delhi: V.K Publications, (2008) P. 419.

different things. Incidence of taxation points to the monetary burden of taxes on the taxpayers. Contrary to it, the effects of taxation refers to their real burden.¹⁹⁰

Again, the natures of the commodity being taxed in Nigeria have an effect on consumption. This is because decrease in consumption due to taxes may be beneficial or harmful. If on account of taxes, prices of necessities of life or conventional necessities go up, they will have bad effect. These goods are mostly consumed by the poor. An example of such products is foodstuff. Despite the imposition of taxes, demand for these goods remains inelastic. In order to maintain the consumption of these goods as before, they will either borrow or cut down the consumption of comforts, like milk, fruits etc. Demand of these goods being elastic, their consumption falls with rise in price. Taxes on luxuries are considered desirable because demand for these goods is elastic and when their prices rise due to imposition of taxes, their consumption goes down. Fall on consumption of these goods is beneficial to the society and incidence of taxes levied on these goods falls mostly on rich people who are capable of bearing this burden.¹⁹¹ Taxes on intoxicants and harmful goods are also beneficial to the society e.g. taxes on alcohol and cigarettes. In other words, prices of these goods rise and their consumption falls resulting in increased social efficiency.

In summary, the study of the impact and incidence of tax is very important in tax administration. The tax system is not merely aimed at raising a certain amount of revenue, but the aim is to raise it from these sections of the people who can best bear the tax. The aim is to secure a just distribution of the tax burden.¹⁹² This obviously cannot be done unless an effort is made to trace the incidence of each tax levied by the government. It is absolutely necessary to know who pays it ultimately in order to find out whether it is just to ask him to

¹⁹⁰ *Ibid* P.420.

¹⁹¹ P Mieszkowski, 'Tax Incidence Theory' (1969) *JEL*, 1103.

¹⁹² T Seth, Incidence of Taxation, meaning, Impact and other details, www.economicdiscussion.net/taxes/incidence-of-taxation-meaning-impact-and-other-details/1942 accessed on 5th September, 2014.

pay it, or whether the burden imposed on him is according to the ability of the tax-payer or not.

CHAPTER THREE

THE NIGERIAN TAX SYSTEM AND ITS ADMINISTRATION

Tax administration can be described as all the machinery put in place to determine, monitor and enforce the collection of taxes by government of a country.

Tax administration is the process of assessing and collecting taxes from individuals and companies by the relevant tax authorities, in such a way that correct amount assessed is collected efficiently and effectively with minimum tax avoidance or tax evasion.¹⁹³ Tax administration implies tax policy making and execution. That is, it involves planning, organization, commanding, coordination and control and its purpose is to fully implement tax laws, programmes and proposals. In the long-run, this means collecting all the legislated tax with minimum cost. In the short-run period, it implies optimizing the revenue collectible with the resources the government makes available to the administrator.¹⁹⁴

Furthermore, Tax administration ‘involves all the principles and strategies adopted by any government in order to plan, implore, collect, account and coordinate personnel charged with the responsibility of taxation.’¹⁹⁵ It also includes the effective use of tax revenue for efficient provision of necessary social amenities and other facilities for the taxpayers.¹⁹⁶ There is no doubt that tax administration and collection is a major problem facing taxation in the world¹⁹⁷ and some of these problems will be analyzed in the course of this chapter.

¹⁹³ L Soyode & S. O Kajela, *Taxation – Principles and Practice in Nigeria* (Ibadan: Silicon Publishing Company, 2006) P. 12.

¹⁹⁴ EJC Duru & E O Tandu, ‘*Tax Policy and Administration in Nigeria: The way Forward*’ in EA Obi, *et al* (ed), *State and Economy* (Onitsha: Book Point Publishers Ltd, 2005) P. 340.

¹⁹⁵ G N Ogbonna & Ebimobowei, ‘Impact of Tax Reform and Economic Growth of Nigeria: A Time Series Analysis’, *Current Research Journal of Social Sciences*, (2012) 4 (1-2), 1-4.

¹⁹⁶ I Omesì *et al*, ‘National Tax System and Administration: Implications of Multiple Taxation on the Economy’ (2014) *European Journal of Business and Management*, 2-3.

¹⁹⁷ Jibrin *et al*, Impact of Petroleum Profit Tax on Economic Development of Nigeria, *British Journal of Economics, Finance and Management*, (2012) , 5(2), 60-70.

3.1 Tax Administration in Nigeria

Tax administration in Nigeria is carried out by the various tax authorities as established under the relevant tax laws. ‘Tax authority’ as defined in Section 108 of the Personal Income Tax Cap P8 LFN 2004 (As Amended) (PITA) means ‘the Federal Board of Inland Revenue’, ‘the State Board of Inland Revenue’ or the Local Government Revenue Committee’. However, the tax authority as defined above in addition to Joint Tax Board, the Joint State Revenue Committee and the Tax Appeal Tribunal together constitute the organs of tax administration in Nigeria. The administration of tax in Nigeria is vested in the various tax authorities depending on the type of tax under consideration and those bodies are reposed with power of administration and collection of the various taxes. These authorities differ from one tier of government to another. While the Federal Government or the National Assembly has a preponderance of taxing powers; the administration and collection of these taxes is usually spread through the three tiers of government.¹⁹⁸

Under this sub-head are the various recognized authorities or bodies reposed with the administration and collection of taxes.

3.1.1 The Federal Inland Revenue Service Board

The Federal Inland Revenue Service Board through its operational arm, the Federal Inland Revenue Service (FIRS) deals with corporate bodies as well as Personal Income Tax for certain categories of individuals viz: Members of the Armed Forces, the Nigeria Police, Residents of the Federal Capital Territory Abuja, External Affairs Officials and Non-resident individuals.¹⁹⁹ This body was established by the Federal Inland Revenue (Establishment) Act, No 13 of 2007 and by Section 1 vested

¹⁹⁸ *Lagos State Internal Revenue Board v Motorola Nig Ltd.* (2012) LPELR – 14712 (CA)

¹⁹⁹ Federal Inland Revenue Service (Establishment) Act, 2007, S. 1 & 2; Taxes and Levies (Approved List of Collection) Act Cap T2 Laws of the Federation of Nigeria (LFN) 2004 (As amended) Part 1, Schedule 1.

with the power to do all such things as may be deemed necessary and expedient for the assessment and collection of taxes due to the Federal Government.

The jurisdiction of FIRS is limited to the taxes listed in Part 1, Schedules 1 of the Taxes and Levies (Approved List for Collection) Act²⁰⁰. They include:-

- (1) Companies Income Tax
- (2) Withholding tax on companies, residents of the Federal Capital Territory, Abuja and non-resident individuals
- (3) Petroleum Profits tax
- (4) Value Added tax
- (5) Education tax
- (6) Capital gains tax on residents of the Federal Capital Territory, Abuja, bodies corporate and non-resident individuals
- (7) Stamp duties on bodies corporate and residents of the Federal Capital Territory, Abuja
- (8) Personal Income tax in respect of
 - (a) Members of the armed forces of the federation;
 - (b) Members of the Nigerian Police Forces;
 - (c) Residents of the Federal Capital Territory, Abuja; and
 - (d) Staff of the Ministry of Foreign Affairs and non-resident individuals.²⁰¹

The FIRS Board is the umbrella authority for tax administration for all forms of tax legislation as all of them adopt the body. The Federal Inland Revenue Service started as part of a colonial tax organization under the name Inland Revenue Department of Anglophone West Africa. The department's scope of administration

²⁰⁰ *Ibid*; By virtue of S.2, 25 and 68, the FIRS is charged with the administration of Federal Tax Statutes such as Personal Income Tax Act, Companies Income Tax Act, Withholding Tax Act, Value Added Tax Act etc.

²⁰¹ *AG & CJ Anambra State v Registered Trustees of the Cattle Dealers Association Lagos State* (2016) LPELR

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40474 (CA)

then covered Nigeria, Ghana, Sierra Leone and the Gambia.²⁰² In 1943, the Nigerian Inland Revenue Department was carved out of the Inland Revenue Department of Anglophone West Africa and established as an autonomous body²⁰³ under the supervision of the Commissioner of the income tax. An official of the United Kingdom Inland Revenue Department, WAB Carte was appointed as the first commissioner of income tax of the new agency, a position he held until 1951 when he was succeeded by Traser G. Selby. In 1958 as one of the recommendations of the Raisman Commission, the Income Tax Administration Ordinance No. 39 of 1958 was passed.²⁰⁴ The ordinance among other things provided for the establishment of the Federal Board of Inland Revenue, however full effect was only given to this provision under the Companies Income Tax Act (CITA) 1961. The Act also created a Body of Appeal Commissioners to resolve tax related disputes. In 1993, the Finance (Miscellaneous Taxation Provisions) Act No. 3 and Decree No. 104 established the Federal Inland Revenue Service (FIRS) as the operational arm of the FBIR and received the functions of the Joint Tax Board, respectively.²⁰⁵

However, the history of tax administration in Nigeria changed dramatically in 2007 with the granting of financial and administrative autonomy to the Federal Inland Revenue Service through the passage of the Federal Inland Revenue Service (Establishment) Act 2007. This milestone in the history of taxation and tax administration in Nigeria was a result of the recommendation of the study and working groups on Nigerian tax system.²⁰⁶

²⁰² I O Okaura (ed), *Federal Inland Revenue Service and Taxation Reforms in Democratic Nigeria* (Ibadan: Safari Books Ltd, 2012) P. 25.

²⁰³ *Ibid.*

²⁰⁴ FIRS, History of FIRS <http://firs.gov.ng/About-us/History_of_FIRS.aspx> accessed on 2nd February, 2015.

²⁰⁵ *Ibid.*

²⁰⁶ *Ibid.*

The major arrangement and what existed hitherto is that whereas under the previous 2007 scenario, corporate personality was vested in the Federal Board of Inland Revenue and the Federal Inland Revenue Service functioned merely as an operational arm of the Federal Board of Inland Revenue, but since the passage of the 2007 Act, corporate personality is now vested in the Federal Inland Revenue Service.²⁰⁷ The major feature of the Federal Inland Revenue Service Establishment Act 2007 is that it granted autonomy to the service. Administratively speaking, the service is no longer dependent on the Federal Civil Service Commission in the areas of recruitment, promotion, welfare and discipline. These issues are now determined by the FIRS Board.²⁰⁸

The board is the governing apparatus of the service, having overall supervision of the service and specifically having the following powers and functions:²⁰⁹

- a) provision of general policy guidelines relating to the functions of the service;
- b) manage and superintend the policies of the service on matters relating to the administration of the revenue assessment, collection and accounting system under this Act or any enactment or law;
- c) review and approve the strategic plans of the service;
- d) employ and determine the terms and conditions of service including disciplinary measures of the employees of the service;
- e) stipulate remuneration, allowances, benefits and pensions of staff and employees in consultation with the National Salaries , Income and wages commission; and

²⁰⁷ B R Kachollom, An Evaluation of the Performance of Federal Inland Revenue Service <<http://kubanni.abu.edu.ng.8080/jspui/bitstream>> accessed on 2nd February, 2015.

²⁰⁸ *Ibid.*

²⁰⁹ Federal Inland Revenue Service (Establishment) Act, 2007, S. 7.

- f) do such other things which in its opinion are necessary to ensure the efficient performance of the functions of the service.

The composition of the FIRS Board is completely different from the composition of the erstwhile FBIR. First, apart from the chairman of the FIRS who also doubles as the chairman of the FIRS Board, no other staff of the service sits in the new Board unlike under the FBIR scenario where directors and heads of department were members of the FBIR. Second, two new institutional members have been included on the FIRS Board that did not belong to the defunct FBIR. These are the Central Bank of Nigeria and the Attorney General of the Federation. Third, unlike the FBIR, geo-political representation has been introduced on the FIRS Board. Finally, the chairman of the Service/Board may be appointed outside the service unlike under the FBIR where the chairman has to be appointed from within the service.²¹⁰

By virtue of Section 3(2) of the Federal Inland Revenue Service (Establishment) Act,²¹¹ the FIRS Board now consists of the following fifteen (15) members:

- a) The Executive chairman of the FIRS, who shall be a person experienced in taxation to be appointed by the president as chairman;
- b) six members with relevant qualifications and expertise appointed by the president to represent each of the six geo-political zones of the country;
- c) a representative of the Attorney-General of the Federation;
- d) the Governor of the Central Bank of Nigeria or his representative;
- e) a representative of the Minister of Finance not below the rank of a Director;

²¹⁰ I O Okaura *op cit*, P. 389.

²¹¹ *Op cit*.

- f) the chairman of the Revenue Mobilization, Allocation and Fiscal Commission or his representative who shall be any of the commissioners representing the 36 states of the Federation;
- g) the group Managing Director of the Nigerian National Petroleum Corporation or his representative who shall not be below the rank of a Group Executive Director of the corporation or its equivalent;
- h) the Comptroller-General of the Nigerian Customs Service or its representative not below the rank of Deputy Comptroller-General;
- i) the Registrar-General of the Corporate Affairs Commission or his representative not below the rank of a Director; and
- j) the Chief Executive Officer of the National Planning Commission or his representative not below the rank of a Director.

All other auxiliary administering bodies and other tax legislations adopt the body. These bodies have the chairman of the Federal Inland Revenue Service as the chairman of these bodies. For instance, the Joint Tax Board established under Section 86 of the Personal Income Tax²¹² has the chairman of the FIRS as its chairman. Similarly, Section 7 of the Value Added Tax Act²¹³ reposes the management of the tax on the FIRS, while the Value Added Tax Technical Committee established under Section 21 of the VAT Act also has the chairman of the FIRS as its chairman. Also, by virtue of Section 43 of the Capital Gains Tax Act (CGTA)²¹⁴ and the only schedule to the CGTA which adopts the administrative provisions of CITA, the FIRS is equally the administering authority. Further by the combined effect of Section 2 and 3 of the Petroleum Profit Tax Act (PPTA), the administration of the PPTA is also reposed on

²¹² Personal Income Tax Act (PITA) Cap P8 Laws of the Federation of Nigeria (LFN) 2004 (As amended).

²¹³ Cap VI Laws of the Federation of Nigeria 2004 (As amended).

²¹⁴ Cap CI, laws of the Federation of Nigeria, 2004.

the FIRS and finally, the Tertiary Education Trust Fund (Establishment, etc) Act, 2011²¹⁵ too is administered by the said Board.²¹⁶

3.1.2 The Joint Tax Board

The Joint Tax Board (JTB) was created by virtue of Section 86(1) of the Personal Income Tax Act 1993 (as amended). The Board helps to coordinate the various aspects of taxation between all the states of the Federation as well as promote uniformity in the rates and other indices relating to personal income tax in Nigeria. The 1999 Constitution (As amended) by virtue of Sections 2 and 3(1) recognize 36 states and the Federal Capital Territory and each state has its own method of tax administration.²¹⁷ The Joint Tax Board is therefore the unifying body for tax administration amongst these states so as to avoid cases of conflicts or double taxation.

Section 86(2) of PITA 2004 (as amended) provides that the Board shall be headed by the executive chairman of the Federal Board of Inland Revenue (now Federal Inland Revenue Service) who also act as the chairman of the board.²¹⁸ All the states of the Federation must also nominate a member via the commissioner responsible for income tax of the state and such person shall be a person knowledgeable in tax matters.²¹⁹ Usually, the chairman of the FIRS Board represents their respective states. Also, the secretary to the Board who shall not be a member of the Board and a legal adviser. He must be an experienced Senior Officer in income tax matters.²²⁰ Another member who shall always be in attendance at J.T.B. meetings

²¹⁵ Act No. 16, 2011.

²¹⁶ JAA Agbonika, *Problems of Personal Income Tax in Nigeria*, (Ibadan: Ababa Press, 2012) P.203

²¹⁷ *Ibid.*

²¹⁸ PITA S. 86(2) (a).

²¹⁹ *Ibid.*, S. 86(2) (b).

²²⁰ *Ibid.*, S. 86(3) (4).

is the Legal Adviser of FIRS Board who shall serve thereat as the adviser to the JTB.²²¹

The functions of the Board as spelt out in Section 86(9) of PITA 2004²²² are as follows:

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

²²¹ *Ibid.*, S. 86(8).

²²² *Ibid.*

The Board meets on quarterly basis to appraise the performance of the members and to deliberate on Tax issues of National importance to develop new strategies to carry out its functions.²²³ In view of the above important stated functions of the Board in advising all tiers of Government on tax matter so as to evolve an efficient tax administration system in the country and also resolving all areas of conflict on Tax Jurisdiction among member state,²²⁴ the researcher suggests that membership of the Board should be expanded to compulsorily include all chairmen of the various state Boards of Internal Revenue since these chairman are at the helm of administration of taxes in their respective states.

3.1.3 The State Board of Internal Revenue

The State Board of Internal Revenue in each state is another tax authority vested with the administration of tax in each state of the federation. It is established by virtue of Section 87(1) of the Personal Income Tax Act. The State Board of Internal Revenue through its operational arm, the State Internal Revenue Service collects taxes from individuals and partnerships resident in the state. Taxes collected go to the State Government.²²⁵ Section 87(1) of PITA provides that the State Board shall comprise:

- (a) the chairman of the State Internal Revenue Service as chairman of the State Board who shall be experienced in matters of taxation and a member of a relevant recognized professional body, appointed by the State Governor, subject to confirmation by the State House of Assembly;
- (b) directors from within or outside the state service;
- (c) a director from the State Ministry of Finance;

²²³ Joint Tax Board, About JTD <www.jtb.gov.ng/about-jtb> accessed on 3rd February, 2015.

²²⁴ *Ibid.*

²²⁵ M A Abata, 'The Impact of Tax Revenue on Nigerian Economy (Case of Federal Board of Inland Revenue)' (2014), *Journal Of Policy and Development Studies*, Vol 1, No. 1, 113.

- (d) the legal adviser to the state service;
- (e) three other persons appointed by the State Governor on their personal merit, one each representing a senatorial District in the state;
- (f) the secretary of the state service who shall be an ex-officio member.

The functions of the Board include:

- a) Ensuring the effectiveness and optimum collection of all taxes and penalties due to the government under the relevant laws,
- b) Doing all things as may be deemed necessary and expedient for the assessment and collection of the tax and shall account for all amounts so collected,
- c) Making recommendations where appropriate to the Joint Tax Board on tax policy, tax reform, tax legislation, tax treaties and exemptions as may be required from time to time.
- d) Controlling the management of the State Inland Revenue Service on matters of policy, subject to the provision of the law setting up the service,
- e) Appointing, promoting, transferring and imposing discipline on employees of the state service.

Furthermore, quorum of the meeting is formed with any five members of the State Board one of whom shall be the Chairman or a Director.²²⁶

The Secretary is responsible for summoning a meeting of the State Board whenever the business requiring its attention so warrants or on the request of a member.²²⁷ A majority decision of the members on any matter obtained by him in written correspondence shall be treated in all respects as though it were a decision of

²²⁶ PITA, S. 87(3).

²²⁷ *Ibid*, S. 87(6).

the State Board in actual meeting unless any member has requested the submission of the matter to such meeting.²²⁸

Again, while the Federal Government shall provide the office to be used by the Board, the recurrent expenses such as emoluments of the secretary and other members of staff shall be shared between the Federal and State Government either in proportion to their respective tax revenues or as may be agreed upon by the Governments.²²⁹ Also, the State Board of Internal Revenue may retain from the tax collected an amount not exceeding 5% to defray cost of collection and administration subject to approval of the State Assembly.²³⁰ Furthermore, by virtue of Sections 89 and 90 PITA, the Act has created **two committees** to ensure administrative efficiency. These committees are:

(a) The Technical Committee of the State Board

The Technical Committee of the State Board comprises of the chairman as Board chairman, directors within the state service, the legal adviser and secretary of the state service.²³¹ The functions of the Technical committee of state Board include:²³²

- (i) The power to co-opt additional staff from within the service in the discharge of its duties.
- (ii) Consider all matters that require professional and technical expertise and make recommendation to the state Board.
- (iii) Advise the state Board on all its power and duties specially mentioned in Section 87 of the Act.

²²⁸ *Ibid*, S. 87(7).

²²⁹ *Ibid*, S. 86(10).

²³⁰ *Ibid*, S. 88(1)(b).

²³¹ *Ibid*, S. 89(1)

²³² *Ibid*, S. 89(2).

- (iv) Attend to such other matters as may from time to time be referred to it by the Board.

(b) The Joint State Revenue Committee

This committee was created by Section 92 of the Personal Income Tax Act. This committee shall comprise of the chairman of the State Inland Revenue Service as chairman, a representative of the Bureau on Local Government Affairs not below the rank of a director, a representative of the Revenue Mobilization Allocation and Fiscal Commission, as an observer, the state sector commander of the Federal Road Safety Commission, as an observer, the legal adviser of the state Inland Revenue Service, and the secretary of the committee who shall be a staff of the State Inland Revenue Service.²³³

By virtue of section 93 PITA, the functions of the committee are as follows:

- (i) Implement decisions of the Joint Tax Board.
- (ii) Advise the Joint Tax Board of the State and Local Government on revenue matters.
- (iii) Harmonize tax administration in the state.
- (iv) Enlighten members of the public generally on State and Local Government revenue matters;
- (v) Carry out such other functions as may be assigned to it by the Joint Tax Board.

3.1.4 The Local Government Revenue Committee

This committee was created under Section 90 of the PITA. The section provides that: - “There shall be established for each local government area of a state a

²³³ *Ibid*, S. 92.

committee to be known as the Local Government Revenue Committee (in this Act referred to as the Revenue Committee”).

Prior to 1996 when an amendment to the Personal Income Tax Decree (now Act) was made by the then military government, the Local Governments had no statutorily recognized tax authorities. Their respective revenue departments were the only bodies responsible for collection of taxes, rates and levies. However, the Local Government Revenue Committee was created under the Personal Income Tax Act, to assist in collection of taxes and levies.²³⁴

The Revenue Committee comprises of the Supervisor for finance as chairman, three local government councilors as members, and also two other persons experienced in revenue matters to be nominated by the chairman of the local government on their personal merit.²³⁵ The functions of the Revenue Committee include the assessment and collection of all taxes, fines and rates under the jurisdiction of the local government and accounting for all amounts so collected in a manner to be prescribed by the chairman of the local government.²³⁶

Furthermore, by virtue of S. 91(2) PITA, the committee shall be autonomous of the local government treasury. The researcher however states that the autonomous nature of the committee as posited does not arise as the chairman of the committee is most often than not the executive chairman of the local government and recommends an amendment of Section 91(2) PITA to clearly specify the chairman meant under it.

Finally, from all indications, it would seem that there is a proliferation of administrative bodies with the same composition and different functions under the Personal Income Tax Act. These committees and Board under whatever auspices they are known for have their meetings at intervals at the expense of the much needed

²³⁴ JAA Agbonika, *op cit.* P. 215.

²³⁵ PITA, *ibid.*, S. 90(2).

²³⁶ *Ibid.*, S. 91.

Government revenue thereby increasing administrative costs. It is recommended therefore that such committees like the Technical committee of the state Board and the Joint State Revenue Committee created under Section 89 and 92 of PITA respectively be repealed.

As a matter of fact, the proliferation of all these administrative bodies also points to the direction that the Personal Income Tax Act is not simple and easy to understand and the researcher also recommends simplification of the tax laws as is the trend in developed countries like Australia to enable proper administration under the Self-Assessment Regime in Nigeria.

3.1.5 **The Federal Capital Territory Inland Revenue Service Board**

The Federal Government recently enacted a new law, the Federal Capital Territory Inland Revenue Service Act, 2015. The Act establishes the Federal Capital Territory Inland Revenue Service (FCTIRS or the Service) charged with the responsibility of assessing and collecting taxes in the FCT. This power was hitherto vested in the Federal Inland Revenue Service (FIRS) by virtue of Section 2(1) (b) of the Personal Income Tax Act and the FIRS (Establishment) Act.

The new law establishes the Federal Capital Territory Inland Revenue Service Board for the service²³⁷ made up of 14 members including 6 persons from the 6 geopolitical zones, two of whom must be women. All members of the Board, other than the chairman, shall be part time members.²³⁸

The functions of the Board as stated in S. 7(1) of the Act are as follows:-

- (a) provide the general policy guidelines relating to the functions of the service;

²³⁷ Federal Capital Territory Internal Revenue Service Act, 2015 S. 3(1).

²³⁸ *Ibid*, S. 3(2).

- (b) manage and superintend the policies of the service on matters relating to the administration of the revenue assessment, collection and accounting system under this Act or any enactment or law;
- (c) review and approve the strategic plans of the service;
- (d) employ and determine the terms and conditions of service including disciplinary measures of the employees of the service;
- (e) make recommendations, where appropriate, to the Joint Tax Board on tax policy, tax reform, tax registration and exemptions as may be required from time to time;
- (f) stipulate remunerations, allowances and benefits of staff and employees in consultation with the minister, and
- (g) do such other things, which, in its opinion, are necessary to ensure the efficient performance of the functions or the service under this Act, from time to time.

The first schedule to the Act listed the legislation to be administered by the FCT IRS to include the Personal Income Tax Act, Capital Gains Tax Act, Stamp Duties Act, Federal Capital Property Tax regulations and all enactments or laws imposing taxes and levies within the FCT.

Furthermore Section 8(1) (g) of the Act requires the FCT IRS Board to issue a taxpayer identification number to every person taxable in the FCT. Also S. 7(1)(f) requires the Board to stipulate remuneration, allowances and benefits of staff in consultation with the FCT Minister while S. 7(2)(e) grants powers to the Board to determine the terms and conditions of service (including remuneration, allowances, benefits and pensions) of staff after consultation with the Federal Civil Service Commission. These sections the researcher agrees bring the full autonomy of the FCT

IRS in question.²³⁹ In conclusion, if the FCT gets it right, it can easily become the reference point for tax administration in Nigeria and across Africa as being in the capital city means its impact can easily trickle down to the rest of the country as federal lawmakers, ministers, president, government agencies and so on pay the right amount of tax on all their income and allowances.²⁴⁰

3.2 Distribution of Taxing Powers in Nigeria.

Tax power is the power to impose or levy tax.²⁴¹ It is power inherent in sovereignty and unlimited in the absence of constitutional restrictions but subject in its exercise to the discretion of the authorities in whom it is reposed. Taxing powers can also be defined as constitutionally-granted power of government to impose and collect taxes, as the means of raising revenue within its jurisdiction.²⁴² It is noteworthy that taxing power is twofold: (a) the power to impose tax, and (2) the power to collect tax

The appropriate arm of the sovereign, reposed with the power to impose taxes is the legislature. The legislative arm of government enacts laws imposing taxes and tax legislation. In other words, unless the legislature makes a law on the payment of a particular tax, such tax should not be demanded by the government.²⁴³

In a federation like Nigeria, the concept of inter-governmental fiscal power is based in three-tier tax structure – Federal, State and Local Government, each of which has different tax jurisdiction for the enactment of tax laws, formulation of tax policies,

²³⁹T Oyedele, A new tax authority has been established for the Federal Capital Territory <proc.com/ng/en/assets/pdf/tax-watch-June-2015-fct-Internal-revenue-service-act.pdf> accessed on 22nd January, 2016.

²⁴⁰ *Ibid.*

²⁴¹ J A A Agbonika, *op cit*, P. 195.

²⁴² Business Dictionary <www.businessdictionary.com/definition/taxing-power.html> accessed on 10th February, 2015.

²⁴³ JAA Agbonika, *loc cit*.

and tax administration.²⁴⁴ As at 2018, 55 different taxes and levies are shared by all three levels of government. Each of the three tiers of government has the sphere clearly spelt out in the Taxes and Levies (Approved List for Collection) Act 2004 (As Amended). The most veritable tax handles are under the control of the Federal Government while the lower tiers are responsible for the less buoyant sources.²⁴⁵

The taxing powers of Federal and State Governments derive directly from the Nigerian Constitution. The Federal Government is the controlling machinery, determining what kind and quantum of taxes and levies should be imposed by each tier of government.²⁴⁶

Basically, the power to tax is one of the plenary powers of the government which need not be formally conferred upon it. In a single tier system, i.e. unitary system of government, there is no problem with the definition of the power. Consequently, such a government can impose any form of tax for any purpose and at whatever rate that pleases its fancy. In effect, such government is not subject to any constitutional limitation. The only limitation one can possibly infer is perhaps practical and that is, it may be restricted by practical considerations like ease of assessment and collection; the effect such tax may have on the political fortune of the government especially if it operates in a bi-party or multi-party democracy where the government has to seek the mandate of the electorate on a periodic basis.²⁴⁷

However in a federal setting, because of the inherent conflict always existing between the central and the constituent governments, it is essential that powers are

²⁴⁴ A Odusola, Tax Policy Reforms in Nigeria, United Nations University, *Unu-Wider, Research paper No. 2006/03*.

²⁴⁵ C O Akembor & L o Arugu, 'State Government Taxation: Empirical Evidence From Nigeria', (2014) *The Business & Management Review*, Vol 4, No 3, 63.

²⁴⁶ A Uzo-Peters, Inequalities In The Constitutional Allocation Of Taxing Rights In Nigeria, <File:///c:/users/new/Downloads/SSRN-Id2919791.pdf> accessed on 10th February, 2016.

²⁴⁷ Tax Laws; Analytical approach on double taxation in Nigeria, <www.lawprojectfameuk.blogspot.nl/2010/09/tax-law-analytical-a[[raoch-on-double.html]> accessed on 10th February, 2016.

allocated and defined in the fundamental laws (in this case, The Nigerian Constitution) delimit the extent to which each level of government can go. Beyond this limit, its action is regarded as being ultra vires and unconstitutional.²⁴⁸ Apart from the version of elimination or minimization of conflicts between the central and the constituent governments, the need to define allocation of powers particularly in the field of taxation is underscored by the interest of the taxpayers for it is not in the nature of man to voluntarily self-assess and part with his money especially when it is to an abstract entity such as governments, therefore, there is the need for certainty in the area of who has what powers to tax in any particular circumstances.

3.3 Division of Tax Powers between the Federal, State and Local Government

3.3.1 Federal Taxing Powers

The powers to make laws for the imposition of tax are vested by virtue of Section 4(2) of the 1999 Constitution of the Federal Republic of Nigeria (As amended). Section 4(2) provides thus:

The National assembly shall have power to make laws for the peace, order and good government of the federation or any part thereof with respect to any matter included in the exclusive legislative list set out in part 1 of the second schedule to this constitution.

Although there are multifarious taxes in Nigeria only four of them are specifically mentioned by name in the Exclusive duties. The items under the exclusive legislative list expressly relating to taxation are items 16 relating to customs and excise duties and item 25 relating to export duties. In addition, item 58 of the exclusive legislation list vests the Federal Government with powers of taxation on

²⁴⁸ *AG of Cross River State & Anor v Ojua* (2010) LPELR – 9014 (CA).

Stamp Duties and item 59 vests the Federal Government with powers on taxation of incomes, profits and capital gains.²⁴⁹

It is important to note that not all these taxes per se are collected by the Federal government or even accrue to it. In fact, only custom duties, excise duties, export duties, companies' income tax and petroleum profit tax are administered by the Federal government through its revenue agencies. The exclusive control of the federal government over these taxes is quite logical. Federalism presupposes the existence of a minimum degree of fiscal economic cohesion and uniformity. The power over the exclusive legislative list by the Federal government is however to be exercised to the exclusion of the Houses of Assembly of States.²⁵⁰

In addition, to power to legislate on matters in the exclusive legislative list to the exclusion of the State House of Assembly, the National Assembly also exercises power to legislate on any matter in the concurrent legislative list set out in the first Column of Part II of the Second schedule to the Constitution.²⁵¹

Unlike in the case of the Federal government, no tax is specifically reserved for the State government under the 1999 Constitution. The only reference in the Constitution to the power of the State governments in relation to taxation is constrained in Item D, 9 and 10 of the concurrent legislative list set out in the First Column of Part II of the second schedule to the Constitution.

3.3.2 State Government Taxing Powers

To determine the scope of the taxing powers of the State, it could impliedly be derived from the general provision conferring legislative powers on states which provides under S.4 (7) of the Constitution as follows:

²⁴⁹ Part I, Second Schedule, 1999 Constitution of the Federal Republic of Nigeria (As amended).

²⁵⁰ S. 4(3), 1999 Constitution (as amended)

²⁵¹ *Ibid*, S. 4(7).

The House of Assembly of a State shall have powers to make laws for the peace, order and good government of the state or any part thereof with respect to the following matters, that is to say:-

- (a) Any matter not included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution;
- (b) Any matter included in the Concurrent Legislative List set out in the First Column of Part II of the Second Schedule to this Constitution to the extent prescribed in the second column opposite thereto; and
- (c) Any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.

It is observed from the above provisions that the state governments have plenary powers to make laws on any subject matter that is not on the exclusive list. That is what is referred to as 'the residual list'. Their power in respect of those on the Concurrent Legislative List is however subject to the doctrines of inconsistency and covering field. In other words, in respect of matters in the Concurrent Legislative List, the inconsistency rule stated in Section 4(5) of the Constitution which is to the effect that any law made by the State House of Assembly which is in conflict with the law made by the National House of Assembly shall to the extent of the inconsistency be void applies.²⁵²

One of the implications of the techniques of division of legislative powers between the Federal and State government is that while the taxing power of the Federal government can be specifically enumerated, those of the state are left open-ended and states like Lagos State are making huge revenues from taxes like consumption taxes, luxury taxes, property taxes etc and recently its internally

²⁵² Tax Law; 'Analytical approach on double taxation in Nigeria', *op cit*, *AG Ogun State v Abberuaba* (1985) LPELR – 3164 (SC)

generated revenue (IGR) from taxes peaked at 75 percent, surpassing the Federal governments' 20 percent.²⁵³

3.3.3 Local Government Taxing Powers

As regards local government, the view held by majority of people is that Section 2(2) of the 1999 Constitution excludes Local Governments from partaking in legislative powers. However, S. 7(1) of the Constitution guarantees a system of local government by democratically elected local government councils and also the duty to participate in the economic planning and development of its area. The states are mandated to confer on the local governments by legislation some functions in addition to those specified under the Fourth Schedule to the Constitution. The functions conferred must be by law and must be matters within the residual list which States have powers to legislate on.

The enhanced status of the Local Government Council raised the issue on whether or not they have independent power to raise their own taxes. As a matter of strict conceptual analysis, Nigeria Federalism is a partnership between the Federal government and the State. Hence Section 2(2) of the Constitution provides that 'Nigeria shall be a Federation consisting of states and a Federal Capital Territory'. Therefore, the division of legislative power under S. 4 of the Constitution involves only the Federal and state governments. Again, matters that the Constitution mandates the state governments to vest in the local government councils are only those within the residual matters of the states. The implication of this is that local governments have no legislative power of their own and cannot impose any tax on any subject matter whatsoever.

²⁵³ K Adaramola, Lagos surpasses FG as Tax Revenue surges <www.venturesafrica.com/lagos-surpasses-fg-as-tax-surges-to-75-in-revenue/> accessed on 15th February, 2015.

Also noteworthy is the fact that the provision of the Schedule 4 of the Constitution do not directly vest the local government councils with the power to collect taxes rather a state government must first enact appropriate enabling laws, which will determine the taxable persons, assessment procedures and method of collection, recovery and penalties for delinquency. And where such laws have been enacted, a local government council will exercise power within the limits prescribed by the state enabling law.²⁵⁴

In conclusion, it has been seen that the taxing powers of the various tiers of government is spelt out in the Constitution. The states normally get periodic allocation from the central government in addition to the revenue internally generated through the state board of internal revenue for the administration of the state. From the state, the local government equally gets periodic allocation in addition to the revenue generated locally from the local people through the revenue department of finance in the local council for the administration of the people. This system has led to perennial setbacks as it brings about uneven economic development of the country. The inequitable distribution of nature in terms of natural resources makes some states and local governments very backward in the scheme of things since their only hope is on the insufficient periodic allocation from either the federal or state government as the case may be.

Currently in Nigeria, most state governments are facing financial problems. The senate in 2014 considered a motion entitled: Looming Danger of Bankruptcy in States: The Need for Fiscal Evaluation' which drew attention to fiscal challenges and looming dangers of insolvency and bankruptcy confronting states in Nigeria.²⁵⁵ The

²⁵⁴ JAA Agbonika *op cit*, P. 198, *Shell Petroleum Development Company of Nigeria Limited v Burutu Local Government Council* (1989) 9 NWLR Pt 165, 318.

²⁵⁵ A Sanni, 'Current Law and Practice of Value Added Tax in Nigeria' (2012) 5 *British Journal of Arts and the Social Sciences*, 186; A Uzo-peters *op cit*.

senate raised certain fundamental issues which included the call for an urgent review of revenue sharing formula among the three tiers of government among others. This compelled an argument in favour of taxation at state government level, granting states, the jurisdiction to tax certain activities that are sourced from their state, on the basis of economic allegiance. The recent amendment of the Taxes and Levies (Approved List for Collection) Act by the National Assembly thereby enlarging the taxes collectable by the state governments is commendable. However, it is recommended that a critical review be done of the basis of the division of taxing powers in Nigeria under the Constitution as a way that will guarantee the ability of each level of government to raise its independent revenue to meet its responsibilities.²⁵⁶

3.4 **Implications of Multiple Taxation in the Nigerian Tax System *Viz a Viz* the Self - Assessment System**

A major problem facing the SAR in Nigeria is the multiplicity of taxes. Multiple taxation seems to be a Nigerian coinage which is yet to acquire international recognition. By its usage in Nigeria, multiple taxation is the imposition or collection of more than one tax on the same tax base by different taxing authority. Multiple taxation is said to occur when the same income is subjected to more than one treatment.²⁵⁷ From the general usage of multiplicity of taxes by stakeholders, it can be said to manifest in at least four ways.

First, it refers to the various unlawful compulsory payments being collected by the local and state governments without appropriate legal backings through intimidation and harassment of the payers. Collection of it is characterized by the use of stickers, mounting of road blocks, use of revenue agents/consultants including

²⁵⁶ *Ibid.*

²⁵⁷ F Izedonmi, 'Eliminating Multiple Taxation in the Capital Market: the capital market perspective', A paper delivered at the University of Benin, in 2010, P. 1.

motor parks tout. Second, it refers to situations where a taxpayer is faced with demands from two or more different levels of government either for the same or similar taxes.²⁵⁸ Third, the term refers to where the same level of government imposes two or more taxes on the same tax base. A good example is payment of Companies Income Tax, Education Tax and Technology levy by the same company. Fourth, it refers to cases whereby various government agencies impose taxes in the form of fees or charges.²⁵⁹

Individuals and corporate bodies complain about the ripple effects associated with the duplication of tax.²⁶⁰ Multiple taxation has not only become a cancerous leach in the body of corporate entities in the economy but also constituted a major source of revenue leakages as illegal agents have exploited the lapses within the tax system to pursue their selfish interests.²⁶¹ The manufacturing industries or sector is not left out as ‘the manufacturing industries are confronted with multiple statutory levies and taxes which are clearly duplicate of what other tiers of government charge. Apart from the additional cost to the industries, the time spent discussing such levies constitutes a distraction to the operators of manufacturing industries in Nigeria. It also makes planning difficult since one is not sure of how many levies and taxes will be paid.²⁶² This issue of multiple taxes lead to non compliance in a Self-Assessment Regime as the tax regime in Nigeria is severely afflicted by the multiplicity of tax imposing and tax-collecting entities at Federal, State, and Local government levels. One of the principles underlying the imposition of tax is that it has to flow from an

²⁵⁸ Report of the Main Report of the Study Group on the Nigerian Tax System in Nigeria in ‘Nigeria Tax Reform In 2003 and Beyond’ July 2003.

²⁵⁹ A Sanni, ‘Multiplicity of Taxes in Nigeria: Issues, Problems and Solutions’ (2012) *International Journal of Business and Social Science*, 229.

²⁶⁰ A Odusola, ‘Tax Policy Reforms in Nigeria’, (2006) *World Institute for Development Economics Research*, 3.

²⁶¹ I Omesì, *op cit*, 239.

²⁶² A Dangote, Developing Manufacturing Industries in Nigeria, A paper delivered at the CBN First Annual Monetary Policy Conference on Growing the Nigerian Economy, Abuja on 5th to 6th November, 2001.

Act of the legislature, which means that tax has to be certain in an ideal tax administration. But this seems to be defeated by the current trend where government, ministries, agencies and parastatals at almost all levels of government have devised a means of generating revenue through the imposition of multiple and illegal ‘levies, charges and fees’. It is also not only worrisome that these fees, levies and charges are imposed in circumstances that gave them the coloration of taxes, but their imposition on the same subject matter is duplicated by the different levels of government.²⁶³

Different factors have been identified as responsible for multiple tax practices in Nigeria among which are: unfair revenue formula, dwindling of state income from the capital fund, unhealthy state rivalries, political patronage, source of reimbursing so called political god-fathers, lack of political will to stop multiple taxation by some state and local governments, poor equipping and training of revenue agencies staff and greed on the part of tax officials.²⁶⁴

A basic implication of multiple taxation is illegal and inappropriate taxation of taxpayers. The incidence of multiple taxation disregards the provision of the Taxes and Levies (Approved List for Collection) Act Cap T2, Laws of the Federation of Nigeria 2004. (As amended in 2015) previously referred to as Taxes and levies (Approved List for Collection) Decree No. 21 of 1998, which provides the taxes and levies collectible by the various tiers of government. Various Ministries Departments and Agencies (MDAS) of the Federal, State and Local tiers of government impose illegal and inappropriate taxes and levies in the form of illegal taxes and levies, excessive quantum of taxes demanded when the tax is legal, extra legal mode of

²⁶³ E Onyeaso, Multiple and illegal Taxes in Nigeria, <www.academic.edu/4366902/multiple-and-illegal-Taxes-in-Nigeria> accessed on 4th February, 2015.

²⁶⁴ C S Oboh, ‘Multiple Tax Practices and Taxpayers’ Non-compliance Attitude in Nigeria (2013) *International Research Journal of Finance and Economics*, 155. ; *AG of Cross River State & Anor v Ojua Esq* (2010) LPELR – 9014 (CA).

collection of such taxes. That is, display of lawlessness in the process of tax collection contrary to the procedures laid down in the relevant tax laws for tax collection. Some states and local governments utilize the services of security personnel and thugs to force taxpayers to pay taxes and levies and sometimes business premises are shut down without prior notice or court order.²⁶⁵

Apart from the poor state of infrastructure in Nigeria, harsh and unstable policies, difficulty in clearing goods at the ports and high lending rates, the incidence of multiple taxation is a major hindrance to investments in the country. Telecommunication operators in Nigeria recently cried out and condemned various requests for taxes and levies that are, outside of what are prescribed by the tax laws. They cited instance where state and local governments authorities have physically invaded offices, locked up Base stations and employed other unwholesome tactics to enforce these taxes and levies.²⁶⁶ Whereas taxes are expected to be backed up by statutes, many local governments collect taxes that are not backed by any law. Instead of the local government revenue committee to perform its statutory functions, most local governments today prefer to engage consultants who employ touts and armed personnel to enforce tax payment thereby rendering tax officials redundant and violating the fundamental principles or ‘canon’ of taxation as propounded by Adam Smith.²⁶⁷

In order to reduce the multi-dimensional problems arising from the multiplicity of taxes at Federal, State and Local government levels and to create an investor-friendly tax regime, the Federal government enacted the Taxes and Levies (Approved Lists for Collection) Act 1988 (As Amended). The Act provides a list of

²⁶⁵ O U Bassey, *Personal Income Tax in Nigeria* (Lagos: CIBN Press Ltd, 2013) P. 37.

²⁶⁶ I Omes, *op cit*, 241.

²⁶⁷ G N Ogbonna, ‘Burning issues and challenges of the Nigerian Tax System with Analytical Emphasis on Petroleum Profit Tax’ (2010) *International Journal of Accounting, Finance & Economics perspectives*.

taxes and levies to be collected by all tiers of government. Any tax or levy levied outside of what the Act provides is illegal.²⁶⁸

The Federal, State and Local governments are responsible for collecting the taxes and levies in parts, I, II, III of the Schedule to the Taxes and Levies (Approved Lists for Collection) Act 2004 (As Amended) as follows:

Part I – Taxes to be collected by the Federal Government:

1. Companies income tax;
2. Withholding tax on companies, residents of the Federal Capital Territory, Abuja and non-resident individuals;
3. Petroleum profit tax;
4. Value-added tax;
5. Education tax (Now known as Tertiary Education Trust Fund Act);
6. Capital gains tax on residents of the Federal Capital Territory, Abuja, bodies corporate and non-resident individuals;
7. Stamp duties on bodies corporate and residents of the Federal Capital Territory, Abuja;
8. Personal income tax in respect of –
 - (a) Members of the Armed Forces of the Federation;
 - (b) Members of the Nigerian Police Force;
 - (c) Residents of the Federal Capital Territory, Abuja; and
 - (d) Staff of the Ministry of Foreign Affairs and non-resident individuals;
9. National Information Technology Development Levy.

Part II – Taxes to be collected by the State Government :

1. Personal income tax in respect of:

²⁶⁸ *Eti-Osa Local Government v Jegede* (2007) 10 NWLR, pg 545.

- (a) Pay-as-You-Earn (PAYE); and
- (b) Direct taxation (Self-assessment);
- 2. Withholding tax (individuals only);
- 3. Capital gains tax (individuals only);
- 4. Stamp duties on instruments executed by individuals;
- 5. Pools betting and lotteries, gaming and casino taxes;
- 6. Road taxes;
- 7. Business premises registration fees in respect of urban and rural areas which includes registration fees and per annum renewals as fixed by each state;
- 8. Development levy (individuals only) not more than N100 per annum on all taxable individuals;
- 9. Naming of street registration fees in the State Capital;
- 10. Right of occupancy fees on lands owned by the State Government in urban areas of the state;
- 11. Market taxes and levies where state finance is involved;
- 12. Land use charge, where applicable;
- 13. Hotel, Restaurant or Event Center Consumption Tax, where applicable;
- 14. Entertainment Tax, where applicable;
- 15. Environmental (Ecological) fee or levy;
- 16. Mining, Milling and Quarrying fee, where applicable;
- 17. Animal Trade Tax, where applicable;
- 18. Produce Sales Tax, where applicable;
- 19. Slaughter or Abattoir fees, where state finance is involved;
- 20. Infrastructure maintenance charge or levy, where applicable;

21. Fire service charge;
22. Property Tax, where applicable;
23. Economic Development levy, where applicable;
24. Social services Contribution Levy, where applicable;
25. Signage and Mobile Advertisement, jointly collected by States and Local Governments.

Part III – Taxes and Levies to be collected by the Local Government:

1. Shops and, kiosks rates;
2. Tenement rates;
3. On and off liquor license fees;
4. Slaughter slab fees;
5. Marriage, birth and death registration fees;
6. Naming of street registration fee, excluding those collectible by the Federal and State Governments;
7. Right of Occupancy fees on lands in rural areas, excluding those collectible by the Federal Governments;
8. Market taxes and levies excluding any market where state finance is involved;
9. Motor park levies;
10. Domestic animal license fees;
11. Bicycle, truck, canoe, wheelbarrow and cart fees, other than a mechanically propelled truck;
12. Cattle tax payable by cattle farmers only;
13. Merriment and road closure levy;

14. Radio and television license fees (other than radio and television transmitter);
15. Vehicle radio license fees (to be imposed by the local government of the state in which the car is registered);
16. Wrong parking charges;
17. Public convenience, sewage and refuse disposal fees;
18. Customary burial ground permit fees;
19. Religious places establishment permit fees;
20. Signboard and advertisement permit fees;
21. Wharf Landing Charge, where applicable.

From the above, the number of taxes, levies and charges in Taxes and Levies (Approves List for Collection) Act are 55 different taxes, which gives a false impression that there are 55 taxes in Nigeria. It has been reported that there are over 120 taxes²⁶⁹ being collected in Nigeria under different names and nomenclatures, the researcher recommends that following the basic principle that taxation is statutory, the correct approach to determine the number of tax would be to count the number of the specific Federal and State laws enacted mainly for taxing purposes. By following this line, the number of taxes will be smaller. Even the 55 different taxes are too much. Many of these items are levies and charges that could be consolidated into one or two.²⁷⁰ By reducing the number of taxes, tax compliance and administration is simplified and efficiency is enhanced. Simplicity is the new trend in tax administration and legislation. Taxpayers are motivated by a simple and efficient tax system in a Self-Assessment regime. It is therefore recommended, an overhaul of the tax system and reform of the tax laws and systems. Reducing the total number of

²⁶⁹ The 2003 Tax Study Group, Appendix IV, P. 313-314.

²⁷⁰ Y Olugbenro, Dealing with multiplicity of taxes, <www.yomiolugbenro.com> accessed on 7th February, 2015.

taxes paid, increasing transparency as to how and what to pay, and facilitating procedures for filing taxes, will be essential to reducing high compliance costs and, in so doing, increase Nigeria's tax compliance rate and also the revenue.²⁷¹

Finally, on the local level, the researcher recommends that all the tiers of government should properly fund their departments and agencies in order to check their embarking on illegality to the end of increasing their Internally Generated Revenue. The states should make available to the local governments all the revenue from the Federation Account and allocate the required percentage of state revenue to the local government councils. The states should also adequately fund the various agencies and departments and also ensure that the local government ministries and the House of Assembly play their oversight functions very well on the activities of the local government.²⁷²

3.5 Interpretation of Tax Laws *viz a viz* the Self- Assessment System

There is no doubt that one of the latest trend in the world of taxation is that tax laws are to be simple and easily comprehensible by the taxpayers in order to encourage voluntary tax compliance most especially in a Self-Assessment Regime like Nigeria.

In reality tax laws are difficult to read and understand. 'Parliamentary statutes are not the easiest thing to read and understand, and over the years there have been many disputes between the authorities and taxpayers regarding the interpretation of tax laws'.²⁷³ Many of these disputes would have been avoided if all the provisions of our tax laws were simply expressed and devoid of much ambiguity.

²⁷¹ Ngozi Okonjo-Iweala, Multiple Taxation Killing Economy, <[web.facebook.com/ngoziokonjoiweala/posts/688751802841754](https://www.facebook.com/ngoziokonjoiweala/posts/688751802841754)> accessed on the 7th February, 2015.

²⁷² A Sanni, *op cit*, 236.

²⁷³ W E Pritchard & D Murphy, *CIMA Stage 3: Business Taxation*, (London: Pitman publishing, 1988) P. 6.

Effective tax administration depends to a great extent on the accurate interpretation of the provisions of the tax legislation. The courts are responsible for the interpretation of tax laws enacted by the National Assembly.²⁷⁴

There are three primary approaches to the interpretation of statutory provisions as originally developed by the English judges at common law and absorbed into the laws of the general law of Nigeria.²⁷⁵ First the “literal rule” that where the words of statute are clear and unambiguous, they should be interpreted accordingly to their natural and ordinary meaning.²⁷⁶ Secondly, the golden rule, allowing the judge to modify the literal meaning in the event of ambiguity.²⁷⁷ Thirdly the mischief rule, directing the judge to interpret statute by reference to the mischief it was designed to cure²⁷⁸ and in more recent times a fourth approach has emerged in the form of purposive interpretation, requiring the judge to ascertain “the true intent of the legislative”²⁷⁹

The literal rule has been followed religiously by Nigerian judges²⁸⁰ and it means “the subject is not to be taxed unless the words of the taxing statute unambiguously impose that tax on him.”²⁸¹ It follows that from this that for tax liability to arise there must be a clear link between the charging provisions and the intended taxpayer. This link must be direct, not inferential.²⁸² Implicit in all this is that the

²⁷⁴ O U Basse, *op cit*, P. 30.

²⁷⁵ I O Bolodeoku, *The General Principles of Law*, in E. O. Akanki, (ed) Commercial Law in Nigeria (Lagos: University of Lagos press, 2005) P. 21-25.

²⁷⁶ *Amalgamated Society of Engineers v Adelaide Steamship Co Ltd* (1920) 28 CLR 129, 161-2.

²⁷⁷ *Grey v Pearson* (1857) 6 HLC 61, 106.

²⁷⁸ *Heydon's case* (1584) 3 Co Rep 7a, 7b.

²⁷⁹ *Fidelity Bank Plc v Monye* (2012) 10 NWLR, 1

²⁸⁰ *Mobile Oil Ltd v F.B.I.R.* (1977) 1 NCLR; *Haliburton West Africa Ltd v F.B.I.R.* (2006) 7 CLRN 138, *Oando v F.B.I.R.* (2009) TLR 61.

²⁸¹ *FBIR v. Integrated Data Services Limited* (2009) NWLR Pt 8, 615.

²⁸² *Regional Authority v Tax Board* (1967) NCLR 45, 51.

courts have no business in trying to repair legislation that fails to fire or misfire.²⁸³ This is illustrated by the case of *Ayshire Pullman v IRC*²⁸⁴ where a provision intended to widen the tax net failed to achieve that purpose Lord Simmonds said:

It is at least clear what the gap that is intended to be filled is and hardly less clear how it is intended to fill the gap. Yet I can come to no other conclusion than that the language of the section fails to achieve its apparent purpose and I must decline to insert words or phrases which might succeed where the draftsman failed.²⁸⁵

Also, this rule of literal construction of the statute has special force in tax cases.²⁸⁶ In the case of *Mobil Oil (Nig) Ltd v FBIR*,²⁸⁷ Bello JSC succinctly expressed

We cannot impose on section 30A an interpretation which will frustrate the clear intention of the legislature. The general rule for construing a statute has been stated by this court in a number of cases. The rule is: where the words of a statute are clear, the court shall give effect to its literal meaning.

The literal rule, sometimes referred to as strict construction,²⁸⁸ directs that where the words of a statute are plain and unambiguous, they should be construed strictly according to their natural and ordinary meaning ‘without looking to other sources to ascertain its meaning.’²⁸⁹

Whatever might be the contention as to the proper approach towards the interpretation of the tax legislation, authors and the court are ad idem that the starting

²⁸³ D A Obadina, ‘*Interpretation of Tax, Statutes And Development: The Place Of Purposive Interpretation*’ in JAA Agbonika (ed) *Topical issues in the Nigerian Tax Laws and Related Areas* (Ibadan: Ababa press, 2015) P. 139.

²⁸⁴ (1921) 14 TC 745.

²⁸⁵ (1946) 1 All ER 637.

²⁸⁶ M N Umenweke, *Tax Law and its Implications for Foreign Investments in Nigeria*, (Enugu: Nolix Education publications, 2008) P. 28.

²⁸⁷ *Supra*; See also *Ahmadu and Anor v The Governor of Kogi State and Ors* (2002) 3 N.W.L.R Part 755, 502.

²⁸⁸ B A Garner, *Blacks’ Law Dictionary*, (10th edn, USA: Thomson Reuters, 2014) P.1074.

²⁸⁹ *Cape Brandy v IRC* (1921) 12 Tax cases 358; *FBIR v Halliburton (WA) Ltd* (2014) LPELR -24230 (CA).

point for every such attempts is necessarily to attempt a strict interpretation of the words as used by the draftsman without any imposition of an external intendment . Where however the words are unclear and there is a need to avoid an absurdity in the enforcement of the intentions of the law makers, a departure then becomes necessary to liberal or intendment construction²⁹⁰ or the purposive approach.²⁹¹ However, the courts in Nigeria have consistently held that tax statutes must be interpreted in accordance with the literal rule.²⁹² This stands in contrast to the position in the United Kingdom and many other common law jurisdictions where the courts have shifted to purposive interpretation.

Although the literal rule remains the preferred choice of the courts for the interpretation of taxing statutes, some judges have been receptive to purposive interpretation of tax statutes although as submitted by a learned author²⁹³ does not represent good law and should not be followed as stare decisis by lower courts.

One of such cases is the *Phoenix Motors Case*²⁹⁴ where his lordship held that:

If a statute is revenue based or revenue oriented, it will be part of sound policy for a court of law to construe the provisions of the statute literally in favour of the revenue or in favour of deriving revenue for the government, unless there is a clear provision to the contrary...No court of law should lend its hand to a person or body bent on beating the efforts of government at collecting revenue by relying on

²⁹⁰ A G Karibi Whyte 'Interpreting and understanding Nigerian Tax Legislation' in O Akanle (ed) Tax Laws and Tax Administration in Nigeria 1991, NIALS, 93.

²⁹¹ DA Obadina, *op cit*, 120-149.

²⁹² *F.B.I.R. v Integrated Data Services Limited* (Supra); See also *Nigeria Breweries PLC. v Oyo State Board of Internal Revenue* (2012) LPELR – 8672 (CA)

²⁹³ M N Umenweke, *op cit*, P. 30, See also *Phoenix Motors Ltd v. NPFMB* (1993) 1 NWLR (Pt 272) 718, *Cape Brandy Syndicate v FBIR* (1921) 12 TC. 358, *Aderawos Timber Trading Co Ltd v FBIR* (1966) LLR 195.

²⁹⁴ *Supra*.

technicalities of the law with a frugal aim to cheat government of its legitimate income.

This view represents the purposive and progressive stands on the subject²⁹⁵ and a positive attitude by the court towards doing the needful to reduce the praxis of tax evasion among taxpayers, it has however been criticized²⁹⁶ as being inconsistent with all recognized rules of interpretation of tax statutes.²⁹⁷ According to Ipaye,²⁹⁸

Clearly this approach is inconsistent with any recognized rule for interpretation of tax statutes. The contention here is not that the Nigerian cases were wrongly decided or that the Nigerian courts should remain caged in by ancient philosophies of the common law. It is merely that the precedents and philosophies that underlay the traditional approach were so well thought out that they ought not to be casually jettisoned. Also, it is a standard requirement for orderly legal development that precedents, which are to be departed from, must be acknowledged and considered in full. In that context, it would appear that far more superior reasons are required than we have at the moment for abandoning the well-known principles of interpretation of taxing statutes. If the trend persists, government gets an added advantage to the detriment of the people, as tax laws will be amplified on the basis of equity, common law and general principles.

From this view by the learned author, it is my opinion that tax statutes might be of some special class as it imposes a compulsory burden on the subject, however the interpretation of an ambiguous provision of such a statute should not demand any special procedure distinct from such developed by the court in the interpretation of

²⁹⁵ C Asuzu, Remember Lot's wife: The Interpretation of Tax Statutes <www.papers.ssrn.com/013/papers.cfm> accessed on 5th February, 2015.

²⁹⁶ M N Umenweke *op cit*, P. 30. (View on Shell Petroleum's case)

²⁹⁷ A Ipaye 'Interpretation of Tax Statutes' (2012) *Nigerian Taxation*, 1, Vol II (2), 1.

²⁹⁸ *Ibid.*

statute. It is also particularly important that the essence of the enactment of the act must be a primary consideration. A tax statute is conceived for the purpose of generating revenue for the government. This revenue is in turn expected to be utilized for the general good of the state and its subjects. It would therefore amount to substantial injustice to insist on some ancient, traditional interpretations that would rob the government of such revenue on the premise of the absence of a supporting precedent or insufficient reason to justify a departure from established or, ‘well-known principles of interpretation of taxing statutes’ particularly where founded totally on different economic realities.²⁹⁹

The views of learned author Obadina³⁰⁰ is totally agreed upon in this work, wherein he stated as follows:

While we are bound to agree with Ipaye that the Phoenix is inconsistent with established principles of interpretation relating to taxing statutes, it may be questioned whether the philosophies underlying the traditional approach (i.e. literal interpretation) have ever been thought out by the courts in Nigeria, it is closer to mark to say that Nigerian judges have ‘faithfully’ followed ancient English authorities without examining their relevance and appropriateness in the context of Nigeria’s peculiar socio-political circumstances. Furthermore, it is relevant to note that many of our most celebrated doctrines of law have come about through the contribution of judges who have been prepared to think ‘outside the box’ of established precedent in the face of pressing social problems.

²⁹⁹ A M Ekanem, Illuminations On The Attitude Of The Court In Interpretation Of Tax Legislations In Nigeria – FBIR v. IDS Ltd In View <File:IIIc/users/view/Downloads/SSRN_Id2873618.pdf.> accessed on 5th February, 2015.

³⁰⁰ D A Obadina, *op cit*, P. 136.

As taxation in Nigeria is self assessing at least in theory, a taxpayer should be able to understand the law and the liability which the government has imposed upon him or her and so should be able to plan their affairs with the relative certainty that neither an unexpected tax assessment or penalty will follow as to warrant frequent interpretation of tax statutes in courts of law. The tax authorities have an obligation according to the best international practices that taxation laws should be clear and certain. However, a purposive approach in interpretation of tax statutes should not be made an excuse for starting with an assumption as to the underlying purpose, and then forcing the words into a preconceived and strained construction to fit that assumption.³⁰¹

It is on this premises the researcher disagrees with the Supreme Court in the case of *Shell Petroleum v Federal Board of Inland Revenue*,³⁰² in this case, FBIR disallowed the deduction of certain expenses claimed by Shell Petroleum and these expenses included currency exchange losses, Central Bank commissions and educational scholarship expenses. The matter went through appeals from Appeal Commissioners through to the Supreme Court which held that where there is a statutory or contractual obligation to incur an expense, such expense is deductible even where it is not directly related to the tax payer's "petroleum operations". It held therefore that Shell was entitled to deduct all three categories of expenses since it had a statutory obligation to incur the said expenses. Similarly, in the case of *Gulf Oil Company (Nigeria.) Limited v. Federal Board of Inland Revenue*,³⁰³ the issue that came up for consideration was whether or not the charges and commissions paid by Gulf Oil to the Central Bank as a result of the government directive to pay the company's profit tax abroad were expenses "wholly, exclusively and necessarily incurred" for the purpose of the

³⁰¹ J Tretola, 'The Interpretation of Taxation Legislation by the courts – A Reflection on the views of Justice Graham Hill', (2006) *Revenue Law Journal*, Vol 16, 1, 84.

³⁰² (1996) 8 N.W.L.R Part 466, 256.

³⁰³ [1997] 7 N.W.L.R Part 514, 698.

company's petroleum operations within the meaning of section 10(1) of the PPTA. The court relied on the decision in *Shell* and held in favour of Gulf Oil.

It is respectfully submitted that the courts, in the above cases were wrong. The Supreme Court applied equity considerations in the interpretation of tax incentive provision by giving administrative directive an overriding effect over the PPTA. Tax laws are statutory so why would non-statutory agreement supersede a statute? Can tax be imposed by agreement? Tax can only be imposed under a valid statute. In *Partington v. A G*,³⁰⁴ Lord Cairns stated that a person, who comes within the letter of the tax law, must be taxed however great the hardship may appear to the judicial mind. On the other hand, if the crown seeking to recover tax cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law, the case might otherwise appear to be.

It is not proper that these agreements have the force of law in the light of provisions of statutes. They should have been made to complement the statute not to supersede them so that the taxpayers can be held to their obligations under the agreements and the statute. It is respectfully submitted that the decision in *SPDC Ltd v. FBIR* does not represent good law and should not be followed by lower courts.³⁰⁵ This decision runs afoul of the certainty principle as the application of this agreement will create difficulty in the ascertainment of the payable tax because of uncertainty of the applicable law. This will lead to arbitrariness, exploitation and extortion by the officials of the tax authority and tax evasion / avoidance on the part of taxpayers. However, the decisions have also exposed the inadequacies of the PPTA, which, it is hoped, would be addressed by the lawmakers, as quickly as possible.

³⁰⁴ (1869) LR 4 HL.

³⁰⁵ M N Umenweke *op cit*, P,30.

CHAPTER FOUR

SELF ASSESSMENT SYSTEM: PRINCIPLES, ISSUES AND ADMINISTRATION

4.1 The Concept of Self - Assessment Regime or System

Assessment is the process by which tax liability is established. Self-assessment system is when it is the responsibility of the taxpayer rather than the revenue authority to calculate the relevant tax liability and to ensure that the requirements regarding payment and so on are met.³⁰⁶ The operation of self-assessment allows a taxpayer to determine his tax liability and account for tax collected thus placing the onus of taxation substantially on the taxable entity. Tax authorities must, however, monitor the genuineness and accuracy of self-assessments by taxpayers who are required to supply accurate information and keep records of all transactions.³⁰⁷

The growing concern of tax administrations throughout the world is on how to simplify tax assessment to encourage voluntary tax compliance and many countries including Nigeria have adopted the self-assessment system as a solution. SAS can therefore be defined as a ‘do it yourself’ process whereby taxpayers are required to file their tax returns, reporting their respective income that is assessable to tax and determining their respective tax liabilities on the basis of their tax returns. Under SAS, the onus is placed squarely on the taxpayers to understand, interpret and apply the laws to their own circumstances. In addition, taxpayers are responsible for timely and accurate reporting and to make payment of taxes by the due date.³⁰⁸ In the case of an employee, tax becomes due for payment whenever his salary is forthcoming and

³⁰⁶ N A Barr, *et al*, *Self-Assessment For Income Tax* (London: Heinemann, 1977) P. 1.

³⁰⁷ TK Naiyeju, *Improving The Nigerian Tax System For the Canadian Experience*, (Nigeria: Words Smith Printing and Packaging, 1996) P. 2.

³⁰⁸ K Hobson, *op cit*, P. 9.

matured for payment.³⁰⁹ For convenience and respect to the relevant rules and regulations tax is to be deducted before salary is paid.³¹⁰

The self-assessment regime makes it imperative that taxpayers are adequately conversant with tax legislation, guidelines, ruling and administrative procedures in order to ensure appropriate compliance. SAS also places on taxpayers greater responsibilities in relation to their tax affairs. Thus, with the change to SA in Nigeria, the onus is on taxpayers to comprehend, interpret and to comply with the relevant provisions of the tax law that are applicable to their respective circumstances while the tax authority's onus is to review and verify tax returns based on the tax authority's interpretation and application of the tax law.³¹¹

The self-assessment tax system was introduced in the Nigerian tax laws in 1991 with operational effect in 1992 and initially restricted to a threshold of taxpayers and extended to the rest in 1998. However, it was not until 2011 that its implementation became effective, through a project based system.³¹²

Prior to the implementation of SA in Nigeria in 1991, taxpayers were only required to file their returns and report their incomes that were assessable to tax. The appropriate tax authority would assess the taxpayers' tax liabilities and would issue notices of assessment. Upon receipt of the notices of assessment, taxpayers would be required to pay their respective taxes within some days from the issue date. Under SA, the tax returns filed by taxpayers are deemed notices of assessment and the appropriate tax authority is not required to issue any such notices. Taxpayers are therefore required to pay whatever taxes that are due to the tax authority by the specified due date.

³⁰⁹ *Lanto v Wowo* (1999) 7 N.W.L.R Part 610, P.229; *PDP v Ekeagbara & Ors* (2016) LPELR - 40849 (CA).

³¹⁰ *Ikpeazu v Ogah & Ors* (2016) LPELR - 40843 (CA); *Ogah v Ikpeazu & Ors* (2017) LPELR -42372 (SC).

³¹¹ M Inglis, *art cit*, 5.

³¹² C N Onyegbule, 'Self-Assessment Practice in Nigeria' Vanguard, June 25, 2012, P. 14.

The Nigerian self assessment system requires that the taxpayer accurately calculates his tax liability, pay the tax due at designated bank to collect (evidence of payment) e-ticket and file self-assessment return on or before the statutory due date for filing *such* tax return.³¹³ Tax returns are accepted by the tax authority, as filed, subject to on-the-spot simple checks to ensure that tax return forms are correctly completed.³¹⁴ The returns are later subjected to further administrative processing including risk assessment of all tax returns and audit, where necessary, determined by risk-based case selection and where it is found the taxpayer fails to meet his obligations; late returns penalty and interest will be imposed, as the case may be.³¹⁵

The tax authority exercises its right under the law by issuing administrative assessments on taxpayers who fails to file tax returns on due date. Information for such assessments are obtained by an ‘on the spot audit’ of the taxpayers’ record and from third-party sources.³¹⁶

A taxpayer must file returns under the SAS in person or engage the service of accredited agents to file returns on his behalf. The return must be signed by the taxpayer or his appointed agent.³¹⁷ It is also mandatory for all taxable persons (employees and self-employed individuals as well as companies) to render the returns of all transactions engaged in during the accounting year to the relevant revenue authority. The period within which the returns must be made however differs, depending on the status of the taxpayer.³¹⁸ Companies and individuals that fail to file tax returns in any assessment year will be subject to administrative/Best of Judgment

³¹³ Tax Administration (Self-Assessment) Regulation, 2011, S. 3(1) (2).

³¹⁴ *Ibid*, Regulation 3(3).

³¹⁵ *Ibid*, Regulation, 27(1).

³¹⁶ *Ibid*, Regulation, 22(1), (2).

³¹⁷ *Ibid*, Regulation, 5(1), (2).

³¹⁸ *Ibid*, Regulation, 12(1), (2), (3), (4) made provisions for the due dates for filing SA returns under PITA, CITA, PPTA and VATA

assessment.³¹⁹ This is raised where audited accounts and other relevant returns are not submitted within the stipulated time in line with the tax law; it is usually based on ‘fair and reasonable’ estimate of income/profit.³²⁰

4.2 Mission and Objectives of Self Assessment System

Income tax has traditionally been assessed by the tax department which is known as administrative assessment. Under an administrative assessment system, the onus is on the tax administration to examine tax returns and financial statements, calculate the amount of tax payable, and notify the taxpayers of the tax liability. Taxpayers are only required to file their returns and report their incomes that were assessable to tax. The tax collecting authority has the mandate to assess the taxpayers’ tax liability and issue notice of assessment based on which taxpayers will be obliged to pay the required amount.³²¹ Therefore the key features of the administrative assessment system are as follows:

- (i) Taxpayers report on their activities on an annual basis.
- (ii) Reporting consists of completion of a tax return and filing financial statements, and other supporting information to the tax administration.
- (iii) Tax returns and the supporting financial statements are reviewed and verified by tax officials.
- (iv) The tax administration makes the decision on the tax liability and informs the taxpayer on what to pay, typically through a notice of assessment.
- (v) The tax administration reconciles assessment notices and payments.

³¹⁹ *Ibid*, Regulation, 22; *F.B.I.R. v Azigbo Brothers Ltd* (1963) 2 All NLR 198, HC; See also *Mobil Oil Nigeria Ltd v F.B.I.R.* (1977) 3 SC, P. 63.

³²⁰ M N Umenweke *op cit*, P. 248; CITA, *op cit*, S. 65(3), PITA, *op cit*, S. 54(3).

³²¹ M Terrefe, ‘A close Scrutiny of Self-Assessment System and Its Impact on Tax Compliance Level of Taxpayers: The case of Wolaita Zone’ (2014) ASRJETS 83.

However, administrative assessment system are said to have been resource-intensive and tend to be ineffective. It is considered by many jurisdictions as costly, inefficient and complex to administer since it imposes much burden on tax administrators.³²²

As a result of its drawbacks and challenges, various countries abandoned the administrative assessment system and sought for another alternative system of tax assessment. Several tax administrators in both advanced and developing countries have adopted a self assessment system for tax filing purposes. Internationally, there has been a steady movement towards self-assessment and away from administrative assessment practices. In fact, self-assessment for tax purposes is not a new phenomenon. Canada and the United States first implemented self assessment in the 1910s, followed by Japan in 1947.³²³ In the last 30 years, however, the spread of self-assessment for income tax has been a common phenomenon. Some countries and the year of adoption of SAS are as follows: Sri Lanka (1972), Pakistan (1979), Bangladesh (1981), Indonesia (1984), Australia (1986-87), Ireland (1988), New Zealand (1988) and the United Kingdom (UK) in 1996-97).³²⁴ Presently, around half (18) of revenue bodies in the OECD for example apply self assessment principle for the Personal Income Tax (PIT) while 22 apply self-assessment for Companies Income Tax (CIT).³²⁵

Although many countries have turned to self- assessment systems, some key countries like Singapore³²⁶, Belgium, Luxembourg and France³²⁷ remain with direct/administrative assessment systems.

³²² *Ibid.*

³²³ E C Loo, *The Influence of the Introduction on Self-Assessment on Compliance Behavior of Individual Taxpayers in Malaysia* (2006), ses.library.usyd.edu.au/handle/2123/7695 accessed on 2nd September, 2014.

³²⁴ M Terrefe, *op cit* 83.

³²⁵ *Ibid.*, 84.

³²⁶ Inland Revenue Authority of Singapore, www.Iras.gov.sg accessed on 3rd September, 2014.

The objectives of introduction of SAS defer from country to country but their primary objective as observed being tax compliance remains the same. In the United States of America, SAS was established as early as 1913 for both companies' income tax and personal income tax. The introduction of SAS in the US was implemented by the advent of the 16th Amendment to the United States Constitution which modified the apportionment required in 1913, and since then income tax has become one of the central avenue of funding the Federal Government.³²⁸ The main objectives of SAS in the US at that time were to increase tax efficiency (collection) and instill awareness among taxpayers of funding federal expenses.³²⁹ Since 1913, the operation of SAS in the US is premised and primarily underpinned by 'voluntary compliance'

Australia is also one of the countries that have embraced SAS. Australia Tax Office (ATO) affirmed that their mission and objective for introducing a SAS for individual was to give taxpayers greater equity and fairness, increased certainty and simplicity.³³⁰ Major changes to the way tax was assessed for individuals were introduced in Australia through the Taxation Law (Self Assessment) Act, 1992.³³¹ The introduction of SAS in Australia placed a greater responsibility on the taxpayer to assess their own tax debt or refund.

SAS in Canada was first introduced in 1917 as it was considered as 'the most economical and efficient way to collect income tax.'³³² In the early stages of the adoption of SAS, taxpayers felt that the tax system was too complex and this discouraged taxpayers from voluntarily filing their tax returns. They also felt that it

³²⁷ OECD, www.oecd.org accessed on 3rd September, 2014.

³²⁸ A Ando *et al*, *The Structure and Reforms of the U.S Tax System*, (Massachusetts: MIT Press, 1985) P. 1.

³²⁹ N Eissa, 'Tax Reforms and Labour supplies' in Poterba (ed), *Tax Policy and the Economy National Bureau of Economic Research* (Massachusetts: MIT Press, 1996) P. 10.

³³⁰ Australian Tax Office (2009), <http://www.ato.gov.au/corporate/content.asp?doc=/content/00107941.htm> accessed on 20th September, 2014.

³³¹ *Ibid*.

³³² E C Loo, *op cit*, 41.

was not fair and equitable. However, after several years of operation, taxpayers became aware of their responsibilities and embraced the system.³³³

In Japan, self assessment for both companies and individual taxpayers was first introduced in 1947.³³⁴ A developing conflict between taxpayers and the tax authority, perceptions of fairness and equity as well as inefficiency of the tax system led to the need for a tax reform and the introduction of SAS in Japan in late 1940s.³³⁵ The declared objectives of Japan's self assessment system are establishing a relationship of trust between taxpayers and the tax authority, efficient tax administration and also to act as a symbol of agreement with post-war democratic thought.³³⁶

Furthermore, the mission of SAS in Japan is to raise the rate of appropriate tax filings and payment through taxpayers' cooperation.³³⁷ In the beginning of SAS in Japan, the tax authority faced a low level of tax literacy and poor management of the tax system generally but those challenges in the last two decades have been resolved.

As for Nigeria, the self assessment system was actually introduced in 1991, with operational effect in 1992 and initially restricted to a threshold of taxpayers and extended to the rest in 1998. However, it was not until 2011 that its implementation became effective. The legal frame work for self-assessment generated divergent opinions among taxpayers, tax practitioner and relevant tax authorities in Nigeria. This resulted in inconsistencies in the self-assessment practices in Nigeria. To address

³³³ Canadian Revenue Authority (CRA) (2001) http://www.cra-arc.gc.ca/tx/ndvdl/tpcs/ncm-tx/rvws/menu_eng.html accessed on 20th September, 2014.

³³⁴ Y Kimura, 'Japan's Tax Administration Reform and the Self Assessment System' Tax Administration Asian Development Bank Institute Course III, Siem Reap, Cambodia, 21-23 March, 2006.

³³⁵ J Shoven, *The Japanese Corporate Investment in L Summers* (ed) Tax Policy and the Economy National Bureau of Economic Research (Massachusetts: MIT Press, 1989) P. 2.

³³⁶ Y Kimura, *op cit*.

³³⁷ H Ishi, *The Japanese Tax System* (Oxford: Oxford Press, 2001) P. 40.

this,³³⁸The Management Board of the Federal Inland Revenue Service (the Board) in exercise of the powers conferred on it by Section 61 of the Federal Inland Revenue Service (Establishment) Act 2007, with the approval of the Minister of Finance gazetted a Regulation³³⁹, modifying the processes and procedures for self assessment returns³⁴⁰ it sets out the processes and procedures for SA practice by taxpayers and tax authorities.

The Regulations cover tax returns under CITA, PITA, PPTA, Education Trust Fund Act, National Information Technology Development Agency Act, Value-Added Tax Act, FIRS Act, and though not specifically mentioned Capital Gains Tax Act given that all taxes under the FIRS Establishment Act are stated as falling under the scope of the Regulation.³⁴¹

The objective of the self assessment in Nigeria is that it ensures compliance by saving significant time and resources required by tax authorities in ensuring compliance by taxpayers.³⁴² According to the Revised National Tax Policy³⁴³ 2016, the tax authorities shall apply all available resources and tools at their disposal to ensure that taxpayers voluntarily comply with their tax obligations. And in order to improve voluntary compliance. The National Tax Policy recommends among other things that tax authorities should ensure that the option for self-assessment is in place, and the process and procedure are simple.

4.3 Principles of Self-Assessment System

³³⁸Y Olugbenro, Nigeria: FIRS' Administrative Reforms: A Strategic Shift, (2014) Decoitte, <http://www.mon.daq.com/Nigeria/x/333334/tax+authorities/FIRS+Administrative+Reforms+A+Strategic+Shift> accessed on 25th September, 2014.

³³⁹ Tax Administration (Self Assessment) Regulation, 2011 dated 19 December, 2011.

³⁴⁰ T Oyedele, Self assessment is no longer business as usual in http://www.pwcnigeria.typepad.com/tax_matters_nigeria/2012/04 accessed on 25th September, 2014.

³⁴¹ Tax Administration (Self-Assessment) Regulations, 2011, S. 2(i) – (viii).

³⁴² National Tax Policy 2012, S. 4.3.

³⁴³ S. 4.2.

Principles are defined as basic rule, law or doctrine especially one of the fundamental tenets of a system.³⁴⁴ It can also be defined as the rules or theories that something is based on³⁴⁵ and these principles become the underpinning regulations to accomplish the objectives of SAS.³⁴⁶

Based on the declared missions and objectives of self assessment from various countries who have adopted the system to date, it seems voluntary compliance, administrative efficiency and improving fairness and equity are the key motivating factor for introduction of SAS. Therefore in order to convert this system into a significant tax structure compared with the previous system (direct or administrative assessment), the principles must be developed and put into action so that the SAS can be operated efficiently.

The mechanisms of operation of a SAS are significantly different from the direct assessment system, whereby administrative burden of tax is at least partially shifted to taxpayers. From a factual perspective, this should encourage taxpayers to become more responsible, honest and up to date with current tax regulations by forcing them to engage more directly with their tax computations process. In contrast, some taxpayers may have a negative reaction by using the nature of SAS to manipulate their tax returns, that is, decrease voluntary compliance and/or employ tax agents³⁴⁷ who in turn can affect their tax declaration levels either negatively (from a tax revenue perspective) e.g. by advising them of tax deductions and bonuses they

³⁴⁴ B A Garner *op cit*, P. 1386.

³⁴⁵ B Barjoyai, *Taxation: Principles and Practice in Malaysia* (Kuala Lumpur: Dewan Bahasa Dan Pastaka, 1987) P. 8.

³⁴⁶ A Mohamed *et al*, The Effects of Knowledge on Tax Compliance Behaviours among Malaysian Taxpayers, International Conference on Business and Information July 11-13 Tokyo Japan, acc <http://ibacnet.org/bai2007/proceedings/papers/2007bai7357:doc> accessed on 5th September, 2014.

³⁴⁷ J Hasseldine & P Hite, 'Framing, Gender and Tax Compliance' (2003) *Journal of Economic Psychology*, 24(4), 517-533.

may not be mindful of to take, or potentially positively by increasing the quality of returns that would otherwise be made in error.

To reduce the possibility of taxpayer manipulating their tax returns, the tax authorities are likely to implement an enhanced investigation policy such as increasing tax audits and tax assessments (administrative), but these actions, if applied extensively, will in effects eventually change the SAS back into the old direct assessment system. The more tax assessment required by the tax authorities, the less benefit results from a move to self-assessed for tax return. Therefore, the tax authorities have to determine the appropriate operation of SAS and exercise the principles of SAS by ensuring the taxpayers and tax authority's responsibilities are balanced, thereby minimizing any tax assessment they have to perform so that SAS can genuinely reduce tax compliance costs and increase administrative efficiency as well as developing public voluntary tax compliance.³⁴⁸

4.3.1 **Equity**

The introduction of SAS must be seen to be equitable and fair in its impacts on all individuals. Equity in SAS is specifically developed through suitable tax administration, particularly in respect of filing accurate and timely tax returns. SAS does not affect taxpayers' ability to pay directly but might affect accuracy of filing. Thus all levels of taxpayers should have the same capabilities, knowledge and opportunities to file tax returns accurately.

A tax that is perceived as fair or equitable should promote voluntary compliance.³⁴⁹ Allan states: it is clearly a desired characteristic of taxes that they be fair. Apart from the ethical desirability of equity, there is the practical need for taxes

³⁴⁸ M R Palil, 'Tax Knowledge and Tax Compliance Determinants in Self Assessment System in Malaysia' (2010) *University of Birmingham Journal*, 37.

³⁴⁹ K Murphy, 'The Role of Trust in Nurturing Compliance: A study of Accused Tax Avoiders' (2008) 28(2) *Law and Human Behaviour Journal*, 187-209.

to be acceptable to the taxpaying public. If taxes are generally believed to be inequitable; the consequences may range from widespread evasion to revolution.³⁵⁰

It is recognized that it can be problematic determining what is 'fair' or equitable and that further detailed work is required for that. However, there is no doubt that in Nigeria, SAS is not perceived as equitable and fair, it is observed that only civil servants and companies pay tax and the great majorities which constitute the informal sectors do not pay tax. The options for dealing with personal income taxes in Nigeria are through withholding for employees, direct/self-assessment for high net worth individuals and presumptive tax for those in the informal sector. While the first two approaches are functional, the presumptive tax regime is but theory as no framework for applying this has been released. As a result, those operating in the informal sector have been enjoying a sort of tax holiday, because no attention has been paid to the potential tax revenue that can be generated from this sector. However, with the amendment to the PITA in 2011, more emphasis has been laid on presumptive taxation of those in the informal sector. The application of the regime is expected to be based on a framework to be prescribed by the Ministry of Finance in regulations published in a gazette. However, currently, the Ministry of Finance has not released any regulations with respect to presumptive taxation in Nigeria.

It is however recommended that the uniform lump-sum method wherein uniform lump-sum payments which is a form of presumptive taxation which is based on an income average in the industry be adopted in the informal sectors in Nigeria. In this case, a flat tax liability is imposed on all firms operating under the same occupation or trade. This could be an attractive tool for Nigeria because it is simple to

³⁵⁰ C M Allan, *The Theory of Taxation* (Harmonds Worth: Penguin Books Ltd, 1971) P. 36.

administer and tax authorities do not need to verify a particular firms or individual's records in order to arrive at a tax liability just as is applicable in SAS.

4.3.2 Certainty

Taxpayers need to be fully informed about when, where, and who should pay taxes and what amount of tax should be paid (the incidence of tax). Any financial transaction should be known in advance to achieve full certainty.³⁵¹ In SAS, clear and certain rules should be disseminated to taxpayers sufficiently in order to minimize grey areas of the law and misinterpretation.³⁵² For example in the UK, Her Majesty Revenue and Custom (HMRC) Code of Practice³⁵³ provides details about the information that taxpayers can expect in order to help to reduce uncertainties and it is suggested that Nigeria should have something of a similar nature to help reduce uncertainties.

It is expected that in a SAR, taxation measure is certain and clear for a taxpayer to apply. Therefore, it should be considered at the drafting level, whether the tax is certain. In this regard, when designing a tax, the tax authority should always be aiming for certainty and in the words of John Donaldson in *Merkar Island Corporation v Laughton*:

Ministers when formulating policy should at all time be asking themselves and asking parliamentary counsel ‘Is this concept too refined to be expressed in basic English? If so, is there some way in which we can modify the policy so it can be expressed.’³⁵⁴

³⁵¹ A Lymer & L Oates, Taxation: Policy and Practice (Birmingham: Fiscal Publications, 2009) P. 12.

³⁵² *Peace Mass Transit Limited v. Federal Capital Territory & Ors* (2014) LPELR – 23740 (CA).

³⁵³ Her Majesty’s Revenue and Custom (HMRC) <http://www.hmrc.gov.uk/leaflets/cii.htm> accessed on 7th September, 2014.

³⁵⁴ (1983) 2 Ac 570.

As the self assessment is built on the presumption that a taxpayer or their adviser can calculate and ascertain their taxable liability, If a tax is uncertain then a taxpayer or their adviser will be unable to determine when the tax will apply and would not be able to self assess.³⁵⁵

A further reason to require certainty under the SAS is that there is some evidence to suggest that uncertainty in the taxation law can result in an increase in tax evasion because taxpayers lose respect for the taxation law and therefore more likely to evade it.⁵⁰ Orow suggests, in this regard, that uncertain law is ‘retroactive law’. In his words: Uncertain law is retroactive law because the effect of the law is known only after the event. It also penalizes those anxious to obey it and eventually creates contempt for the law.³⁵⁶

4.3.3 Convenience and Efficiency

The tax administrators should not only focus on their convenience but must also consider taxpayers convenience in terms of tax regulations, filings, payments, assessments, administrations and costs of administering the tax system.³⁵⁷ The SAS should provide a simple tax system and tax returns. These should facilitate taxpayers in understanding tax systems and encourage them to easily file their tax returns correctly. This could be aided through continuous education programmes administered in various ways for example through pamphlets and mass media.

Since tax can affect taxpayers’ behavior in many ways, the SAS also has to be very convenient from taxpayers’ perspectives,³⁵⁸ for example, clear payment

³⁵⁵ G Cooper, ‘Incentives and Strategic Choices Facing Taxpayers Under the Tax Self-Assessment System’ (1995) 12 *Australian Tax Forum* 99.

³⁵⁶ N Orow, *General Anti-Avoidance Rules – A Comparative International Analysis* (Bristol: Jordans Publishing Ltd, 2000) P. 36.

³⁵⁷ C Sandford, *Successful Tax Reform: Lesson from an Analysis of Tax Reform in Six Countries*, (Birmingham: Fiscal Publications, 1993) P. 20.

³⁵⁸ S James, ‘Self Assessment and UK Tax System’, Paper Presented At Conference On Current Issues In Tax Administration, Sydney, April 11-12, 1996.

structures and appropriate forms of payment (online transfer). The SAS should be more efficient to administer than the direct assessment system in relation to tax costs incurred by the tax authority (in creating tax returns, assessments, chasing the evaders, educating taxpayers etc). The administrative costs should be as little as possible to achieve desirable economic efficiency.

A key aspect of efficiency is **neutrality** which is said to exist where taxes minimize distortions to economic activities and do not impede genuine commercial transactions. An ideal tax system would, however, interfere with private decisions as little as possible. That is, it would not necessarily distort choices about how income is earned and how it is spent. It would not unduly favour leisure over work or consumption over saving and investment. It would not needlessly cause business firms to modify their production techniques or their business to acquire other firms or be acquired by them merely for tax considerations. It would not discourage risk-taking or the formation of new business.³⁵⁹

4.4 Issues in Self Assessment System

It has been observed that each country inevitably has its own issues and controversies upon adopting and implementing SAS. The following are some issues that should be addressed and monitored continuously in Nigeria in order to accomplish SAS objectives.

4.4.1 Tax Education and Tax Knowledge

Most SAS countries including the United States of America³⁶⁰, Canada and the UK have implemented specific tax education programmes for taxpayers. Tax education

³⁵⁹ US Department of Treasury, 'Tax Reform for Fairness, Simplicity and Economic Growth', Volume 1 (1984), See also, N Wilson Rogers & D Pinto *op cit*, 78.

³⁶⁰ In US, IRS in collaboration with some professional agencies developed an online education platform known as 'Understanding Taxes' <<http://www.us.gov/individuals/index.html> accessed on 15th September, 2014. (This website assists taxpayers on how to file their tax returns and resolve issues arising in relation to their tax matters).

can constitute any formal or informal programme organized by the tax authority or independent agencies by which to facilitate taxpayers in completing tax returns correctly and also bring their mind of their responsibilities with respect to the tax system.³⁶¹

Also in the US, various programmes including the public information programme were introduced to educate school children, small business owners and other self-employed individuals. Through workshops or in-depth tax courses, instructors and educators provided training on filing tax returns, starting a business, record-keeping, preparing business and personal tax returns, self-employment tax issues, and employment taxes. Again, the Taxpayers Advocate Service is an independent organization within the Internal Revenue Services (IRS), and was introduced to assist taxpayers who are experiencing economic hardship, who are seeking help in resolving tax problems that have not been resolved through the normal channels, or who believe that an IRS system or procedure is not working as it should.³⁶²

It is suggested that in order for SAS to successfully fulfill its objectives in Nigeria, some of these practices currently being implemented in the US should be emulated, adopted and practiced in Nigeria too. In the UK, the HMRC introduced various education programmes including continuous events throughout the year during weekends and school holidays. These include drama, storytelling, art and craft activities and drop in sessions, workshops, tours, like demonstrations and competitions.³⁶³ The coverage of the education

³⁶¹ M Mckerchar, Tax complexity and its impact on tax compliance and tax administration in Australia, IRS Research conference, Georgetown University law centre June 13 and 14 2007 <<http://www.irs.gov/pub/irs-soi/ofresconfmckerchar.pdf>> accessed on 16th September, 2014.

³⁶² Internal Revenue Services (IRS), update on Reducing the Federal Tax Gap and Improving Voluntary Compliance (2009) < http://www.irs.gov/pub/newsroom/tax_gap_report_final_version.pdf > Accessed on 16th September, 2014;

58Her Majesty's Revenue and Custom (HMRC) < www.gov.uk/government/organisations/hm-revenue-custom/services-Information>Accessed on 16th September, 2014.

programmes was not simply for tax filings only, but additionally on tax morality, tobacco, drugs and black market smuggling.³⁶⁴

Again, in Australia, the Australian Taxation Office (ATO) launched a programme called 'Teaching Tax with Tax Files' in 1998 to educate school children aged 9-12. It is an innovative multi-media tax education kit which comprises of an interactive CD-Rom and a hard copy which provides schools with extensive, up-to-date information about tax. This programme is expected to educate the school children to be aware of where government money comes from and how it is put in use, the duties of a taxpayer, and is expected to develop their understanding of the role of taxation in a society.³⁶⁵

Countries such as the US, Canada, Japan, New Zealand, Australia, the UK and Malaysia using the SAS have all been implementing a continuous tax education for taxpayers and children (as future taxpayers). Apart from these programmes to educate taxpayers directly and instill public awareness regarding tax matter, various countries such as the USA, the UK and Australia also have developed interactive websites, disseminated leaflets together with tax returns, opened call centers, created advertisements or supplied reminders through the television and radio to remind taxpayers of deadline dates for filing. These measures, it is further advocated, should be adopted in Nigeria.

In addition to tax education, knowledge about tax laws also plays a major role in determining taxpayers' compliance in a SAR.³⁶⁶ Therefore, continuous education programmes and effective monitoring mechanisms must be taken into account by tax authorities to ascertain that taxpayers have a good and reasonable knowledge and understanding of tax matters. However the awareness and attitude of the taxpayers themselves is more important since the effectiveness of tax education depends on the

³⁶⁴ *Ibid.*

³⁶⁵ Australian Tax Office (2014) <<http://www.ato.gov.au/corporate/content.abo.?doc=/content/00107941.html>> accessed on 17th September, 2014.

³⁶⁶ K Eriksen & L Fallen (1996) 'Tax knowledge and attitudes towards taxation: A report on a quasi experiment. *Journal of Economic Psychology*', 17, 387-402.

readiness, acceptance and honesty of taxpayers which of course is influenced by the genuineness of the way the tax is seen to be put into use by the government.

4.4.2 **Simplicity of the System**

The second crucial implementation issue is the simplicity of the system. A tax authority should have a simple tax return system from a taxpayer's point of view. A tax authority might assume its tax return is simple and easy to complete but it may not be so from the taxpayer's point of view.³⁶⁷ Therefore, before the final and actual version is delivered to taxpayers, it would be wise to put the forms through a series of tests to validate the tax return's simplicity and being easy to complete. To help simplify tax administration, the information required on the tax forms should be kept to a minimum and be readily available from the taxpayer's books and records.³⁶⁸

Simplifying the tax system will also lead to a reduction in taxpayer's costs of complying with their tax obligations. Compliance costs, like administrative costs, can be reduced by such measures as imposing a single rate (in the case of VAT), defining a reasonable registration threshold and reducing exemptions. Exemptions increase book keeping requirements and raise the cost of compliance. The data should be obtainable from their own accounts and taxpayers should not be asked to present data which would require them to keep special records for tax purposes.³⁶⁹

It is my opinion that simplifying tax laws in SAS will encourage voluntary compliance among taxpayers as they might more easily interpret and understand the law and the tax structure and so possibly be better able to declare their income and compute their own tax liabilities correctly. Many provisions in the tax legislation are

³⁶⁷ C Silvani & K Bear (1997) 'Designing a Tax Administration Reform Strategy: Experiences and Guidelines, Working Paper International Monetary Funds, Washington DC <<http://www.imf.org/external/pubs/ft/wp/wp9730.pdf>> accessed on 20th September, 2014.

³⁶⁸ *Ibid.*

³⁶⁹ Cnossen & Sijbren, 'Administrative and Compliance Costs of the VAT: A Review of the Evidence' (1994) *Tax Notes International*, Vol 8, 1649.

not applied for the simple reason that no one is able to comprehend them. The tax legislation is in some cases unintelligible: that without a commerce or law degree the ordinary taxpayer stands no chance of finding his way through the morass and even with these qualifications his advisers will of necessity have to struggle to make sense of language that is as convoluted as it is confusing.³⁷⁰

A typical example of a difficult ambiguous provision is S. 36(5) of the Personal Income Tax Act 2004 (As Amended) which states as follows:

Where under the provisions of Section 30 of this Act for the purpose of computing the income of a period from a source chargeable with tax under this Act, being a period the income of which is assessable income from that source for any year, it has been necessary to allocate or apportion to specific periods which fall within that period both gains or profits and losses, then no deduction shall be made under the provisions of subsection (2) of this section in respect of the loss or apportioned part thereof referable to that specific period, except to the extent that the loss or part thereof exceeded the aggregate gains or profits apportioned to the remaining specific period or periods within that whole period.

This provision is an example of the way the wordings of our tax legislation are framed which makes it even difficult for lawyers to interpret let alone laymen who are expected to assess and pay their tax liabilities themselves.

Since the main feature of SAS is self-completed tax returns which require a high degree or at least a reasonable level of simplicity because taxpayers come from various levels of backgrounds, education, income and most importantly levels of tax

³⁷⁰ M Inglis, *op cit* 5.

knowledge. In helping taxpayers to complete their tax returns accurately, the tax authority should supply simple but efficient tax systems.

4.4.3 Tax Audits and Audit Probability.

It is widely recognized that taxpayers' perception of the probability of being audited strongly determines their degree of compliance especially in a SAR.³⁷¹ Thus, the importance that a tax administration assigns to the audit function greatly affects the ability of the organization to enforce compliance.³⁷²

Therefore the third issue of SAS operation is setting and operating a suitable tax audit system. A tax audit is an investigation made by the tax authority in order to verify the accuracy of tax returns and attempt to detect non-compliance behavior and activities while audit probability is defined as the number of tax returns assessed (audited) divided by the number of tax returns received.³⁷³

There is a conflict between direct assessment and SAS in terms of tax audits whereby in direct assessment, all tax returns are subject to thorough scrutiny while SAS does not require any direct assessment as the responsibility is shifted to taxpayers for all assessments.³⁷⁴ Notwithstanding the conflicts, there is no doubt that tax audits are more detailed and extensive than other types of examination, such as general desk checks, compliance visits/reviews or documents matching programmes. Thus the main purpose of tax audit is to ascertain the extent to which taxpayers may have complied with the relevant statutory provisions of the tax Act concerning their audited financial statements and other tax-related returns.³⁷⁵

³⁷¹ J A Dublin *et al*, 'Are We a Nation of Tax Cheaters? New Econometric Evidence on Tax Compliance' (1987) *American Economic Review*, Vol 77, No 2, 240.

³⁷² C Silvani & K Bear, *op cit*, 22.

³⁷³ E Kircher, *the Economic Psychology of Tax Behaviour*, (Cambridge: Cambridge University Press, 2007) P. 10.

³⁷⁴ A Mohani, 'Personal Income Tax Non-Compliance in Malaysia', (2001) *Victoria University Journal*, 24.

³⁷⁵ K Prince & J O Anyaduba, 'The Impact of Tax Audits on Tax Compliance in Nigeria' (2014) *International Journal of Business and Social Science*, 207.

Taxpayers must know that if they fail to comply with the tax laws, they face a reasonable risk of being detected. Self-assessment systems must therefore depend heavily on a strict audit program focused on higher-risk taxpayers.

During the last decade, many countries have successfully modernized their tax collection system, improved the accuracy of the taxpayer register, and computerized much of the tax collection process. However, many do not have effective audit programs to control the underreporting of taxes. Although several countries have seen some improvement – especially in the short term – in compliance and collection, within a few years after the first drastic changes are introduced a plateau is reached and there are no significant further advances.³⁷⁶ For example in Denmark, which has a strong and sophisticated audit program, the compliance rate is one of the highest in the world – reaching more than 95 percent for the VAT.³⁷⁷

Unfortunately, in many countries like Nigeria,³⁷⁸ auditing has decreased in importance relative to other tax administrative functions, as shown by the reduction in the number of staff assigned to auditing as well as by the decrease in the percentage of taxpayers who are audited. Auditors have gradually been moved to tax administration functions that are not directly related to controlling evasion. Reliance for audit works are then placed on private independent audit firm which in turn increase administrative and compliance costs. The recent move by the FIRS to engage the services of consulting firms to carry out investigative audit exercise on the corporate taxpayers in Nigeria in order to increase tax collection although commendable, the researcher recommends the use of FIRS staff instead of engaging independent consulting firms. The improvement of the skill and expertise of its staff especially its

³⁷⁶ C Silvani & K Baer, *op cit*, 23.

³⁷⁷ *Ibid.*

³⁷⁸ CITA S. 4(43) *op cit*. Prior to the introduction of the SAS, there was no specific provision in CITA for tax audit. This section was introduced to empower FIRS to carry out tax audit.

specialized departments such as the inspectorate, audit and investigation department is highly recommended instead of the temporary solution of engaging consulting firms and thereby increasing administrative costs.³⁷⁹

With the dwindling revenue accruing to federal and state governments as a result of declining returns from sale of crude oil, tax authorities at both federal and state should embark on a drive to increase collection through taxes. Tax audits remain the primary tool through which the tax and accounting records of taxpayers are reviewed in a SAR to ensure that the correct tax returns have been filed and correct taxes paid in the relevant year of assessment.³⁸⁰ In conclusion on this point, the researcher strongly recommends the need to periodically verify the tax returns filed by taxpayers through audits procedures as an integral part of the self-assessment regime.

4.4.4 Fines and Penalties

The fourth important issue in organizing a SAS discussed in this chapter is the use of fines and penalties to aid collection mechanism. Taxes are compulsory but fines are avoidable. As with tax audits, penalties and fines also appear to play a significant role in the success of SAS. In a SAS, taxpayers are also faced with a more difficult tax compliance task when compared to direct assessment system. Since SAS is heavily reliant on the honesty of taxpayers and is also not subject to complete scrutiny or assessment by the tax authority, the execution of penalties is important compared to in a direct assessment system. A possible explanation for this is that very

³⁷⁹D Komolafe, Joint Tax Audits: Friend or Foe of the FIRS, www.templats-law.com/wp-content/uploads/2016/04/JOINT-TAX-AUDITS-FRIEND-OR-FOE-OF-THE-FIRS-ii.Pdf accessed on 7th April 2016.

³⁸⁰Deloitte, Tax Audit Exercise: When will FIRS adopt risk-based approach in Nigeria? (2015) <www.deloitte.com/ng/en/pages/tax/articles/inside-tax-articles/tax-audit-exercise-when-will-FIRS-adopt-risk-based-approach-in-Nigeria.html> accessed on 20th September, 2014.

few taxpayers will be likely to be involved with tax audits and so penalties and fines take on a critical behavior – influencing role in helping to improve tax compliance.³⁸¹

A good system of sanctions and penalties is an indispensable tool for enforcing compliance. As part of the assessment of the tax administration, the effectiveness of the sanctions and penalty systems in encouraging taxpayers to voluntarily comply with their tax obligations should be evaluated.³⁸²

Various arguments arise regarding the impact of fines and penalties on tax compliance in SAS for example, fines that are too low could be perceived as an indicator that the authorities are weak and unable to control non-compliant taxpayers, thereby undermining trust among honest taxpayers and leading to a lack of encouragement to comply with tax law in SAS. Furthermore, fines that are inappropriate because a taxpayer has made a mistake resulting from vague or overly complex tax laws would weaken the perception of retributive justice and encourage tax evaders to try harder to regain their losses incurred by those fines.³⁸³

On this point, the researcher contends and recommends that since SAS is heavily reliant on the honesty of taxpayers and is also not subject to complete scrutiny or assessment by the tax authority, the execution of penalties is important compared to a direct assessment system. However, to ensure that the fines and penalties should be able to be easily applied by tax administrators to non-complying taxpayers and to achieve this, penalties should be relatively mild, since the application of lesser penalties does not require as a rule, a lengthy administrative and judicial process.³⁸⁴ Also, the sanctions and penalties should be designed to change the behavior of the average taxpayer, which requires that sanction be applied to the largest possible

³⁸¹ R Palil & A Farik, 'Factors Affecting Tax Compliance Behaviour in Self-Assessment', (2011) *African Journal of Business Management*, 12864.

³⁸² C Silvani & K Bear, *op cit*, 25.

³⁸³ R Palil & A Farik, *op cit*, P. 12867.

³⁸⁴ C Silvani & K Bear, *loc it*.

number of non-complying taxpayers. This is particularly relevant for countries like Nigeria with high levels of non-compliance.

In conclusion, these four issues, namely tax education and knowledge, the simplicity of the tax system, use of tax audits and penalties and fines are some of the main issues that may affect efficient operations in SAS and also encourage the possibility that taxpayers will calculate and pay their liabilities on their own since voluntary compliance should go hand in hand with a system of self-assessment.

4.5 Self-Assessment System in Nigeria

When Nigerian income tax emerged on 1961, Nigeria adopted an official assessment system also referred to as the formal system whereby tax payers were required to submit their returns within 30 days from the date of service. Under the formal system, taxpayers received their annual tax returns from the FIRS (formally known as the Federal Board of Internal Revenue (FBIR)), normally in March each year. It was the taxpayers' statutory duty to declare all the necessary particulars pertaining to their income and expenses for that particular year of assessment and to submit the completed returns to the FBIR not later than April 30th every year. Self-Assessment method of payment of taxes was actually introduced in Nigeria in 1992, following the enactment of the appropriate law in 1991. Initially, self assessment was not mandatory for every taxpayer until 1998.³⁸⁵

Under the formal system, it was assumed that taxpayers did not possess the necessary knowledge to compute their tax payable. The critics of the formal system called for tax reform in Nigeria which made the FIRS to make an aggressive and extensive assessment of the tax system (formal system). The formal system was considered to be time consuming, costly, inefficient and complex to administer. In

³⁸⁵ A Ebimobowei & O G Nkwazema, 'Self - Assessment and Revenue Generation in Nigeria' (2014) *Developing Countries Studies Journal*, Vol 4, No 10, 102.

addition, it encouraged late tax collection and placed a huge demand on human resources, hence the FBIR had been flooded with documents and burdensome work since the introduction of the tax system in Nigeria. Also, the nature of formal system itself required a high volume of returns to be processed resulting in a backlog of un-assessed cases, and delays in processing and issuing returns. In addition and most importantly, it was argued that the formal system did not encourage voluntary compliance as compared with SAS.³⁸⁶ The tax responsibility gap between taxpayers and tax authorities was therefore not in balance.

Thus, the introduction of SAS in 1991 for companies was an effort to enhance tax administration in Nigeria in line with global tax administration enhancement. As mentioned earlier in this chapter,³⁸⁷ the majority of countries reviewed in this work agreed that the main objective of SAS is to increase voluntary compliance, to minimize administrative costs, to increase efficiency and to lessen the Revenue authorities' burden. In Nigeria, some unethical attitudes emerged in the formal system such as failure to lodge tax returns and some tax payers not registering as taxpayers which led to the new system known as Self- Assessment System.

The Nigerian self-assessment requires that the taxpayer accurately calculate his tax liability, pay the tax due to designated bank to collect e-ticket and the self-assessment return³⁸⁸ on or before the statutory (due) date for filing such tax return.³⁸⁹ Tax returns are accepted by the tax authority as filed, subject to on-the-spot simple checks to ensure that tax return forms are correctly completed.³⁹⁰

³⁸⁶ C. N. Onyegbule, 'Achieving Voluntary Compliance through Self-Assessment Tax Regime', (2011) *The Common*

wealth Association of Tax Administrators Newsletter, 13

³⁸⁷ Under S. 3.2 of this chapter.

³⁸⁸ Tax Administration (Self-Assessment) Regulation 2011, Regulation 3 (1) (2).

³⁸⁹ *Ibid.*

³⁹⁰ *Ibid* Regulation 3 (3).

The returns are later subjected to further administrative processing including risk assessment of all tax returns and audit, where necessary. This is determined by risk based case selection which is the recent form of audit being adopted by FIRS. This risk based audit focus more on specific high-risk taxpayers, transactions or business arrangements unlike the traditional-tax audit approach where tax officers carry out substantive audit procedure on all items in the financial records of the tax payer.³⁹¹ Where the taxpayer fails to meet his obligation, late returns, penalty and interest will be imposed, as the case may be.³⁹²

The tax authority exercises its right under the law by issuing administrative assessments on taxpayers who fail to file tax returns on due date. Information for such assessments is obtained by on the spot audit of the tax payer's records and from third-party sources.³⁹³ Again, taxpayers are reminded about their obligation to file and pay taxes due ahead of due dates for filing tax returns by the tax authority.³⁹⁴

The implementation of SAS as re-invigorated since 2011 has brought about changes that resulted from a re-designed work-flow process, which gave the tax payer his full right to assess himself, eliminated the 100% examination of tax returns that was earlier been in practice and replaced it with risk based case selection for audit.³⁹⁵ A notice of assessment³⁹⁶ is no longer issued under SAS. The tax return furnished by the taxpayer is deemed to be a notice of assessment.

Also, there are adequate provisions for sanctions in the tax laws to address any forms of breach of laws and non compliance with the provisions of the law, particularly false declarations or deliberate attempts to reduce liability to tax under the

³⁹¹ Deloitte, *Op cit.*

³⁹² FIRS (Establishment) Act, 2007, *op cit.*, S.32 (1) (a) (b).

³⁹³ Tax Administration (Self-Assessment) Regulation 2011, Regulation 22 (1).

³⁹⁴ *Ibid*, Regulation 22 (2).

³⁹⁵ C N Onyegbule, *op cit.*

³⁹⁶ PITA *op.cit.*, S.57.

SAS.³⁹⁷ The sanctions include rejection of tax returns and recourse to administrative assessment and imposition of additional tax.³⁹⁸ The additional tax is imposed on the basis of information derived from taxpayer's records and third parties.³⁹⁹ Fines or imprisonment or both, interest shall be charged for the amount of tax under-declared with effect from the date when the liability became due; and the principal officers of the company stand the risk of being imprisoned as individuals for failure to ensure compliance.⁴⁰⁰

However, it is posited that despite all the intendments of the introduction of SAS in Nigeria since 1992, voluntary compliance has not taken root. Perhaps this is because it is run side-by-side with administrative assessment system due to grey areas in the tax laws and the absence of appreciable efforts at taxpayers' enablement.

4.6 **Benefits of Self Assessment System**

In countries where self-assessment has been adopted, it has generally been initiated with the objective of improving overall compliance of tax revenue on time. SA ultimately reduces administrative costs of tax authorities, and where aided by modern technology, most countries have adopted the system to drive down cost and ensure timeliness in filing return. Nigeria can benefit from this trending revenue collection system.⁴⁰¹ Self Assessment also reduces the discretionary powers of tax official and reduces opportunities for corruption.⁴⁰²

Furthermore SAS is more cost effective as it only selects exceptional cases for further scrutiny.⁴⁰³ Administrative assessment system are resource-intensive and tend

³⁹⁷ C N Onyegbule, *op cit*.

³⁹⁸ Tax Administration (Self-Assessment) Regulation 2011, Regulation 20.

³⁹⁹ *ibid*, Regulation 23.

⁴⁰⁰ *ibid*, Regulation 27, 28.

⁴⁰¹ Frank Obaro, 'Self Assessment Can Drive Tax Growth In 2013', *Vanguard*, February 10th, 2013, P. 10.

⁴⁰² *Ibid*.

⁴⁰³ T K Sarker, 'Improving Tax Compliance In Developing Countries Via Self-Assessment System – What Could Bangladesh Learn From Japan' *Asia Pacific Tax Bulletin* 2003 Vol 9, No 6, 8.

to be ineffective because of reasons such as: high cost of administration because of the high level of intervention of tax officials; resource limitations to check tax returns; poor taxpayer education and assistance programs; less tax collection overall because of insufficient focus on the highest revenue risks and high level of dispute. Whereas self assessment requires taxpayer to perform certain functions and exercise some responsibilities that might otherwise be undertaken by the Tax authority.

Again, objectives supporting the change of self assessment system are to increase voluntary compliance, reduce tax authorities' burden of assessing tax returns and increase tax collection efficiency.⁴⁰⁴

Finally, self-assessment gives the taxpayer greater control and responsibility over his tax affairs⁴⁰⁵ and increase in revenue where well implemented.

4.7 Problems of SAS

First of all, under the SAS there is the possibility of decline in the quality of assessments and voluntary compliance. Under the SAS, the burden of assessing tax liability has been shifted from the shoulders of tax assessors to the taxpayers. Therefore to comply with SAS voluntarily, taxpayers need to possess a good understanding of the tax laws, particularly the income tax laws and changes in tax legislations.⁴⁰⁶

Notably, even in the developed country, such as, Australia and the United Kingdom (UK), the implementation of SAS was overwhelmed with various problems and criticisms at the beginning. In the UK, the Association of Certified Chartered

⁴⁰⁴ M Terrefe, *op cit*, P. 84.

⁴⁰⁵ O G Nikwazema, 'Self-Assessment Scheme and Revenue Generation in Nigeria', *Developing Country Studies*, 2004 vol 4, No 10, 1.

⁴⁰⁶ M Lai & K Choong, 'Self-assessment Tax System and Compliance Complexities: Tax Practitioners' Perspectives', (2009) *Oxford Business & Economics Conference Program Journal*, 2.

Accountants (ACCA)⁴⁰⁷ found that 36% of its members still have problems with the SAS and about 9% of them claimed that SAS is still chaotic even after four years of implementation while on 24th November, 2003, the Australian Treasurer had to announce a major review of SAS based on concerns raised by the Australian taxpayers on the tax system, and it took almost a decade for SAS to really make a difference in Australia.⁴⁰⁸

Earlier, Inglis also had the opinion that SAS is not working properly in Australia as the frequent changes in tax laws and its volume make it difficult for tax specialists and tax assessors to comprehend, let alone anyone else. In a similar vein, the Nigerian tax laws are inherently voluminous and complex and the constant amendments make it difficult even for tax officers, tax academics, tax practitioners to keep abreast of the latest development, let alone the ordinary people. This ordinarily leads to increase in tax defaulters as to be tax compliant, taxpayers need to be tax literate. At minimum, individual taxpayers need to possess some basic knowledge of personal taxation with respect to the taxability of income, deductibility of expenses, entitlements, reliefs, rebates and exemptions need to have a good understanding of the basic concept of self-assessment system to be compliant which is nonetheless easier said than done.

4.8 **Establishment of Tax Administration (Self Assessment) Regulation, 2011**

On December 12, 2011, the Management Board of the FIRS (the Board) in exercise of the powers conferred on it by Section 61 of the Federal Inland Revenue Service (Establishment) Act 2007, with the approval of the Minister of Finance

⁴⁰⁷ ACCA, ACCA Members' Survey: Self Assessment, (2002) *The Association of Chartered Certified Accountants*, 1.

⁴⁰⁸ A Paddock & C Oates, 'Corporate Tax Self-Assessment Lessons From Down Under' *International Tax Review* 2003, 14(10), 28-30.

gazzetted a Regulation dated 19th December, 2011 modifying the processes and procedures for self assessment returns.

The regulations cover tax returns under the Companies Income Tax Act (CITA), Education Tax Act (ETA), Petroleum Profit Tax Act (PPTA), Personal Income Tax Act (PITA), National Information Technology Development Act (NITDA), Value Added Tax Act (VATA)⁴⁰⁹ and though not specifically mentioned, Capital Gains Tax Act (CGTA), given that all taxes under the FIRS Establishment Act are stated as falling under the scope of the Regulation.⁴¹⁰

The Regulations provided guidance and introduced some form of consistency in the filing of self-assessment tax returns. However, the enabling Section 61 of the FIRS (Establishment) Act only granted powers to the FIRS Board to make rules and regulations for giving full effect to the provisions of the law. The Board does not have powers to amend or modify the law. Therefore, any provisions of the Regulations which run contrary to the relevant laws will be null and void and of no effect.⁴¹¹

The major changes introduced by the Regulations include the requirement of concurrent filing of tax returns and payment of tax due on or before the due date.⁴¹² By this regulation, a taxpayer must compute his/her tax liabilities, pay the tax/taxes due and file the relevant returns with evidence of payment (e-ticket) on or before the due date.⁴¹³ The relevant tax authority i.e. the FIRS shall accept all tax returns submitted by the taxpayer and carry out all the necessary checks to ensure that all required information have been appropriately entered into the return forms⁴¹⁴ and

⁴⁰⁹ *ibid*, 2011, S. 2.

⁴¹⁰T. Oyedele, Tax Administration (Self Assessment) Regulation 2011: What you need to be aware of, <<http://www.pwc.com/ng/en/pdf/tax-administration-self-assessment-regulations-Nigeria.pdf>> accessed on 30th September, 2014.

⁴¹¹ *Ibid*.

⁴¹² Tax Administration (SA) Regulations 2011, S. 3(1).

⁴¹³ *Ibid* Regulation 3(2).

⁴¹⁴ *Ibid* Regulation 3(3).

failure by a taxpayer to submit the tax returns forms on or before the due date is a breach of these regulations and the taxpayer shall be liable to pay such fines together with interests as may be prescribed in the regulation or under the relevant provisions of the applicable tax laws.⁴¹⁵

On the forms for the purpose of filing tax returns under the Regulation, it provides thus:

- a) In the case of the Personal Income Tax Act and other taxes on individuals, the tax return forms shall be as may be prescribed by the relevant tax authority;
- b) In the case of taxes on companies, the tax return forms shall be as may be prescribed by the Board of the Federal Inland Revenue Service;
- c) In the case of the tax return forms required under the Value Added Tax Act, the forms shall be as may be prescribed by the Board of the Federal Inland Revenue Service;
- d) In the case of all other taxes not covered by paragraph (a), (b) and (c) of this Regulation, the tax return forms shall be as may be authorized by the relevant tax authority responsible for the collection of the tax.⁴¹⁶

Another change introduced by the Regulation include filing of tax returns to be done by the taxpayer in person or through an accredited agent⁴¹⁷ being a person certified by any of the bodies: The Association of National Accountants of Nigeria (ANAN), the Chartered Institute of Taxation of Nigeria (CITN) and the Institute of Chartered Accountants of Nigeria (ICAN).⁴¹⁸ To perform the filing, the agent must have the accompanying seals of the relevant professional bodies, and must be tax

⁴¹⁵ *Ibid* Regulation 3(4)

⁴¹⁶ *Ibid* Regulation 4.

⁴¹⁷ *Ibid* Regulation 5(1).

⁴¹⁸ *Ibid* Regulation 2.

compliant,⁴¹⁹ that is, has paid taxes as and when due as evidenced by the production of current tax clearance certificate. The relevant tax authority may also assess the competence and professionalism of the agent in accordance with standards of the relevant professional body.⁴²⁰

On signing of forms where the tax agent is engaged by a taxpayer. The Regulations provides as follows:

Where an agent has been engaged by a taxpayer for the purpose of filing tax returns:

- (a) In the case of filing returns for Personal Income Tax Act, the form must be signed by the taxpayer in person;
- (b) In the filing of returns under the Companies Income Tax Act, the forms must be signed by a Director or the Company Secretary.⁴²¹

The Regulations further made provisions for the due dates of filing returns under the provisions of the existing tax laws. With respect to Personal Income Tax, the due date for filing self assessment is 31 March of every year while in the case of Pay-As-You-Earn (PAYE) (for employment income), tax deducted must be paid with appropriate returns (showing total emolument and tax deducted for each employee during the month) within 10 days of the end of each month and annual returns showing total annual emolument, tax relief, total tax deducted for each employee and a declaration under oath on the relevant forms must be filed by the employer.⁴²²

In respect of Companies Income Tax⁴²³, due date is 6 months after the financial year and date, while for Petroleum Profit Tax, estimated tax returns must be filed for each accounting year within 2 months of the accounting year while

⁴¹⁹ *Ibid* Regulation 6.

⁴²⁰ *Ibid* Regulation 10.

⁴²¹ *Ibid* Regulation 7.

⁴²² *Ibid* Regulation 12(1), (a), (b) (i) (ii).

⁴²³ *Ibid* Regulation 12(2).

installment payment must commence one (1) month thereafter with final returns made within 5 months after the end of relevant accounting period along with evidence of payment of final installment.⁴²⁴

And for VAT, payment and returns are due not later than the 21st day of the month after the month of transaction with evidence of payment.⁴²⁵

The researcher however faults the provision by the Regulations for the due date for filing of tax returns and payment of tax by the companies when clearly the CITA under its S. 77 made clear provisions on time within which tax shall be paid by every company. Section 77 of CITA expressly states as follows:

A company filing self assessment shall pay the tax due within two months from the date of filing the assessment in one lump sum or such number of monthly installments (not being more than six) as may be approved by the Board;

This subsection added two provisos. The first was that the last installment must be paid by 30th November of the year of assessment, and the second is that a request for installment payment must be made in writing.

Clearly, the scope of the Regulation as regards this is over reaching considering the fact that the principle legislation (CITA) for which the FIRS made regulations for already had copious provisions on the procedure for self assessment. It is observed that the FIRS does not have powers to amend or modify the law and that S. 12(3) of the Regulation shall be null and void and of no effect.

Again, as regards extension of time to file returns, the Regulations stated that a taxpayer may apply for extension of time to file returns but specific circumstances to be considered by the relevant tax authority as stated in the Regulations are (1) Death

⁴²⁴ *Ibid* Regulation 12(3).

⁴²⁵ *Ibid* Regulation 12(4).

of taxpayer in the case of an individual or death of a principal officer such as the Chairman, Director or company Secretary in the case of a company or (2) A natural disaster.⁴²⁶ And both circumstances must be supported by verifiable evidence.⁴²⁷ However late filings outside extension granted regardless of whether tax due has been paid will be liable to a penalty.

The regulation however stated as follows as regards consequences of late filing under the period of extension:

Where an extension is granted, any late filing outside the period of extension whether accompanied by payment of tax due or not shall be penalized for late filing under these Regulations.⁴²⁸

This section merely implies that taxes must be paid as and when due regardless of any approval for extension of time for filing granted by the tax authority .Such tax payments may have to be estimated given that in many cases the actual amounts may not be known.⁴²⁹ In this case, it is posited that there should be a laid down amount in the Regulation as regards penalties and interests to be paid as provided in the various Court Rules in other to avoid undue extortion of the tax payers. However it is observed that there is no extension for filing of VAT returns.⁴³⁰ The researcher also faults the provisions of Regulation 14 (1) in that a ‘Principal Officer’ as stated therein for the purposes of the Regulations is not defined.

The Regulations also made provisions on installment payment of Income Tax. Under the Regulations, a taxpayer is required to notify the relevant tax authority of intention to make installment payment and pay the tax due by installment commencing in the relevant year of assessment before the due date in a manner that

⁴²⁶ *Ibid* Regulation 14(1).

⁴²⁷ *Ibid* Regulation 14(2).

⁴²⁸ *Ibid* Regulation 15.

⁴²⁹ T. Oyedele *op cit*.

⁴³⁰ Tax Administration (Self Assessment) Regulations, S. 17.

final payment shall be made not later than the due date together with the returns.⁴³¹ The tax authority may grant approval for installment payment in a manner that the last installment is paid not later than 2 months after the due date subject to a maximum of three (3) installments from the due date.⁴³² Also, any taxes unpaid as at the due date shall attract interest.⁴³³

It is noteworthy that due date is defined as the day prescribed by the law for the filing of returns and making of payments by taxable persons.⁴³⁴ Furthermore, Tax authorities may issue administrative assessment where a taxpayer fails to file returns or as a result of under payment arising from a tax audit or investigation.⁴³⁵ The minimum notice period to conduct an audit is 7 days. However, no notice period is stated for an investigation. Also, administrative assessment shall include penalties and interests imposed as parts of the liability due, effective from the time the returns became due.

Again the circumstances where the relevant tax authorities can raise Administrative Assessments are provided as follows:

- (a) In the course of an authorized audit of a taxpayer's book provided that the taxpayer has been given not less than seven days notice that an audit into its books and affairs is to be conducted,
- (b) In the course of an authorized investigation into the affairs of the taxpayer, and;
- (c) In the administration of the Pay-As-You-Earn Regulations under the provisions of the Personal Income Tax Act, the relevant tax authority shall within the year of assessment or within six years after the expiration of the

⁴³¹ *Ibid* Regulation 18(1).

⁴³² *Ibid* Regulation 18(2) (a).

⁴³³ *Ibid* Regulation 18(2) (b).

⁴³⁴ *Ibid* Regulation 35 (a).

⁴³⁵ *Ibid* Regulation 22.

year of assessment serve a notice of assessment on every employer to be assessed.

Again, where a taxpayer fails to file returns or pay the tax due, the relevant tax authority shall impose penalties and interest on the taxpayers, agent or employer, from the due date of filing as provided in the applicable laws or regulations issued by relevant tax authorities. Any appeal against an administrative assessment may be lodged with the appropriate tax office of the relevant tax authority responsible for the assessment. If dissatisfied, further appeal may be lodged directly to the Executive Chairman of the relevant tax authority (or its equivalent) and thereafter to the Tax Appeal Tribunal and then the Federal High Court.⁴³⁶

Finally, the Regulations state that the taxpayer information shall be treated as confidential and not disclosed to any third parties or government agencies other than as provided in the laws of the Federal Republic of Nigeria.⁴³⁷ All relevant tax authorities are required to apply uniform procedures to all taxes administered as set out under the Regulations.

In conclusion under this head, the researcher admits that the Regulations is a welcome development by the FIRS as overall the Regulations seek to provide some guidance and introduce some level of consistency in the filing of self assessment tax returns. However, the enabling Section 61 of the FIRS (Establishment) Act only grants powers to the FIRS Board to make rules and regulations for giving full effect to the provisions of the law. The Board does not have powers to amend or modify the law. Therefore, any provisions of the Regulations which run contrary to the relevant tax laws will be null and void, and of no consequence. Given that some of the changes

⁴³⁶ *Ibid* Regulation 22(2).

⁴³⁷ *Ibid* Regulation 33.

touch on issues on which CITA has very clear provisions, the FIRS should consider presenting a bill to the National Assembly for amendment of CITA.

4.9 Adoption of the Self-Assessment Regime in Nigeria

The principle of self-assessment (and self-payment) is the foundation of a modern tax administration⁴³⁸ and if well implemented in Nigeria will surely yield anticipated revenue for the government. The question now is how well adopted and implemented is the SAS in Nigeria? It is obvious that two decades after the adoption of the SAS in Nigeria, it is yet to take root. First of all, underlying the shift to a self-assessment tax regime is the philosophy of ‘the customer is king’. SA is significantly hinged on the key assumption that the taxpayer is a stakeholder and a partner who should be treated courteously. If revenue collection is to be improved, then there is need to accord taxpayers respect and gain their trust and understanding. Enforcement and closures only become necessary after all information and support services fail to elicit voluntary compliance.⁴³⁹

In Nigeria, so many factors presently hinder the taxpayers’ voluntary compliance. The low level of tax compliance can be attributed to a number of factors which includes incoherent fiscal policies, cumbersome and inefficient tax administration system, ambiguities in the tax laws, lack of transparency regarding the utilization of tax revenue for social services and visible development.

Self-assessment tax regime can be grouped into two broad components, namely **Taxpayer Enablement**, and **Compliance Enforcement**.⁴⁴⁰ Whereas the taxpayer bears the burden of computing and paying the due, the FIRS has to ensure

⁴³⁸ V. Tanzi & A Palleschio, ‘The Reform of Tax Administration’, (1995) *IMF working paper*, 11.

⁴³⁹ O Deji & V Onoja, ‘Self Assessment Regime: Towards Voluntary Tax Compliance in Nigeria’, *Gauge*, April-June, 2011, P. 8.

⁴⁴⁰ *Ibid*, P.10.

that the taxpayer is sufficiently enabled to perform this function. Chiefly in this enablement is that our tax laws are not simplified.⁴⁴¹ In other words, Nigerian tax laws are not easy to comprehend or understand for the average taxpayer to assess and pay his tax liabilities. The income tax legislations are far too lengthy. If two of the important criteria of a good tax system are simplicity and certainty, the Nigerian tax system fail the test miserably. Adopting the words of Inglis:

The legislations are in some cases too highly worded that without a commerce or law degree the ordinary taxpayer stands no chance of finding his way through the morass and even with these qualifications this advisers will of necessity have to struggle to make sense of language that is as convoluted as it is confusing.⁴⁴²

The task of the tax officer in Nigeria is not any easier as many provisions in the legislation are not applied for the simple reason that no one is able to comprehend them. In order for taxpayers to calculate their own tax liabilities, they must first understand the tax law and how it applies to their situation. Simple laws and regulations facilitate self-assessment, while maximizing taxpayer effort and compliance cost. Simplified and harmonized administrative procedures can also help lower cost of compliance simplified rules (including record keeping requirements) should be in place for small taxpayers.⁴⁴³

Some countries like Liberia, Lesotho and Tanzania, implemented self-assessment when they introduced a new income tax and in addition to the technical aspect of the income tax, the three countries had the opportunity to comprehensively review the income tax legislation to ensure is easily understandable, well organized,

⁴⁴¹ M Inglis, 'Taxing times: Is Self Assessment Working' (2002) *Australian Tax Review*, 5.

⁴⁴² *Ibid.*

⁴⁴³ A Okello, 'Managing Income Tax Compliance Through Self-Assessment', (2014) *IMF Working paper*, 16.

effective and integrated into the respective country's legal system, all of which are supportive of a self-assessment system.⁴⁴⁴

In Nigeria however, self assessment was introduced by making only minimal but critical changes to the income tax legislation.⁴⁴⁵ While this approach may be desirable at the early stages of the adoption of SAS, this approach however left conflicting legal and administrative provisions in place which confuse the public and administrators. The researcher suggests that effective self-assessment regime will require a complete overhaul of the Nigerian tax legislations.

International experience demonstrates the importance of deliberate and consistent review of SAS⁴⁴⁶ The focus should be to assess whether the SAS is operating in the manner that was intended and whether it is realizing its full potential. While this has been done in some developed countries, there is no evidence that neither Nigeria nor any of the above stated countries that implemented self-assessment with the introduction of a new income tax law have undertaken such reviews as a basis for improving the income tax law. For example, in Australia, the Australian Tax Office (ATO) and Treasury Department has addressed problems that the administration identified with the self-assessment arrangements. Various reviews were undertaken and changes made over the years. Some major reviews were commissioned by the Australian government on November 24, 2003. It was conducted by the Department of Treasury and involved extensive public consultation with, and submissions from professional associations, business groups and tax payers. It examined whether the right balance had been struck between protecting the rights of individual taxpayers and protecting the revenue for the benefit of the whole Australian community. It also sought to identify whether there were refinements to

⁴⁴⁴ Rwanda also subsequently enacted a new income tax law as part of a broader legislative review process.

⁴⁴⁵ For example, Tax Administration (Self Assessment) Regulations.

⁴⁴⁶ A. Okello, *op cit*, 17.

the present arrangements that would reduce the level of uncertainty for taxpayers, reduce compliance costs and enhance the timelines of ATO audits and amendments, while preserving the capacity of the ATO to collect legitimate income tax liabilities.⁴⁴⁷ The researcher suggests that this is the type of review that should be undertaken by the FIRS from time to time.

Again, the taxpayers in Nigeria are not enabled by the provision of good service to the taxpayers. Self assessment demands that the tax administrators adopt a service-oriented attitude towards taxpayers ensuring that taxpayers have the information and support they need to meet their tax obligations. It's trite, that taxation vis-a-vis revenue generation (collection) is intricately interwoven with governance, as a matter of fundamental imperative. One cannot simply be divorced from the other. Just as in the medieval African monarchies, contemporary democracies all over the world rely on the citizens financial contributions for the sustenance of government and public good. Instructively, the tripartite intricate link between taxation, democracy and good governance cannot be emphasized.⁴⁴⁸ The FIRS should provide the taxpayers with clear information describing their obligations, the tax applicable, when and where they are payable. The average taxpayer in Nigeria need to be informed about changes to the laws and they should have easy access to information and tax forms. The researcher recommends that the FIRS should constantly, unequivocally and religiously provide taxpayers with a range of advice and information through enquiry centers, websites, free public seminars, and so on.

Furthermore, the Nigerian taxpayer should be enabled by the tax authority through the designing of simple and user-friendly tax forms that captures all

⁴⁴⁷ A. Okello, *op cit*, 18.

⁴⁴⁸ *Akinbiyi v Lagos Island Government Council* (2012) LPELR 19839 (CA).

declarations to be made. Also, all tax forms should be accompanied by guidance notes so that the taxpayer (especially individuals and fringe companies) does not bear additional costs through the engagement of external professionals/advisors to complete the forms.⁴⁴⁹ Modern Innovations in this area should also be exploited to improve the business environment and reduce the cost of compliance. Some examples of new practices in this area includes e-filing or other means (e.g. drop-off boxes in the tax administration or a commercial bank), and e-payment (internet and mobile banking).⁴⁵⁰ Some of these innovations are been implemented in Nigeria but the workability and usability is another bull game. For example, the official website of FIRS⁴⁵¹ on the surface has such information as ‘e-filing,’ ‘Tax Calculator’, ‘Tax Legislation’ etc but a click on any of the portals reveals no information. In other words, the FIRS website is underdeveloped and not useable. The researcher recommends that in a SAR where the voluntary tax compliance of the taxpayers is to be encouraged, such should not be applicable. The Nigerian taxpayers should be enabled in this area to encourage SAS in Nigeria.

Furthermore, the tax forms in Nigeria are only seen in the tax offices and designated banks only. The taxpayer should be able to collect and have access to forms with minimal efforts.⁴⁵² The forms should be made available at websites and places frequently visited by taxpayers. For example, churches/mosque, banks, post offices, shops/supermarket, petrol filing station etc. These are some of the enablement that should be in place by the FIRS to effectively implement SAS in Nigeria.

Again, the second component of self-assessment tax regime being compliance enforcement is simply the stick aspect as opposed to the carrot. When taxpayers are

⁴⁴⁹ A Ebimobowei, *op cit*, 105.

⁴⁵⁰ *Ibid*, 106

⁴⁵¹ FIRS <[www. Firs.gov.ng](http://www.Firs.gov.ng)> accessed on 15th December, 2016.

⁴⁵² O Deji & V Onoja, *op cit*, P.10.

sufficiently enabled, then there should not be any justifiable reason for deliberate refusal to comply or for fraudulently under declaring. It is posited that with appropriate taxpayer enablement in place by the tax authority i.e. FIRS, tax compliance enforcement action may bring about a change in behavior from non compliance to voluntary compliance.⁴⁵³ One of the Tax compliance enforcement that should be adopted in Nigeria is effective collection enforcement. The prompt detection of taxpayers failing to file tax returns and/or pay the tax due is critical to improve tax compliance. This begins with having a cleansed and updated taxpayer register. Collection enforcement must be prompt and expeditious, since international experience has consistently shown that the older the debt, the more difficult it is to collect.⁴⁵⁴

In Nigeria, the reverse is the case. It takes years for the tax authority to detect taxpayers that failed to liquidate their tax liabilities and even when detected, will take years for the case to be heard in court. It is a known fact that some cases stay up to 15 years in court and some proceed up to the Supreme Court.⁴⁵⁵ The researcher suggests that there should be a law in place for some cases to proceed on arbitration instead of the regular courts for prompt resolution.

Again taxpayers in Nigeria must know that if they fail to comply with the tax laws, they face a reasonable risk of being detected. Tax systems such as those found in Canada, the United States and the United Kingdom primarily rely on the notion of voluntary compliance by taxpayers but importantly, the threat of possible audit also

⁴⁵³ A Ebimobowei, *op cit*, 105.

⁴⁵⁴ .A Okello, *op cit*, 16.

⁴⁵⁵ For example, the case of *Aeromaritime v Lagos State Internal Revenue Board* (2001) LPELR 6957 (CA) lasted for 5 to the Court of Appeal.

serves to encourage voluntary tax compliance.⁴⁵⁶ Interests and penalties will also serve to remind taxpayers of the need to take reasonable care in preparing their tax returns and managing their tax affairs. Interests and penalties must be neither too lenient nor unrealistically harsh and must be applied consistently throughout the country.⁴⁵⁷

In conclusion under this head, the researcher suggests that since FIRS require tax payers to file their returns, tax assessment and payment on time, the FIRS should also be efficient in their internal processes. As tax officers are no longer burdened with tax assessment workloads, therefore it is responsible for taxpayers to expect and demand better tax services and guidance on tax policy matters from the FIRS and finally, non-compliance should be dealt with justly and swiftly to encourage the majority of taxpayers to comply although these enforcement strategies should be resorted as the last measures for non-voluntary compliance.

⁴⁵⁶ V Braithwaite, 'A New Approach to Tax Compliance' in V Braithwaite (ed), *Taxing authority: Understanding Tax*

Avoidance and Evasion (UK: Ashgate, 2003) P. 11.

⁴⁵⁷ A Okello, *op cit*, 16.

CHAPTER FIVE

SELF ASSESSMENT PROVISIONS IN NIGERIAN TAX

The adoption of Self-Assessment System (SAS) results in a considerable shift of responsibility upon taxpayers with regard to their compliance obligation. Additional compliance responsibilities for taxpayers include an obligation to report, compute and pay their taxes according to tax laws. In discharging these obligations, taxpayers must understand the tax laws, compute and pay the correct amount of tax liability, as well as keeping appropriate records.⁴⁵⁸

In Nigeria, there has been a progressive proliferation of taxes⁴⁵⁹ since independence by various legislation either by civilian or military administration which was as a result of the level of economic development in the country. However the intendment of this chapter is not the tax laws in Nigeria but limited to the self-assessment provisions under the Nigerian Tax regime. The whole essence of good governance is to improve the welfare of the generality of the populace which is carried out with resources raised through taxation. Thus, the imposition of tax and the self-assessment system provision is statutory to enable government meet its obligations. It is noteworthy that the SAS is a system whereby the taxpayers are given the privilege by law to compute their tax liability and remit the taxes to the tax authorities.⁴⁶⁰ In other words, the self-assessment regime does not exist in a vacuum but adequately governed and backed by law.

The various tax laws which the tax authorities operate for various tax types being administered all contained provisions for the Self Assessment Tax System. A summary of the legislation guiding the implementation of the self-assessment system

⁴⁵⁸ N S Sapei & J Kasipillai, 'Impact of the Self Assessment System for Corporate Taxpayers' (2013) *American Journal of Economics*, 75.

⁴⁵⁹ JAA Agbonika, *Problems of Personal Income Tax in Nigeria* (Ibadan: Ababa press, 2012) P. 57.

⁴⁶⁰ L Yahayn, 'The Perception of Corporate Taxpayers' Compliance Behaviour Under Self-Assessment System in Nigeria, (2015) *Journal of Management Research*, 350.

in Nigeria are as follows: - Constitution of the Federal Republic of Nigeria, 1999(As amended), Federal Inland Revenue Service (Establishment) Act of 2007, Tax Administration (Self-Assessment) Regulations, 2011, Company Income Tax Act of 2007, Personal Income Tax Act of 2011, Petroleum Profit Tax Act of 2007 and the Value Added Tax Act of 2007. These tax legislation and the self-assessment provisions there in are to be discussed hereunder.

5.1 **The Constitution of the Federal Republic of Nigeria**

The Constitution of the Federal Republic of Nigeria 1999 (as amended)⁴⁶¹ has provided a leeway for implementation of self assessment. Section 24(f) stipulates that, ‘It shall be the duty of every citizen to declare his income honestly to appropriate and lawful agencies and pay his tax promptly’. This section of the constitution in summary made provision for the self-assessment tax regime as the taxpayer is granted the right, by law, to compute his own tax liability, pay the tax due and produce evidence of tax paid at the time of filing his tax returns at the tax office, on due date.⁴⁶²

It is noteworthy that the Constitution is supreme; it is organic or fundamental law. The Constitution is the *fon et origo* and foundation of all laws⁴⁶³ and any act which infringes or runs contrary to those organic principles or system or provisions must be declared to be inconsistent. The court has the jurisdiction to declare any other law or Act inconsistent with the provisions of the constitution, invalid and therefore null and void.⁴⁶⁴ It cannot be otherwise as the Constitution is the supreme law of the

⁴⁶¹ The Constitution of the Federal Republic of Nigeria 1999 (as amended) Laws of the Federation of Nigeria 2004.

⁴⁶² A Ebimobowei & O G Nkwazema, ‘Self - Assessment and Revenue Generation in Nigeria’ (2014) *Developing Countries Studies Journal*, Vol 4, No 10, 102.

⁴⁶³ *Wabura & Ors v. F.R.N.* (unreported) Suit No. CA/A/7/C/2006.

⁴⁶⁴ *Fasakin Foods (Nig) Ltd v Shosanya* (2006) 10 NWLR (Pt 987) 126 at 148-149.

land and it is settled law that any law or Act or section thereof that is inconsistent with any provision of the Constitution is null and void to the extent of the inconsistency.⁴⁶⁵

Also noteworthy is the fact that where a taxpayer fails to pay tax by virtue of S. 24(f) of the Constitution, the rights of the individual to own a property, right to privacy and freedom from compulsory acquisition of property as entrenched in S. 37, 43 and 44 of the Constitution is affected. The section states as follows:-

S. 37 The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communication is hereby guaranteed and protected.

S. 43 Subject to the provisions of this constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.

S. 44(1) No movable property or any interest in any movable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by the law that, among other things-

(a) Requires the prompt payment of compensation therefore and

(b) Gives any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria ..

S. 44(2) Nothing in subsection (a) of this section shall be construed as affecting any general law;

(a) For the imposition or enforcement of any **tax**, rate or duty.

⁴⁶⁵ *Nwaigwe & Ors v Okere & Anor* (2008) LPELR – 2095(SC), P. 21.

From S. 44(2) (a) above, there is no doubt that the taxpayers' freedom from compulsory acquisition of property by allowing compulsory acquisition of property for the sake of enforcement of tax is qualified.⁴⁶⁶ Tax payment is an obligation of a citizen according to S. 24(f) of the Constitution. Failure of the citizen to pay tax shall strip him of the protection clothed him by S. 44(1) of the Constitution.⁴⁶⁷

At the national level, the protection of taxpayers' right is also contained in the Constitution and in codified tax laws.⁴⁶⁸ At the international level, Nigeria signed and ratified almost all the United Nations Human Rights treaties including the African Charter on Human and People's Right (1983) (African Charter) as well as the protocol to the African Charter on the Establishment of African Human Rights Court (2004) which was adopted on 21st October, 1986. The African charter has been passed into law in Nigeria and therefore in the absence of an express guarantee or declaration by the Nigerian Constitution, the African charter as a domestic law fills that gap.⁴⁶⁹

Article 45 of the African charter creates the African Commission on Human and Peoples' Rights (African Commission) with the goal of promoting and protecting human and peoples' rights under conditions laid down by the charter. No known taxpayers' rights abuse case has been recorded therein but it remains a good legal instrument for taxpayer right protection.

Until recently, the Constitution and other Human Rights instruments have not been consulted and applied in the practice of taxpayers' right of protection. Aggrieved parties have always sought legal redress under the provisions and protections in tax statutes. However, it is to be noted from the foregoing that asides the obligation to pay

⁴⁶⁶ *Chief of Defence Staff & Anor v Tijah* (2016) LPELR – 40818 (CA).

⁴⁶⁷ *Independent Television/Radio v. Edo State Board of Internal Revenue* (2014) LPELR – 23215(CA), P. 64.

⁴⁶⁸ B O Oke, 'Taxpayers Rights Protection in Nigeria', (2012) *Institute of Advanced Legal Studies Journal*, 21.

⁴⁶⁹ *Ibid.*

tax as provided in the Constitution, there are also relevant rights of the taxpayers provided in both the Constitution of the Federal Republic and the African Charter.⁴⁷⁰

One of such rights provided in the Constitution is the taxpayers' right to fair trial. Right to a fair hearing or fair trial is provided for in Section 36(1) of the Constitution. It is trite that tax disputes are mostly civil in nature and where they involve elements of criminality; they are to be transferred from the Tax Appeal Tribunal to a regular High Court. However, whether the taxpayers' dispute is civil or criminal in nature, several rights have been guaranteed. Section 36(1) and (2) of the Constitution provides as follows:-

- (1) In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.
- (2) The proceedings of a court or the proceedings of any Tribunal relating to matters mentioned in subsection (i) of this section (including the announcement of the decision of the court or Tribunal) shall be held in public.

The corresponding provision of the African Charter is Article 7, which provides as follows:-

Every individual shall have the right to have his cause heard. This comprises of:-

⁴⁷⁰ The African Charter has been ratified in Nigeria based on the provisions of S. 12 of the 1999 Constitution (As amended) ; *Abacha & Ors v. Fawehinmi* (2000) LPELR – 14(SC).

- (a) The right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;
- (b) the right to be presumed innocent until proved guilty by a competent court or tribunal;
- (c) the right to defence, including the right to be defended by a counsel of his choice;
- (d) the right to be tried within a reasonable time by an impartial court or tribunal.

The right to fair hearing is a well-established principle for trials in Nigeria and the researcher posits that it equally applies to all citizens and taxpayers in a self-assessment regime (SAR) without discrimination. It applies in all judicial and quasi-judicial proceedings (even in administrative tribunals). In the case of *Ovunwo & Anor v Woko & Ors*,⁴⁷¹ the Supreme Court held as follows:-

Fair hearing is a fundamental constitutional right as entrenched in the 1999 constitution as amended. And the breach of fair-hearing in any proceedings without more vitiates such proceedings in their entirety; it renders the entire proceedings null and void.

As one of the pillars of the principle of fair hearing, courts and Tribunals must ensure that from the fair assessment of a reasonable man, that there is no likelihood of bias is in the course of determining a tax dispute. Where a case of bias or likelihood of bias is proven, it vitiates the proceedings in its entirety. The court will treat this as

⁴⁷¹ (2011) LPELR – 284(SC).

excess of jurisdiction which in turn means that the court acted ultra virus and without jurisdiction. In *Okupe v FBIR*,⁴⁷² the court held as follows:-

But it cannot be gainsaid that excess of jurisdiction is manifested where there has been a complete disregard of the fundamental conditions of the administration of justice and where there has been shown real likelihood of bias or prejudice in the Tribunal, the court has always held that there has been excess of justice.

5.2 Federal Inland Revenue Service (Establishment) Act 2007

In 2002, the Federal Government of Nigeria set up a study group to examine the Nigerian tax system and make appropriate recommendations towards an improved tax system. The study group made recommendations and one of such recommendations put forward by the study group is the development of a National Tax Policy (NTP), which is aimed, amongst others, at addressing inherent problems in the Nigeria Tax System. It was therefore not a surprise when the Bill to establish the Federal Inland Revenue Service (Establishment) Act was passed by the national Assembly in 2007.⁴⁷³ The Act came into force on 16th April 2007.

The Act provides for the establishment of the Federal Inland Revenue Service (FIRS)⁴⁷⁴ as an autonomous parastatal with perpetual succession, common seal, and ability to sue and be sued and the capacity to acquire, hold or dispose property for the purpose of carrying out any of its functions as contained in the Act.⁴⁷⁵

⁴⁷² (1974) 4 S.C.4.

⁴⁷³ Olugbenro, FIRS Administrative Reforms: A strategic shift, <[http://www.monag.com/Nigeria/x/33334/tax+authorities/FIRS + Administrative + Reforms + A + Strategic + shift](http://www.monag.com/Nigeria/x/33334/tax+authorities/FIRS+Administrative+Reforms+A+Strategic+shift)> accessed on 2nd November, 2014.

⁴⁷⁴ Federal Inland Revenue Services (Establishment) Act, No 13 of 2007.

⁴⁷⁵ S 1(1) *Ibid.*

By virtue of Sections 2, 25 and 68⁴⁷⁶ as well as the First Schedule to the Act, the FIRS is charged with the administration of Federal Tax statutes such as Personal Income Tax Act (PITA), Companies Income Tax Act (CITA), Withholding Tax Act, VAT etc. The FIRS Board replaced the Federal Board of Inland Revenue (FBIR) which also repealed Part 1 of the Companies and Income Tax Act.⁴⁷⁷

The FIRS is the umbrella authority for tax administration of all forms of tax legislation and is by Section 3 vested with the power to do all such things as may be deemed necessary and expedient for the assessment and collection of taxes due to the Federal Government.⁴⁷⁸

On December 12, 2011, the Management Board of the Federal Inland Revenue Service in exercise of the powers conferred on it by Section 61 of the Act,⁴⁷⁹ with the approval of the Minister of Finance gazetted a Regulation⁴⁸⁰ dated 19th December, 2011 modifying the processes and procedures for self-assessment returns. The said Section 61 of the Act provides as follows:-

The Board may with the approval of the Minister, make rules and regulations as in its opinion are necessary or expedient for giving full effect to the provisions of this Act and for the due administration of its provisions and may in particular, make regulations prescribing the-

- (a) Forms for returns and other information required under this Act or any other enactment or law; and
- (b) Procedure for obtaining any information required under this Act or any other enactment or law.

⁴⁷⁶ *Ibid.*

⁴⁷⁷ S. 62(2) *Ibid.*

⁴⁷⁸ JAA Agbonika, *op cit*, P. 202.

⁴⁷⁹ FIRS (Establishment) Act 2007.

⁴⁸⁰ Tax Administration (Self-Assessment) Regulation 2011.

The implementation of self-assessment tax system has re-invigorated since 2011 with the promulgation of the Tax Administration (Self-Assessment) Regulation, 2011.⁴⁸¹ However, where a company fails to file, FIRS can raise an administrative assessment known as Best of Judgment (BOJ) after the expiration of the time allowed.⁴⁸²

It is noteworthy also that prior to the enactment of the FIRS Act, several legislations provided for the regulation and administration of different classes of taxation. Although these legislations are still in force as the enabling legislations of those branches of taxation, some of their provisions (especially those that have bearing with the administration of tax) have been repealed by the provisions of the Act.⁴⁸³ The principal legislations which will still be discussed in this chapter includes the Personal Income Tax Act; Companies Income Tax Act; The Petroleum Profit Tax Act, Value Added Tax Act and the Capital Gains Tax Act. These legislations each provide for the administration, operation, (i.e. self assessment, best of judgment assessment, collection) and enforcement of tax. The administration of the various taxes created by the respective legislations is principally placed on the FIRS⁴⁸⁴ for taxes accruing to the Federal Government while the State Board of Internal Revenue of the 36 various state governments⁴⁸⁵ except the Federal Capital Territory collect from individuals resident in those states. The income of those residents in the FCT and those whose residence cannot be determined are charged by the FIRS.

There is no gain saying that the enactment of Federal Inland Revenue Service (Establishment) Act 2007 was a remarkable landmark in the annals of tax

⁴⁸¹ JAA Agbonika, 'An Appraisal of the Law Regulating the Assessment and Collection of Personal Income Tax in Nigeria', (2015) *Journal of Law, Policy and Globalization*, 8.

⁴⁸² E.g. S. 41 Companies Income Tax Act, Cap. C.2, LFN, 2004(as amended).

⁴⁸³ The FIRS Act has repealed parts of the Companies Income Tax Act.

⁴⁸⁴ CITA 2004 S.1 (As amended) *op cit*; Petroleum Profits Tax Act Cap. P8, LFN, 2004(as amended) S.3; Capital Gains Tax Act Cap C.1 LFN, 2004, S.43(c); FIRS Act, S.1.

⁴⁸⁵ Personal Income Tax Act, Cap P8, LFN, 2004(as amended), S.87.

administration in Nigeria. The Act has the effect of harnessing and consolidating administrative procedures in the entire various Acts. It is important to note the provision of S. 68(1) and (2) of the FIRS Act which provides that,

- (1) Notwithstanding the provisions of this Act, the relevant provisions of all existing enactments including, but not limited to, the laws in the first schedule shall be read with such modifications as to bring them into conformity with the provisions of this Act.
- (2) If the provisions of any other law, including the enactments in the first schedule are inconsistent with the provisions of this Act, the provisions of this Act shall prevail and the provision of that other law shall to the extent of the inconsistency be void.

The above provision of the FIRS Act, the researcher argues will not in effect extend to Regulations made by the FIRS under S. 61 as to prevail over Tax legislations passed by the National Assembly. The enabling S. 61 by the FIRS (Establishment) Act only grants powers to the FIRS Board to make rules and regulations for giving full effect to the provisions of the law. For example, the Tax Administration (Self Assessment) Regulations 2011 made by the Board. The Board does not have powers to amend or modify the law. Therefore any provisions of the Regulations made by the FIRS which run contrary to the relevant tax laws will be of no effect,

However, notwithstanding the Promulgation of the Tax Administration (Self-Assessment) Regulation by the FIRS, Section 32(1) (d) of the FIRS (Establishment) Act, 2007 empowers the Service to serve a Demand Notice on the company or person in whose names a tax is chargeable where such person or company fails to self-assess 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 the Act. Also, Section 65 of CITA empowers the Board to assess every company chargeable with tax after expiration of period allowed for delivery of audited accounts and returns provided for in Section 55 of the Act (CITA).

According to the Handbook on Self-Assessment issued in 2011 by the FIRS,⁴⁸⁶ the tax administrators are expected:

- (a) To issue Reminder letters to taxpayers within two (2) months to expected due dates
- (b) 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.⁴⁸⁷

In other words, where a taxpayer fails to self-assess as provided in the Regulation, the FIRS will proceed on 'Best of Judgment' 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 await the appropriate assessment from tax authority. When the returns of the taxpayer are filed in the tax office, the assessment officer assesses the accounts of the taxpayer to determine the tax liability and proceed to register the assessed accounts. He endorses the document and sends it

⁴⁸⁶ FIRS, <<http://www.firs.gov.ng/Resource-Centre/Pages/Tax-Circulars.aspx>> accessed on 2nd November, 2014.

⁴⁸⁷ O A Welkulon, 'Enforcement: powers and Processes of Revenue Authorities', A paper presented at the Mandatory Professional Program Chartered Institute of Taxation of Nigeria on 24th September, 2014, P. 13.

to the taxpayers, who finally becomes aware of tax liability and proceed to make payment at the appropriate designation.⁴⁸⁸

The above provisions in a nutshell connotes that the self-assessment scheme is run side by side with the government assessment in Nigeria.

Again, 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 powers 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;
- (f) Value Added Tax Act.⁴⁸⁹

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.⁴⁹⁰ After judgment, the tax authority is required to serve on the taxpayer, notice of the amount of the tax changeable 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

⁴⁸⁸ O Eiye, 'Understanding Taxpayers' Behaviour and Development of Strategies to Enforce Tax', a paper presented at the Chartered Institute of Taxation of Nigeria Mandatory Professional Training Programme on 24th September 2014, P. 15.

⁴⁸⁹ I. O. Okauru, *Federal Inland Revenue Service and Taxation Reforms in Democratic Nigeria* (Ibadan: Safari Books Ltd, 2012) P. 137.

⁴⁹⁰ Fifth Schedule of FIRS (Establishment) Act, 2007, Paragraphs 11, 13 and 14.

registration of a copy of such judgment with the Chief Registrar of the Court. An appeal from the decision of the tribunal on points 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.⁴⁹¹

5.3 Tax Administration (Self Assessment) Regulations 2011

Self-Assessment tax regime as earlier stated was introduced into the Nigerian tax system in 1991 by Finance (Miscellaneous Taxation) Decree No. 2 of 1991 with an effective date of 1992 which enjoined companies to file self-assessment returns.⁴⁹² It was then made optional with some attractive incentives attached to elicit compliance. Self-Assessment became mandatory with great emphasis from the Tax authority i.e. FIRS in the year 2011 with the promulgation of a regulation⁴⁹³ Tax Administration (Self-Assessment) Regulation 2011 by the FIRS Board, in exercise of the powers conferred on it by Section 61 of the Federal Inland Revenue Service (Establishment) Act 2007, with the approval of the Minister of Finance. The Regulation was dated 12th December, 2011 modifying the processes and procedures for self assessment.⁴⁹⁴

SAS Regulation in Nigeria requires the taxpayer to accurately compute tax liability, pay the tax due into a bank designated for the purpose and collect the e-ticket

⁴⁹¹ *Ibid* Paragraphs 16 and 17.

⁴⁹² O Eiyee, *op cit*, P. 15.

⁴⁹³ M B Tanko, 'Tax Law Enforcement: Practice and Procedure' (2015) *Research Journal of Finance and Accounting*, 145.

⁴⁹⁴ F Obaro, Self Assessment Can Drive Growth in 2013, <<http://www.economicconfidential.com/2014/01/self-assessment-can-drive-growth-in-2013>> accessed on 12th November, 2014.

and file the self-assessment return on or before the due date fixed for filing the return.⁴⁹⁵ The enabling provision in the Regulation, Regulation 3 states as follows:-

3. (1) The established Self-Assessment Regime requires the concurrent filing of returns and payment of tax due on or before the due date.
- (2) A taxpayer must compute his tax liabilities, pay the tax due and file the relevant returns with evidence of payment of the tax on or before the due date.
- (3) The relevant tax authority shall accept all tax returns submitted by the taxpayer and carry out necessary checks to ensure that all required information have been appropriately entered into the tax return forms.
- (4) Failure by a taxpayer to submit the tax returns forms on or before the due date is a breach of this Regulation and the taxpayer shall be liable to pay such fines together with interests as may be prescribed in these Regulations or under applicable tax law provisions.

It is obvious from the foregoing that returns filed under SAS are subjected to two types of audit. First is spot audit, which is on-the-spot preliminary check, conducted to ensure correctness, accuracy and completeness of tax returns forms submitted to the tax office.⁴⁹⁶ The second is risk-based audit.⁴⁹⁷ This type is not conducted in all returns, rather samples of returns are randomly selected to ensure that there is no attempt to underreport income, over state expenses as well as any irregularity that would amount to tax evasion.⁴⁹⁸

⁴⁹⁵ C. N. Onyegbule, 'Achieving Voluntary Compliance through Self-Assessment Tax Regime' (2011) The Common

Wealth Association of Tax Administrators Newsletter, 13.

⁴⁹⁶ Tax Administration (Self-Assessment) Regulation, 2011, Regulation 3 (3).

⁴⁹⁷ S. 26 & 27 FIRS (Establishment) Act, 2007.

⁴⁹⁸ A Mas'ud *et al*, Tax Complexity and Tax Compliance in pre and post Self-Assessment System Implementation in Nigeria <<https://www.researchgate.net/publication/297917991>> accessed on 3rd November, 2014.

However, where a taxpayer failed to file tax return on the due date as required, the tax authority can exercise power conferred upon it by law to conduct administrative assessment.⁴⁹⁹ Information for administrative assessment is obtained from the taxpayers' records and the third parties.⁵⁰⁰

As has been discussed and analyzed by the researcher earlier in this work, the key issues covered in the Regulation include the official recognition of the use tax agents,⁵⁰¹ extension of time for making returns,⁵⁰² due dates for filing returns,⁵⁰³ installment payments,⁵⁰⁴ administrative assessments⁵⁰⁵ and the appeal procedure under the administrative assessment regime,⁵⁰⁶ etc

The Regulation as noted earlier applies to Companies Income Tax Act (CITA), Personal Income Tax Act (PITA), Petroleum Profits Tax Act (PPTA), Value Added Tax Act etc.⁵⁰⁷

In summary, the implementation of self-assessment tax system as re-invigorated since 2011 by the promulgation of the Regulation under review has brought about changes which gave the taxpayer his full right to access himself. The Tax Administration (Self Assessment) Regulations has clarified provisions of the tax laws on Self Assessment.⁵⁰⁸

5.4 Companies Income Tax Act Cap. C21, LFN, 2004 (As amended)

Companies Income Tax is a tax on all limited liabilities companies in Nigeria except companies engaged in petroleum operations. The first legislative enactment on

⁴⁹⁹ S. 22 of the Regulation *op cit*.

⁵⁰⁰ A Mas'ud *loc cit*, P. 4.

⁵⁰¹ Tax Administration (Self-Assessment) Regulation, 2011, Regulation 5.

⁵⁰² *Ibid*, Regulation 13.

⁵⁰³ *Ibid*, Regulation 12.

⁵⁰⁴ *Ibid*, Regulation 18.

⁵⁰⁵ *Ibid*, Regulation 22.

⁵⁰⁶ *Ibid*, Regulation 33.

⁵⁰⁷ *Ibid*, Regulation 2.

⁵⁰⁸ C N Onyegbule, Self-Assessment Practice in Nigeria, <www.nigeriabestforum.com> accessed on 4th November, 2014.

Companies Income Tax in Nigeria was introduced in 1939 through the instrumentality of the Companies Income Tax Ordinance.⁵⁰⁹ Before the law came into effect, the regulation of both personal and business taxation was vested in one and the same legal regime.⁵¹⁰ The Companies' Income Tax Ordinance vested administration of the tax in a Commissioner to be appointed for that purpose by the Governor and the proceeds from the tax were to be remitted to the government treasury to form part of the general revenue of Nigeria. This ordinance was however found to be ineffective as it failed to bring individuals into tax net. Due to this weakness, the Companies Income Tax Ordinance 1939 was repealed a year after its passage by the Income Tax Ordinance 1940.⁵¹¹ The Ordinance regulated both personal and business taxation and carried on for 21 years when the second separate enactment on companies' income tax was again enacted.

The second time a law was passed aimed at the exclusive taxation of companies income was in 1961. This was the Companies Income Tax Act No. 22 1961 which was landmark legislation, and from the date it came into force, the provisions of the Income Tax Ordinance⁵¹² and the Income Tax Administration Ordinance⁵¹³ together with all rules made there under ceased to have effect with respect to Companies Income Tax.⁵¹⁴ The Act also established the Federal Board of Internal Revenue as a statutory body and vested it with the power to administer Companies Income Tax⁵¹⁵ as well as all Federal taxes.

The Companies Income Tax Act was in force until 1979 when it was repealed by the Companies Tax Act No. 28 1979. The Companies Income Tax 1979 originally

⁵⁰⁹ Ordinance No. 14 1939.

⁵¹⁰ FIRS, *A Comprehensive Tax History of Nigeria* (Ibadan: Safari books ltd, 2012) P. 201.

⁵¹¹ *Ibid.*

⁵¹² Cap 85, 1958.

⁵¹³ Ordinance No. 39 1958.

⁵¹⁴ FIRS, *op cit*, P. 201.

⁵¹⁵ *Ibid.*

promulgated as Decree No. 28 of 1979 repealed the Companies Income Tax Act 1961 and all the amendments thereto⁵¹⁶ and is the current law providing a legal framework for the taxation of Companies Income in Nigeria.

The Companies Income Tax Act 1979 has been amended severally by various Finance (Miscellaneous Taxation Provisions) Decrees.⁵¹⁷ In 2007, CITA 1979 was further amended by the Companies Income Tax (Amendment) Act⁵¹⁸ to reflect some of the recommendations of the 2002 study Group. CITA Cap 60 LFN 1990 (now Cap C 21 LFN 2004 (as amended) 2007 provides an Act to consolidate the provisions of the Companies' Income Tax Act 1961 and to make other provisions relating thereto.

Under Section 55(1) of CITA, filing of companies' income tax returns is done through self-assessment. The section provides as follows:-

- (1) Every company, including a company granted exemption from incorporation shall whether or not a company is liable to tax under this Act for a year of assessment, with or without notice from the service, file a self-assessment return with the service in the prescribed form at least once a year and such return shall contain:
 - (a) the audited accounts, tax and capital allowance computation for the year of assessment and a true and correct statement in writing containing the amount of profit from each and every source computed;
 - (b) a duly completed self-assessment form as may be prescribed by the service, from time to time, attested to by a director or secretary of the company and such attestation shall contain a declaration that it contains a true and correct statement of the amount of its profits computed in respect of all sources in

⁵¹⁶ *Ibid*, P. 208.

⁵¹⁷ Some of the Decrees include Nos. 21 of 1991, 30, 31 and 32 of 1996, 18 and 19 of 1998 and 30 of 1999.

⁵¹⁸ No. 11 2007.

accordance with this Act and any rule made and that the particulars given in such returns are true and complete;

(c) evidence of payment of the whole or part of the tax due into a bank designated for the collection of the tax.

From the foregoing provision, it is observed that the taxpayer prepares its Companies' Income Tax (CIT) computations by self (or by its appointed tax consultants/advisers), pays the resulting CIT liability and file its tax returns by self rather than waiting for the tax authority to issue assessment on him. Also, every company, whether its profit are exempt from CIT (including those exempted from incorporation by the Companies and Allied Matters Act)⁵¹⁹ is expected to register and file returns at least once in a year in the prescribed format.⁵²⁰

Furthermore, it is noteworthy that the law does not leave the filing of returns at large. It must be filed within the time prescribed for it.⁵²¹ For instance, a newly incorporated company must file its return within eighteen months from the date of incorporation or six months after the end of its first accounting year,⁵²² whichever is earlier. A company that has been in business for more than eighteen months i.e. existing business must file its return not more than six months after the end of its accounting year.⁵²³ In case of a company filing self assessment, it must file its returns not later than eight months of the end of its accounting period.⁵²⁴

Failure to file the return within the prescribed time attracts penalty.⁵²⁵ Though the FIRS has the power to extend time for a company upon an application made to it

⁵¹⁹ Companies and Allied Matters Act, Cap 20, LFN, 2004.

⁵²⁰ T Fowler, 'Understanding Companies Income Tax-Part 2', *The Guardian*, September 8, 2016, P. 12.

⁵²¹ CITA *op cit.* S. 55(2) (a) (b).

⁵²² *Ibid.* S. 55(2) (a).

⁵²³ *Ibid.* S. 55(2) (b).

⁵²⁴ *Ibid.*

⁵²⁵ *Ibid.* S. 55(3) (a) (b).

in that respect, cogent reasons must be provided which is subject to the approval of the service.

Again, while penalties exist for late or non-filing of self-assessment or returns, incentives exist for prompt filing. One of such incentives is that self-assessment filers are not constrained to pay provisional tax.⁵²⁶ In other words, all companies not filing self-assessment are to pay provisional tax, which is equivalent of the tax paid in the immediate preceding year which is usually an amount not lower than the tax paid in the previous year. The tax is payable not later than the 31st of March in each year of assessment when paid in lump sum.⁵²⁷ Failure to pay as at when due results in the accrual of interest. This is not necessary where the company files self-assessment and is sure to file its returns on or before the due date for filing.⁵²⁸

It is however noteworthy that provisional tax is not an assessment but an advance payment of income tax, for the relevant year. The tax can be eventually utilized as a set off against the assessment for that year. Payment of provisional tax while the substantive tax is in abeyance due to an objection or appeal serves as a check against recalcitrant companies who may desire to use objections or appeals as a ploy to delay the payment of tax.

By virtue of provisional tax, an objection or appeal is not a bar to the payment of the tax due.⁵²⁹

On the other hand, the researcher posits that to assume liability to tax of companies not filing self-assessment on the basis of their previous liability may sometimes be misleading as a company's earnings may have increased or decreased in

⁵²⁶ *Ibid.* S. 77(6).

⁵²⁷ *Ibid.* S. 77(1).

⁵²⁸ JAA Agbonika *op cit*, P. 118.

⁵²⁹ CITA *op.cit.* S. 77(3).

that accounting year. Accordingly, it is suggested that the payment of provisional tax be on the ‘best of judgment’ basis by the tax authority.

The second incentive allowed to companies filing self assessment is that they are granted the privilege to pay tax by installment. A company filing self-assessment can be allowed on application to the tax authority, to pay its CIT liability in not more than six monthly installments commencing from the due date of filing of returns.⁵³⁰ Such installment payments should also not exceed the 30th day of November of that particular year of assessment.⁵³¹ The first installment payment should accompany the request being made by a taxpayer to the tax authority for payment of CIT liability in installments.⁵³² The researcher however opines that this provision of the law on installment payments prevails over the provisions of the Tax Administration (Self-Assessment) Regulation 2011 on this subject. This is because the provisions relating to installment payment in the Regulation is inconsistent from that provided in CITA which is obviously an Act of the National Assembly.⁵³³

5.5 **Personal Income Tax Act, Cap. P8, LFN 2004 (As amended)**

The personal income taxation in Nigeria is regulated by the Personal Income Tax Act which is an Act to impose income tax on individuals, communities, families and on executors and trustees, and to provide for the assessment, collection and administration of the tax.⁵³⁴

The law came into force by virtue of the Personal Income Tax Act No. 104 of 1993 promulgated on the 25th of August, 1993 and has been subject to varieties of

⁵³⁰ S. 77(5) *Ibid.*

⁵³¹ S. 77(5) (a) *Ibid.*

⁵³² S. 77(5) (b) *Ibid.*

⁵³³ *Arabu v Ogunsiji* (2011) LPELR – 3720(CA) PP 32-33.

⁵³⁴ M T Abdulrazaq, *Revenue Law and Practice in Nigeria*, (2nd edn, Lagos: Malthouse Press, 2010) P. 3; Personal Income Tax Amendment Act (2011) Cap P8 Laws of the Federation of Nigeria 2004, S.1.

Amendments.⁵³⁵ It was also amended in 2004. Lately, there is the Personal Income Tax Amendment Act of 2011.

The Personal Income Tax Act imposes tax on the income of individuals including employed and self-employed individuals. Every chargeable person under PITA shall pay tax in each year of assessment on all sources of income made in and outside Nigeria.⁵³⁶

The mode of assessment under the Personal Income Tax Act is self-assessment. However government or administrative assessment only commences when there is failure by the taxpayer in filing a return or where the information filed by the taxpayer in his return is adjudged by the tax authority to be incorrect or fraudulent.

Section 41 of the PITA provides that:

- (1) For each year of assessment, a taxable person shall, without notice or demand therefore, 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 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 returns may be required for the purpose of this Act and rules or regulations made there under

⁵³⁵ Such as the Finance (Miscellaneous Taxation Provision) Decree No 3 of 1993, No 30 of 1996, No 32 of 1996, Nos

18, 19 and 21 of 1999,

⁵³⁶ PITA. *op cit.* S. 41(1) (2) (3) & 44.

with respect to any such income, allowance, relief, deduction or otherwise as may be material for that purpose.

Section 44 of the PITA goes further to provide that a taxable person required to file a return of income shall in the return calculate the amount payable. Section 41 and 44 are the statutory provisions that guarantee self-assessment under the Personal Income Tax Act.

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 returns.⁵³⁷ Again, 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.⁵³⁸ 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.

Furthermore, where a taxable 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.⁵³⁹

The due date for the filing of self assessment returns under the Personal Income Tax Act shall be on or before 31st of March of every year.⁵⁴⁰ It is noteworthy that Personal Income Tax Act is payable for each year of assessment on the aggregate

⁵³⁷ PITA S. 54(1).

⁵³⁸ *Ibid.* S. 54(3).

⁵³⁹ *Ibid.* S. 54(2) (b); See also, *Hon Commissioner for Finance and Economic Development & Anor. v Ukpong & Anor.* (2000) LPELR – 6931 (CA).

⁵⁴⁰ Tax Administration (Self-Assessment) Regulation, 2011 FIRS (Establishment) Act, 2007, S. 12(1) & (2).

amounts each of which is the income of every taxable person, for the year, from a source inside or outside Nigeria.⁵⁴¹ The incomes chargeable are:

- (a) gain or profit from any trade, business, profession or vocation, for whatever period of time such trade, business, profession or vocation may have been carried on or exercised;
- (b) any salary, wage, fee, allowance or other gains or profit from employment including compensations, bonuses, premiums, benefits or other perquisite allowed, given or granted by any person to any temporary or permanent employee other than so much of any sums as or expenses incurred by him in the performance of his duties, and from which it is not intended that the employees should make any profit or gain;
- (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) dividend, interest or discount;
- (e) any person, charge or annuity;
- (f) any profit, gain or other payment not falling within paragraph (a) to (e) inclusive of this subsection.

The list of income subject to personal income tax in Nigeria is so wide that basically few categories of incomes may escape taxation under the Act. Section 3 of PITA as reproduced above is the charging provision which create liability to pay tax under the PITA. Charging provisions are provisions which create liability to pay taxes upon the taxpayer.⁵⁴² It is worthwhile to say now that as a matter of general principle, that a taxpayer is liable to pay tax to the government only when he is in receipt of an

⁵⁴¹ PITA. *op cit* S. 3(1).

⁵⁴² M N Umenweke, *Tax law and its implications for Foreign Investments in Nigeria* (Enugu: Nolix Educational Publications, 2008) P. 98.

income chargeable and at the same time be one that is not exempted from taxes by any tax statute.⁵⁴³ In other words, it must amount to an income receipt as against a capital receipt or any other type of receipt for the said receipt to be taxable by the tax authority.⁵⁴⁴ Lord MacNaughten⁵⁴⁵ drew the dividing line between income receipt and other types of receipt, when he said thus: ‘that income tax I may be pardoned for saying so is a tax on income. It is not meant to be tax on anything else’.

Worthy of mention under this head is that dispute arising from the operation of the Personal Income Tax Act shall be settled by the Tax Appeal Tribunal established under Section 59 of the FIRS Act. Appeal from the decision of the Act shall lie to the Federal High Court. Thus the Personal Income Tax (Amendment) Act 2011 states that ‘the Tax Appeal Tribunal established pursuant to Section 59 of the Federal Inland Revenue Service (Establishment) Act 2007 shall have the powers to entertain all cases arising from the operation of PITA.’⁵⁴⁶

5.6 **Petroleum Profit Tax Act, Cap. P.8, LFN 2004 (As amended)**

The Petroleum Profit Tax Act (PPTA)⁵⁴⁷ is the principal legislation which governs the taxation of companies engaged in petroleum operations in Nigeria. The PPTA imposes tax upon the profits from the winning of petroleum in Nigeria, to provide for the assessment and collection thereof and for purposes connected therewith. The law took effect from 1st January, 1958 and has had several amendments.

⁵⁴³ *Ibid*, P. 99.

⁵⁴⁴ M N Umenweke, ‘Understanding Taxation of Companies in Nigeria’, *Modern Practice Journal of Finance and Investment Law (MPJFIL)*, Vol. 8, Nos. 3-4, 627.

⁵⁴⁵ *L.C.C v Attorney General* (1901) 4 T.C 265.

⁵⁴⁶ Personal Income Tax (Amendment) Act, 2011, S.60.

⁵⁴⁷ Petroleum Profits Tax Act Cap P13, Laws of the Federation of Nigeria 2004 (as amended).

For a company to be subjected to tax under the PPTA, the company must be engaged in petroleum operation. 'Petroleum Operation'⁵⁴⁸ involves the whole of the following activities:

- (1) winning or obtaining petroleum;
- (2) transportation of the petroleum from source of winning to a storage point for exports;
- (3) operations incidental to petroleum operations; and
- (4) sale or disposal of chargeable oil won in the concession area.

If a company does not do the four activities together, the company cannot be taken to be engaged in petroleum operations. The definition of petroleum operations specifically excluded refining at a refinery. The profits from operations at a refinery are subjected to companies' income tax under CITA and not PPTA.⁵⁴⁹ The charging provisions for the payment of tax under the PPTA as amended is Section 8 which provides that a tax shall be charged, assessed and payable upon the profits of each accounting period of any company engaged in petroleum operations. The accounting period is any of the following:

- (a) a period of one year commencing on 1st January and ending on 31st December of the same year; or
- (b) any shorter period commencing on the day the company first makes a sale of bulk disposal of chargeable oil under a programme of continuous production and sales, domestic, export or both and ending on 31st December of the same year; or

⁵⁴⁸ PPTA S.2.

⁵⁴⁹ T Oremade, *Petroleum Profits Tax in Nigeria*, (Ibadan: Evans Brothers, 1986) P. 17.

- (c) any period of less than a year being a period commencing on 1st January of any year and ending on the date in the same year when the company ceases to be engaged in petroleum operations.

Notwithstanding the provision of self-assessment under S.30 of PPTA, it is necessary to go into the above brief discussion of what PPTA provides for generally in order to have an appreciable understanding of the provision of SAS in PPTA. Section 30 PPTA provides the legal backing under the Act for self-assessment. It states as follows:

- (1) Every company which is or has been engaged in petroleum operations shall for each accounting period of the company, make up accounts of its profits or losses, arising from these operations, of that period and shall prepare the following particulars-
 - (a) Computations of its estimated adjusted profit or loss and its estimated assessable profits of that period;
 - (b) In connection with the second schedule to this Act, a schedule showing-
 - (i) The resident at the end of that period in respect of its assets;
 - (ii) All qualifying petroleum expenditure incurred by it in that period;
 - (iii) The values of any of its assets (estimated by references to the provisions of that schedule) disposed of in that period; and
 - (iv) The allowances due to it under that schedule for that period.
 - (c) A computation of its estimated chargeable profits of that period;
 - (d) A statement of other sums, deductible under Section 22 of this Act, the liabilities for which were incurred during that period;

(e) A statement of all amounts repaid, refunded, waived or released to it, as referred to in subsection (5) of Section 20 of this Act, during that period; and

(f) A computation of its estimated tax for that period.

Upon the receipt of the accounts and particulars by the revenue, the revenue may accept same and make an assessment accordingly or refuse to accept and proceed to make its assessment on its estimate.⁵⁵⁰ Similarly where the company fails to make the returns, the revenue shall estimate the assessment⁵⁵¹ and where a company has been under self assessed, the Board is also empowered to raise an additional assessment.⁵⁵²

A company which disputes its assessment, as made by the Board, has 21 days from the day of service of the notice of assessment to register an objection by notice of objection in writing addressed to the Board to either revise or review the assessment.⁵⁵³

The Board may amend the assessment if after considering the objection, it agrees with the company in respect of the amount of tax liability. However, if there is no agreement, the Board shall give the company a notice of refusal to amend the assessment as desired and may revise the assessment to such amount as the Board may determine and give such company notice of refusal to amend the revised assessment.⁵⁵⁴ Any objection to such assessment is appealable to the Body of Appeal Commissioners⁵⁵⁵ and Federal High Court.⁵⁵⁶

⁵⁵⁰ PPTA S. 35(1) (2).

⁵⁵¹ *ibid* S.35 (3).

⁵⁵² *Ibid* S.36 (1).

⁵⁵³ *ibid* S.38 (2).

⁵⁵⁴ *ibid* S.38 (5) (6).

⁵⁵⁵ *Ibid*.S.41.

⁵⁵⁶ *Ibid*.S.42.

It is also noteworthy on the payment and collection of the tax that Petroleum Profits Tax is payable in twelve equal monthly installments together with a final installment as provided under Section 45.

From the above analysis on the assessment and collection of tax under the PPTA, it can be seen that although there are provisions for the keeping of account books and filing of returns by the companies themselves there is no express provision marked out as to the self-assessment of same by the companies under the PPTA, as was provided in the Personal Income Tax Act and Companies Income Tax Act. The researcher therefore submits that in this case the Tax Administration (Self-Assessment) Regulations 2011 will step in to fill the lacuna. This is because the Regulation specifically provided under Regulation 2, which deals with the scope of the application, that the provisions of the Regulation apply to all Self-Assessment requirements under the PPTA amongst other tax laws, rules and regulations covered under the provisions of the Federal Inland Revenue Service (Establishment) Act, 2007 and such other tax laws, rules and regulations, as may be enacted from time to time.⁵⁵⁷

5.7 Value Added Tax Act Cap. V.1 LFN 2004 (As amended)

Value Added Tax (VAT) in Nigeria commenced in 1993 following the enactment of Decree No. 102 of 1993.⁵⁵⁸ Prior to the adoption of VAT, however, there were some kinds of expenditure taxes like the general sale tax and excise duty payable on some goods, etc. All of these were subsumed under the Value Added Tax vide the Value Added Tax Act Cap No. 102 of 1993, now Value Added Tax Act Cap

⁵⁵⁷ Tax Administration (Self-Assessment) Regulations, 2011, Regulations 2(i)-(vii).

⁵⁵⁸ C. S. Ola, *op cit*, P. 583.

V1, Laws of the Federation of Nigeria, 2004.⁵⁵⁹ A further amendment was effected on 27th May 2007 as VAT (Amendment) Act No. 12 of 2007.⁵⁶⁰

VAT is a consumption tax that has been embraced by many countries world-wide. Because it is a consumption tax, it is relatively easy to administer and difficult to evade. It is tax imposed and charged on goods and services which are not expressly exempted from VAT under Nigeria law. Except for the VAT-exempted or zero-rated goods and services, the current rate of VAT charged in Nigeria is five percent (5%) of the value of the goods and services supplied or delivered.

VAT paid by a business on purchases is known as input tax, which is recovered from VAT charged on company's sales, known as output tax.⁵⁶¹ Where the output tax (i.e. the tax collected) exceeds the input tax (i.e. the tax paid) then the excess is remitted to the FIRS, but where input exceeds output, the taxpayer is entitled to a refund of the excess from FIRS on production of such documents as the Board may, from time to time require,⁵⁶² though in practice this is not always possible. The Federal Inland Revenue Service (FIRS) is the tax authority responsible for the administration of VAT.

As a matter of general knowledge, registration by 'vatable' persons is the starting point of VAT administration. Every person or company carrying on business or trade and whose products or services are not exempted is expected to register with the FIRS.⁵⁶³ The period for registration is six months from the commencement of the Act or business, whichever is earlier. Contravention attract penalty of N10, 000 for

⁵⁵⁹ JAA Agbonika, *op cit*, P. 133.

⁵⁶⁰ L A Nwanyanwu, 'Value Added Tax Administration in Nigeria: An inquiry into Irrecoverable Invoices' (2015) *Applied Economic and Finance Journal*, 43.

⁵⁶¹ Value Added Tax Act (VAT) Cap V1, Laws of the Federation 2004 (As amended), S. 12(2) and S. 14(2).

⁵⁶² *Ibid* S. 16(1) (a) & (b).

⁵⁶³ *Ibid* S. 8 & S. 9.

the first month in which the failure occurs and additional N5, 000 for each subsequent month in which the failure continues.⁵⁶⁴

Ministries, parastatals and agencies of governments are also to register as collecting agents of the FIRS.⁵⁶⁵ To enforce compliance, contractors are to provide evidence of registration with FIRS as condition for obtaining contract.⁵⁶⁶ In addition, non-resident companies shall register through their representatives who transact business on their behalf in Nigeria. Registration is, therefore, paramount as it provides a data base of 'vatable' persons against which the success of VAT administration is measured.⁵⁶⁷

As is applicable to the other tax laws discussed, VAT assessment complies with the self-assessment procedure in which a VAT taxable person assesses himself by adding 5% to the total value of his taxable goods and services. It is a self-assessment tax that is paid when returns are being made.⁵⁶⁸ Unlike other types of taxes such as the companies' income tax, it does not involve elaborate calculations of capital allowances and assessment income. The assessed tax becomes due for payment once the invoice is issued and acknowledged. This form of assessment is applicable to both input and output value added taxes.⁵⁶⁹

Though VAT assessment is self assessment oriented, the FIRS may assess on a best of judgment (BOJ) bases if the taxpayer fails to render returns or renders an incomplete or inaccurate returns.⁵⁷⁰

In conclusion, there is no doubt that the implementation of SAS has positively impacted Nigeria tax administration in a number of ways. The legal backing received

⁵⁶⁴ *Ibid* S. 8(2).

⁵⁶⁵ *Ibid* S. 9(1).

⁵⁶⁶ *Ibid* S. 9(2).

⁵⁶⁷ L A Nwanyanwu, *op cit*, P. 44.

⁵⁶⁸ FIRS, Information Circular No. 9304 on Value Added Tax (VAT) on 20th August, 1993.

⁵⁶⁹ VATA *Ibid* S.16.

⁵⁷⁰ *Ibid* S.18.

by SAS in Nigeria through the provision in the Constitution, Laws and Regulation discussed above shows by implication that SAS covers all forms of taxation in Nigeria.

CHAPTER SIX

A COMPARATIVE ANALYSIS OF THE OPERATION OF SELF ASSESSMENT SYSTEM IN DIFFERENT COUNTRIES

This chapter will attempt an overview of the Self-Assessment System (SAS) in various countries. For a detailed analysis and in order to distinguish operations among them, this chapter is divided into two parts: **Self-Assessment in Developed and Developing countries**. For the developed countries, an analysis is made for six (6) countries; they are the US, the UK, Australia, Canada, New Zealand, and Japan while Malaysia, Sri-Lanka, Cambodia and Bangladesh represent the developing countries. An analysis of all these countries will reveal that they have or used to have similarities with the Nigerian tax system which is the focal tax system under review in this work.

Regardless of the advantages or disadvantages that Self-Assessment (SA) might bring about to the tax authority or the taxpayers, SA has been part and parcel of tax reforms in many countries. Hence it is necessary to examine the series of tax reforms that have been undertaken together with the implementation of the SA in a number of countries. The following sections highlight the introduction, implementation and practices of SA and related tax reforms in five developed and three developing countries.

6.1 Self Assessment in Developed Countries

6.1.1 United States

The beginning of Income tax and the Income Revenue Service (IRS) started in the US during the civil war in 1862 when President Lincoln and congress created the position of Commissioner of Internal Revenue and enacted an income tax to help bear war expenses. When the civil war ended in 1872, the war income tax ceased to be

imposed. About two decades later in 1894, the US congress attempted to impose a similar tax by passing the Tariff Act (1894). However, in 1895, the US Supreme Court ruled that the imposition of income tax was unconstitutional.⁵⁷¹ The constitutional requirement to enable the imposition of income tax was put in place in 1913 by the sixteenth Amendment (this is part of the United States Constitution which allows the congress to levy an income tax without apportioning it among the states) and hence the imposition of a Federal Income Tax was reinstated.⁵⁷²

Also, in 1913, the substantial increase in the number of taxpayers, the limited time frame to assess all the tax returns, the shortage of human resources and the need to increase the efficiency of tax collection, meant that the IRS required all taxpayers to assess their own liabilities and to send in their returns together with their payments of tax. Since 1913, taxes have been imposed on a full self-assessment basis, that is, taxpayers assess their own tax liability and pay taxes or receive a refund. This system is premised on ‘voluntary compliance’.⁵⁷³

A series of tax reforms and modifications had been done in the US since the commencement of SA almost a century ago. These reforms have included various improvements to the tax administration in general in order to develop public awareness of the system, increase voluntary compliance and boost the accessibility of payment and adequacy of collection. For example, in July 1940, a withholding tax system (i.e. deduction of tax at source) was introduced by the Income War Tax Act (1940) followed by the ‘Pay As You Go’ (PAYG) system in 1943.⁵⁷⁴ In the 1940s,

⁵⁷¹ Inland Revenue Services (IRS) (2006) <<http://www.irs.gov>> accessed on 4th December, 2014; *Pollock v Farmer's loan & Trust Company*, 157 (1895) U.S 429.
Brushaber V. Union Pacific Railroad, (1916) 240, U.S. 1. See also, *Bowers V. Kerbaugh – Empire Co.* (1926) 271 U.S. 170

⁵⁷³ Inland Revenue Services IRS (2008) <<http://www.Irs.gov>> accessed on 4th December, 2014.

⁵⁷⁴ G E Hent, ‘Collection of Personal Income Tax at the Source’ (1942) *Journal of Political Economy*, 50(5), 719-37.

wage-earners were assessed on a half year basis of their income as reported by their employers for each half year, ending in April and October respectively. The annual returns then had to be filed in September or October by employees.⁵⁷⁵ The introduction of withholding tax created a protest from wage-earners who claimed that the system was unfair, with problems in record keeping as well as the perceived level of tax burden. Further, the adoption of withholding tax was found to be hostile among certain taxpayers.⁵⁷⁶

The then income tax administration was being shaped by a few major events such as the development of the standard deduction, per capita exemption, PAYG withholding tax and the reorganization of the income tax administration in 1951 and 1952. Consequently, in 1953, the Bureau of Internal Revenue was replaced with the Inland Revenue Service or IRS. Subsequently, automatic data processing was introduced in 1959 together with the legislation for direct filing of tax returns.⁵⁷⁷ Although tax administration developed following this change, tax compliance issues were not entirely resolved.⁵⁷⁸ After World War II, the income tax base was converted from a narrowly-based tax which affected some 8 million taxpayers to a broadly-based tax which affected about 70 million taxpayers.⁵⁷⁹ Due to the inability to audit all tax returns, taxpayers were required to assess their own tax liabilities and to send in their returns together with their payments of tax.

During the 1960s and 1970s, SA was adhered to with national pride and regarded as the great strength of the American tax system.⁵⁸⁰ Even without direct

⁵⁷⁵ *Ibid.*

⁵⁷⁶ *Ibid.*

⁵⁷⁷ Inland Revenue Services, Historical Highlights of the IRS <www.irs.gov/uac/historical-highlights-of-the-irs> accessed on 20th December, 2015.

⁵⁷⁸ In order to further dissuade taxpayers from avoiding taxes, the Tax Reform Act (1969) was introduced

⁵⁷⁹ SS Cohen, 'To Tax and To Please-The Greatness of the United States', National Industrial Conference, Board of New York, 15th December, 1966, 268-272.

⁵⁸⁰ MM Caplin, 'New directions in tax administration', (1962) *Accounting review*, 37(2), 223-30.

empowerment activities, 97 percent of total revenue collected came from self-assessment or voluntary compliance. The remaining three percent was collected by direct enforcement.⁵⁸¹ The good compliance rate among taxpayers was attributed to patriotism, good citizenship and common honesty.⁵⁸²

As regards the voluntary compliance of taxpayers, efforts in the beginning were geared towards service programme for auditing returns.⁵⁸³ This service programme relied strongly on the taxpayer compliance measurement programme (TCMP) which was launched in the mid 1960s and designed to nurture and support the SA system.⁵⁸⁴ The IRS also utilized computer processing to replace the heavy manpower commitment involved in selecting returns for audit. For those classes of returns characterized as ‘Low Level of Compliance’ audits were carried out – 50 percent of which were carried out in the field and the remainder were carried out in the offices of the IRS.⁵⁸⁵ The audit programme was then expanded to cover taxpayers who had previously not been examined. This approach comprised three major elements, namely pre-identification of large corporate taxpayers; coordinated control to assure prompt audit results and the use of audit teams to conduct uniform audits.⁵⁸⁶

The US tax administration’s policy was focused on three main goals, namely seeking more reasonable and responsible interpretations of the tax laws; providing better service to American taxpayers and continuing a vigorous enforcement programme to discourage and deter tax abuse.⁵⁸⁷ To ensure that the IRS’s employees possessed the appropriate knowledge and skills to achieve these objectives, classroom

⁵⁸¹ *Ibid.*

⁵⁸² W H Smith, ‘The IRS - Meeting the Challenges of Tax Administration’, A speech delivered at the University of Miami Tax Conference on 12th May, 1970 <<http://www.ebsco.com>> accessed on 21st December, 2014.

⁵⁸³ *Ibid.*

⁵⁸⁴ SS Cohen *op cit.*

⁵⁸⁵ W H Smith, *op cit.*

⁵⁸⁶ MM Caplin, *op cit.*

⁵⁸⁷ Inland Revenue Service (2008) <<http://www.irs.gov>> accessed on 4th December, 2014.

and on the-job training were provided, consultants were employed to help to improve on the clarity and polite tone of letters and notices sent to taxpayers.⁵⁸⁸

The TCMP was discontinued indefinitely in October 1995 and a new taxpayer compliance measurement project entitled the ‘National Research Programme (NRP)’ was launched to replace the TCMP.⁵⁸⁹ The main difference between the audit approach under TCMP and NRP was that NRP auditors appeared ‘more friendly’ by requesting ‘reasonable substantiation’ for income and deductions claimed by taxpayers. The missions of NRP were across-the-board and included the provision of compliance data, determination of the compliance rate on voluntary reporting and the improvement of IRS affairs by providing particular information about non-compliance.

In order to aid compliance in the SAS, various education programmes such as the ‘Public Information Programme’, ‘Free Tax Return Preparation for You by Volunteers’, ‘Volunteer Income Tax Assistance Programme (VITA)’, ‘Tax Counseling for the Elderly’(TCE), and ‘Military Personnel And Their Families Get Free Tax Help’ are being implemented in the US.⁵⁹⁰ The tax returns and instructions have been simplified and problems encountered by taxpayers, especially in relation to the type and colour of return, were identified through national surveys. Consequently, different taxpayers are issued with different forms and instructions to accommodate their needs and ease the process of filing tax returns.⁵⁹¹

Although income tax compliance is better in the US than in most other countries, the IRS had estimated roughly 15 percent of individuals’ income remained

⁵⁸⁸ SS Cohen *op cit*.

⁵⁸⁹ P C Mills, New IRS Audit Compliance Initiative to Launch, Bulletin Board <<http://www.mpcpa.com/new-irs-audit.htm> accessed on 21st December, 2014.

⁵⁹⁰ Inland Revenue Service (2008) *op cit*.

⁵⁹¹ *Ibid*.

unreported. The annual tax gap⁵⁹² was once estimated to be \$200 billion of which three-quarter is attributed to individual taxpayers.⁵⁹³ For the years 2008 to 2010 the estimated gross tax gap was \$458 billion.⁵⁹⁴ The gross tax gap is the amount of true tax liability that is not paid voluntarily and timely.⁵⁹⁵ Whilst the voluntary compliance rate (VCR) was 81.7 percent. These estimates, which remain the most recent published estimate available,⁵⁹⁶ were conducted using data collected in the year 2008 and 2010.

SA has been in place in the US for almost a century and the overall compliance rate is quite high. The vast majority of these receipts are collected through the self-assessment system. According to the U.S. Department of the Treasury, Office of Tax Policy,⁵⁹⁷

The vast majorities of these receipts are collected through our voluntary compliance system, under which taxpayers report and pay their taxes with no direct enforcement and minimal interaction with the government. The overall compliance rate achieved under this system is quite high.

6.1.2 **Australia**

The introduction of SA in Australia was a fragment of the tax reform process in Australia, which began in 1986, and has been well integrated into the overall Australian taxation system. The Australian Tax Office (ATO) recognized that the traditional assessment system of ‘checking and ticking’ was not cost effective and has

⁵⁹² Tax gap is defined as the difference between taxes owed and taxes paid.

⁵⁹³ JA Dublin, Criminal Investigation enforcement activities and taxpayer non-compliance, A paper presented at IRS Research Conference, Washington on June, 1-5th, 2004.

⁵⁹⁴ Internal Revenue Service Research, Analysis & Statistics ‘Federal Tax Compliance Research: Tax Gap Estimates for Tax Years 2008-2010’, May 2016 <www.irs.gov/pub/irs-soi/P1415.pdf> accessed on 4th December, 2016.

⁵⁹⁵ *Ibid.*

⁵⁹⁶ *Ibid.*

⁵⁹⁷ U.S. Department of the Treasury, Office of Tax policy, A Comprehensive Strategy for Reducing the Tax Gap, September 2006 <www.irs.gov/pub/irs-news/comprehensive-strategy.pdf> accessed on 21st December, 2014.

not much *causatum* on the general compliance with the income tax law.⁵⁹⁸ SA was believed strongly to provide a better channel for advancement in the efficiency and effectiveness of ATO as well as operating as a vehicle enhancing taxpayer compliance.⁵⁹⁹ Although the move to SA by the ATO was reflective of an adaptive and responsive organization, the essence of SA was explicitly meant to shift the burden of assessment from the tax authority to taxpayers.⁶⁰⁰

In Australia, SA was introduced at intervals. Firstly, it was applicable in part only to individual taxpayers, but was subsequently extended in full to companies and superannuation funds. However, subsequently after the implementation of SA, modifications to improve the system were carried out in 1992. The modifications and adjustments included the introduction of public and private rulings, interest for under payment or late payment of tax and a new penalties regime.⁶⁰¹ In addition, a shorter period of review for individual resident taxpayers with simple tax affairs was implemented with the intention of reducing record keeping obligations.

Under SA, the tax returns filed by non-individual taxpayers are deemed as an assessment issued by the Commissioner of Taxation for various purposes under the Income Tax Assessment Acts. For individual taxpayers, a notice of assessment is issued by the ATO. The ATO accepts most returns at face value and processes them without any review. Instead, emphasis is shifted to taxpayers' advisory services and post assessment checks including audits. The ATO may audit any claim made and of course may impose penalties and/or charge interest on unpaid taxes discovered.⁶⁰²

⁵⁹⁸ C Sanford & I G Wallschutzky, 'Self assessment for Income Tax: Lessons from Australia', *British tax review* (1994) 220.

⁵⁹⁹ M Inglis, 'Taxing Times: is Self Assessment Working?' *Australia Tax Review*; 18(3), 3-9.

⁶⁰⁰ M D'Ascenzo, In defence of the rule of law, second commissioner address to law council of Australia Taxation law workshop, Victoria, 26-28 October, 2001.

⁶⁰¹ C Sanford & I G Wallschutzky, 'Self-assessment and all that – UK proposals in the light of Australian experience' *Management Accounting*, (1994b) 57.

⁶⁰² M D'Ascenzo & T Poulakis, 'Self-Assessment: Quo Vadis?' (2002) *Taxation in Australia*, 412-416.

Since nearly two decades since the implementation of SA in Australia, it has enabled the ATO to better utilize its resources and to focus on taxpayer services and post-assessment compliance activities.⁶⁰³ The ATO's success in implementing SA is partly attributed to its comprehensive compliance programmes. The Compliance Programme is published yearly by the ATO with the goal to share openly with the community the strategies and the results achieved in the previous year. The annual compliance programme is drawn up by the ATO for various categories of taxpayers. The programme sets out the ATO's compliance priorities and approaches in tackling aggressive tax planning and spells out clearly what it intends to do to ensure the integrity of the tax system.⁶⁰⁴ This programme also adopts a general approach to providing assistance and education to support taxpayers in self-assessing their taxable income and entitlements. The information needed is made available through publications such as 'Tax pack', 'e-tax (electronic lodgment)', 'Retirees Tax Pack' and 'Short Tax Return' in which explanations on common mistakes is included. To ensure that taxpayers comply with the law, complex audits and reviews or enquiry before returns being lodged or assessments issued were conducted. Finally, to assist taxpayers in understanding their rights and how they might be dealt with by the ATO, the Taxpayers' charter and the compliance model guide were issued.⁶⁰⁵

Business owners are required to prepare their own activity statements with regards to goods and services tax and income tax and also to understand their obligations in maintaining adequate records. An electronic tool was developed to

⁶⁰³ *ibid*

⁶⁰⁴ A Paddock & C Oates, 'Corporate Tax Self-Assessment Lessons From Down Under' (2003) *International Tax Review*, 28-30.

⁶⁰⁵ Australian Tax Office <www.ato.gov.au/About-ATO/About-us/In-detail/key-documents/compliance-model/> accessed on 2nd January, 2015.

enable them to self-assess their record keeping capabilities and identify possible weaknesses.⁶⁰⁶

Various procedural changes have been made in order to enhance compliance. Among these, an option to move from monthly to quarterly lodgment of business activity statements from some employers withholding PAYG was given. The ATO also endeavors to identify patterns of poor compliance; competency issues among tax agents in performing their duties, and to focus on key compliance features such as tax evasion and fraud, aggressive tax planning, international tax issues and overdue debt. Taxpayers who either do not lodge or lodge late are also highlighted for further action. Lastly, for those who lodge returns and may be involved in the cash economy, their financial performance would be scrutinized against industry norms.

The introduction of SA in Australia had led to changes in the administration of the ATO and changes in enforcement strategies by the ATO whereby post assessment activities such as audit have become significantly more important.⁶⁰⁷

Unfortunately the major shortcoming of the SA system lies in the complexity of the Australian tax laws⁶⁰⁸ where taxpayers deal with uncertainty. As a result of uncertainties in interpreting and applying the tax law, and increased enforcement activities under SA, Australian taxpayers tend to rely heavily on tax professionals for advice and also to seek assistance of tax agents to file their returns⁶⁰⁹ while the ATO had endeavored to educate taxpayers and simplify the law, the tax administration and

⁶⁰⁶ Australian Tax Office <www.ato.gov.au/calculators-and-tools/> accessed on 2nd January, 2015.

⁶⁰⁷ R L Marshall *et al*, 'Self-Assessment and the Tax Audit Lottery: The Australian Experience' (1997), *Managerial Auditing Journal*, 9-15.

⁶⁰⁸ M Mckerchar, 'Tax Complexity and its Impact on Tax Compliance and Tax Administration in Australia' (2007) *The IRS Research Bulletin*, 185.

⁶⁰⁹ R L Marshall *et al*, *op cit*, 15.

law still remains contentious, complex and ambiguous and has resulted in increases in appeal against penalties, tax rulings and tax law interpretations.⁶¹⁰

Even with the successful implementation of SA in Australia, improvement remains the primary focus of the ATO. For example, the Australian Treasury has released a report entitled ‘Review into Improving the Self Assessment System’⁶¹¹ to improve aspects of the income tax self assessment system. The review had focused on areas in need of most attention and overall made recommendations directed at improving taxpayer certainty, reducing compliance costs and achieving a more balanced penalty arrangement and ensuring that taxpayers have a better understanding of their obligations under SA.

6.1.3 United Kingdom

The income tax in the UK began in the 1790s at a time when the British were faced with continuous warfare with France. Financial concerns led to taxation innovations in both countries. William Pitt (The younger), the then Prime Minister was credited the father of income tax in the UK. He introduced ‘Triple Assessment’ in 1798 and then expanded to a general income tax in 1799 with more focus on property-based income tax such as tax on rentals and house value.⁶¹²

In 1944, a new income tax system was introduced known as Pay-As-You-Earn (PAYE) where an employee received his or her salary and wages after tax deduction. Taxation at source had long been a core principle of the UK’s tax system, with its use in income tax collection commencing in 1803 in addition to Pitt’s income tax system. This system has contributed to the government in terms of improvement in cash flow, reduction in bad debts, and ease of taxpayers’ payments of weekly or monthly taxes,

⁶¹⁰ P Niemiowski *et al*, ‘Thirty Years of Tax Compliance Research: of what use is it to the ATO?’ in M Walpole & C Evans (eds), (St Leonards: Prospect Media, 2001) P. 199-214.

⁶¹¹ A Noroozi, <www.igt.gov.au/files/2014/12/improving-self-assessment-systempdf> Accessed on 3rd January, 2015.

⁶¹² A Lymer & L Oats, *Taxation: Policy and Practice* (Birmingham: Fiscal Publications, 2009) P. 339.

thereby preventing large annual payments at the end of the tax year.⁶¹³ In 1965, two new taxes were established: Corporation Tax and a real property gain tax called Capital Gains Tax. Capital gain tax aimed not to increase revenue significantly but to decrease non-compliance and increase equity among taxpayers. In 1984, inheritance tax was introduced to replace capital transfer tax which was launched in 1975.

The Self Assessment System was introduced in the UK in 1996/97.⁶¹⁴ Following the introduction of SA in Australia, there had been suggestions that the UK should move to SA.⁶¹⁵ The introduction of SA in UK seemed to be the biggest single change on the UK since the implementation of PAYE in 1944.⁶¹⁶ The introduction of the SARS in the UK was driven by three main reasons.⁶¹⁷

Firstly, the costs of administration were high since the 1970s. The Board of Inland Revenue reported that the cost of collecting taxes from 1974 to 1975 was about £200 million –most of this being used for staff salaries.⁶¹⁸ In 1976, the Inland Revenue had employed nearly 81,600 staff, an increase of 7,000 staff compare to those employed in 1975 and of which number had increased to 90,000 by 1978. Besides that, the cost of administering individual taxes averaged 1.75% of the net revenue collected.⁶¹⁹ This percentage was quite high compared with that in the USA, particularly as the number of staff was thought to be comparable with those in the UK.

Secondly the debate of tax credits in early 1970s has also led to the introduction of SAS. The existence of a reduced-rate band for low income earners would result in many years end adjustments as the amount of tax withheld each week

⁶¹³ *Ibid.*

⁶¹⁴ *Ibid.*, P. 341.

⁶¹⁵ S James & C Nobes, *The Economics of Taxation*, (7th edn, London: Prentice Hall, 2000) P. 153.

⁶¹⁶ *Ibid.*

⁶¹⁷ NA Barr *et al*, *Self Assessment for Income Tax* (London: Heinemann Educational Books, 1977) P. 3.

⁶¹⁸ *Ibid.*, P. 1.

⁶¹⁹ *Ibid.*, P. 2.

would not add up exactly to the total tax due for the whole year. Consequently, tax administration could not cope easily with many year adjustments and therefore, the tax credit scheme could not easily incorporate a reduced rate band.⁶²⁰

The third reason was in relation to the costs of administration, the discussion of local government finance culminating in the report of the Layfield committee of enquiry required some 12,000 additional civil servants in the 1970s to administer the tax collection. This significant increment would reflect the additional cost of administrations due to the increase in workload during that time.⁶²¹

As a result of the consequences of the cost of administrations, the flexibility of the structure of marginal tax rates and the feasibility of the local income taxes, the committee suggested that there was a need to propose a new system, the self assessment system, to overcome these problems. Thus, the introduction of SAS in 1996/97 for individuals in the UK was made in the hope of increasing the efficiency of tax administration and collections.

The objective of SAS in the UK, as in all developed and developing countries, was to make the tax system simpler, fairer and easier for taxpayers, to make it possible for the Inland Revenue to accept the statement of Accounts without further review and to allow taxpayers to pay the right amount of taxes at the right time without intervention by the Inland Revenue. Aside these, SAS permits taxpayers to understand and to have more control over their own tax problems and eventually, should open up ways for further reforms to simplify, unify and improve the system of personal taxation especially in relation to customer services through greater co-operation between taxpayers and the IR.⁶²²

⁶²⁰ *Ibid.*

⁶²¹ *Ibid.*

⁶²² D Brodie, 'Self Assessment: Reflection from Tax Aid', (1999) *British Tax Review*, 233.

Compliance issues remain important in the UK tax system. Tax administrators in the UK face some difficulties from the perspective of tax practitioners. A research study⁶²³ revealed a number of problems particularly in relation to procedures arising from the implementation of SAS. The following issues were highlighted:

- i) Many problems were encountered in completing the Statement of Accounts, in response to which the IR acknowledged the need to make improvements.⁶²⁴
- ii) The SAS restricted the practitioners' access to well-trained IR staff.⁶²⁵
- iii) Inconsistent practices at the IR due to the restructuring of Tax Service Offices and Tax District Offices with the reduction in staff and their inconsistent training.
- iv) Software-related problems during the introduction of electronic lodgment of tax returns, and
- v) In relation to electronic filing, tax practitioners faced difficulties when lodging tax returns themselves because they needed a digital signature form their clients. This led to an increase in costs incurred by practitioners.

Notwithstanding tax compliance concerns, other related issues also emerged, such as simplicity of tax returns. Since SAS is fully reliant on the taxpayers to assess, the tax returns were quite difficult to complete. Many taxpayers perceived that the tax system itself was too complex, difficult to understand and the terminology used were unfamiliar to taxpayers⁶²⁶ e.g. taxpayers might get confused between 'tax allowance' and 'tax credit' as well as 'relief and deductions'. To help overcome this confusion,

⁶²³ A Hansford, *Self Assessment: Working towards Best Practice – A Research Perspective*, <<http://tax.org.uk/>> accessed on 3rd January, 2015.

⁶²⁴ D Smith, 'Self Assessment: An Inland Revenue Perspective', (1999) *British Tax Review*, 241-243.

⁶²⁵ A Hansford *op cit*.

⁶²⁶ G Hinks, 'Self Assessment Complexity Set to Increase Penalties', (2000) *Accountancy Age*, 11-24.

the tax authorities have engaged in a variety of activities to help educate taxpayers in the details they need to know in order to be tax compliant. This has widened the development of 'Tax Aid'. This organization is a registered charity established in 1992 to provide free tax advice and assistance to individuals in financial need. However, some improvements have been identified e.g. taxpayers who sought considerable help in 1997 and 1998 were able to complete their own returns without much help in 1999.⁶²⁷ However, the returns were still considered not flexible enough to accommodate the different needs of taxpayers, especially those that frequently shifted from the 'employed individual' status to 'self-employed' status, or vice versa.⁶²⁸

In spite of the numerous problems faced by practitioners and taxpayers, the Inland Revenue had beliefs that the goals of SA, as mapped out by the Inland Revenue had in most cases been actualized. The Inland Revenue acknowledged that notwithstanding there was some difficulties in the beginning, taxpayers and practitioners had coped well with SA.⁶²⁹ The UK government had benefitted from SAS with improved administration of income tax, making assessments not difficult, adept, honest, encouraging taxpayers to disclose all income voluntarily and making their tax affairs up to date. SAS has also brought about technological innovations e.g. e-filing, instilled public awareness through education programmes for practitioners and employers and consultation with external bodies on an unprecedented scale.⁶³⁰ Needless to say, like in some other countries, there remains room for improvement in the implementation of SA in the UK.

6.1.4 Japan

⁶²⁷ D Brodie *op cit.*

⁶²⁸ *Ibid.*

⁶²⁹ C James & C Nobes, *op cit.*

⁶³⁰ D Smith, *op cit.*

Tax administration in Japan has gone through numerous reforms to improve its standards. The principal taxes on income, the Income Tax and the Corporation Tax form the backbone of the Japanese tax system.⁶³¹ Self assessment system was introduced in Japan in 1947 to replace the direct assessment system as a result of a post-war wave of democratization.⁶³² The principal purpose of SA was to raise the rate of appropriate tax filings and payment of taxes through taxpayers' cooperation. However, 1868 was the beginning of modernization for Japan. At that time they received the majority of their tax revenues comprised mostly of land tax and liquor tax. Income tax was first introduced in Japan in 1887.⁶³³

At the inception, a direct assessment system was being implemented. In 1947 at the end of the World War II, the self-assessment system was applied to all the major sources of tax revenues. The introduction of SAS was a massive transformation in the taxation method and it was the start of a series of major tax administration reforms in the post-war era. In the early days of introduction, the tax authority was worried about winning the trust of taxpayers and there were many alterations to the process before the system was considered to be operating smoothly.⁶³⁴ In the period following the end of World War II, inflation was running at over 100% per annum in Japan. It was no longer possible to secure the necessary tax revenue in the hyper-inflationary environment since the existing taxation system was based on the previous year's income. A decision was taken to adopt a new system under which taxpayers would calculate and file their own income for the current year. Again, the incapacity of the revenue staff in dealing with increasing numbers of taxpayers was another driving factor backing the move to SAS. This was as a result of the sudden increase in

⁶³¹ *Shotoku Zeiho* (Law No 33 of 1965); *Hojin Zeiho* (Law No 34 of 1965).

⁶³² Y Kimura, 'Japan's Tax Administration Reform And The Self Assessment System', Tax Administration Asian Development bank Institute Course III, Siem Reap, Cambodia, 21-23rd March, 2006.

⁶³³ *Ibid.*

⁶³⁴ H Ishi, *The Japanese Tax System*, (3rd edn, Oxford: Oxford Press, 2001) P. 3.

the number of people who had to pay tax because the inflationary economy was creating many more taxpayers as tax thresholds failed to keep up with inflation. The main problems encountered in the early stage of AS in Japan includes the following:⁶³⁵

- 1) Problems finding out individuals running their personal business.
- 2) Individual income tax has a minimum taxable income threshold, making it harder identifying those with tax obligations.
- 3) Many sole proprietors and family - owned small scale corporations found it quite challenging adapting to the new system, and many did not even keep accounting books.
- 4) Tax officers were making assessments without any clear basis through which to meet the target, resulting in the public further losing trust in the tax authority. By 1948, many anti-tax protests were staged in various parts of Japan. Some had led to threats and violence against tax officers. In some cases, petrol bombs were flung into tax offices and incomes of tax executives.
- 5) The actual amount of tax paid was less than the amount budgeted for by the government.
- 6) The difficulty in terms of filing and collection.

As a result of the many problems which arose with the then existing tax administration and the consequent deterioration of the nations' trust of the tax authority, it was thought that a more specialized tax administration organization was needed. Therefore in June 1949, in order to pressure the trustworthiness, the National Tax Agency (NTA) was established as a separate body from the Tax Bureau of the

⁶³⁵ Y Kimura *op cit.*

Ministry of Finance⁶³⁶ to focus on tax assessment and collection.⁶³⁷ The emergence of NTA proved to be a favourable progress in continuing the believableness and authority of the tax authority. They have increased the sense of ethical duty toward tax. Efforts were fashioned to in addition inform taxpayers about the tax system and to provide advice for those requiring assistance. They also focused in human resources development including improved staff education, promotion of bookkeeping and accounting records and proper tax filing and also received important support from tax associated bodies in the private sector.

In Japan, as in the USA and the UK, ensuring compliance through tax audits and fines is a common approach to improving tax collection.⁶³⁸ In order to preserve people's trust in the system and their belief that tax is applied equally, and to maintain their motivation to file and pay taxes correctly, it is essential that those who try to avoid tax be dealt with firmly, sometimes by making them the focus of prioritized tax audits. Tax collection had also become a major obstacle, whereby it operated in an extraordinary environment where delinquency rates were more than 40%.⁶³⁹ Prevention of non-compliance and prompt addressing of new delinquency therefore became the focus. While calling upon taxpayers to pay on time, automatic debiting of tax against their bank accounts was also implemented. As a result, non-compliance rates fell significantly and collection operations started to improve.

Currently, SA is firmly established as part of the Japanese tax system. The success of the SA system has been due to the efficiency of the Japanese tax administration in taking both legislative and administrative measures to support the system.. These measures included appropriate implementation of withholding taxes

⁶³⁶ Japan, Ministry of Finance, *An Outline of Japanese Taxes*, (1992) 290

⁶³⁷ The NTA was conceived of at the time the Ministry of Finance was created by the National Administration Organisation Law (Kokka Gyosei Soshiki HO, Law No 120, 1948)

⁶³⁸ Art 234, Income Tax Law (Shotoku Zeiho(Law No 33 of 1965)

⁶³⁹ *ibid.*

and provisions for proper bookkeeping requirements. The introduction of the national tax comprehensive management system known as *Kokuzei Sougou Kanri* (KSK system) has also contributed to the success of SA in Japan.⁶⁴⁰

The KSK system is a comprehensive or automatic data processing system that is able to store taxpayers' information, carry out administrative tasks, present statistical information and issue certificates for taxpayers who pay their taxes promptly. The system is able to identify deficient returns and classify them into two categories: those that require tax officials' visits and those that do not require tax officials' visit to premises of taxpayers.⁶⁴¹

The Japanese tax system continuously focuses on enhancing tax compliance through having good relationships with customers (taxpayers) and undertaking enforcement activities. For instance, taxpayers may choose to submit their returns by postage-free filing or through electronic filing where taxpayers require more explanation, taxpayer information services including tax counseling are provided. In terms of enforcement, strong and disciplined audit teams conduct three types of examination: General Examination i.e. where basic details are required, Special Examination i.e. dealing with complications and tax evasion matters and Point Examination i.e. covering field examination of specific items. For delinquent taxpayers, an appropriate audit would be conducted coupled with the imposition of a range of penalties.⁶⁴²

Self-assessment in Japan has gradually become accepted by the public as the basis for the stable tax revenue that is required for running the nation. Now it has firmly taken root and the Japanese are presently handling the challenges of the 21st

⁶⁴⁰ *Ibid.*

⁶⁴¹ T K Sarker, 'Improving tax compliance in developing countries via self-assessments system – what could Bangladesh learn from Japan' (2003), *Asia – pacific Tax Bulletin*, 14-15.

⁶⁴² *Ibid* 15-16.

century. The basic principles and objectives of SAS have however remained unchanged. There are many developments in the environment surrounding tax administration in Japan, such as the information technology (IT) explosion, globalization, the declining birthrate and the aging of the population. The number of taxpayers has risen and cases of tax assessment and collection are getting more and more complex and difficult. To overcome these problems, the Japanese tax authority have set up five basic themes for tax administration, namely taxpayer service, ensuring compliance, the use of IT and streamlining operations, the role of tax accountants, and human resources development.⁶⁴³

To conclude, the history of the Japanese tax administration particularly as it relates to SAS is seemingly a series of steady steps taken to strengthen tax audits, increase tax collection and preserved fairness and equity as well as other activities to ensure compliance. A steady effort to work on the basics such as developing human resources, instilling public awareness and educating taxpayers have also proved very important. The success in implementing SAS in Japan has not come about easily but strong co-operation between the tax authority and taxpayers is the main element.

6.1.5 New Zealand

Self assessment was introduced in New Zealand (NZ) as a result of tax reform in the mid 1980s.⁶⁴⁴ Tax reform in NZ was an integrated part of an economic restructuring and liberalization process to meet market forces. It was necessary due to the failure of the then existing system to collect sufficient revenue to finance government expenditure. The old system offered too many tax incentives and loopholes and was too costly to administer. The high tax rates on personal income tax

⁶⁴³ Y Kimura, *op cit*.

⁶⁴⁴ The Treasury, 'Review of Aspects of Income Tax Self Assessment', A Discussion Paper, Commonwealth of Australia, March 2004.

had also resulted in tax avoidance and evasion.⁶⁴⁵ Furthermore, the introduction of SA was expected to add and enhance other improvements being made to simplify tax administration.

The NZ tax administration adopted the practice of SA for many years before implementing the necessary legislative changes.⁶⁴⁶ The government felt that this situation caused deficiencies in the tax system and gave rise to a duplication of responsibilities in the sense that taxpayers would self-assess their own tax liabilities, but the commissioner was still required by the then legislation to make an assessment. This duplication in actual fact cause inefficiencies and thus was uneconomical in terms of administration.⁶⁴⁷

Subsequently, the SA system was legislated effective from 1st April 1999. This reform was essential to bring the Tax Administration Act (1994) in line with existing administrative practices. The legislation provided a legal framework that was consistent with the other administrative reforms such as penalty provisions, disputes resolution procedures and binding ruling legislation.⁶⁴⁸

Although SA in NZ has been legally established, taxpayers are given the option of either assessing their own liability or electing for the tax authority to undertake the assessment. This seems to be inconsistent with the objective of SA as practiced in other countries. The argument put forward by the Commissioner was that the Inland Revenue Department (IRD) was merely doing a service by assessing the tax liabilities on behalf of taxpayers. This would effectively help in establishing the date of the notice of assessment, as the date of filing the return is deemed to be the

⁶⁴⁵ R Stephens, 'Radical Reforms in New Zealand', (1993) *Fiscal Studies Journal*, 10.

⁶⁴⁶ Legislation giving effect to these changes in NZ was largely contained in the Taxation Laws Amendment (Self Assessment) Act 1992.

⁶⁴⁷ B Birch, Taxation (simplification and other remedial matters) Bill, Commentary on the Bill, (1998) Policy Advice Division of the Inland Revenue Department, Wellington, 10.

⁶⁴⁸ A Sawyer, 'Binding Tax Rulings: The New Zealand Experience', (1997) *Australian Tax Review*, 26, 11-27.

date of the notice of assessment. The tax authority only issue a statement confirming the amount of tax due, as no notice of assessment is issued.⁶⁴⁹ In practice, this means that on the date of receipt of the taxpayer's assessment, the return is date stamped-electronically or manually, and it is this date that is entered into Inland Revenue's computer system. Once this date is entered into the system, a return acknowledgment form is generated and sent to the taxpayer. The taxpayer will therefore have a record of the date of receipt, and the date of self assessment.⁶⁵⁰

NZ operates a full SAS for Income Tax. Taxpayers assess their own liabilities, then claim a refund or pay the amount owing. The Inland Revenue Department (IRD) as noted above does not issue assessment notices as a matter of course, however, it does issue a Personal Tax summaries or Statement of Earnings when requested by a taxpayer. In practice, around 75% of New Zealand wage and salary earners do not lodge income tax returns. Instead, to pay the correct amount of tax during the year, they rely on the extensive tax withholding system for wages, salary, interest and dividends. In addition, taxpayers do not need to contact the IRD if they have less than N\$200 under or overtaxed income. Significant numbers of other individual taxpayers must confirm the details of an IRD Generated Personal Tax summary including wage, salary and interest details. They do this instead of lodging a return. Once taxpayers confirm these details; they receive a refund or pay the amount outstanding. Businesses and individual taxpayers with income outside the withholding tax system (such as from rent), must lodge returns.⁶⁵¹

⁶⁴⁹ B Birch *op cit.*

⁶⁵⁰ Inland Revenue Department (IRD), Date of Self-Assessment, <www.ird.govt.nz/technical-tax/legislation/2005/2005-III/2005-III-remedial-issues/ri-date-self-assessment/leg-2005-III-ri-date-of-self-assessment.html> accessed on 7th January, 2015.

⁶⁵¹ The Treasury, Review, of Income Tax Assessment, <www.selfassessment.treasury.gov.an/content/discussion/05chapter/.asp> accessed on 7th January, 2015.

The IRD issues non-binding information to taxpayers and tax agents through its monthly Tax Information Bulletin, a telephone service, Fact/Information sheets and a tax return guide (like Australia's Tax Pack). The IRD also issues four types of legally binding rulings: public, private, product and status. Taxpayers do not have to follow a ruling nor can they appeal or dispute a ruling, however they must disclose in their tax return if they follow a ruling. The IRD publishes public rulings, giving its interpretation of how certain tax laws apply in a given situation. Private rulings indicate how the law applies to a particular taxpayer and other taxpayers cannot rely on them. The IRD does not publish private rulings. Taxpayers pay application fees and preparation fees for them. Product rulings state how the law to a particular transaction rather than to a particular taxpayer. The IRD publishes product rulings in the Tax Information Bulletin and taxpayers seeking them pay fees on the same basis as for private rulings. Status rulings clarify if changes in the law affect a private or product ruling a taxpayer has received previously.⁶⁵²

In conclusion, the NZ SA system is firmly established with extensive reliance on the tax withholding system for wages, salary, interest and dividends. However, NZ operates a self-assessment system under which companies and individual self-assess their income tax liability and returns can be filed in hard copy or electronically.⁶⁵³

6.2 Self Assessment in Developing Countries

Having analyzed the SAS of some of the above developed countries, this section discusses the use of SAS in some developing countries. These countries are Malaysia, Cambodia and Sri-Lanka. These later two countries illustrate cases of

⁶⁵² *Ibid.*

⁶⁵³ Deloitte, Taxation and Investment in New Zealand 2016, <www.deloitte.com/content/dam/Deloitete/global/Documents/Tax/dttt-tax-newzealandguide-2016.pdf> accessed on 7th January, 2015.

relatively successful SAS implementation (Cambodia) and one facing more problems (Sri-Lanka) with their use of SAS although it is acknowledged that wide varieties of tax and SAS design can be found amongst developing countries.

6.2.1 Malaysia

Tax in Malaysia was introduced by the British into the Federation of Malaysia, in 1947 and was based on Heasman's Report.⁶⁵⁴ Initially, the Income Tax Ordinance 1947 was gazetted as the main act but this was subsequently reformed and replaced by Income Tax Act 1967 (ITA) which took effect on January 1, 1968. During that time, ITA consolidated the three acts of income taxation namely Sabah Income Ordinance 1956, Sarawak Inland Revenue Ordinance 1960 and Income Tax Ordinance 1947. Currently, ITA 1967 is the main Act to govern direct tax in Malaysia including corporate and individual income tax. The *Lumbaga Hasil Dalam Negeri* or the Inland Revenue Board (IRB) is the tax authority which administers direct taxes in Malaysia. Other than ITA, the IRB are also responsible for administration, assessment, collection and enforcement of real property gain taxes, petroleum taxes and stamp duties. Royal Malaysian Customs (RMC) is the government agency responsible for administering the nation's indirect tax policy. SAS was first introduced in Malaysia in 2000 as one aspect of tax reforms.⁶⁵⁵ SAS was first introduced in 2001 for companies and 2004 for personal taxpayers. Thus with the change to SA the onus is on taxpayers to comprehend, interpret and to comply with the relevant provisions of the tax law that are applicable to their respective circumstances,⁶⁵⁶ while the IRB's onus is to review and verify tax returns based on the IRB's interpretation and application of the tax law.

⁶⁵⁴ V Singh, *Malaysian Tax Administration* (6th edn, Kuala Lumpur: Longman, 1999) P. 10

⁶⁵⁵ C Butler, 'Self Assessment: The way forward' (1993), *Tax Nasional*, 2-3.

⁶⁵⁶ S Shanmugam, 'Management Self Assessment – An Appraisal', (2003) *Tax Nasional*, 1st quarter, 30-32.

Prior to the implementation of SA in Malaysia, taxpayers were only required to file their returns and report their incomes that were assessable to tax. The IRB would assess the taxpayers' tax liabilities and would issue notices of assessment. Upon receipt of the notices of assessment, taxpayers would be required to pay their respective taxes within 30 days from the issue date. Under Malaysian SA, the tax returns filed by taxpayers are deemed as notices of assessment, and the IRB is not required to issue any such notices. Taxpayers are therefore required to pay whatever taxes that are due to the IRB by the specified due dates.⁶⁵⁷

The main objectives of adopting SA in Malaysian were to enhance voluntary compliance among taxpayers, to minimize administrative cost and to lessen the burden of the IRB.⁶⁵⁸ Under the Official assessment system, the rate of compliance in terms of lodgment of returns was regarded as unsatisfactory, as it was reported that in 1997, the compliance rate of returns filed was only 69.2 percent and further it was reported that from 1990 to 1996, approximately 20 to 30 percent of the returns filed were not finalized by the end of the year by the IRB.⁶⁵⁹ This trend continued as it was reported that in the year 2002, although nearly three million tax returns were finalized, they represented only 61.8 percent of returns lodged.⁶⁶⁰

The official assessment system was considered costly, inefficient and complex to administer, especially since the assessment and appeal processes placed a heavy burden on the IRB. The high volume of returns lodged resulted in backlogs of unassessed cases, and delays in processing and issuing of returns. This was also partly attributed to by the dependence on the correctness and completeness of the information submitted by taxpayers. Weak enforcement due to lack of qualified staff

⁶⁵⁷ Income Tax Act, 1967 S. 103(1).

⁶⁵⁸ J Kasipillai, 'What do Malaysian Taxpayers know?' (1998) *Malaysian Accountant*, February, 2-7.

⁶⁵⁹ *Ibid.*

⁶⁶⁰ Inland Revenue Board (IRB) Malaysia (2002) Annual report. <www.hasil.gov.my/bt_goindex.php> accessed on 19th January, 2015.

and shortage of staff to carry out enforcement activities added to the administrative problem experienced by the IRB under the official assessment system.⁶⁶¹ Several studies indicated that SA could successfully address such problems⁶⁶² which ultimately led to its adoption by the IRB.

The IRB in Malaysia thereafter reported that with the implementation of SA, income tax collection had increased from RM 13.9 billion in 2000 under the official assessment system to RM 20.8 billion in 2001 and it attributed the increase to the implementation of SA.⁶⁶³

6.2.2 Sri Lanka

Income tax in Sri Lanka was first introduced in 1932. Income tax administration was mainly governed by the Income Tax Department (ITD) which was established in the same year and now ITD is known as Department of Income Tax, Estate Duty and Stamps (the Department). The vision is ‘to be a taxpayer friendly tax administrator delivering excellent service to the taxpaying public, with well trained and dedicated staff’⁶⁶⁴ while the mission is “to collect taxes under the law by encouraging voluntary compliance, and to enhance public confidence in the integrity and efficiency of tax systems by administering tax and related legislation fairly, uniformly and courteously and thereby facilitate and foster a beneficial tax culture”.⁶⁶⁵ To realize both vision and mission, strategic goals were also outlined which were “to improve voluntary compliance with the tax laws through programmes which encourage and assist that and detest those who do not comply and, where necessary,

⁶⁶¹ S Shanmugam *op cit*, 30-32.

⁶⁶² S James, ‘Self assessment and UK tax system’, A paper delivered at a conference on current issues in Tax Administration at Sidney on 11th -12th April, 1996.

⁶⁶³ R N Abdul & F Mohd, SA System Increased Collection of Income Tax <<http://www.utusan.com.my>> accessed on 19th January, 2015.

⁶⁶⁴ Inland Revenue of Sri Lanka (2008) <<http://www.Inlandrevenue.gov.lk>> accessed on 19th January, 2015.

⁶⁶⁵ *Ibid*.

take appropriate corrective action”.⁶⁶⁶ Judging from its mission and strategic goals, ‘compliance’ and ‘corrective action’ appear to be important goals in administering tax in Sri Lanka.

Self assessment system was adopted in Sri Lanka in 1972 which posits that Sri Lanka has been experiencing 45 years of operation of SAS. However, the triumph of SAS does not rely on how long it has been implemented. In other words, various factors play significant roles in relation to a SAS victory. Although the SAS has been in operation since 1972 in Sri Lanka, a Commissioner in the Inland Revenue claimed⁶⁶⁷ that the system was only suitable for implementation in developed countries but not for Sri Lanka. He also claimed that only 31% out of approximately 250,000 tax returns were audited every year and that 97% of tax remained unaudited. The tax authority relied on the self-assessed tax returns, with no detailed auditing carried out. The Inland Revenue commissioner also asserted that tax audits or assessments would be exercised if it was felt that an additional tax could be generated due to lack of human resources. Principally, individual taxpayers should be audited every three years at least. As a result, the Sri Lanka tax authorities are suffering an increment in tax collection default due to inefficient tax audits and tax collections.⁶⁶⁸ According to the Annual Report 2008 published by the Central Bank of Sri Lanka, the default tax in 2007 is over RS. 158 billion (828 million Pounds) – a 69.7 percent increase in default taxes over the figure for year 2000 due to improper tax collection procedures and lack of specially trained tax force.⁶⁶⁹

The Inland Revenue commissioner also admits that the main problem for the successful implementation of SAS is lack of human resources. For example, since

⁶⁶⁶ *Ibid.*

⁶⁶⁷ D Dissanayake, Self Assessment Suits an advanced tax culture, but not this country, *The Sunday Times*, 19th October, 2009. <http://sundaytimes.lk/091018/News/nws_Io.html> accessed on 20th January, 2015.

⁶⁶⁸ *Ibid.*

⁶⁶⁹ *Ibid.*

2007, 118 (out of approximately 750) tax officials have left due to lack of job satisfaction – graduates who are recruited as tax officers, have no promotion prospects. They remain tax officers until they retire. Despite no future prospects, the burdens of the job also become another factor explaining why many tax officials have left. On average, a tax official has to assess 800-1,200 tax returns every year.⁶⁷⁰ Consequently, the tax authority must train new tax officials more frequently, which is costly.

SAS in Sri Lanka appears to be far from being successful according to him unless some measures are taken by the tax authority. A continuous education programmes to cultivate awareness among taxpayers particularly highlighting their responsibilities as taxpayers have been recommended and being implemented.⁶⁷¹ In addition, the government focuses on human resources development as well as offering more opportunities (career enhancement) to tax officials so that they would have more motivation to work. A user friendly website, as has been introduced in many developed countries (e.g. the UK, the USA and Australia) should be developed to offer information which is related to tax matters or as a platform for taxpayers to file their tax returns and make a payment (e-filing).⁶⁷² Sri Lanka it is submitted generally represents what is obtainable in most developing countries that have adopted SAS.

6.2.3 Cambodia

Initially, the tax authority of Cambodia was known as the Tax Department. It was re-established in 1981 with the capacity of less than 200 officers and the first branch was in *Phnom Penh* with five more offices in other locations. The tax system was first introduced in 1982 formally known as Official Assessment (also called the

⁶⁷⁰ *Ibid.*

⁶⁷¹ Central Bank of Sri Lanka, Annual Report (2008)
<www.cbsl.gov.lk/pics_n_docs/10_publication/_docs/efr/annual_report/Ar2/008e/8.aro8_chap_06-e.pdf>
accessed on 20th January, 2015.

⁶⁷² *Ibid.*

Pure Estimated Regime of Taxation). Like other countries implementing this system, Cambodian taxpayers were simply required to declare their income in a tax return and furnish all relevant documents to support this claim. Then, tax officials assess and calculate the aggregate income and the estimated profit (for a business entity). A notice of assessment would then be issued to the taxpayers and payments made to tax office cashiers.

In 1994, a new system called the Self Assessment System was introduced to replace official Assessment.⁶⁷³ A further tax reform occurred in 1997 whereby a new law on Taxation was introduced to accommodate regulations regarding profit tax, salary tax, VAT, excise tax, withholding tax and associated administrative rules and procedures. The implementation of SAS in Cambodia was undertaken in stages. Before 2000, SAS was applied only in *Phnom Penh*. A year later it was extended to 5 provinces and by the year 2003, a total of 16 provinces out of 24 provinces were involved. The tax system was reformed to conform with the country's transition to a market economy.

The main objective of SAS in Cambodia is to increase the efficiency of tax collection.⁶⁷⁴ Several measures have been undertaken to strengthen collection including clear strategic management (vision, mission and plans), clear organizational structure, controlling of large taxpayers (with a focus on auditing, filing on time, payment and debts); methods of direct assessment (calculations, payments and penalties); providing good taxpayer service and tax audits (good taxpayer services will promote voluntary compliance by improving taxpayer understanding and

⁶⁷³ S Eang & U Seiha, 'Cambodian Tax Reform and Self-Assessment System', Tax administration Asian Development Bank Institute Course III, Siem Reap, Cambodia, 21st -23rd March, 2006.

⁶⁷⁴ *Ibid.*

confidence in the tax system); introducing better quality technology for assessment, collection and audit and finally, employing professional staff.⁶⁷⁵

In the Cambodian self assessment system, employers also have to make monthly declarations and payments no later than the 15th day of the succeeding month and there is no annual return for personal taxpayers. Tax deducted monthly by the employer is deemed to be the amount of tax liabilities for the year of assessment.⁶⁷⁶ Like other SAS countries, voluntary compliance remains the issue with the SAS. The compliance rate is relatively low in Cambodia.⁶⁷⁷ Several measures have been planned and undertaken by the tax authority to minimize non-compliance behavior. The strengthening of tax auditing to detect non-compliance taxpayers has been aggressively implemented. A measure in which tax officials conduct general audits on selected taxpayers all over the country. In 2005, around 1000 large and medium taxpayers were audited which resulted in more than KHR400 billion (643,956,00 Pounds) being collected.⁶⁷⁸

Continuous staff training has also been conducted in line with tax audits to enhance the credibility and performance of the tax officials, and thereby developing confidence and exposure to current tax laws. On the other hand, the Cambodian tax authority is also facing a number of problems with SAS; many taxpayers file tax returns with loss result for many years which in turn reduces tax collection, limits their capacity and places a strain on human resources. That is on tax auditors.⁶⁷⁹

⁶⁷⁵ *Ibid*

⁶⁷⁶ Price Water house Coopers, pocket tax book: a summary of Cambodian Taxation (2008) <http://pwc.com/Extweb/service.nsf/docid/F_365DD8F4BE64113CA25723A0033D677/S_FILE/CambodianPBT-2008.pdf> accessed on 21st January, 2015.

⁶⁷⁷ A Riahi-Belkaoui, 'Relationship between Tax Compliance Internationally and Selected Determinants Of Tax Morale'. *Journal of International Accounting, Auditing and Taxation* (2004) 13, 135-143.

⁶⁷⁸ Eang & U Seiha *op cit*.

⁶⁷⁹ Cambodian Annual Economic Review (2004) <<http://www.cdri.org.kh/webdata/download/caer/caer04e.pdf>> accessed on 21st January, 2015.

In terms of information technology, Cambodia is facing some problems due to lack of resources.⁶⁸⁰ The significant cost incurred by IT development not only relates to purchasing equipment but also to after-sale costs such as software, technical support, and staff training. Therefore, a well-designed computer system is a useful device for a tax administration and when used effectively can reduce the cost of operations, improve efficiency of controls, and assist taxpayers in complying with tax legislation. Limited internet access throughout Cambodia has also been pin-pointed as a major barrier to tax administrator's attempt to implement SAS effectively and successfully in the way it is typically used in developed countries. Statistics show that internet coverage was at approximately 6,000 out of total population of 12,573,580 (0.05%) in the year 2000.

This number significantly increased to 44,000 out of the total population of 15,507,538 (0.03%) in 2007⁶⁸¹. There is no recent data available.

In conclusion, although Cambodia is a less developed country, it demonstrates the spirit necessary to excel in its tax administration. Thus the administrator is consistently implementing procedures to realize the country's SAS objectives. Introducing E-service, the internet, posting tax information on the website, producing and providing more tax guides and information brochures, improving the process of response answering inquires, providing more seminar, making more use of media including TV, radio and newspapers, improving relationship with tax agents as well as increasing interaction with community group are some prominent steps being taken by the administrator to enhance the efficiency.⁶⁸²

⁶⁸⁰ Economic Institute of Cambodia (2009) <<http://data.eicambodia.org/>> accessed on 21st January, 2015.

⁶⁸¹ International Telecommunication Union (2008) <<http://www.Hu.Int./net/home/index.aspx>> accessed on 21st February, 2015.

⁶⁸² Economic Institute of Cambodian *op cit*.

It is noteworthy that some other African countries just recently started embracing SAS. In Ghana for example, the new Income Tax Act, Act 896 which came into force in January, 2016 requires taxpayers to correctly carry their self-assessment obligations and file the appropriate returns when due.⁶⁸³

According to Ghana Revenue Authority (GRA) there are plans to expand the self-assessment scheme to cover all tax-payers in the country by 2017.⁶⁸⁴ Other African countries include Botswana (2002), Kenya (1992), Tanzania (2004), Malawi (2010), Lesotho (2004).

6.3 An International Comparison of Self Assessment Systems

6.3.1 General Tax Administration

The self-assessment system is widely practiced in the OECD⁶⁸⁵ countries and around half of OECD countries have implemented a self assessment system for either personal income taxation or corporate taxation.⁶⁸⁶ Tax administration practices across OECD countries demonstrate a variety of issues and problems and therefore taken collectively, provide a comprehensive review of the majority of tax administration issues faced when using self assessment systems. This section therefore builds on the specific cases of the USA, the UK, Australia, NZ and Japan already explored in details above in order to widen the review of the administration of the self assessment system and make brief comparisons therein.

Out of thirty-five members of OECD, tax administrations have evolved into a variety of institutional arrangements, however, in the majority of cases there are

⁶⁸³ B Ayamgha, Ghana Revenue Authority now running a self-assessment regime – Asare <www.ghananewsagency.org/economics/gra-now-running-a-self-assessment-regime-asare—106973> accessed on 21st August, 2016.

⁶⁸⁴ Ghana Revenue Authority holds seminar for taxpayers <www.peacefmonline.com/pages/local/social/2014II/222376.php> accessed on 21st August, 2016.

⁶⁸⁵ The Organisation For Economic Co-operation and Development (OECD).

⁶⁸⁶ (OECD) (2007). Tax administration in EOOD and selected non-EOCD countries. Comparative Information Series (2006). Centre for Tax Policy and Administration. <<http://www.oecd.org/dataoecd/37/56/38093382.pdf>> accessed on 10th January, 2015.

unified and semiautonomous bodies with a broad range of powers. They are mainly responsible for tax administration that report directly to their respective governments. In many OECD countries, a separate body for the collection of tax and social contributions and revenue bodies have been given a considerable degree of autonomy to carry out and administer their own tax systems.⁶⁸⁷ The evolution from autonomy to semi autonomy administration as well as the integration of tax collection among a large number of OECD members has increased taxpayers' confidence in the tax administrations and their perception of equity and fairness of the tax system.⁶⁸⁸ Autonomy means a broad range of powers that are mainly responsible for tax administration and collections without government intervention while semi autonomy means where a broad range of powers that are mainly responsible for tax administration and collections with government intervention particularly in developing policies.⁶⁸⁹ Over half of the OECD countries report they have established semi-autonomous bodies.⁶⁹⁰ In addition, the steps taken by most of the OECD countries in using the self assessment system has increased taxpayers' awareness, knowledge and compliance gradually, particularly within three to five years after the introduction of the SAS.⁶⁹¹

6.3.2 Compliance Measures

In terms of personal income tax, the vast majority of countries rely on 'withholding at source' arrangement for the collection of tax revenue in respect of

⁶⁸⁷ *ibid*

⁶⁸⁸ *ibid*

⁶⁸⁹ *ibid*

⁶⁹⁰ OECD, Institutional Arrangements For Tax Administration in Tax Administration, 2015: Comparative Information on OECD and other Advanced and Emerging Economies (Paris: OECD Publishing, 2015) P. 31.

⁶⁹¹ OECD, Tax Administration in OECD and selected Non-OECD Countries: Comparative Information Series (2006), Centre for Tax Policy and⁶⁹¹ Administration, 2007 <<http://www.oecd.org/ctp/consumption/cis-2006pdf>> accessed on 10th January, 2015.

salary and wages. Taxpayers are also required to file their tax returns annually under the self assessment system, so the filing methods vary across countries. Also in corporate income taxes, just over 50% of member countries have evolved their systems of administration to one based on self-assessment principles, as opposed to administration assessment. Again, with minor exceptions all revenue bodies operate with a formal set of taxpayer's rights set out in law or other statutes, and/or in administrative documents. In any democratic society taxpayers/citizens will have a number of basic rights as well as obligations in reaction to their government and its agencies. Revenue bodies are no exception, and most countries have legislation governing taxpayer's rights and obligations in relation to tax. Some countries like USA (2014) have chosen to consolidate the measures taken to protect taxpayers into a 'Tax Charter' or 'Declaration' and to publish these widely. In some countries, they have taken the form of a general statement of the broad principles which should govern the relationship between the revenue body and taxpayers. In other countries, these documents provide a more detailed guide to the rights of taxpayers at each stage in the assessment process.⁶⁹²

The implementation of SAS in more than 60% of the OECD countries has produced significant reforming of the tax administration of these countries especially in terms of improving overall taxpayer compliance with tax laws and efficacy. Generally speaking, the use of self assessment principles in the countries concerned reflects an abandonment of administrative assessment procedures on efficiency and effectiveness grounds, in favour of a more targeted verification approach (e.g. risk-based desk and field audits, computerized matching of income reports) to verify the information contained in tax returns. In countries where this change has been made, it

⁶⁹² OECD, *Legislated Administrative Frameworks for Tax Administration, in Tax Administration 2015: Comparative Information on OECD and other Advanced and Emerging Economies*, (Paris: OECD Publishing, 2015) P.

has generally been initiated with the objective of improving overall compliance with the laws and efficiency through the earlier collection of tax revenue, an expanded and better-targeted program of audit inquiries; and reducing the incidence of disputed assessments.⁶⁹³

Again, in order to further improve their SAS, some OECD countries encouraged tax authorities to pre-fill tax returns to assist taxpayers in meeting their returns filing obligations. Countries in the Nordic region (i.e. Denmark, Estonia, Finland, Norway and Sweden) and more recently in Chile and Spain, have fundamentally reformed this approach by making third party information available to taxpayers by way of a ‘pre-filled’ or ‘pre-populated’ tax return, or ‘tax proposal’. Pre-filing entails the use of by revenue bodies of information held by them (e.g. taxpayer identity information, elements of taxpayer history, and third party reports of income and deductions etc) to populate fields within tax returns etc that are made available to taxpayers for their examination.⁶⁹⁴ Noteworthy on this is that Eight revenue bodies (i.e. Chile, Denmark, Finland, Lithuania, Malta, Norway, Spain and Sweden) provide a capability that is able to generate a fully completed annual tax return (or its equivalent) online and/or in paper form for majority of taxpayers required to file tax returns in 2013, while four bodies (i.e. Belgium, Iceland, Singapore and South Africa) achieved this outcome in 2013 for between 25-50% of their personal taxpayers.⁶⁹⁵ Unfortunately pre-filing is not being implemented in Nigeria and will be a welcome development in tax administration in Nigeria.

⁶⁹³ OECD, *Tax Administration in OECD and selected Non-OECD countries: Comparative Information Series* (2006) *op cit* P. 58.

⁶⁹⁴ OECD, *The use of Online Services in Tax Administration, in Tax Administration 2015: Comparative Information on OECD and other Advanced and Emerging Economies* (Paris: OECD Publishing, 2015) P. 254.

⁶⁹⁵ *Ibid.*

Furthermore, in order to encourage voluntary compliance, the revenue authorities in some countries have compliance measurement framework that could be used to monitor and evaluate the impacts of their compliance activities. For example, the vast majority (49 of 52 revenue bodies) which includes Australia, Austria, Belgium, Canada, South Africa etc were reported to have formal process for identifying, assessing and prioritizing their key compliance risk areas (e.g. profit shifting, VAT fraud, return non-filing, non-payment of liabilities) as part of their organizational planning. However, research identified three revenue bodies (i.e. Australia, New Zealand and South Africa) that publish a formal compliance programme setting out a summary of the major tax compliance risks identified and how they will be dealt with.⁶⁹⁶ This principle although highly recommendable is not yet operated in Nigeria.

For example, commencing in South Africa in 2012, South Africa Revenue Services (SARS) published its first compliance programmes. In explaining the rationale for publication of its compliance programmes, SAR's Commissioner observes:

It may appear somewhat counter intuitive for us to publicly announce those areas of risk that will come under the SARS microscope. But in doing so, we would like to help people recognize behaviours that pose a risk to them and take measures to avoid them, thereby encouraging voluntary compliance. We are not out to catch people. Rather we are in the business of getting everyone to do right thing willingly. This is a bit like road signs which alert drivers to upcoming speed traps. In the same way that these have been shown to reduce speeding, international

⁶⁹⁶ OECD, *Selected Aspects of Strategic Management, in Tax Administration 2013: Comparative Information on OECD and other Advanced and Emerging Economies*, (Paris: OECD Publishing, 2013) P. 138-139.

best practice has shown that by highlighting areas of high risk and non-compliance with tax and custom legislation, taxpayers and traders are encouraged to adjust their behaviour.⁶⁹⁷

6.3.3 Random Audit of Tax Programmes

Most revenue authorities prefer to be selective when choosing which tax returns to audit and selecting only those returns believed to be the most non-compliant. However, sometimes returns may be chosen at random. Random selection means every tax return has an equal probability of being audited, regardless of how tax officials perceive a particular individual's compliance status. A tax agency may initiate a programme of random audits for a variety of reasons. For example, a government may wish to ensure that all taxpayers have some chance of being subject to audit to ensure fairness in its enforcement programme. Other reasons might be to update existing audit selection methods, better allocate agency resources or to identify emerging compliance issues.⁶⁹⁸

Over 29 of 56 surveyed revenue bodies have reported the use of, or intention to use, random audit programmes for some of the taxes administered. For example in Canada, the Canada Revenue Agency (CRA) runs a Research Audit Programme to obtain information on the compliance of the small and medium enterprise taxpayer population. Files are selected randomly using statistical sampling methodologies rather than based on an evaluation of risk in order to produce statistically valid and unbiased results.

Again, in Ireland, the Revenue Authority conducts a random audit programme each year on a sample of cases drawn from the population of taxpayers (largely self-

⁶⁹⁷P Gordhan, SARS Compliance Programme, 2012/13-2016/17, <www.sars.gov.za> accessed on 11th January, 2015.

⁶⁹⁸OECD, *Compliance Risk Management, Use of Random Audit Programs*, (Paris: OECD Publishing, 2004) P. 7 <www.oecd.org/tax/administration/33818547.pdf> accessed on 12th January, 2015.

employed and investor-type taxpayers). The primary purpose of the programme is to ensure that no self-assessed taxpayer is exempted (or believes himself or herself exempt) from the possibility of being audited. The programme is also designed to measure and track compliance with tax legislation and to provide feedback and insight on new trends and compliance issues within the tax system.⁶⁹⁹

It is obvious that many revenue bodies are giving increasing emphasis to strengthen their knowledge of the nature and causes of non-compliance of tax payments. It would appear that random audit is used fairly widely notwithstanding related cost considerations and such audit programmes are worthy to be imbibed in Nigeria.

6.3.4 **Electronic Services (e-service)**

The concept of e-service (short for electronic service) represents one prominent application of utilizing the use information and communication technologies (ICT) in different areas. However providing an exact definition of e-service is hard to come by as researchers have been using different definitions to describe e-service. Despite these different definitions, it can be argued that all agree on the role of technology in facilitating the delivery of services, which make them more of electronic services.⁷⁰⁰ However e-services have been described to cover all electronic interactions and include web (internet, portals, and web services), emails and telephone (fixed line and mobile) channels.⁷⁰¹

Over the last two decades, many revenue bodies have taken steps to exploit the use of modern computing technologies to transform their operations, in particular those concerned with tax collection and assessment processes and the provision of

⁶⁹⁹ OECD, *Selected Aspects of Strategic Management, op cit*, P. 134.

⁷⁰⁰ Wikipedia <www.en.wikipedia.org/wiki/E-services#Definitions-and-origin-of-the-term-e-service> accessed on 12th January, 2015.

⁷⁰¹ OECD, *Survey of Trends and Developments in the use of Electronic Services for Taxpayer Service Delivery*, (Paris: OECD Publishing, 2010), P. 9.

basic services to taxpayers and their representatives. The reasons for this are fairly obvious: applied effectively, these technologies can deliver enormous benefits (e.g. lower administrative costs, faster and more accessible services for taxpayers and tax professionals) both to Governments and taxpayers. The main types of electronic services now offered by most revenue bodies include:

- ◆ Provision of a comprehensive range of tax and other information, forms and calculators;
- ◆ Electronic filing of tax returns;
- ◆ Fully and/or partially completed pre-filled tax returns;
- ◆ A mix of electronic payment facilities for all taxes (e.g. direct online payment);
- ◆ Access to personal taxpayer information via online taxpayer portals; and
- ◆ Call centers using modern telephony facilities (including Interactive Voice Response (IVR) technologies) to provide more accessible phone inquiry services.⁷⁰²

Comparative researches have been rife on the fact that there had been substantial progress in recent years in the number of revenue bodies offering e-filing capabilities for their major taxes. In the main, most progress had been made with e-filing for the personal income tax. Also noteworthy is the fact that an increasing number of revenue bodies had introduced mandatory e-filing requirements on some/all business to achieve major progress over a relatively short time frame. In 2013, just over half of revenue bodies surveyed by OECD reported that majority of

⁷⁰² OECD, *The use of Electronic Service in Tax Administration, in Tax Administration 2013: Comparative Information on OECD and other Advanced and Emerging Economies* (Paris: OECD Publishing, 2013) P. 235.

their personal taxpayers used e-filing (either by themselves or via tax professionals) for the year 2011.⁷⁰³ Presently in 2015, an OECD survey showed that the provision of e-filing services for the personal income tax (PIT) is now just about universal across the countries surveyed, with all countries where the national revenue body administers a PIT reporting the availability of this service for fiscal year 2013. For example, almost 60% of revenue bodies reported that the majority of their personal taxpayers filing returns used e-filing (either by themselves or via tax professionals) with a number of countries making substantial progress over the last 10 years in increasing their e-filing usage for example, Argentina (+82%), Israel (+95%), Lithuania (+82%) and South Africa (+95%).⁷⁰⁴

Again, almost 80% of surveyed revenue bodies reported that returns for their corporate taxpayers were e-filed for the 2013 fiscal year. Such countries that made 75% and above substantial progress over the last 10 years in increasing e-filing usage include – Belgium, Cyprus, Denmark, Netherlands, Saudi Arabia, Spain, South Africa and United Kingdom.⁷⁰⁵

Compared with the PIT, there is a greater tendency to rely on the use of mandated e-filing requirement and according to OECD, 22 revenue bodies reported the use of such a requirement for some/all of their taxpayers for the 2011 fiscal year for example in Canada, for tax years after 2009, all corporations who have gross revenues in excess of USD 1 million are required to internet file their corporate tax return with the exception of insurance corporations, non-resident corporations, corporations reporting in functional currency and corporations that are exempt from

⁷⁰³ *Ibid.*

⁷⁰⁴ OECD, *The use of Online Services in Tax Administration, in Tax Administration 2015: Comparative Information on OECD and other Advanced and Emerging Economies* (Paris: OECD Publishing, 2015) P. 250.

⁷⁰⁵ *Ibid.*

tax payable under Section 149 of the Income Tax Act.⁷⁰⁶ Also in Ireland, all returns/payments due on or after 1st June, 2011 must be made by companies on-line through the Revenue On-Line Service (ROS). However, Revenue may exclude a company from its obligation to pay and file electronically, if Revenue is satisfied that the company does not have the ‘capacity’ to do so.⁷⁰⁷

Taken as a whole, and drawing from prior series undertaken by OECD, revenue bodies appear to have made substantial progress over the last 4 to 5 years in automating tax payment collection for the majority of taxpayers. And as reported by OECD in 2015, twenty revenue bodies reported that the majority of tax payments were made by fully electronic methods. These countries include Chile, Finland, Hungary, India, Ireland, Netherland and United Kingdom.

There is no doubt that in Nigeria, FIRS in its web online provided for tax payments. The question is what is the quality of the e-services being provided by FIRS? There is no gain saying that the payment option provided is not up to the global standard obtainable in developed countries. Most of the clickable web portals do not work. Again there is a lack of familiarity with e-services and what is actually entailed in using an e-service as opposed to the level of comfort with paper forms built up over many years by the taxpayers. Majority of Nigerian taxpayers still entertain fears of security and privacy of their money since the FIRS standard of e-services is not yet at par with those of the developed worlds.

6.3.5 Voluntary Disclosure of Programmes

There appears to be potential for many revenue bodies to make greater use of voluntary disclosure policies and programmes to improve tax compliance and bolster

⁷⁰⁶ Canada Revenue Agency (www.cra-arc.gc.ca) accessed on 17th January, 2015.

⁷⁰⁷ Office of the Revenue Commissioners <www.revenue.ie> accessed on 17th January, 2015.

tax revenues. Results from countries that have taken this approach demonstrate that they can be an effective tool for encouraging taxpayers to report past non-compliance including in disclosure of concealed assets and income from offshore bank accounts.⁷⁰⁸

In general terms, voluntary disclosure programmes are opportunities offered by revenue bodies to allow previously non-compliant taxpayers to correct their tax affairs under specified terms. When drafted carefully, voluntary disclosure programmes benefit everyone involved – taxpayers making the disclosure, compliant taxpayers and government.⁷⁰⁹ It is noteworthy that tax voluntary disclosure and tax amnesty does not mean the same thing although it has been used interchangeably particularly by the media. For example, the so called tax amnesty held recently in Nigeria the researcher argues was wrongly named. A critical consideration in the design of a voluntary disclosure programme is the set of incentives offered to encourage taxpayers to come forward voluntarily (e.g. concessions regarding penalties and/or interest) while tax amnesty involves waving tax.⁷¹⁰ With reduced resources available for compliance programmes and greater expectations of improved revenue collection performance, revenue bodies far and wide are looking for effective “quick win” strategies. The deployment of “voluntary disclosure” policies is one such low cost strategy which a number of revenue bodies have long used successfully as a permanent feature of their approach to encourage voluntary compliance.

An example of a country that routinely offer voluntary disclosure programme as part of their normal on-going compliance activities is New Zealand where the tax system is based on self assessment and the Voluntary Disclosure Rules provide an incentive to taxpayers to determine their correct tax liability. The Rules also reflect

⁷⁰⁸ OECD, *Legislated Administrative Frameworks for Tax Administration* (2015) *op cit*.

⁷⁰⁹ *Ibid*.

⁷¹⁰ *Ibid*.

the savings to Ireland Revenue from voluntary admissions of irregularities and other benefits of co-operation by taxpayers. By making a full voluntary disclosure, a taxpayer will attain the advantage of either a full or partial reduction of any shortfall penalty for which they are liable and may also avoid prosecution action.⁷¹¹

Again, in Singapore, Inland Revenue Authority of Singapore (IRAS) introduced a Voluntary Disclosure Programme (VDP) in 2009 to encourage taxpayers to come forward voluntarily to disclose past errors made in tax declarations in exchange for no or reduced penalties, the VDP is applicable to Income Tax (including withholding tax) as well as Goods and Services Tax.⁷¹²

Furthermore, in Australia, ATO has for many years promoted a policy of voluntary disclosure to encourage compliance with the tax laws. When a taxpayer tells the ATO about a false and misleading statement they have made or a mistake that increases their tax or reduces their credit - and they do so without prompting, persuasion or direct compulsion on the ATO's part, it is referred to as 'voluntary disclosure'. In this case, a voluntary disclosure generally opens the way to concessional treatment both for any administrative penalty⁷¹³ that apply and any interest charges.⁷¹⁴

It is also noteworthy that some programmes are new and short-term in nature, while others have been around for some time and are permanent opportunity for taxpayers to correct their affairs. For example, Canada has had a voluntary disclosure program for many years. It allows taxpayers to come forward and correct their

⁷¹¹ Inland Revenue Department (IRD) website, <www.ird.gov.nz/technical-tax/standard-practice/shortfall/sps/-09-02-voluntarydisclosures.html> accessed on 19th January, 2015.

⁷¹² Inland Revenue Authority of Singapore, IRAS Voluntary Disclosure Program, Inland Revenue Authority of Singapore (2014), <<https://www.Iras.gov.sg/ira-shome/About-Us/Taxes-in-Singapore/Helping-and-Encouraging-Compliance/IRAS--Voluntary-Disclosure-Programme/>> accessed on 19th January, 2015.

⁷¹³ Administrative Penalties are those the ATO may impose without taking court action. They apply uniformly across most tax laws except for exercise law which has its own penalties regime.

⁷¹⁴ ATO, correct a mistake or amend a return: make a voluntary disclosure, Australian Tax Office, (2014) <www.ato.gov.au/general/correct-a-mistake-or-amend-a-return/make-a-voluntary-disclosure> accessed on 19th January, 2015.

inaccurate or incomplete information that they have not reported during previous dealings with the Canada Revenue Agency without penalty or prosecution.⁷¹⁵ Whilst the recent 45 –days tax amnesty programme declared by the FIRS in Nigeria on 5th October, 2016 on penalties and interest regarding tax liabilities for the years 2013 to 2015 financial years can be termed as being short term and temporary.⁷¹⁶

Recently, a number of revenue bodies have introduced further more targeted voluntary disclosure programmes aimed at specific types or forms of non-compliance, in particular, non compliance involving the concealment of incomes and assets in offshore accounts.⁷¹⁷ For example, in March 2014, Australian tax authorities announced an initiative (PROJECT DO IT) to allow eligible taxpayers to come forward and voluntarily disclose unreported foreign income and assets.⁷¹⁸ In announcing the initiative, the ATO commissioner urged taxpayers with offshore assets to declare their interest ahead of a global crackdown on people using international tax havens. The initiative closed on 19th December, 2014, with more than 5600 taxpayers coming forward.⁷¹⁹ Also recently, on 18th January 2017, a decree providing a tax amnesty program for the repatriation of foreign investments was published in Mexico’s official Gazette. The decree provides that individuals and companies resident in Mexico as well as permanent establishments in Mexico, may repatriate undisclosed foreign investment income subject to an 8% tax rate.⁷²⁰

From the above analysis, it can be seen that tax amnesty and voluntary disclosure programmes are not strange in the history of tax administration worldwide.

⁷¹⁵ OECD, *Update on Voluntary Disclosure Programmes, A Pathway to Tax Compliance*, (Paris: OECD Publishing, 2015) P. 13.

⁷¹⁶ FIRS provides clarifications on the ongoing tax amnesty programme, <pwc-nigeria.typepad.com/files/tax-alert-firs-clarifies-tax-amnesty-nov-2016.pdf> accessed on 20th January, 2015.

⁷¹⁷ OECD, *Legislated Administrative Frameworks for Tax Administration* (2015) *op cit*, P. 328.

⁷¹⁸ *Ibid.*

⁷¹⁹ ATO, <www.ato.gov.au/projectdoit> accessed on 20th January, 2015.

⁷²⁰ D Chung <www.orbitax.com/taxhub/> accessed on 20th January, 2015

It is a measure administered usually when the government is in fiscal emergency and when voluntary tax compliance and enforcement fails to increase appreciably tax collection to meet government needs. In the case of Nigeria, the researcher posits tax amnesty nationwide by the ruling government. This should be by way of waiving tax. Typically, countries do not waive tax as part of their voluntary disclosure programme as waiving tax would represent some form of a tax amnesty. This is because according to research conducted by the International Monetary Fund (IMF), tax amnesty programs are unlikely to deliver benefits that exceed their true cost.⁷²¹ However, the researcher recommends a one-off Tax Amnesty tax waiving nationwide to forgive all companies and individuals that have defaulted in tax payments until now and forego all their trespasses. As a matter of fact, since the government hitherto have failed to provide the basic amenities which encompasses good roads, electricity, basic infrastructures like hospitals, schools, water etc, while swimming under the mud of corruption without agitation from the taxpayers and tax defaulters alike, the researcher posits a fresh start by this dispensation by forgiving all tax defaulters .⁷²² This is because many eligible defaulting taxpayers are outside the tax net consequent upon their piled-up arrears, interests and penalties. They are petrified of being compelled to pay the money they can't afford to pay any longer because of the dwindling economy and recession. They thus remain outside the tax net evading and avoiding tax. In the researcher's view, declaring a total tax amnesty will improve voluntary compliance. It is like a fresh slate to all eligible taxpayers to register and turn into a new leaf and thereafter punitive enforcement measures should be adopted for the recalcitrant ones. Those who have been abiding by paying taxes hitherto will however be encouraged by such measures as they should delightfully be receiving new members into the

⁷²¹ K Bear *etal*, *Tax Amnesties, Theory, Trends and some Alternatives*, (Washington, DE: International Monetary Fund, 2008) P. 55.

⁷²²

taxpaying family. The government too should be seen using the resources collected henceforth from tax in improving the lots of Nigerians, judiciously utilized in the form of service provision.

6.3.6 Revenue Bodies Strategic Plans and Targets

Research carried out over the years by OECD has found that most revenue bodies prepare strategic plans (or documents with a similar name and purpose) covering a medium term period of three to four years. These documents which can vary in their level of detail generally has a purpose of setting out the key directions and priorities and organizational goals and directions for the target period, against the background of a stated organizational mission/mandate, vision for the future and set of values. Well prepared, such document can be a valuable tool for communicating with both internal and external audiences and fostering commitment. This is for example reflected in the comments of the IRS Commissioner in US in his organization's strategic plan for the period of 2014 to 2017 where he stated as follows:-

In my experience, a large organization like the IRS depends on strategic plans to prioritize goals and effectively manage its resources. I'm pleased to present the 2014-2017 strategic plans and lay out the agency's primary goals and objectives for the next four years. The plan reflects the contribution of every part of the IRS, and it provides clear direction of where we will focus in the years ahead.⁷²³

As a matter of course, Revenue's Statement of Strategy sets out Revenue's strategic direction, identifies the main issues facing the Revenue authority in the country, priorities, new directions and outcomes. The statement also articulates

⁷²³ IRS, IRS strategic plan 2014-17, (Washington DC: United States Internal Revenue Service, 2014) P. 2 <www.irs.gov/pub/irs-pdf/p3744.pdf> accessed on 20th January, 2015.

Revenue's principles, values and vision on how work is carried out and how goals and objectives are achieved. It provides a high-level framework of deliverables and performance targets and maps strategies to business objectives and ultimately to desired outcomes.

Furthermore, each statement of strategy is formulated following consideration of the environment impacting on revenue, including challenges, risks and opportunities facing the organization. It is aligned to the current programme for Government and the possible impact on future Revenue priorities. The role of Revenue's stakeholders, particularly its people, is also integral to the strategy formulation process.⁷²⁴ Apart from the US, other countries that have strategic plans include Australia, Latvia, New Zealand, South Africa, and United Kingdom.

According to OECD research, with few exceptions, all revenue bodies reported that they prepare a multi-year business plan, although the number indicating that such plans were made public was less than 80%, the majority of revenue bodies not disclosing their plans were the less autonomous forms of institutions.⁷²⁵ Also, from the research, understanding taxpayers' satisfaction with services and their overall perceptions of revenue bodies' administration was the most commonly identified targeted area and its importance is apparent from the published comments and reports of revenue bodies.⁷²⁶ For example, according to New Zealand Inland Revenue in 2014,

Ensuring that our customers are satisfied with our services contributes to voluntary compliance. In 2013-14, 79% of customers thought we

⁷²⁴ Irish Tax and Custom, Revenue Corporate Governance, April 2016, <file:///c:/users/new/Downloads/governance-framework.pdf> accessed on 30th July, 2016.

⁷²⁵ Nigeria's FIRS is autonomous.

⁷²⁶ OECD (2015) *op cit*,

made it easy to get it right, and 82% of our customers were confident that we were fair.⁷²⁷

There is no gain saying that the FIRS does not have such publicized statements of intents, plans or otherwise when compared to other countries of same autonomous revenue bodies. It is noteworthy from the reviewed statements above that such statements of strategic plans are officially-published and tend to provide a clear and relatively brief articulation of revenue body mission, vision, values and strategic goals and related objectives and sometimes key measure of performance. From the examined publicized strategy plans of some of the countries by the researcher, it runs from 40 to 50 pages showing headings like ‘what we want to achieve’, ‘our strategic intent’, ‘our goals’, ‘our strategies’, ‘measuring our success’ etc with concise detailed articulation of each heading.

In conclusion, having comparative analyzed some aspects of the trends applicable in some SAS jurisdictions; it is acknowledged that the implementation of SAS in most countries has produced significant reformation in the tax administration of these countries especially in terms of improving overall taxpayer compliance with tax laws and efficiency.

⁷²⁷ New Zealand Inland Revenue Department, Statement of Intent 2014-18, <www.ird.govt.nz/resources/4/f/4febboeo-f764=4017-bcfc-c5bb4eeaf6bf/soi2014.pdf> accessed on 30th July, 2016.

CHAPTER SEVEN

Self-Assessment Regime and Voluntary Tax Compliance

Tax compliance has always been a major concern for all tax administrations, more so in a self assessment environment where it is dependent on voluntary compliance. In Nigeria, there is a dearth of research on tax compliance in relation to the implementation of self assessment. One of the objectives for implementing self assessment is to increase voluntary tax compliance. As such, in a tax system based largely on voluntary compliance, understanding factors that affect compliance amongst taxpayers is of vital importance. The simple question to be partly analyzed in this chapter is why do some people pay taxes levied upon them in a SAR while others do not?

7.1 The Concept of Tax Compliance

The definition of tax compliance in its most simple form is usually cast in terms of the degree to which taxpayers comply with the tax law. However like many such concepts, the meaning of compliance can be seen almost as a continuum of definitions. This ranges from the narrow law enforcement approach, through wider economic definitions and on to even more comprehensive versions relating to taxpayer decisions to conform to the wider objectives of society as reflected in tax policy.⁷²⁸ Tax compliance is multi-faceted measure and theoretically is defined by considering three distinct types of compliance such as payment compliance, filing compliance and reporting compliance.⁷²⁹

Organization for Economic Cooperation and Development advocates dividing compliance into categories in considering definitions of tax compliance. These

⁷²⁸ S James & C Alley, Tax Compliance, Self-assessment and Tax Administration (2010) Munich Personal RepEC Archive, <<https://mpra.ub.uni-muenchen.de/26906>> accessed on 1st March, 2015.

⁷²⁹ R E Brown & M J Mazur, 'IRS's Comprehensive Approach to Compliance', being a paper delivered at National Tax Association Spring Symposium Washington DC in May, 2003.

categories are administrative compliance and technical compliance where the former refers to complying with administrative rules of lodging and paying otherwise referred to as reporting compliance, procedural compliance or regulatory compliance and the latter refer to complying with technical requirements of the tax laws in calculating taxes or provisions of the tax laws in paying the share of the tax.⁷³⁰

Another scholar claimed that tax compliance should be defined as taxpayers' willingness to obey tax laws in order to obtain the economy equilibrium of a country.⁷³¹ Kircher perceived a simpler definition in which tax compliance is defined as the most neutral term to describe taxpayer's willingness to pay their taxes.⁷³²

A wider definition of tax compliance suggested that due to the remarkable aspect of the operation of the tax system in the United States and that it is largely based in self assessment and voluntary compliance, tax compliance should be defined as taxpayer's ability and willingness to comply with tax laws which are determined by ethics, legal environment and other situational factors at a particular time and place.⁷³³

Again, tax compliance is also defined by several tax authorities as the ability and willingness of taxpayers to comply with tax laws, declare the correct income in each year and pay the right amount of taxes on time.⁷³⁴ It has also been defined as the reporting of all incomes and payment of all taxes by fulfilling the provisions of laws, regulations and court judgments.⁷³⁵ Another definition of tax compliance is a person's

⁷³⁰ Organization for Economic Cooperation and Development (OECD) (2001) Compliance Measurement Practice Note, <<http://www.oecd.org/DAF/FSM/minimumattributestaciat.html>> accessed on 1st March, 2015.

⁷³¹ J Andreoni, 36, 818-60.

⁷³² E Kircher, 'The Economic Psychology of Tax Behaviour' (Cambridge: Cambridge University Press, 2007) P. 10.

⁷³³ Y D Song & T E Yarbrough, 'Tax Ethics and Taxpayer Attitudes': A survey, (1978) *Public Administration Review*, 38(5), 442-452.

⁷³⁴ Internal Revenue Services (IRS) (2009) Update in Reducing the Federal tax Gap and Improving Voluntary Compliance <<http://www.irs.gov/pub/newsroom/tax-gap-report-final-version.pdf>> accessed on 2nd March, 2015; Inland Revenue Board (IRB) Malaysia (2009) <<http://www.hasil.gov.my>> accessed on 2nd March, 2015.

⁷³⁵ J Aim, 'A Perspective On The Experimental Analysis Of Taxpayer Reporting', (1991), *The Accounting Review*, 66(3), 577-93

act of filing their tax returns, declaring all taxable income accurately and disbursing all payable taxes within the stipulated period without having to wait for follow-up actions from the authority.⁷³⁶ Furthermore, tax compliance has been segregated into two perspectives, namely compliance in terms of administration and compliance in terms of completing accurately the tax return.⁷³⁷ Compliance in pure administrative terms therefore includes registering or informing tax authorities of status as a taxpayer, submitting a tax return every year (if required) and following the required payment time frame.⁷³⁸ In contrast, the wider perspective of tax compliance requires a degree of honesty, adequate tax knowledge and capability to use this knowledge, timeliness, accuracy and adequate records in order to complete the tax returns and associated documentation.⁷³⁹

Based on the above, the wider perspective of compliance becomes a major issue in a self assessment system since the total amount of a tax payable is highly dependent on the levels of tax compliance although it is inevitable that tax authorities will seek to influence the risk of non-compliance by various means. For instance, through continuously conducting tax audits and tax education.

Tax compliance can also be defined by the way of achieving it. By defining it this way, tax compliance is either voluntary or enforced.⁷⁴⁰ Voluntary compliance means the taxpayers' voluntary fulfillment of their main obligations without the involvement of the tax authority| i.e. people voluntarily declare and timely pay their

⁷³⁶ C Y Chow, 'Gearing Up For Self Assessment Tax Regime for Individuals'. *Tax Nasional*, 2nd quarter, 20-23.

⁷³⁷ *Ibid.*

⁷³⁸ L Ming et al, 'Toward Electronic Tax Filing: Technology Readiness and Responses of Malaysian Tax Practitioners', *Tax Nasional*, First Quarter, 16-23.

⁷³⁹ V Singh & R Blunpulan, 'The Malaysian Self Assessment System of Taxation: Issues And Challenges', *Tax Nasional* 3rd quarter, 12-17.

⁷⁴⁰ E Kircher et al, 'Enforced Versus Voluntary Tax Compliance: The 'Slippery Slope' Framework', (2008) *Journal of Economic Psychology*, 29, 210-225.

tax obligations, and their tax accounting is in accordance with the norms in tax law.⁷⁴¹ Enforced compliance means that tax compliance is achieved with the intervention by the tax authority which may involve correcting data during control or implementing coercion in collecting tax arrears. In other words, the administrative burden of the tax authority is minimal in voluntary compliance and heavy in enforced compliance.⁷⁴² This definition above, the researcher strongly concurs with as tax compliance is not the willingness of taxpayer to pay taxes⁷⁴³ but an outcome already achieved either voluntarily or through the intervention of the tax authority.

The OECD recently further defines tax compliance as a degree to which the tax behaviour of taxpayers complies (or fails to comply) with the tax rules of their country.⁷⁴⁴ The researcher further disagrees with this definition for it cannot be said that compliance is the taxpayer's ambition, will or readiness to pay taxes in the required amount. Rather, tax compliance is the outcome of the tax behaviour of the taxpayer and in order to understand tax compliance as a comprehensive whole, the factor that influence the decision of the taxpayer to be or not to be compliant need to be understood and this the researcher intends to discuss further in this chapter under the head 'tax compliance determinants'.

In contrast with tax compliance, tax non-compliance is defined as taxpayer's failure to remit a proper amount of tax, perhaps on account of the complexity or even contradictions in the tax legislation or tax administration procedures.⁷⁴⁵ Non-compliance is also perceived as the failure of a taxpayer to report (correctly) the

⁷⁴¹ OECD, *Compliance Risk Management: Managing and Improving Tax Compliance*, (2004) Paris, France: Organisation for Economic Co-operation and Development.

⁷⁴² K Randlane, 'Tax compliance as a system: Mapping the Field', (2015) *International Journal of Public Administration*, 3.

⁷⁴³ E Kircher, *op cit*.

⁷⁴⁴ OECD, (2014) *International Tax Terms*, <<http://www.oecd.org/etp/33967016.pdf>> accessed on 3rd March, 2015.

⁷⁴⁵ J R Kesselman, 'Compliance, Enforcement and Administrative factors in Improving tax fairness in A M Maslove (ed) *Issues in the Taxation of Individuals*' (Ontario: Queen's Printer, 1994) P. 62-84.

actual income, claim, deductions and rebates and remit the actual amount of tax payable to the tax authority on time.⁷⁴⁶

As the literature cited above has shown, tax compliance and tax non-compliance is a wide concept and can be viewed from many perspectives, including legal, public finance, economic, and also psychological.⁷⁴⁷

Thus in conclusion, tax compliance is defined for the purpose of this study as voluntary compliance which means the taxpayers' voluntary fulfillment of their main obligations without the involvement of the tax authority whilst tax non-compliance means failure to comply with tax laws and/or report incorrect income, the act of claiming incorrect deductions, relief and rebate and/or paying the incorrect amount of tax beyond the stipulated time frame.

7.2 Tax Evasion and Avoidance

Tax evasion and avoidance are both phenomena that are probably as old as taxation itself. Wherever and whenever authorities decide to levy taxes, individuals and firms try to evade paying them. Though this problem has always been present it becomes more pressing in the course of globalization as this process extends the range of opportunities to circumvent taxation while simultaneously reducing the risk of being detected.⁷⁴⁸ The desire to uplift one's society is the first desire of every patriotic citizen.⁷⁴⁹ Tax payment is a demonstration of such a desire. The payment of tax is a civic duty and an imposed contribution by government on her subjects and companies to enable her finance or run public utilities and perform other social responsibilities. Taxes thus constitute the principal source of government revenue.

⁷⁴⁶ E Kirhcher, *op cit*.

⁷⁴⁷ M R Palil & A F Mustapha, 'The Evolution and Concept of Tax Compliance in Asia and Europe', (2011) *Australian Journal of Basic and Applied Sciences*, 557-558.

⁷⁴⁸ GIZ Sector Programme Public Finance, *Addressing Tax Evasion and Tax Avoidance in Developing Countries*, (Germany: Deutsche Gesellschaft fur, 2010) P. 7.

⁷⁴⁹ M Ellingham & A Sadmo, 'Income Tax Evasion: A Theoretical Analysis', (1972) *Journal of Public Economics*, 1,323-338.

However, one of the greatest problems facing Nigerian Tax System is the problem of tax evasion and avoidance. These “Twin devils” have created a great gulf between actual and potential revenue. The government has for the umpteenth time complained of the widespread incidence of tax avoidance and evasion in Nigeria as companies and other taxable persons employ various tax avoidance devices to escape or minimize their taxes or deliberately employ fraudulent ways and means of evading tax altogether sometimes with the active connivance of the tax officials.⁷⁵⁰

Since tax is a principal source of government revenue, if persons are able to escape by legal or illegal means the tax to which they should logically be subject under the general scope of the tax, the theoretical equity of the tax to a large measure is lost.⁷⁵¹ The question that naturally crops up is what is Tax Avoidance and Tax Evasion?

7.2.1 Tax Avoidance

Tax avoidance is seeking to minimize a tax bill without deliberate deception (which would be tax evasion) but contrary to the spirit of the law. It therefore involves the exploitation of loopholes and gaps in tax and other legislation in ways not anticipated by the law. Those loopholes may be in domestic tax law alone, but they may also be between domestic tax and company law or between domestic tax law and accounting regulations, for example. The process may also seek to exploit gaps that exist between domestic tax law and the law of the other countries when undertaking international transactions.⁷⁵² The taxpayer has always been the common target. To the taxpayer, tax avoidance is synonymous with tax planning which is a legitimate exercise of his legal right to arrange his legal relations to his business or property in

⁷⁵⁰ J F Adebisi & D O Gbegi, ‘Effects of Tax Avoidance and Tax Evasion on Personal Income Tax Administration in Nigeria’, (2013) *America Journal of Humanities and Social Sciences*, 125-138.

⁷⁵¹ L G Rynolds, *Government Finance and Economic Analysis*, (London: Heifan publications, 1963) P. 10.

⁷⁵² Tax Research UK, Tax Avoidance, Evasion, Compliance and Planning <www.taxresearch.org.uk/Documents/TaxLanguage.pdf> accessed on 7th March, 2015.

such a way as to prevent the Revenue from putting the largest possible shovel into his stores.⁷⁵³ Tax avoidance means payment of less or zero tax in a legitimate manner.⁷⁵⁴

OECD defined Tax Avoidance as follows:

Tax avoidance is generally used to describe the arrangement of a taxpayer's affairs that is intended to reduce his tax liability and that although the arrangement could be strictly legal it is usually in contradiction with the intent of the law it purports to follow.⁷⁵⁵

Tax avoidance as defined by *Aim and Martinez* is the legal reduction in tax liabilities by practices that take full advantage of the tax code, such as income splitting, postponement of taxes and tax arbitrage across income that face different treatments.⁷⁵⁶

Commenting on the attitude of the courts and the legislative towards Tax Avoidance, *Professor Wheatcraft* observed that 'tax avoidance is an art of winning games without actually cheating, thereby beating the internal Revenue and the government to their own game.'⁷⁵⁷ Similarly in *IRC v Duke of Westminster*,⁷⁵⁸ Lord Tomlin observed in respect of Tax Avoidance that:

'Everyman is entitled, if he can to order his affairs so that the tax attaching under the appropriate Acts is less than it otherwise would be. If he succeeds in ordering them so as to secure this result, then however inappropriate, the commissioner of Inland Revenue or his fellow tax payers may be of his ingenuity, he cannot be compelled to pay an increased tax'.

⁷⁵³ Per Lord Clyde in *Ayrshire Pullman Motor Services v C.I.R.* (1920) 14 T.C 754, at 763.

⁷⁵⁴ M N Umenweke, *Tax Law and its Implications for Foreign Investments in Nigeria*, (Enugu: Nolix Educational Publications, 2008), P. 171.

⁷⁵⁵ Organisation for Economic Co-operation and Development, 'International Tax terms' <<http://www.oecd.org/document/29/0,2340,en-264934897-333933853.html>> accessed on 7th March, 2015.

⁷⁵⁶ J Aim & J Martinez – Vazquez, *Societal Institutions and Tax Evasion in Developing and Transition Countries*, a Paper Prepared for a Public Finance in Developing and Transitional Countries Conference, Georgia State University in 2001.

⁷⁵⁷ Wheatcraft USA, 'The Attitude of the Legislative and the Courts to Tax Avoidance', (1955) 18 *MLR* 20.

⁷⁵⁸ (1936) A.C 1 at 19-20.

Justice Ruddy in his opinion stated that tax avoidance is ‘the art of dodging tax without breaking the law’.⁷⁵⁹

From the judicial authorities and authors reviewed, one can safely say that tax avoidance amounts to an attempt by a taxpayer to minimize his/her tax liability legally. Therefore a taxpayer can use the provisions of the Income Tax Act and other relevant legislation to his/her advantage to arrange his/her affairs tax effectively. The moral question of tax avoidance is contentious in that some court decisions and learned authors imply that a taxpayer is entitled to avoid tax where possible, while others describe tax avoidance as ‘unpatriotic and anti social’⁷⁶⁰ which imposes a heavier tax burden on the *fiscus* and the avoider’s fellow taxpayers. However on which side the argument tilts, it is the writers view that a taxpayer is free to arrange his/her affairs to minimize his/her tax burden. It is up to the FIRS to employ the provisions at its disposal to counter measures where a taxpayer crosses the line and becomes more than just a shrewd tax avoider. The writer believes that it is not a moral or legal issue unless the legislature expressly prohibits it.

7.2.2 Tax Evasion

Tax evasion, just like tax avoidance has no generally adopted definition. *James and Alley* defined tax evasion as ‘the attempt to reduce tax liability by illegal means’.⁷⁶¹ Tax evasion is usually associated with the commission of a criminal offense. It can be considered to consist of willful and conscious non-compliance with the laws of a taxing jurisdiction which can include a deliberate concealment of facts from revenue authorities. Tax evasion is an action by which a taxpayer tries to escape

⁷⁵⁹ *McDowell & Co. Ltd v CTO* 154 ITR, 148 (1985).

⁷⁶⁰ M N Umenweke, *op cit*, P. 172.

⁷⁶¹ A James & C Alley, ‘Tax Compliance, Self Assessment and Tax Administration’, *Journal of Finance and Management in Public Services*, 2(2) 27-42.

legal obligations by fraudulent or other illegal means.⁷⁶² It may result from the evasion of tax on income that arises from illegal activities such as smuggling, drug trafficking, and money-laundering. In a broader sense, tax evasion may also encompass a reckless or negligent failure to pay taxes legally due, even if there is no deliberate concealment of income or relevant information. Notwithstanding unintended evasion normally leads to only payment with interest and penalties.⁷⁶³ In Nigeria, the common examples of tax evasion include:

- (a) The failure to notify the taxing authorities of one's presence in Nigeria if he is carrying on taxable activities;
- (b) The failure to report the full amount of income;
- (c) Deductions of claims for false expense;
- (d) Falsely claiming relief that is not due;
- (e) The failure to pay over the proper amount of tax due;
- (f) Departing from Nigeria without paying a tax due with no intention of paying them;
- (g) The failure to report items or sources of taxable income, profits or gains where there is an obligation to provide such information or if the taxing authorities have made a request for such information.⁷⁶⁴

The conceptual distinction between tax evasion and tax avoidance hinges on the legality of the taxpayer's actions. Tax evasion is a violation of the law. When the taxpayer refrains from reporting income from labour or capital which is in principle taxable, he engages in an illegal activity that makes him liable to administrative or legal action from the authorities. In evading taxes, he worries about the possibility of

⁷⁶² Committee of Experts on International Cooperation in Tax Matters, (7th edn) *International Tax Evasion and Avoidance* <www.un.org/esa/ffd/tax/sevethsession/CRPII-AddI-Tax%20Evasion.pdf> accessed on 30th March, 2015.

⁷⁶³ *Ibid.*

⁷⁶⁴ M H Collins, 'Evasion and Avoidance at the International Level', (1988) *European Taxation*, 1.

his action being detected. Tax avoidance, on the other hand is within the legal framework of the tax law. It consists in exploiting loopholes in the tax law in order to reduce one's liability. In engaging in tax avoidance, the taxpayer has no reason to worry about possible detection; quite the contrary, it is often imperative that he makes a detailed statement about his transaction in order to ensure that he gets the tax reduction that he desires.⁷⁶⁵

The classic distinction between tax avoidance and evasion is due to *Oliver Wendell Holmes* in the case of *Bullen v Wisconsin*⁷⁶⁶ who wrote

When the law draws a line, a case is on one side of it or the other, and if on the safe side is none the worse legally that a party has availed himself to the full of what the law permits. When an act is condemned as evasion, what is meant is that it is on the wrong side of the line.....

Thus the distinguishing characteristic of evasion is illegality.⁷⁶⁷ In other words, there is a clear cut difference between tax avoidance and tax evasion. One is legally accepted and the other is an offence. Because of the subjectivity of the interpretation and application of tax avoidance, the borderline between evasion and avoidance in specific cases may be difficult to define. For one thing, the criminal laws of countries differ, so that behaviour that is criminal under the laws of one country may not be criminal under the laws of another. Courts in most countries have consistently recognized the right of taxpayers to avoid taxes by means that are within the law. For instance, in the United States case of *Helvering v Gregory*⁷⁶⁸, Learned Hand J said:

⁷⁶⁵ The Theory of Tax Evasion: A Retrospective view <www.ntanet.org/NTJ/58/4/ntj-v58no4p643-63-theory-tax-evasion-retrospective.pdf> accessed on 30th March, 2015.

⁷⁶⁶ (1916) 240 US 625, P. 630.

⁷⁶⁷ J SlemRod, 'Tax Avoidance, Evasion, and Administration', (2002) *Handbook of Public Economics*, 3, 1428 – 1429.

⁷⁶⁸ 69 F 2d 809, 810 (2nd Cir. 1934); *CIR V Newman* 159 F. 2D 848 (2D CIR 1947).

Any one may so arrange his affairs that his taxes shall be as low as possible, he is not bound to choose that pattern which will best pay the Treasury; there is not even a patriotic duty to increase one's taxes.

However, courts in many countries have also found that the tax laws should be interpreted so as to prevent their avoidance by the use of transactions that have no business purpose, although there is considerable variety in the approaches of courts in different countries. For example, in the United Kingdom, the leading case of the modern era is *WT Ramsey v CIR*,⁷⁶⁹ where the House of Lords held that where there is a composite transaction, the court is entitled to determine the tax liability by looking at the end result rather than the individual steps in transaction.⁷⁷⁰ Tax laws also typically include a variety of specific or general anti avoidance rules. For instance, in Nigeria, S. 7 of the Personal Income Tax Act⁷⁷¹ enables the tax authorities to tax a business on such a fair and reasonable percentage of the turnover of the business as the relevant tax authority may determine where the said business produce either no assessable income or an assessable income, which in the opinion of the relevant tax authority is less than might be expected to arise from that business, as the case may be, or the true amount of the assessable income of that person from the business cannot be readily ascertained. A similar provision was successfully used to assess Mobil Oil in 1977.⁷⁷² Even though their assessment was challenged up to the Supreme Court, the Supreme Court upheld the assessment as proper, after making slight adjustment to the assessment made by the Federal Tax Board.⁷⁷³ A similar provision can be found in S. 65(3) of the Companies Income Tax Act⁷⁷⁴ which gives the FIRS

⁷⁶⁹ (1981) 1 All ER 449.

⁷⁷⁰ *Mc Niven v Westmoreland Investments Limited* (2001) STC 237.

⁷⁷¹ Cap P8, Laws of the Federation of Nigeria, 2004 (As amended)

⁷⁷² *Mobil Oil Nig Ltd v FBIR* (1977) 3 S.C. 53.

⁷⁷³ M N Umenweke, *op cit*, P. 193.

⁷⁷⁴ Cap C21, Laws of the Federation of Nigeria 2004, (As amended)

Board the power to make assessment upon companies that do not submit their returns prior to or at the end of an accounting period.⁷⁷⁵

It is noteworthy that tax compliance is different from tax avoidance and tax evasion because it is defined as seeking to pay the right amount of tax (but no more) in the right place at the right time where right means that the economic substance of the transaction undertaken coincides with the place and form in which they are reported for taxation purposes. The significant difference between tax avoidance and tax compliance is the intent of the taxpayer. A tax avoider seeks to pay less than the tax due as required by the spirit of the law. A tax compliant taxpayer seeks to pay the tax due (but no more).⁷⁷⁶

In sum, it is difficult to envisage a tax law without anti-avoidance provisions but it is also expected that the duty of the legislator in designing such provisions is to strike a proper balance between the rights of the individual to organize his affairs as he best deems suitable and the public interest in avoiding the circumvention of tax laws.⁷⁷⁷ It is only when that balance is reasonably struck that those provisions achieve their true purposes and do not unduly hamper economic activity and enterprise.

7.2.3 Causes, Effects and Strategies against Tax Evasion and Tax Avoidance in Nigeria

In SAS in tax administration, few people ‘enjoy’ paying tax even though many recognize the necessity to pay some tax as the price of achieving and maintaining a civilized society.⁷⁷⁸ The causes of tax evasion and avoidance are universal, as they are applicable in any country that tax is imposed. Some are peculiar to different areas

⁷⁷⁵ *Nigerian Breweries Plc v Lagos State Internal Revenue Board* (2001) FWLR (Pt 72), 1984; *Income Tax Comm.v Ramvat* (1937) LR 641. A. 102.

⁷⁷⁶ Tax Research UK, *op cit*, 1.

⁷⁷⁷ D Heahey, Tax Avoidance or Tax Evasion? The Difference Between Tax Avoidance And Tax Evasion Is The

Thickness Of The Prison Wall, (2015) Symposia Melitensia Number 10, 228-229.

⁷⁷⁸ *Ibid.*

however some of these causes include the absence of quid pro quo that is; something of value given in return by the government for the taxes paid. Some argue that taxes should not be paid as the authorities do not provide amenities which are in any way commensurate with the taxes paid. Again there is the issue of inequitable distribution of amenities by the government. In many parts of Nigeria, citizens are opposed to payment of any form of taxes and rates on the ground that government had been unfair in the distribution of amenities. This has been alleged to be the cause of most civil disturbances in some parts of the country and non-compliance in tax payments, especially in a self assessment regime where taxpayers are expected to assess themselves.

Furthermore, the absence of spirit of civil responsibility can cause tax evasion and avoidance in Nigeria. Most Nigerians probably due to illiteracy and ignorance fail to understand that they owe certain responsibilities to government, one of which is payment of tax.⁷⁷⁹ Again, some businessmen do not see the rationale for paying tax irrespective of the huge profit they might have made. They prefer to make up their account in such a way that a loss will be reflected. This is not an exception in Nigeria.⁷⁸⁰ Most times, only civil servants and salaried workers and few self-employed constitute class of people that actually pays tax in Nigeria and even among the salaried workers many have turned the statutory reliefs into a fertile ground for tax evasion.⁷⁸¹ Other causes of tax evasion and avoidance in Nigeria are: corruption in public offices, ignorance of tax authority, lack of adequate enforcement for default, proliferation of taxes and high tax rates.⁷⁸²

⁷⁷⁹ O Onuigbo, *Banking and Finance for Professional*, (Aba: Yonkee Standard Press Ltd, 1956) P. 10.

⁷⁸⁰ BD Kiabel & N G Nwankwo, *Curbing Tax Evasion and Avoidance in Personal Income* (Owerri: Springfield Publishers, 2009) P. 20.

⁷⁸¹ L A Ayna, *The Nigerian Tax Law* (Ibadan Spectrum Law Publishing, 1999) P.6.

⁷⁸² F J Obafemi, 'An Empirical Study of Tax Evasion and Tax Avoidance A Critical Issue in Nigeria Economic Development', (2014) *Journal of Economics and Sustainable Development*, 23 – 24.

The effects of tax evasion and avoidance in Nigeria are not far-fetched. It has undoubtedly adversely affected the government revenue generation capability and the economy as a whole. This is most especially now that the international price of oil that Nigeria had hitherto relied upon has fallen. However, despite the government efforts to bridle the practices of tax evasion and avoidance in Nigeria, the problem still persists. There is no doubt that the revenue due to the Government will be reduced by the lack of good governance and unpatriotic act of tax evaders.⁷⁸³ The taxpayer indulges in evasion by resorting to various practices. These practices erode moral value and build up inflationary pressures.

In the same way as there is not only one type of evasion and avoidance, there is ‘no one size fits all’⁷⁸⁴ solution to counter tax evasion and avoidance in Nigeria. First of all, the improvement of citizens’ tax morale requires measures ensuring and visualizing that the state is acting in a transparent, accountable and efficient manner with the ultimate aim of providing services for its citizens. These measures go far beyond reforms of tax system or administration by developing a sound state- society relationship and enhancing the legitimacy of the states requires taking into account the entire public system. Such broader strategies cover e.g. the quality of public services, the transparency and control of the public budget or the fight against corruption.⁷⁸⁵ Again, the importance of taxes for the functioning of the country is not always apparent to the taxpayer. Similarly, individual tax liabilities as well as requirements to comply with the tax system such as filing out different tax forms might be unknown or difficult to understand. By means of taxpayer education and taxpayer service,

⁷⁸³ *Ibid.*

⁷⁸⁴ GTZ – ‘German Technical Cooperation, Good Financial Governance’ – Good Governance in Public Finance, (2006a) Fiscal studies No. 3, Division State and Democracy, Eschborn, P. 12.

⁷⁸⁵ M Everest – Philips, ‘Business Tax as State-Building in Developing Countries: Applying Governance Principles in Private Sector Development’, *International Journal of Regulation and Governance* 8(2), 123-154.

citizens can be informed and educated about the tax system and be assisted in their attempt to comply with the tax system. For example, with the objective to change the public's opinion of the revenue authority to a benevolent attitude and promote a 'tax-paying citizen' culture, the Rwandan Revenue Authority has integrated its external environment into the capacity development process. This includes the organization of an annual 'taxpayer's week' with parades and the awarding of certificates and prizes. Additionally, opinion leaders and political figures are sensitized on how to encourage compliance among constituents.⁷⁸⁶ This strategy cannot be highly recommended enough for a country like Nigeria.

Furthermore, Government in Nigeria should concentrate on measures that reduce taxpayers' cost of fulfilling their tax liabilities. Authorities in Nigeria must be aware of the importance of acting service oriented and should therefore monitor customer satisfaction. There should be a shift towards a customer service orientation which reflects the growing awareness of the need to offer a quality service to the taxpaying public and to be responsive to public concerns. For instances, measures to simplify the taxpaying process and promoting service oriented tax administration include a reduction of number of tax forms and officers assisting clients in filing out documents or the efficient application of online services in Nigeria.

Again, complex and often changing tax laws cause confusion and uncertainty among tax officials and taxpayers. Addressing deficiencies in the tax system is therefore probably as important as process oriented reform actions that enhance the user-friendliness and transparency of the taxation procedure. Particularly small and medium size enterprises (SME) with only limited administrative capacities and private households do not only suffer from the bureaucratic burden of complicated tax

⁷⁸⁶ A Land, 'Developing Capacity for Tax Administration – The Rwanda Revenue Authority' (2004) European centre for Development Policy Management Discussion paper No.57D.

procedures but also suffer from the complexity of the tax system itself. Simplifying the (corporate) income tax structure in Nigeria by reducing the number of tax brackets and high statutory tax rates lower the tax burden and may support voluntary compliance.⁷⁸⁷ Furthermore, the possibility to detect and prosecute tax violators depends crucially on data availability and data quality. Hence actions taken against tax evasion and avoidance relate to an improvement of the data quality available to tax offices. The institutional exchange of high quality information requires different steps. On the one hand, it is important to ensure the collection of adequate data. Therefore, FIRS needs to ensure a sufficient endowment with technical equipment and the establishment of good performing statistic divisions with competent staff members to collect data and keep records. On the other hand, good technical equipment and technically educated staff are also a prerequisite for a well functioning information exchange.⁷⁸⁸ Along these lines, automation of tax collection procedures e.g. through online tax assessment, payment and monitoring opportunities may serve as an efficient way to reduce the scope for tax evasion and avoidance. On this note, it is noteworthy that the Tanzanian Revenue Authority successfully implemented a computerized tax administration system (iTAX) which simplifies tax compliance and contributes to enhanced efficiency of tax collection as well as auditing processes.⁷⁸⁹ If Tanzania could do it, nothing stops Nigeria from towing that path successfully.

Furthermore, Tax evasion and avoidance are also a result of a weak judiciary. Adversary revenue shortfalls need to go hand in hand with legislative reforms strengthening the rule of law. This includes insufficient punishment and prosecution

⁷⁸⁷ J E Golob, 'How would a Flat Tax Affect Small Business?', *Economic Review, Federal Reserve Bank of Kansas city (U.S)* Vol. 81, No. 3, 5-9.

⁷⁸⁸ GIZ Sector Programme Public Finance, *op cit*, 30.

⁷⁸⁹ GTZ – German Technical Cooperation, Benefits of a Computerized Integrated System for Taxation: iTAX case of study – A Handbook for Practitioner Based on GT Tax Sector Experience in Tanzania and the Philippines.

of violators which can only be tackled when detected tax criminals face stricter penalties that are effectively executed by courts in Nigeria. There has been research that higher penalties act as a deterrent and good help to improve tax compliance.⁷⁹⁰ To achieve this goal the Nigerian government has to strengthen the rule of law and develop the capacities of investigation authorities. Moreover, investigators as well courts and judges should receive greater support by politicians in order to emphasize the importance of this issue. Also, the setting up of Revenue Courts should be embraced by the Federal Government. These courts should be enabled to impose monetary penalties and criminal sanctions. Our tax laws are replete with punitive monetary measures as well as criminal sanctions aimed at solving this problem and finally the researcher recommends that suitable personnel for instance lawyers trained in tax law should be recruited and revenue personnel generally trained and retrained to cope with the demands of the job.⁷⁹¹

7.3 Tax Compliance Determinants in SAS

This section discusses the factors that may affect tax compliance in a SAR. Nigeria, having a self-assessment tax system, it is crucial to determine the factors that may affect tax compliance in order to promote an effective tax environment. According to the literatures, there are four main factors, namely, economic, institutional, social and individual factors. The findings from the researches can provide an insight to the FIRS and to the government on the determinants of tax compliance and what can be further done to improve it.

7.3.1 Economic Factors

⁷⁹⁰ A Fishlow & J Friedman, 'Tax Evasion, Inflation and Stabilization', (1994) *Journal of Development Economics*, vol. 43, No. 1, 105-123.

⁷⁹¹ F J Obafemi, *op cit*, 25-26.

Economic factors in relation to tax compliance refer to actions which are associated with the costs and benefits of performing the action.⁷⁹² Taxpayers are assumed to be rational economic evaders who likely would assess the costs and/or benefits of evasion.⁷⁹³ They would attempt to reduce their tax liability, for example, by intentionally under reporting their income and would enjoy tax savings if they were not detected by the tax authorities.⁷⁹⁴ Nevertheless, in case they are caught, they are agreeable to pay more, including a penalty. The tax compliance determinants associated with economic factors are tax rates, tax audits and perception of government spending.

7.3.1.1 Tax Rates

This part will focus on how tax rates affect taxpayer willingness to abide by the prevailing tax laws. It has been claimed that reducing tax rates is not the only policy that has the potential to discourage tax evasion⁷⁹⁵ but the tax rate is an important factor in determining tax compliance behaviour although ‘the exact impact is still unclear and debatable’.⁷⁹⁶ A raise in the tax rates will tend to promote the evasion of tax⁷⁹⁷ while decreasing tax rates does not automatically boost up compliance.⁷⁹⁸

⁷⁹² D Beesoon, et al, Assessing the Determinants of Income Tax Compliance in Mauritius: A study of Individual Taxpayers, being a paper presented at the proceedings of the Fifth Asia – Pacific Conference on Global Business, Economic, Finance and Social Sciences, Ebene – Mauritius on 21-23 January, 2016.

⁷⁹³ B Torgler & F Schneider, ‘Attitudes Towards Paying Taxes In Austria: An Empirical Analysis’, *Empirica*, 32(2), 231-246.

⁷⁹⁴ YD Song & FE Yarbrough, ‘Tax Ethics and Taxpayer Attitudes: A Survey’, (1978) *Public Administration Review*, 38(5), 442-452.

⁷⁹⁵ C T Clotfelter, ‘Tax Evasion and Tax Rates: An Analysis of Individual Returns’, (1983) *The Review of Economics and Statistics*, Lxv (3), 363-73.

⁷⁹⁶ E Kircher, *The Economic Psychology of Tax Behaviour* (Cambridge: Cambridge University Press, 2007) 114.

⁷⁹⁷ MM Ali *et al*, ‘The Effects of Tax Rates and Enforcement Policies on Tax Compliance: A Study of Self Employed Taxpayers’, (2001), *American Economic Journal*, 29(2), 86-202.

⁷⁹⁸ E Kircher *op cit*.

*Allingham and Sandmo*⁷⁹⁹ tried to find out the relationship between actual income, tax rates, penalty and investigation and tax evasion and concluded ‘that taxpayers may choose either to fully report income or report less, regardless of tax rates’. Since the impact of tax rates was debatable, it has been recently suggested that the degree of trust between taxpayers and the government has a major role in ascertaining the impact of tax rates on compliance. When trust is low, a higher tax rate could be perceived as an unfair treatment of taxpayers and when trust is high, the same level of tax rate could be interpreted as contribution to the community.⁸⁰⁰ In sum from the evidence, tax rates have different impact on tax compliance. That is decreasing tax rates does not necessarily always increase compliance and increasing tax rates will not necessarily always decrease compliance behaviour.

7.3.1.2 Tax Audits

Tax audits, audit rates and prior audit experience have been ambiguously discussed in relation to tax compliance. Some studies claimed that audits have a positive impact on tax evasion.⁸⁰¹ These findings suggest that in a self assessment system, tax audits can play an important role and their central role is to increase voluntary compliance. Audits rates and the thoroughness of the audits could encourage taxpayers to be more prudent in completing their tax returns, report all income and claim the correct deductions to ascertain their tax liability. In contrast, taxpayers who have never been audited might be tempted to under report their actual income and claim false deductions. It has also been found that tax audits have a

⁷⁹⁹ M G Allingham & A Sandmo, ‘Income Tax Evasion: A Theoretical Analysis’, (1972) *Journal of Public Economics*, 1(3-4), 323-38.

⁸⁰⁰ E Kircher *et al*, ‘Enforced Versus Voluntary Compliance: ‘The Slippery Slope’ Framework’, (2008) *Journal of Economics Psychology*, 29, 210-55.

⁸⁰¹ J A Dubin, ‘Criminal Investigation Enforcement Activities and Taxpayer Non-Compliance’, A paper delivered at 2004 IRS Research Conference, Washington, on June, 2004, 1-45.

significant role in tax compliance⁸⁰² as it can change compliance behaviour from negative to positive. However a contrary report⁸⁰³ has found that audits were found to be more effective in inducing taxpayers to over claim deductions rather than encouraging them to correctly report their actual income. Dunlin *et al*⁸⁰⁴ found that higher number of tax audits carried out usually have a positive impact on income tax reporting. However this study also found that taxpayers who are not themselves audited pay more in taxes when audit rates increase.

In summary, earlier studies have shown that tax audits play an important role in increasing voluntary compliance. Audit rates and the thoroughness of the audits could potentially encourage taxpayers to be more prudent in completing their tax returns.

7.3.1.3 Perceptions of Government Spending

Very few studies have been done on the tax compliance with respect to government spending. However, one would expect taxpayers to be sensitive to the way the government is spending their money. If the latter is spending the money in an irresponsible manner, then we could tend to think that the taxpayer will try and avoid tax. However, in most developed countries like UK which implement 'Pay as You earned' (PAYE), it is quite difficult to evade much of their tax liability as deductions are made at source for the majority of many taxpayers' liabilities. Unlike the United Kingdom, in other countries where PAYE is not as extensively used, taxpayers have a larger opportunity to under report their income and therefore pay less tax.

⁸⁰² C Butler, 'Self Assessment: The Way Forward' (1993) *Tax Nasional*, June, 2-3.

⁸⁰³ K L Beron *et al*, A Structural equation model for Tax Compliance and Auditing, NBER Working Paper No 2556, National Bureau of Economic Research, <www.nber.org/papers/w2556> accessed on 1st April, 2005.

⁸⁰⁴ J A Dublin, *et al*, 'Are we a nation of Tax Cheaters? New Econometric Evidence on Tax Compliance', (1987) *American Economic Review*, 77(2), 240-45.

It has been suggested by Lewis,⁸⁰⁵ that ‘attitudes should be examined for the degree to which they are a product of myth and misperception’. According to him ‘when myths and misperceptions are replaced by knowledge, a change in attitudes towards taxation will occur even if the taxpayers’ basic ideology and values remain unchanged and the tax law is unchanged. Again, it has been suggested⁸⁰⁶ that attitude to one’s own tax evasion, and attitude to other people’s tax evasion are important. If the government is wisely spending the national revenue, for example for basic facilities like education, health and safety and public transportation, it is likely that voluntary compliance will increase. On the other hand, if taxpayers perceive that the government is spending too much resource on something mundane or unbeneficial to them, then taxpayers will be disappointed and attempt to evade tax.

7.4.2 Institutional Factors

Institutional factors include ‘taxpayers’ perception of the efficiency of the tax authority/government, the simplicity of the tax return more generally as well as the probability of being detected⁸⁰⁷ while taxpayers are influenced by their pure economic concerns either to evade or not to evade taxes, evidence suggest that institutional factors also play an essential part in the compliance decisions. These are as discussed below.

7.4.2.1 Efficiency of the Tax Authority/Government

This differs from country to country. However, the role of the tax authority in minimizing the tax gap and increasing voluntary compliance is very important. There has been a suggestion that in order to increase compliance, maximize tax revenue and be respected by taxpayers, a government must first have an economical tax system,

⁸⁰⁵ A Lewis, ‘The Social Psychology of Taxation’, (1982) *British Journal of Social Psychology*, 21: 151-158.

⁸⁰⁶ L H Roberts *et al*, ‘Understanding Attitudes towards Progressive Taxation’, (1994) *Public Opinion Quarterly*, 58, 165-190.

⁸⁰⁷ *Ibid*.

which is practicable; they must discourage tax evasion and not induce dishonesty; they must avoid the tendency to dry up the source of the tax and should avoid provoking conflict and raising political difficulties; they should also have a good relationship with the international tax regime.⁸⁰⁸

Furthermore, a study⁸⁰⁹ also suggested that the role of a government has a significant positive impact on determining attitudes towards tax. The study attempted to investigate the determinants of tax evasion across 47 countries including the USA, UK, Canada etc and suggested that the government should increase their reputation and credibility in order to obtain trust from the taxpayers.

In summary, researchers from different countries have discussed the impact of the efficiency of the government on compliance and some authors have described how the role of government in inducing tax compliance is important and relevant in self assessment system.⁸¹⁰

7.4.2.2 **Simplicity of Tax Returns and Administration**

Complexity of the tax system is a major determinant of tax compliance. One would expect that in Nigeria, where the tax returns are expected to be completed by the individuals themselves, that these returns would be as simple as possible. The main feature of SAS is self-completed tax returns which require at least a reasonable level of simplicity because taxpayers come from various backgrounds, with different levels of education, income and most importantly levels of tax knowledge.⁸¹¹

Denmark, Canada and New Zealand are the leading countries that have introduced simplified tax returns by reducing the number of pages to facilitate and

⁸⁰⁸ Roth *et al*, *Taxpayer Compliance: An Agenda for Research* (Philadelphia: University of Pennsylvania Press, 1989).

⁸⁰⁹ G Richardson, 'The Relationship Between Culture And Tax Evasion Across Countries: Additional Evidence And Extensions', (2008) *Journal of International Accounting, Auditing and Taxation*, 17(2), 67-78.

⁸¹⁰ J Hasseldine & Z, Li, 'More Tax Evasion Research Required in New Millennium', (1999) *Crime, Law and Social Change* 21(1), 91-104.

⁸¹¹ MR Palil, *op cit*.

increase voluntary compliance among taxpayers.⁸¹² By simplifying the tax return, taxpayers will be encouraged to fill the tax return by themselves rather than outsourcing to a third party.⁸¹³

Errors in a tax return will obviously increase if reporting requirements are complex and *Slemrod*⁸¹⁴ believes that a simple tax return and simpler tax regulations will increase tax compliance especially in a self-assessment. Tax regulations and laws are amended every year as part of the annual budget process, thereby making some of the current regulations not applicable in the future. Simplifying tax administration is important because it can facilitate efficient and enhanced administration and reduce costs.⁸¹⁵ In summary, as the main feature of SAS is self-completed tax returns, and taxpayers come from various levels of backgrounds, simplifying tax returns and administration potentially could help taxpayers to complete their tax returns accurately and increase compliance.

7.4.2.3 Probability of Detection

In the literatures, it was argued that the higher the probability of detection of mistakes, the more compliant a taxpayer will be, *Allingham and Sandmo*⁸¹⁶ claimed that ‘taxpayers will always declare their income correctly if the probability of detection is high.

An investigation⁸¹⁷ of the relationship between the probability of being audited and the taxpayers’ responses indicated that taxpayers’ behavior varied with respect to

⁸¹² A Mohani & P Sheehan, ‘Establishing the Extent of Income Tax Non-Compliance in Malaysia and Australia Using the Gap Approach’ (Part II) (2004) *Tax Nasional*, 1st quarter, 20-24.

⁸¹³ C Silvani & K Baerm Designing a tax administration reform strategy: Experience and guidelines, *Working Paper, International Monetary Funds*, Washington DC.

⁸¹⁴ J Slemrod, Complexity, Compliance costs, and Tax Evasion, in J A Roth & J T Scholz (ed) *Taxpayer Compliance: Social Perspectives*, (1998) Philadelphia, 2, 156-181.

⁸¹⁵ C. Silvani & K Baer op cit.

⁸¹⁶ M G Allingham & A Sandmo, *op cit*.

⁸¹⁷ J Slemrod *et al*, ‘Taxpayer response to an increase probability of audit’: Evidence from a control experiment in Minnesota’, *Journal of Public Economics*, 79, 455-483.

level of income and the probability of being audited played a significant role in determining taxpayers' evasion behaviour.

A recent study,⁸¹⁸ however, investigated tax compliance determinants particularly in terms of ethical preferences and risk aversion (high or low audit probability) using three major data sources: surveys, audits and experiments, across the United States. The study concluded that individuals who are self employed have greater opportunity to evade than other groups, especially in the light of low probability of audits they face and with less third-party withholding of their income tax liabilities. The study also suggested that due to increased evasion across the USA, tax audits have become more important as a way of minimizing tax non-compliance.

In summary, different levels of probability of detection provide different degrees of compliance. For instance, a high probability of detection potentially increases compliance although some earlier authors have held contrary results in some circumstances.⁸¹⁹

7.4.3 Social Factors

Tax compliance determinants from a social factor relates to a taxpayers' willingness to comply with tax laws in response to other people's behaviour and their social environment. That is the government, family and friends.⁸²⁰ The factors discussed in this section are therefore ethics and attitudes towards tax compliance, perception of equity and fairness, changes to current government policy and referent groups. With respect to tax fairness and equity, a good tax system is the one which is designed on the basis of an appropriate set of principles such as equality or fairness

⁸¹⁸ JG Eisen hauer 'Ethical Preferences, Risk Aversion, And the Taxpayer Behavior' (2008) *The Journal of Socio-Economics*, op cit.

⁸¹⁹ J Alemrod et al, *op cit*.

⁸²⁰ B Torgher, Tax Compliance and Tax Morale: A Theoretical and Empirical Analysis <www.globalbizresearch.org> accessed on 2nd April, 2015.

and certainty.⁸²¹ The perceived fairness of the tax system also has an influence on the inclination towards tax evasion. Whenever taxpayers perceive unfairness they will react by trying not to pay taxes. *Etzioni*⁸²² argues that if a public feels increasingly over time that taxes are unfairly imposed, they will be increasingly likely to evade paying taxes.

In the case of changes to current government policies, political stability and the ruling government party in a country might play a significant role in determining tax evasion behaviour. For instance, if an individual favours the current ruling party in Nigeria ‘APC’, he might choose to be compliant because he believes that the government is trusted, efficient and equitable. In contrast, a taxpayer from the opposition party ‘PDP’ might be more non-compliant because he perceives that the government is not on his side.⁸²³

Furthermore, other disciplines of research as well as researches in tax compliance have evidenced that influence of friends and family members in making decisions may be important.⁸²⁴ Therefore, the influence of referent group is seemingly important in making a decision, particularly involving monetary aspects and the obedience to law (tax compliance).

7.4.4 Individual Factors

Decisions either to evade or not to evade taxes are heavily reliant on taxpayers’ personal judgment⁸²⁵ personal circumstantial factors like personal financial constraints, tax payers’ tax knowledge and awareness of penalties and offences are

⁸²¹ H L Bhatia, *Public Finance*, (19th edn) (India: Vikas Publishing, 1976) P. 20.

⁸²² A Etzioni, ‘Tax Evasion and Perceptions of Tax Fairness: A Research Note’, (1986) *The Journal of Applied Behavioural Science*, 22, 177-185.

⁸²³ J Hasseldine & P Hite, ‘Framing, Gender and Tax Compliance’, (2003) *Journal of Economic Psychology*, 24(4), 517-533.

⁸²⁴ Q Guo *et al*, ‘Utility Of The Theory Of Reasoned Action And The Theory Of Planned Behaviour For Predicting Chinese Adolescent Smoking, Addictive Behaviours’, 32, 1066-1081.

⁸²⁵ Mohani, Personal Income Tax non-compliance in Malaysia, <www.ijrs.net/achive/v512/ART20163576.pdf> accessed on 5th April, 2015.

therefore likely to have a significant impact on taxpayer compliance behaviour. People who face personal financial problems are likely to be more prone to evade tax when compared to people in less financial distress.⁸²⁶ It has been argued that in African countries like Namibia, the non payment is due to poverty or inability to pay. Generally, when taxpayers have no enough disposable income and they are used to consume the return from sale, it is clear that tax evasion is inevitable and leads to tax arrears.⁸²⁷

Conversely, studies have demonstrated that people with no financial distress also exercise tax evasion and surprisingly, the level of evasion they exhibit can be more serious than people in financial distress.⁸²⁸ However, based on previous studies, personal financial distress appears to be a significant factor in tax evasion but the degree of the impact is uncertain. The implementation of SAS in a country in that requires the tax payment made together with submission of the tax return might affect the compliance decision among taxpayers, especial those who have financial challenges.

7.4.5 Demographic Factors

Demographic factors such as gender and age have long been studied by researchers, though the findings of previous studies remain inconclusive. Some studies found that males are more compliant though other studies revealed contradictory results or no significant difference at all. As agreements on the findings still maintain, the need to explore current results is relevant. However, it has been

⁸²⁶ *Ibid.*

⁸²⁷ O Fjeldstad & L Rakner, *Taxation and Tax Reforms in Developing Countries: Illustration From Sub-Saharan Africa* (Norway: Chr. Michelsen Institute, 2003) P. 1-49.

⁸²⁸ J Vogel, 'Taxation and Public Opinion in Sweden: An Interpretation of Recent Survey Data', (1974) *National Tax Journal*, 28(4), 499-513.

found that female taxpayers were more compliant than males.⁸²⁹ In contrast it has been suggested that gender has no significant impact on compliance.⁸³⁰

In conclusion, although various studies have been undertaken to determine as accurately as possible the factors that impact upon tax compliance behaviour, undoubtedly, the government should consider seriously the characteristics of non-compliant taxpayers, review current regulations possibly as a result, increase audit rates and penalty rates (enforcement) as well as attempt to build good relationships with taxpayers in seeking to improve general tax compliance level.

7.5 Strategies to Increase Voluntary Tax Compliance in Self Assessment Regime – A Critique

Tax non compliance is a growing international concern for tax authorities and public policy makers since it seriously threatens the capacity of governments to raise required public revenue. The problem is more serious in developing countries particularly in Sub-Saharan African countries. Likewise, in Nigeria, it is evidenced by the ranking in the most recent ‘Paying Taxes’ survey carried out by the World Bank Group. Nigeria’s overall ranking therein is 179 out of 189 countries covered.⁸³¹ To put it in perspective, Ghana ranked 101, South Africa is ranked 19. Nigeria is 11 from the bottom.⁸³² For Africa’s largest economy, this is not commendable. The main reason for this low revenue collection performance is due to tax non compliance and due to poor tax administration.⁸³³ Besides, one of the main problems in implementing self assessment system (SAS) is achieving acceptable levels of voluntary

⁸²⁹ A Mohamad et al, The effects of Knowledge on tax compliance behaviours among Malaysian taxpayers. A paper delivered on International Conference on Business and Information at Tokyo, Japan on 11th -13th July, 2007.

⁸³⁰ G Richardson, ‘Determinants of Tax evasion: A cross-country Investigation’, (2006) *Journal of International Accounting, Auditing and Taxation*, 15(2), 150-169.

⁸³¹ Y Olugbenro, Dealing with Multiplicity of taxes, <www.yomiolougbenro.com> accessed on 3rd April, 2015.

⁸³² *Ibid.*

⁸³³ N A Adimassu, ‘Determinants of Voluntary Tax Compliance Behaviour in Self Assessment System: Evidence from SNNPRS, Ethiopia’, (2015) *International Journal of Science and Research (IJSR)* 967 – 973.

compliance.⁸³⁴ Findings of some prior studies have indicated that in SAS taxpayers may tend to comply less as compared with direct or formal assessments.⁸³⁵ This may happen due to factors such as lack of familiarity with the new system or general limited knowledge of tax issues. Hence dealing with the problem of voluntary tax compliance requires at least some understanding of the factors underlying the non-compliance and therefore proffer recommendations thereof.

7.5.1 Expansion of tax base

As earlier stated, voluntary compliance can best be achieved through a self-assessment system and as the number of taxpayers increase, the amount of tax to be collected will almost certainly increase. However, only 10 million of Nigeria's total population of 180 million pays tax according to the National Tax Policy Review Committee.⁸³⁶ Nigeria has one of the lowest tax-to-gross domestic product ratios in the world at just six percent, and the Government is largely dependent on revenue from oil which make up about 60 percent of overall revenues.⁸³⁷ In Nigeria, the over-dependence of both the government and the economy on petroleum-related income is a well-established fact, however, in an attempt to attain much needed funding for development projects and due to various factors such as fluctuation of international oil prices, restiveness and insecurity in the Niger Delta region of the country, the Boko Haram insurgency and the global economic recession, there is need for the Nigerian government to widen and diversify its tax revenue base.

As of 2014, Nigeria's petroleum industry contributes about 14 percent to its economy. Thus, the petroleum sector remains a small part of the country's overall diversified economy. The oil and gas industry has therefore failed to catalyse the rapid

⁸³⁴ MR PALIL, *op cit*.

⁸³⁵ J Adreoni *et al*, 'Tax Compliance', (1998) *Journal of Economic Literature*, Vol. 36, 818-819.

⁸³⁶ L Charalambous, Tax Committee urges Action on Nigeria's Tiny Tax Base<www.tax-news.com/news/Tax-Committee-Urges-Action-on-Nigeria-Tiny-Tax-Base-72103.html> accessed on 20th February, 2015.

⁸³⁷ *Ibid*.

growth of industries and related business. One of the ways the government can diversify its revenue is to widen tax base and raise its revenue particularly from the non-oil sectors of the economy in the face of dwindling receipts from crude oil.⁸³⁸ This is especially necessary since according to Price Water House Coopers Report entitled ‘What next for Nigeria’s Economy? Navigating the Rocky Road Ahead’ the nation currently has one of the narrowest tax bases in the Africa sub-region.⁸³⁹

The researcher suggests that one of the nation’s untapped sectors of government revenue is the Nigerian informal sector. Widening of its tax base in this sector not only will boost the tax authorities to achieve its SAS objectives but will also aid in no small measure in tapping into the wealth of capital desperately needed for the provision of social goods in the country.

There is no doubt that the informal sector in Nigeria is extremely large and diverse and is said to account for approximately 60-65% of the economy. It’s scope of activities span across trading, spare parts, transportation, construction, agriculture, livestock, food preparation, credit facilities, refrigeration, mechanical and electrical work, dressmaking, traditional healing, just to mention a few. The profile of business in this sphere is typically low income one-man business with self employed proprietors operating underneath the regulatory radar, which do not pay taxes.⁸⁴⁰

With the general consensus that taxation is a veritable source of income to the Nigerian government comes the need to maximize tax revenue by expanding the national income base. There is a growing need to tax the informal sector in Nigeria due to enormous revenue potential of that sector. However, the tax inflow potential

⁸³⁸Business Day, Widening Nigeria’s tax base to drive non-oil economy, Business Day, November 27, 2015, <asokoinsight.com/news/widening-nigerias-tax-base-to-drive-non-oil-economy> accessed on 20th February, 2015.

⁸³⁹A Ezugwu, Nigeria must widen its Tax Base-PWC <www.realnewsmagazibe.net/business/nigeria-must-widen-its-tax-base-pwc> accessed on 20th February, 2016.

⁸⁴⁰CISLAC, Expanding the Tax Base in the Informal Sector in Nigeria <www.maketaxfair.net/assets/policy-brief-on-informal-sector.pdf> accessed on 21st February, 2015.

from the informal sector in Nigeria relative to its sheer size can be said to be woefully insufficient. There are many informal sector participants that either deliberately evade tax payment or are not captured by the tax authorities. The informal sector remains very fluid as there is no concrete regulatory policy in place to monitor activities of the sector.⁸⁴¹ It is however, posited that in order for the informal sector to be brought into the tax radar, there is need for delivery of public services e.g. water, roads, clinics etc. According to a survey,⁸⁴² which I concur with, those who felt the government was using its revenue wisely and those who had concrete experience of services delivery were more likely to feel obligated to pay taxes. Endemic corruption on the part of government also discourages potential taxpayers from embracing the formal sector. Nigerians are daily inundated with news of embezzlement and diversion of funds meant for public purposes into private pockets of public officials. The result is that people are willing to avoid anything or environment that will compel them to pay their hard earned money to the corrupt government as taxes.

Furthermore, transparency and accountability in government go a long way in encouraging voluntary tax compliance which obviously is the numero uno of the objectives of SAS in Nigeria. Nigerian government needs to have more up-to-date and more accurate information on how much money is collected, and how much is spent, where and for what purpose, and what its future obligations are likely to be. The reforms of the tax system should include establishing a key link between the payment of taxes and the delivery of services. As people see services improving, their support for the tax system will also increase. This in turn will aid the funding of further improvements in services to citizens.⁸⁴³ It is recommended that the established bodies

⁸⁴¹ *Ibid.*

⁸⁴² C Bodea & A Lebas, 'The Origins of Voluntary Compliance: Attitudes towards Taxation in Urban Nigeria', (2016) *British Journal of Political Science*, 215-238.

⁸⁴³ CISLAC, *op cit*, P. 13.

like EFCC constitutionally backed by law to investigate and prosecute corruption matters do same fearlessly and sentence all corrupt politicians who steal the country blind in other to act as deterrent to others. And further recommended is the establishment of Revenue courts in all the states of the federation manned by tax professionals just like in the National industrial courts to solely handle all revenue and tax related cases in Nigeria.

7.5.2 Customer Services

Again, the tax authorities should develop various initiatives particularly to assist and facilitate individual taxpayers in fulfilling their tax obligation. Since SAS is highly reliant on taxpayers' responsibilities and honesty, this kind of service is really important, helpful and could reduce the barriers between the taxpayer and tax authority. Customer services or taxpayers' service is especially important for helping taxpayers avoid unintentional errors. The FIRS should provide year-round assistance to millions of taxpayers through many sources, including outreach programs, tax forms and publications, regulations and other published guidance, toll-free call centers, the internet, and Taxpayer Assistance Centers. In addition, during the filing season, FIRS should provide tax counseling for the Elderly, for low-income and limited-English proficiency taxpayers.

Assisting taxpayers with their questions before they file their returns reduces burdensome post-filing notices and other correspondence from the tax authority and reduces overall inadvertent non-compliance.⁸⁴⁴

A wide variety of strategies are available to facilitate taxpayer service. However, one key organizing principle that guides any policy to improve taxpayer

⁸⁴⁴ IRS, 'Reducing the Tax Gap, A Report in Improving Voluntary Compliance', (2007) *U.S Department of the Treasury*, 42.

service is the necessity of delivering, at the lowest possible cost, information that can be used effectively by taxpayers and the tax administration.⁸⁴⁵ No doubt, in Nigeria, the taxpayer services is still under developed within the tax administration.

The most successful, efficient and profitable organizations are those with a market-led approach to their business. They have a clear vision of what they are trying to achieve and how they will achieve it. These principles apply whether they are a big organization, SME, not-for-profit organization or public administration. Marketing drives this focus and public relations (PR) helps communicate it. For tax administrators, like most public sector organizations, the move towards adopting business-type processes is a relatively new one and is largely driven by a recognition that the people whom they serve are actually ‘customers’; who now expect good and efficient ‘customer services’.⁸⁴⁶ The researcher advocates that the tax authorities in Nigeria should embrace the trend of marketability as is being done in some countries. For example in Japan, public relation activities are handled cooperatively by all their tax authority comprising of the National Tax Agency (NTA), The regional Taxation Bureau and tax offices and many of these activities are carried out through the media including regular television and radio programmes/spots that provide current tax information, answering questions called-in by viewers.⁸⁴⁷ Also Belgian tax administration visits a number of shopping malls each June to help taxpayers understand their taxes. Taxpayers are even helped to fill in their tax forms. These actions are very successful because of the long lasting collaboration with a Belgian

⁸⁴⁵ G Jenkins & E N Forlemu, ‘Enhancing Voluntary Compliance by Reducing Compliance Costs: A Taxpayer Service Approach’, (1993) *International Tax Program Journal*, 8-9.

⁸⁴⁶ Intra-European Organisation of Tax Administrations (IOTA), *The Role of PR and Marketing in Tax Administration* P. 1 <www.ujp.gov.mk/uploads> accessed on 5th November, 2015.

⁸⁴⁷ T K Sarker, ‘Improving Tax Compliance in Developing Countries via Self-Assessment: What could Bangladesh Learn from Japan’ *Asia-pacific*, (2003) *Tax Bulletin* Vol 9, No 6, 21.

Radio channel promoting this initiative.⁸⁴⁸ Also Italy provides ‘Tax on Wheels’ a van equipped like a real office driving around the countryside providing information and services.⁸⁴⁹ Nordic countries and Spain, among others, have a history of educating the young in the schools. Officers can either go out to the schools or invite school classes to the tax office.⁸⁵⁰ Denmark and Spain have introduced a game on taxation to the youth.⁸⁵¹ The list of what countries are doing to promote its public relations is endless. Public relations are an essential tool to build a better image by conveying all these elements to all the customers of a tax administration. Its key activity is to create publicity through seminars, press conferences, meetings and other events that will draw attention to services. The primary purpose is to help develop and maintain good relations and understanding between tax administration and the public. It is a long-term activity that involves the building of relationships with media and continuously seeking to find opportunities to enhance tax administration’s reputation in the public mind and to highlight improvements and success⁸⁵² and when used effectively will greatly improve voluntary tax compliance in SAS. In Nigeria, it is recommended that there should be wide tax campaigns about income tax by seminars, billboards, advertising, and pamphlets in its media section. Also, recommended is education of the youth. These strategies are to be implemented by the administration itself or with the help of external partners like primary and secondary schools. Leaflets, booklets and billboards and all kinds of technical information concerning the law, conditions and deadlines should also be distributed in the simplest languages.

⁸⁴⁸ IOTA, *op cit.*

⁸⁴⁹ OECD, Italy’s Tax Administration: A Review of Institutional and Governance Aspects <<https://www.oecd.org/tax/administration/italy-tax-administration-a-review-of-institutional-and-governance-aspects.pdf>> accessed on 2nd November, 2016.

⁸⁵⁰ IOTA, *op cit.*

⁸⁵¹ IOTA, *op cit.*

⁸⁵² IOTA, *op cit.*, P. 10.

In conclusion, providing services that are user friendly, in the sense of being accessible and understandable for all helps to maintain and strengthen the taxpayers' willingness to comply voluntarily in a SAR and thereby contribute to improvements in overall levels of compliance with the laws.

7.5.3 **Enhancing Procedure and Officers Skills**

Efficient tax procedures and competent staff are important in managing tax. Efficient tax procedures can increase productivity and the collection of direct taxes.⁸⁵³ A continuous staff training and development programme can add to the value, quality and professionalism of the officials in dealing with various aspects of problems, cases and taxpayer's behaviors. Human resources developments should be a major focus of the FIRS although it involves a significant cost. For example, in order to produce officers who are competent, professional, knowledgeable, skilled and disciplined, the FIRS should plan and implement special training programmes which are to be conducted by professional consultants and tax law professors and lecturers for officers at every level to ensure that they understand and are equipped to carry out their duties according to the current need. In addition, training and courses are not limited to intermediate and high level officials, but should also involve clerical and supporting staff so that each level of personnel has the confidence and knowledge to deal with their job and responsibilities.

There is an obligation on the part of the tax officers in a SAR to collect from taxpayers the maximum amount of tax that the taxpayer are obliged in law to pay. This implies two things – one is that tax collectors are not permitted to exceed the bounds of the law in securing tax payments nor are they permitted to waive or moderate legal rules in return for private benefit. Again, officers cannot be heard to

⁸⁵³ J Junainah, 'Self Assessment System: A Case Study on Perception of Personal Taxpayers in Kota Kinabalu, Sabah', (2002) University of Kebangsaan, Malaysia, 1.

use undue pressure and beyond the law to coerce taxpayers to pay something, whether it is due or not or whether the taxpayer failed to self-assess or not. Officers should be adequately trained never to use their position of power over taxpayers to receive private benefits such as bribes or favours.⁸⁵⁴ In conventional theory, administrators or officers are as much servants of the populace with whom they deal as they are servants of the authority that employs them. In other words, it is recommended that tax officers must adhere to rules and code of ethics of taxation required to carry out their duties. These qualities would include professionalism, integrity, efficiency, and collective responsibility.

Finally, as human resources are the basis of the national tax organization,⁸⁵⁵ the researcher recommends that tax officers must be equipped with technical knowledge, high moral standards, and the capacity to respond to change in society. There should also be adequate training programmes. It is important that tax officers' level of skill and quality be enhanced through training. There should be a review of the entire training framework by the FIRS which include training for new recruits as well as adding programmes with the aim of strengthening the organization, promoting higher efficiency and responding to emerging needs.

7.5.4 **Simplifying the tax process**

Many people do not pay tax simply because the compliance cost is too high.⁸⁵⁶ An effective way to encourage taxpayers to voluntarily pay their tax obligations is to reduce the cost of compliance by making it as simple and easy as possible to navigate the tax process. This starts with simplifying the tax laws to make them clear and easy

⁸⁵⁴ M Dike, 'Taxation and governance' being A presentation delivered at the 7th Annual Lagos State Stakeholders Conference, on January, 2014.

⁸⁵⁵ Y Kimura, 'Japan's Tax Administration Reform and the Self Assessment System' being a paper delivered at the Tax Administration Course III, Asian Development Bank Institute Siem Reap, Cambodia on 22nd March, 2006.

⁸⁵⁶ World Bank, 'Designing a Tax System for Micro and Small Businesses: Guide for Practitioners, International Finance Corporation, December 2007.

to execute. One of the ways is to reduce the number of taxes and simplifying complex tax legislations. Simpler taxes are needed for many reasons, first and foremost; tax complexity creates headaches for about all taxpayers. Complex taxes are difficult to comply with and to administer. People who do not understand tax rules may also question the fairness of the tax system, feeling that others are receiving more benefits than they are. As a result, these taxpayers may be less apt to comply with the law.⁸⁵⁷

Simplification can also be introduced in filing and payment process. More tax administrations have been moving towards electronic filing and payment system, often making it mandatory among large taxpayers. Nigeria should follow the trend. Electronic system can reduce the amount of time it takes for businesses to fill out multiple tax forms with similar information as well as cut down on the time spent waiting in line to file returns and make payments. There has also been a trend towards reducing the number of forms a taxpayer has to submit. In some countries, the registration process itself has been revamped to allow businesses to register with multiple government agencies in one step, what has been commonly called ‘one-stop-shop’ registration. For example, Costa Rica successfully reduced the requirements for starting and operating a small business by introducing a multi-agency network that facilitates one-stop filing of all the necessary documentation for business formalization.⁸⁵⁸ Use of common network also encourages information exchange between the institutions involved.⁸⁵⁹

Again, voluntary compliance in a SAR would be greatly facilitated by the existence of a simplified tax structure. Indeed, without institutional simplification that enables taxpayers to fulfill their responsibilities more effectively, even the most

⁸⁵⁷ L E Burman & G G William, ‘A Golden Opportunity To Simplify The Tax System: Options For Reforming A Complex Tax Code’, (2001) *Brookings Institution Journal*, 1.

⁸⁵⁸ Caribbean Policy Research Institute, *op cit*, P. 10.

⁸⁵⁹ World Bank, *op cit*.

elaborate service offered to taxpayers by the tax administration would be lost in the sea of confusion, waste and widespread disrespect of the law.⁸⁶⁰ A simpler tax structure will make it easier for taxpayers to assess their tax liability and thus comply more fully with the tax laws. Current worldwide trends bear ample testimony to this fact. Tax Reform efforts in the United States, Canada, Europe, Australia and Latin America, for instance, focus on the elimination of numerous features in the economy that further distort and complicate the tax system.⁸⁶¹

Tax law simplification can take at least two forms; the substantive simplification of tax regulations or the simplified application of tax rules. In the substantive simplification of tax rules, it involves a streamlining of tax rules through the reduction of exceptions, exemptions or caveats. For example, the New Zealand VAT has one of the broadest bases, hardly exempting any transactions. The consequence is that the interpretation of the law is easier and its observance is straightforward. In the case of simplified application of tax rules, tax rules need to be communicated directly to the appropriate sectors irrespective of their complexity. The function of the tax administration is to ensure that tax rules reach their target in as effective a fashion as possible. For instance, the tax authorities could publish individual manuals on income taxes, corporations or partnership as they apply to particular sectors. Such targeted information reduces compliance costs because it relieves the taxpayer from having to expend money and time learning tax rules that may not be applicable to them.⁸⁶²

One additional problem is that there is a high degree of non-compliance with the tax laws in Nigeria caused because tax forms are often too complicated to

⁸⁶⁰ G. P Jenkins, *Tax Reforms: Lesson Learned* (Cambridge: Harvard Institute for International Development, 1991) P. 1.

⁸⁶¹ G Jenkins & E N Forlemu, *op cit*, 9.

⁸⁶² *Ibidi*, 10.

understand. Tax administrators often design forms and information bulletins which render the tax filing process so complicated as to require the assistance of tax preparers, accountants and lawyers. Such assistance is costly and generally it is a known fact that nobody likes to pay tax talk more of incurring additional costs. Taxpayers would thus incur lower compliance costs if the simplification of the tax regime also involved a simplification of the tax forms.⁸⁶³ One solution is to broaden the scope of self-assessment as much as possible while simplifying the basic directions that taxpayers have to follow.

7.5.5 Eradication of Corruption

In Nigeria, voluntary taxpayer compliance in its ideal form is no longer a reality. There is no *quid pro quo* between taxes paid and government services provided. Poor governance invariably leads to an eschewed co-relation between revenue collection and revenue expenditure, such that persistent irresponsible spending by the government bears no relationship to the expectation of the taxpayer.⁸⁶⁴ If due to corruption, citizens cannot be certain whether their paid taxes are used to finance public goods and services, their willingness to pay suffers and it becomes more likely that they evade their tax liabilities. Transparency and accountability in government go a long way in encouraging tax compliance. Also, endemic corruption on the part of government also discourages potential taxpayers from fulfilling their tax obligations voluntarily. Nigerians are daily inundated with news of embezzlement and diversion of funds meant for public purpose into private pockets of officials. The result is that people are willing to avoid anything or environment that will compel them to pay their hard earned money to the corrupt government as taxes.

⁸⁶³ World Bank, 'Designing a Tax System for Micro and Small Business: Guide for Practitioners', (2007) International Finance Corporation, 1.

⁸⁶⁴ K Ongwamuhana, *Tax Compliance in Tanzania* (Tanzania: Mkuki na Nyota Publishers Ltd, 2011) P. 91.

There is wide agreement that corruption has a significant negative impact on tax revenues. Studies in some developing countries indicate that often more than half of the taxes that should be collected cannot be traced by government treasuries due to corruption and tax evasion. Experts have pointed out that presence of corruption reduces tax revenues in the long run.⁸⁶⁵ Corruption affects the growth potential of the economy and thereby reduces the size of the future tax-base. By decreasing the resources available for public authorities, corruption also reduces productive public investments in such areas as roads, health and education in Nigeria.

A 1998 study done in 39 Sub-Saharan Africa countries by the International Monetary Fund (IMF) found strong statistical evidence that an increase in the level of corruption lowers the tax-revenue-GDP ratio. This finding led the IMF to conclude that efforts to lower corruption would increase tax revenue significantly.⁸⁶⁶ Non-adherence to good governance by the Nigerian Government creates an environment where corruption flourish making taxpayers lose the trust of the government and in turn non-compliance with their tax obligations.

The researcher submits that Nigerians need strong selfless and committed leaders, who are originators of great ideas, command the respect and loyalty of the people, and who are truly committed to the development of their nation. Tax money put into proper use for taxpayers will definitely induce a positive attitude to voluntary compliance from taxpayers in Nigeria.

7.5.6 Taxpayer Education

There is no gainsaying the importance of tax education is SAS. The nature of SAS in Nigeria requires sufficient knowledge of current laws and regulations in order to compute actual income and finally make accurate tax calculations and payments.

⁸⁶⁵ O H Fjeldstad & B Tungodden, 'Fiscal Corruption: A vice or a virtue?' (2001) *CMI Working paper*, 13.

⁸⁶⁶ D Ghura, Tax Revenue in sub-saharan Africa: Effects of Economic Policies and Corruption <<http://papers.ssrn.com/so13/papers.ctm?abstract-id=882694>> accessed on 10th November, 2015.

Various programmes must be implemented by the tax authorities to facilitate taxpayers so that they can acquire and practice the knowledge. Unlike the US tax system which educates and exposes tax laws and regulations from a very early age through the implementation of school education programmes,⁸⁶⁷ this is not applicable in Nigeria. Civic education was part of the educational curriculum in the early 1960s and 1970s; however this was stopped in the mid-1980s and 90s.⁸⁶⁸ A re-introduction of this into the school curriculum would not only improve civil responsibility but also infuse a sense of patriotism and commitment to national ideal and interests. There should be vigorous enlightenment and public awareness about tax payment and its importance in the economy.

In addition, the tax authorities should also organize road shows from place to place to deal face to face with taxpayers. For instance, a counter should be open in shopping complexes and offices within a certain period of time as an effort to make taxpayers aware of their duty to pay tax. Efforts should be made to inform taxpayers about the tax system i.e. the self-assessment system and to provide advice for those requiring assistance, so that in the end, they would have a higher sense of morality in the organization with the aim of winning the trust of the people. While such public relations efforts are being made, systems should be put in place for taxpayers to be able to seek guidance on tax law and to ask for advice on calculation for self-assessment.

The target audience should also be primarily students who are the future taxpayers followed generally by the entire taxpayers. As the next generation of taxpayers, the students are provided with an understanding of the significance and role of taxes in financing the government budget and also of their duty as citizens to

⁸⁶⁷ IRS, (2008)

⁸⁶⁸ A G Asuquo, 'Tax System in Nigeria: Issues And Challenges', (2004) The Newsletter of the Chartered Institute of Taxation in Nigeria, 19.

file accurate returns and pay taxes.⁸⁶⁹ In Estonia, tax administration takes part in youth fairs. The project ‘Tax and School’ involves the tax administration and the Ministry of Education with aims to promote a law abiding fiscal culture amongst the younger generation.⁸⁷⁰ Again, in Poland, primary schools educational actions are organized under the watchword “Where Have We Money For Our Expenses – We All Pay Taxes’ which consist in conducting lessons by tax officers in primary schools. The lessons aimed at making children aware of the role of taxes and how they are used in a state, on the assumption that such activities will bring measurable effects in increasing the level of voluntary compliance.⁸⁷¹

Furthermore, in Jamaica, Tax Administration Jamaica (TAJ) has an extensive public education programme that ranges from traditional types of media such as print, television and radio to modern social tools such as Facebook and Twitter. They also organize town hall meetings, seminars, workshops and monthly mobile business clinics. In addition there are specific initiatives targeting school children to raise awareness from an early age. New developments in tax administration are sent in timely press releases to the various media houses and are automatically posted on the TAJ’s website.⁸⁷² The key to creating an awareness of tax morale and voluntary compliance from an early stage in life will eventually lead to a culture of voluntary tax compliance. The researcher therefore recommends tax education on every facet of our institution from Nursery to University levels in Nigeria. Fiscal toys can be used also in catching them young from the nursery and primary levels of education.

⁸⁶⁹ T K Sarker, *op cit*, 22.

⁸⁷⁰ IOTA *op cit*.

⁸⁷¹ IOTA *Ibid*.

⁸⁷² Caribbean Policy Research Institute, Improving Tax Compliance in Jamaica <www.capicaribbean.com/sites/default/files/public/documents/report/improving-tax-compliance-in-Jamiaca.pdf> accessed on 2nd December, 2015.

Furthermore, since most of the citizens of Nigeria are religious and faithful people. Thus with religious provisions that explicitly support fulfilling religious obligations, voluntary tax payment could be enhanced.⁸⁷³ Therefore, tax education can be encouraged to be part of religious education among the adherents. Evoking religious injunctions could elicit more voluntary compliance in a SAR. For instance, the Biblical saying of ‘Give unto Caesar, what is for Caesar and to God what is for God’⁸⁷⁴ is apt and relevant to the Christians while the Quran calls on the Muslims thus: ‘O you, who believe, fulfill all obligations’.⁸⁷⁵ Therefore, it is suggested that the

7.5.7 Enforcement

Finally, on the suggested measures to be taken by the tax authorities to achieve SAS objectives is that the FIRS should design their audits and investigations programme to increase compliance in the SAS. Investigation and prosecution programs should be seriously implemented through law enforcement with the aim of preventing tax non-compliance. Enforcement programmes should also be taken against taxpayers who fail to settle their taxes on time. There should be an increase in civil suits filed in court and pursued timorously to act as a deterrent to contemplative non-compliant taxpayers. In extreme cases, taxpayers should be prevented from leaving Nigeria until the amount owed to the FIRS is settled. No doubt, there is a need to put in place an effective judicial process to adjudicate on tax issues.

In order to preserve people’s trust in the system and their belief that tax is applied fairly, and to maintain their motivation to file and pay taxes properly, it is essential that those who intentionally try to avoid taxes, especially through fraudulent means, be dealt with firmly, sometimes by making them the focus of prioritized tax audits. It is recommended that since the depth of tax audits varies according to the

⁸⁷³ *Ibid.*

⁸⁷⁴ Holy Bible, Matthew 22:21.

⁸⁷⁵ Qu’ran 5:1

status of the taxpayer, those suspected of serious tax avoidance should be prioritized in tax audit selection, and no limits should be placed on the audit length to allow for a thorough review.

In conclusion, the implementation and successful operation of SAS in Nigeria is a big challenge not only to the FIRS but also to taxpayers, unlike the previous system, SAS requires taxpayers to have sufficient tax updates so that they can be good participants and complete their tax return accurately. Failure to do so results in penalties and interests, and perhaps a prison sentence. Despite the fact that some taxpayers may not be satisfied with SAS because they have to do more tasks than previously (e.g. completing tax returns and calculating tax liabilities) while the tax authorities only collect money and administer the process, however the researcher posits that SAS is one of the best ways to manage the tax system in a country like Nigeria which has a large number of individual taxpayers both at the formal and informal sectors. Under the formal system, tax officials spent a lot of time assessing tax returns while in SAS the officials can focus on enhancing the tax audit and investigation procedures, as well as concentrating on tax reforms so that the tax collection will increase.

7.6 Self Assessment System; The Way Forward In the Informal Sector

The most cost – effective systems of collecting taxes are those that encourage most taxpayers to voluntarily comply, leaving the tax authorities to focus on their enforcement efforts on a more limited number of tax evaders. Based on the current Nigerian tax administration the researcher propose in this work some fresh measures as an efficient and effective guide to aid in voluntary tax compliance in the informal sector.

7.6.1 Use of Positive Incentives

Paying taxes is a resisted action, a few people are predisposed to do so voluntarily and that bias is reduced if people perceive inefficiencies from the government in the use of revenues. When that happens, controls and penalties, although necessary, become insufficient and it is necessary to create parallel incentives. Tax Incentives are incentives designed to encourage investments in certain preferred sectors of the economy and sometimes encourage voluntary compliance.

Specific tax incentives exist under the Companies Income tax Act and the petroleum profits tax Act in Nigeria but there are no significant incentives provided by the personal Income tax Act most especially the informal sectors and SMES to encourage voluntary payment of income tax. Personal income taxes have been contributing very little to total tax revenue in Nigeria. Taxing this income is a daunting challenge in Nigeria despite its huge potential as the major means of revenue in Nigeria. It is therefore of the view that the PITA does not make sufficient provisions to encourage voluntary tax payment that it is suggested that the Personal income tax be amended and more tax incentives be provided for in the PITA. The most common incentives should be monetary, particularly those that give a discount of a portion of the fee or discount for annual payment made in advance of regular payments. Also bonus should be given for prompt payment of taxes. Monetary incentives should be frequently carried out on discount or bonus for advance annual payment of periodic taxes. People who paid property tax in one annual fee may receive a bonus of 20% of the tax. Although these are small measures, it reflects the emerging need to seek alternative and complementary methods to encourage tax compliance.

Also, it is suggested that in order to encourage tax payers to pay their taxes on time, taxpayers should be handed over Certificates of Government's appreciation and acknowledgement of diligent tax payers for their contribution towards nation building. These certificates must be issued by the federal government through the FIRS should be handed over to select tax payers. This will be a positive move by the government to connect with honest and punctual taxpayers who play their part in nation building. FIRS should be sending out such certificates of appreciation to individual tax payers in various categories on the basis of the level of taxes paid by them for the current assessment year where taxes have been paid in full and tax payers have no outstanding tax liabilities and where the return is e-filed within the prescribed due date. It is also suggested that the certificates be signed by FIRS chairman and a call out of the taxpayer's name, or company in a National media outlet. The country has a culture of punishing tax defaulters in the informal sector and not rewarding those who have fulfilled their obligations. The institution of awards also will go a long way to stimulate individuals and groups in the informal sector to be alive with their tax obligations.

7.6.2 De-emphasis on record-keeping

Furthermore in order to encourage compliance in the informal sector, it is suggested that there should a de-emphasis on record keeping of account as provided in the Personal Income Tax Act. It is a known fact that most of the people in this sector do not keep books of account. The average petty traders do not keep books of account but it is a known fact that most of them make more money than most young graduates. It is, therefore, suggested that the uniform lump-sum method wherein uniform lump-sum payments which is a form of presumptive taxation which is based on an income average in the industry be adopted in the informal sectors in Nigeria. In

this case, a flat tax liability is imposed on all firms or individuals operating under the same occupation or trade. This could be an attractive tool for Nigeria because it is simple to administer, and tax authorities do not need to verify records in order to arrive at a tax liability. The taxpayers in such sector are also relieved of the cumbersome burden of calculating the amount due to be paid as it is a flat payment.

7.6.3 Engagement of the informal sector

One way to improve citizen participation is giving citizens a say in the government. It increases the likelihood that citizens perceive the taxes imposed on them as useful and fair. One such way of increasing citizens participation is to engage them in the decision making process in government. The Local Government Revenue Committee which was created under Section 90 of the PITA should be amended and have as its members: principal officers comprising of the heads of various associations in the informal sectors and town union presidents. The functions of the Revenue Committee include the assessment and collection of all taxes, fines and rates under the jurisdiction of the local government and accounting for all amounts so collected in a manner to be prescribed by the chairman of the local government. Based on the functions, these principal officers of associations in the informal sector and the town union presidents can agree with their members and corroborate with the government to collect and remit taxes due to the later. This in turn will reduce multiplicity of tax and use of obnoxious means like use of thugs in tax collections on the part of the taxpayers and increase the revenue of the government as it will not be easy to evade.

7.6.4 Continuous Tax Instruction of the Informal Sector

Majority of the players in the Nigerian informal sector are largely not conversant about the essence of tax payment. The inculcation of a custom of tax

compliance depends on changing attitudes and perceptions. There is no refutation of the reality that tax information and culture is practically very poor in Nigeria and even poorer with respect to the informal sector. Tax evasion in the informal sector may principally be as a result of lack of knowledge. The government should therefore strengthen its effort in organizing public education programmes in the media, posters, billboards and other enlightenment channels. More concentrated and unrelenting approach should be put in place for the sensitization of the public. Localized sensitization of the informal sector by deploying tax officials to local government areas by the creation of area tax offices should be considered. For easier and enhanced dissemination, all major Nigerian languages should be printed as hand bills containing information on the need to pay taxes. The relevant states and federal ministries of Information should be drawn in wherein information vans are used to inform the informal entrepreneurs. Tax education should be pursued enthusiastically and on a continual basis which with time is likely to encourage voluntary compliance from the informal sector.

CHAPTER EIGHT

CONCLUSION AND RECOMMENDATIONS

8.1 Conclusion

In this work, the researcher critically analyzed the self assessment regime in tax administration in Nigeria. Self assessment system (SAS) is one of the measures implemented by many countries to replace the official assessment system (OAS). The adoption of SAS results in a considerable shift of responsibilities upon taxpayers with regards to their compliance obligations. In other words, compliance responsibilities for taxpayers include an obligation to voluntarily report, compute and pay their taxes according to tax laws. Objectives supporting SAS in various countries are mostly to reduce tax authorities' burden of assessing tax returns, minimize the cost of collecting tax and to encourage voluntary compliance. In Nigeria, SAS was adopted in 1991 with operational effects in 1992 and this work is of the view that SAS in tax administration has not succeeded in encouraging voluntary tax compliance decades after its adoption in Nigeria. It is noteworthy that total voluntary payment of tax in Nigeria by effective use of SAS is fallacious and it is the intention of this work to proffer suggestions or measures that will facilitate voluntary compliance to at least get to 15% tax to GDP ratio that IMF considers the threshold of tax revenue adequacy in any developing country.

In this research, we started off by discussing the general introduction to taxation, its various definitions and the historical evolution of Nigeria tax system and such issues as those issues that constitute an ideal tax system as posited by Adam Smith were also discussed. The researcher in her opinion noted that there is no certainty in the Nigerian taxation and also it is not convenient for taxpayers to fulfill their tax obligations in Nigeria. Also, we stated that the Nigerian tax system is not

administrative efficient and its laws are not simple to understand and further made recommendations for the issues raised therein.

This study also embarked upon a comprehensive analysis of the administration of taxation in Nigeria and the Nigerian tax system. The administration in Nigeria is carried out by the various tax authorities as established under the relevant laws. Also discussed in this work are the various tax authorities in Nigeria including the recently enacted Federal Capital Territory Inland Revenue Service Act, 2015. Again in a federation like Nigeria, the concept of inter-governmental fiscal power is based in a three-tier tax structure each of which has different tax jurisdiction. This was also addressed in this work. The issue of multiplicity of taxes which has been a major problem facing the SAR in Nigeria was adequately discussed in this research and recommendations proffered for eradication of same.

Again, in this research, we elaborately discussed the self assessment Regime, the principles, issues and administration thereof. The self assessment system is when it is the responsibility of the taxpayer rather than the revenue authority to calculate the relevant tax liability and to ensure that the requirements regarding payment and so on are met. The growing concern of tax administrations throughout the world is on how to simplify the tax assessment system to encourage voluntary tax compliance and as the title of this study indicates, Nigeria have adopted same too as a solution. The research also discussed the mission and objectives of SAS in various countries and stated that the objectives differ from country to country but their primary objectives being to encourage voluntary tax compliance remains the same. Furthermore, based on the canons of taxation introduced by Adams Smith, this work also discussed the central principles of taxation which relate to SAS that is, equity, certainty, convenience and efficiency. Again, it was noted in this research that each country

inevitable has its own controversies upon adopting and implementing the SAS. Such issues as tax audits and audit probability, fines and penalties were analyzed critically with solutions proffered for all the issues raised therein.

It is posited in this study that despite all the intendments of the introduction of SAS in Nigeria since 1992, voluntary compliance has not taken root. This study also faults some provisions of the Tax Administration (Self Assessment) Regulation, 2011 which has been the primary Regulation guiding the processes and procedures for self assessment returns in Nigeria. It is noteworthy that in Nigeria, so many factors presently hinder the taxpayers' voluntary compliance and how well the FIRS tackle them depends on how well the two components of SAR namely Taxpayer Enablement and Compliance of the SAR are also tackled. International experience demonstrates the importance of deliberately and consistently reviewing the SAS the administration has in place. The focus should be to assess whether the SAS is operating in the manner that was intended and whether it is realizing its full potential. Examples and experiences from some countries were recommended in this work.

The various tax laws which the tax authorities operate for various tax types being administered all contained provision for the Self Assessment tax system. A summary of the legislators guiding the implementation of the self assessment system in Nigeria were all set out and legally discussed and analyzed critically in this study. The legal backing received by SAS in Nigeria through the provisions in the Constitution, Laws and Regulation discussed in this study shows by the implication that SAS covers all forms of taxation in Nigeria. This study also undertook a comparative analysis of how self assessment is operated in different countries encompassing five developed and three developing countries. Tax administration practices across Organisation for Economic Co-operation and Development (OECD)

countries demonstrate a variety of issues and problems and therefore taken collectively, a comprehensive review of the majority of tax administration issues faced when using SAS were also critically discussed in this study.

The objectives for introduction of SAS differ from country to country but their primary objective being to encourage voluntary tax compliance remains the same. In this research work, some measures to be taken by the tax authorities to achieve SAS objectives in Nigerian tax system are suggested.

Having stated that tax compliance has always been a major concern for all tax administrations, this work did a major analysis of the concept of tax compliance and in furtherance exploration of tax non-compliance analyzed in details the issues of tax evasion and avoidance as it relates to Nigeria. It is my opinion that tax avoidance is not unlawful as a taxpayer is free to arrange his/her tax burdens as it is left for the tax authorities to counter measures where the lines are crossed. The causes, effects and strategies against tax evasion and avoidance were also discussed and requisite recommendations made. Also discussed was the issue of tax compliance determinants in SAS. It was crucial to determine the factors that may affect tax compliance according to the literatures in order to promote an effective tax environment. The four factors discussed are economic, institutional, social and individual factors. A legal critique of the Strategies to Increase Voluntary Tax Compliance in Self Assessment Regime was addressed in this work. And in conclusion the work proffered novel ideas to make the adoption of SAS triumph in Nigeria.

8.2 **Recommendations**

The study undertook a critical analysis of the self assessment system (SAS) in tax administration in Nigeria and from the study, it is now clear that the self assessment system (SAS) has been gaining wide acceptability globally and that self-assessment is based on the

principle of voluntary tax compliance. Tax system built on self assessment principles can be successful because a successful tax administration is the one in which taxpayers pay willingly, without conspicuous investigations, enquiries, reminders and threats of legal or administrative sanctions. However, despite the fact that Nigeria followed the global trend in implementing SAS, it has been shown that her tax revenue (which is a good measure of voluntary tax compliance) is low, hence the necessity for recommendations. This study, therefore, recommends as follows:

1. Firstly, it is recommended that based on the basic principles of a good tax system according to Adam Smith in his book *Wealth of Nations*, taxpayers in Nigeria should be secure against unpredictable taxes levied on their wages or other incomes. In other words, there must be certainty in the tax system. No taxpayer should be prompted to pay tax on any income not assessable to tax either by force or threats. This is one of the avenues to encourage voluntary tax compliance and self assessment in tax administration in Nigeria.
2. Based on the principles of convenience in tax system, it is recommended that there is need to harmonize and update by law the different taxes that are levied by the different tiers of government so as to reduce the negative impact on the taxpayer.
3. Huge sums of money are used to consult private tax experts or tax consultants at the expense of government revenue, thereby creating avoidable waste of revenue. This should be minimized by training and equipping officers of the tax authorities so as to carry out such duties usually contracted to tax consultants.
4. Uniform lump-sum method wherein a lump-sum payment (a form of presumptive taxation which is based on an income average in the industry) be adopted in the informal sectors in Nigeria. In this case, a flat tax liability is imposed on all firms operating under the same occupation or trade. This could be an attractive tool for

Nigeria because it is simple to administer and tax authorities do not need to verify a particular firms or individual's records in order to arrive at a tax liability.

5. Simplifying tax laws in Nigeria by reviewing and amending the major tax laws in Nigeria to adopt simpler, clearer provisions. Since the main feature of SAS is self-completed tax returns, a high degree or at least a reasonable level of simplicity is required because taxpayers come from various levels of backgrounds, education, income and most importantly level of tax knowledge.
6. A deliberate and consistent reviewing of the SAS that the administration has in place as to assess whether the SAS is operating in the manner that was intended and whether it is realizing its full potential as was done by the Australian Tax Office (ATO) and Treasury Department wherein some major reviews were commissioned by the Australian government on November 24, 2003 and involved extensive public consultation with, and submissions from professional associations, business groups and taxpayers. The researcher suggests that this is the type of review that should be undertaken by the FIRS from time to time.
7. Tax authorities should provide the taxpayers with clear information describing their obligation, the tax applicable, when and where they are payable. Taxpayers in Nigeria also need to be informed about changes in the laws.
8. Simple and user-friendly tax forms should be adopted. These forms should be accompanied by guidance notes so that taxpayers (especially individuals and fringe companies) do not bear additional costs by engaging external professional advisors to complete the forms.
9. Modern innovations should be exploited to improve the business environment and reduce the cost of compliance to ensure voluntary tax compliance. Some of these

new practices in this area include e-filing and e-payment (internet and mobile banking).

10. Tax forms should be made available at websites and places frequently visited by taxpayers. For example, churches/mosques, banks, post offices, shops/supermarkets, petrol filling stations etc. The idea of tax forms in Nigeria being only advertised in the tax offices and designated banks should be jettisoned.
11. Tax returns should be randomly selected so that every return has an equal probability of being audited regardless of how tax officials perceive a particular individual compliance status. This is to ensure that no self –assessed taxpayer is exempted (or believes himself or herself exempt) from the possibility of being audited.
12. Tax authorities should prepare strategic plans (or documents with a similar name and purpose) covering medium term period of three to four years setting out the key directions and priorities and organizational goals and directions for the target period, against the background of a started organizational mission/mandate, vision for the future and set of values and if such document is well prepared it can be a valuable tool for communicating with both internal and external audiences and fostering commitment.
13. Such committees like the Technical Committee of the State Board and the Joint State Revenue committee created under Section 89 and 92 of the Personal Income Tax Act respectively should be repealed. This is because it seems that there is a proliferation of administrative bodies with the same composition and different functions under the Personal Income Tax Act and these committees and Boards have their meetings at intervals at the expense of the much needed government revenue thereby increasing administrative costs.

14. There should be a reduction in the number of taxes being paid in Nigeria. Levies and charges can be consolidated into one or two taxes since taxpayers are motivated by a simple and efficient tax system in a self-assessment regime. An overhaul of the tax system and reform of the tax laws and systems is recommended as reducing the total number of taxes paid, increasing transparency as to how and what to pay and facilitating procedures for filing taxes will be essential to reducing high compliance costs and increase tax compliance.
15. All the tiers of government should properly fund their departments and agencies in order to check their embarking on illegality to the ends of increasing their internally generated revenue. The states should also make available to the local governments all the revenues from the federation account and allocate the required percentage of state revenue to the local government councils.
16. The tax authorities have an obligation according to the best international practices that taxation laws should be clear and certain. A taxpayer should be able to understand the law and the liability which the government has imposed and should be able to plan with relative certainty that neither an unexpected tax assessment or penalty will follow as to warrant frequent interpretation of tax statutes in courts of law.
17. That instead of the literal interpretation of tax laws as used in the Nigerian courts, the purposive approach in interpretation of tax statutes should be adopted when necessary.
18. A critical review of the basis of the division of taxing powers in Nigeria under the Constitution as a way that will guarantee the ability of each level of government to raise its independent revenue to meet its responsibilities based on the looming danger of bankruptcy in some states.

19. Widening of the tax base by tapping into the Nigerian informal sector will not only boost the tax authorities to achieve the objectives of SA but will also aid in no small measures in tapping into the wealth of capital for the provision of social goods in the country.
20. The work recommends further that in order for the informal sector to be brought into the tax radar, there is need for delivery of public services, for example, water, roads, clinics, etc by the government as endemic corruption in the part of the government also discourages potential taxpayers from embracing the formal sector. Transparency and accountability in government go a long way in encouraging voluntary tax compliance in SAS.
21. Tax authorities should develop various initiatives particularly to assist and facilitate individual taxpayers in fulfilling their tax obligation. Customer service or taxpayer's service is especially important for helping taxpayers avoid unintentional errors. The FIRS should provide year-round assistance to millions of taxpayers through many sources, including outreach programs, tax forms and publications, regulations and other published guidance, toll-free call centers, and taxpayers' assistance centers .
22. Again, tax authorities should collaborate with various banking institutions so that taxpayers can pay their income tax over the counter or through online banking. In addition to these collecting agents, FIRS should actively promote the use of E-filing that is, one of the most prominent and important mechanisms in increasing efficient and error-free filing. The FIRS should also develop website that offer a range of information, particularly, for direct taxes administration. Taxpayers who have problems regarding their tax matters can browse the website to seek solutions or communicate with the tax officials through emails or telephone.

23. Tax authorities should also maintain a dominant presence on social media. They should have a Facebook page, a Twitter account as well as videos on YouTube. This is another way in which they can demonstrate a desire to stay connected with the youth by making use of modern technology.
24. Government in Nigeria should concentrate on measures that reduce taxpayers' cost of fulfilling their tax liabilities. Tax authorities in Nigeria must be aware of the importance of acting service oriented and should therefore monitor customer satisfaction. There should be a shift towards a customer service orientation which reflects the growing awareness of the need to offer a quality service to the taxpaying public and to be responsive to public concerns.
25. Tax officers should be equipped with technical knowledge, high moral standards, and the capacity to respond to change in society. There should also be adequate training programmes. It is important that tax officers' level of skill and quality be enhanced through training. There should be a review of the entire training framework by the FIRS.
26. Simplifying the (corporate) income tax structure in Nigeria by reducing the number of tax brackets and high statutory tax rates lower the tax burden and may support voluntary compliance.
27. As the possibility to detect and prosecute tax violators depend crucially on data availability and data quality, FIRS needs to ensure a sufficient endowment with technical equipment and the establishment of good performing statistic divisions with competent staff members to collect data and keep records. A good technical equipment and technically educated staff are also a prerequisite for a well functioning information exchange.

28. The setting up of Revenue Courts should be embraced by the Federal Government. These courts should be enabled to impose monetary penalties and criminal sanctions. Our tax laws are replete with punitive monetary measures as well as criminal sanctions aimed at solving this problem and suitable personnel for instance, lawyers trained in tax law should be recruited and revenue personnel generally trained and retrained to cope with the demands of the job.
29. A simple tax return and simpler tax regulations will increase tax compliance. As the main feature of SAS is self-completed tax returns, and taxpayers come from various levels of backgrounds, simplifying tax returns and administration potentially could help taxpayers to complete their tax returns accurately and increase compliance.
30. Seminars and symposiums on tax is an effective means of tax knowledge which can aid in influencing tax compliance. SAS countries like US, Canada, Japan, Australia, etc have been conducting a regular tax education for taxpayers and children (as upcoming taxpayers) and same is highly recommended in Nigeria.
31. The Personal income tax should be amended and more tax incentives be provided for in the PITA. The most common incentives should be monetary, particularly those that give a discount of a portion of the fee or discount for annual payment made in advance of regular payments.
32. Taxpayers should be handed over Certificates of Government's appreciation and acknowledgement of diligent tax payers for their contribution towards nation building. These certificates which must be issued by the federal government through the FIRS should be handed over to selected tax payers.
33. There should a de-emphasis on record keeping of account as provided in the Personal Income Tax Act. It is a known fact that most of the people in the

informal sector do not keep books of account. In this case, a flat tax liability is imposed on all firms or individuals operating under the same occupation or trade.

34. The Local Government Revenue Committee which was created under Section 90 of the PITA should be amended and have as its members; principal officers comprising of the heads of various associations in the informal sectors and town union presidents. This will increase citizens' participation to engage in the decision making.
35. More concentrated and unrelenting approach should be put in place for the sensitization of the public. Localized sensitization of the informal sector by deploying tax officials to local government areas by the creation of area tax offices should be considered. For easier and enhanced dissemination, all major Nigerian languages should be printed as hand bills containing information on the need to pay taxes.
36. Nigerians need strong selfless and committed leaders, who are originators of great ideas, command the respect and loyalty of their people, and who are truly committed to the development of their nation. Tax money put into proper use for taxpayers will definitely induce a positive attitude to voluntary compliance from taxpayers in Nigeria.

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