

THE RELEVANCE OF RESIDENCY IN THE ASSESSMENT OF TAX LIABILITY IN NIGERIA*

Abstract

Residency is a key factor in taxation, since a taxpayer is generally liable to payment of taxes to the state where he is resident. This paper intends to examine this important factor, the rules involved and whether it is still relevant to taxation of companies and individuals, under the present day tax regime in Nigeria.

Definition of Terms

Residence is defined as a house or dwelling, especially a large, impressive and imposing one; b. the act or an instance of living in a particular place; c. the period of time someone lives there. Residence means living in a particular place, especially officially presidency on the other hand means “a residence”¹

Resident means someone who live permanently in a particular place; a registered guest staying usually at least for a few days, in a hotel²

Residence therefore means living in a particular locality and it is possible that a person may have two places of residence. Residence therefore, connotes the idea of remaining and settling in a place for a fairly long period. It is for this reason that residence is used to determine liability for personal income tax³. The residence of an individual under the Personal Income Tax Act(PITA) has a lot of bearing on whether or not his income can be subjected to tax⁴. By virtue of the provisions of section 2 (2) of PITA, it is evident that tax for any year of assessment may be imposed only by the state in which the individual is deemed to be resident for that year. Thus, no tax can be assessed on any individual whose residence in a state cannot be proved for a year of assessment. The rules of determination of residence are detailed out in the first schedule to the Personal Income Tax Act (PITA).These rules are considered below: Where an individual has more than one source of income his residence is determined by reference to the first of rules applicable to his circumstances in the order in which they are considered below⁵

i. “**Place of residence**” in relation to an individual, means a place available for his domestic use in Nigeria on a relevant day and does not include any hotel, rest house or other place at which he is temporarily lodging unless no more permanent place is available for his use on that day.

“Principal place of residence” in relation to an individual with two or more places of residence on a relevant day, not being both within any one territory means-

- (a) In the case of an individual with no source of income other than a pension in Nigeria, that place or those places in which he usually resides;
- (b) In the case of an individual who has a source of earned income other than a pension in Nigeria, that place or those places which on a relevant day is nearest to his usual place of work;

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¹ Mari Robinson *et al*, Chambers 21st Century Dictionary, Allied chambers Ltd, India, 2001, 1188

² Mari Robinson *et al* *ibid* p.1188

³ Section 2(2) Personal Income Tax Act, Cap 08, Laws of the Federation, 2004

⁴ M.N. Umenweke, **Tax Law and its Implication for Foreign Investment in Nigeria.**, Nolix Educational Publications, Enugu. April 2008 p.206.

⁵ Ariwodola A. James., **Personal Taxation in Nigeria**, JAA (Nig) Ltd, Lagos 2001 4th ed., 30.

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

Where a person has more than one source of income, it is based on the afore going that one can discern where actually the person is resident⁶

“Territory” means a state of the federation and includes the Federal Capital Territory, Abuja.

ii. “**Earned income**” in relation to an individual, means income derived by him from a trade, business, profession, vocation or employment carried on or exercised by him and a pension derived by him in respect of a previous employment⁷

iii. **Foreign Employments**

“Foreign Employment” means an employment the duties of which are wholly performed outside Nigeria save during any temporary visit of the employee to Nigeria; “Foreign Employments” means an individual not being a person to whom subsection (1)(b) of section 2 of this Act applies, who holds a foreign employment on the first day of January in a year of assessment, or who first becomes liable to income tax in Nigeria for that year by reason of his entering that employment during that year, shall be deemed to be resident for that year in the territory in which the principal office of his employer is situated on that day or on the day his foreign employment commences, as the case may be⁸

iv. **Nigerian Employment**

“Nigerian Employment” means any employment, not being a foreign employment, the duties of which are wholly or partly performed in Nigeria. And an individual who holds a Nigerian employment on the first day of a year of assessment or who first becomes liable to Nigerian income tax for that year by reason of his entering such employment during that year, shall be deemed to be resident for that year in the territory in which he has a place or principal place of residence on that day or, on the day on which he enters upon the full duties of that employment. However, if the individual is on leave on the first day of the year of assessment, he shall be deemed to be resident for that year by reference to his place or principal place of residence immediately before his leave began. Exemptions to the above are individuals who are in full time employment with the armed forces. These individuals are treated as resident in the Federal Capital Territory. (The relevant tax authority of which is the Federal Inland Revenue Service)⁹.

The implication of this is that, if you are working in Lagos and reside in Agbara, Ogun State, Ogun State Government should collect taxes from you and not Lagos state as is generally done, since most PAYE taxes are deducted at source and paid directly to the state where the ministry or company office is situated. It is the same if you are working in Anambra State and reside in Enugu or working in FCT Abuja and reside in Suleja, Enugu, and Niger States respectively should collect your taxes

v. **Other Employments**

An employee whose remuneration is subject to Nigerian income tax for any year of assessment, but who is not deemed to be resident in a territory for that year under the provisions of the rule relating to Nigerian employment as stated above, shall be deemed to hold a foreign

⁶ First Schedule to PITA Act, 2004

⁷ *Ibid*

⁸ First Schedule to the PITA

⁹ Para 4, First Schedule to PITA; Section 2(1)(b) PITA

employment, and if his residence cannot be determined under the rule relating to foreign employments as also stated above, he shall be deemed to be resident in the Federal Capital Territory.

vi. Pensions

“Nigerian Pensions” means a pension in respect of past service under, and payable by a government or governments in Nigeria¹⁰; and

- a. an individual whose only source of earned income arising in Nigeria on the first day of the assessment year (1st January) is a pension, shall be deemed to be resident for that year in the territory in which he has a place or principal place of residence on that day.
- b. an individual whose only source of earned income arising in Nigeria on the first day of an assessment year is a pension, and who had no place of residence on that day, shall be deemed to be residence for that year:-
 - a. if the pension is a Nigerian pension wholly payable by the government of one territory, in that territory;
 - b. if the pension is not a Nigerian pension, in the territory in which the principal office in Nigeria of the pension fund or other person authorizing payment of the pension is situated;
 - c. if the pension is a Nigerian pension and is payable by more than one government or if there are two or more pensions arising in different territories to the individual, in the Federal Capital Territory.

vii. Other Earned Income

- a. An individual who has earned income in Nigeria for a year of assessment (other than from an employment or a pension) shall be deemed to be resident for that year in the territory in which he had a place or principal place of residence on the first day of the assessment year (1st January).
- b. If the source of such income is first acquired by the individual during the year of assessment, and he had no place of residence on the first day of that year, he shall be deemed to be resident for that year in the territory where he first established a place of residence during that year; and
- c. In any other case, the individual shall be deemed to be resident for that year in any territory from which any part or the whole of his earned income arising in Nigeria is derived.
- d. If such income is derived from more than one territory in the Federal Capital Territory¹¹

viii. Unearned Income

- a. An individual who has no source of earned income but has one or more sources of unearned income in Nigeria for a year of assessment shall be deemed to be resident for that year in the territory in which he has a place or principal place of residence on the first day of the assessment year.

¹⁰ Para 6, First Schedule to PITA

¹¹ Para 6, First Schedule to PITA

- b. If the unearned incomes arise in one territory and the individual has no place of residence on the first day of that year, he shall be deemed to be resident for that year in the territory where the unearned income arises
- c. Where the unearned income arises in more than one territory and he has no place of residence on the first day of the assessment year, he shall be deemed to be resident in the Federal Capital Territory¹².

Where a dividend or interest is distributed or paid by a Nigerian company, the dividend or interest, as the case may be, shall be deemed to be derived from the territory in which the recipient resides or where the recipient is not resident in Nigeria, tax shall be imposed by the Federal Board of Inland Revenue¹³

ix. Corporation Sole or Body of Individuals

A corporation sole or body of individuals other than a family or community shall be deemed to be resident for a year of assessment in the territory in which its principal office in Nigeria is situated on the 1st day of January in that year or, if it has no office in Nigeria on that day, in a territory in which any part or the whole of its income liable to tax in Nigeria arises for that year.

x. Disputes as to Determination of Residence

All disputes regarding the determination of the residence of a tax payer (either between a tax payer and a tax authority, or between one tax authority and another) shall be referred to the Joint Tax Board. Written notice of a determination by the Board shall be given by its Secretary to the individual and to each tax authority affected thereby, and an assessment which has been made on that individual otherwise than in accordance with the determination of the Board shall be discharged. A determination by the Board in such circumstances shall be binding on all tax authorities and on any appeal tribunal or other body established under a law of a territory for the purposes of income tax within that territory, but may be challenged by the individual in the High Court of the territory, where the relevant assessment has been made. An appeal from a decision of a High Court of the territory by an individual shall be to the Court of Appeal¹⁴

Where a tax authority discovers that an individual who has been assessed by it for tax for a year of assessment, is deemed to be resident for that year in the territory of some other tax authorities, the assessment shall be discharged and any tax already paid by the individual in respect of that assessment shall be:-

- a) Set-off against tax owing for any other year by that individual to the first-mentioned authority, or
- b) Paid to the government of that other authority: or
- c) Repaid to the individual, in such proportions as the first-mentioned authority may decide.

¹² Para 7, First Schedule to PITA

¹³ Section 15 PITA, Ariwodola A. James, *Op. Cit.* ,33

¹⁴ Para 9, First Schedule to PITA

xi. Itinerant Worker

Tax is imposed on an itinerant worker for any year by the state in which he is found during the year¹⁵. Credit is given to an itinerant worker in any year of assessment for any tax already paid by him in that year to any other tax authority¹⁶. This must however, not exceed the tax actually paid by him¹⁷.

Section 108 of the PITA defines an “itinerant worker” as:

... an individual who works at any time during a year of assessment (other than as a member of the forces) for a daily wage or customarily earns his livelihood in more than one place in Nigeria and whose total income does not exceed N600.

The shortcoming of this definition lies in the non-definition of the word “place” making it possible for one to construe it as referring to either a state or town, place, village, site or spot within a state¹⁸. There is nothing in the taxing statute which says conclusively that the word “place” is synonymous with territory” which has itself been defined in the statute to mean a “state” or the “Federal Capital Territory¹⁹”.

If the word “place” were defined to mean a state or Federal Territory, this would have made the position much clearer rather than leaving it to the imagination. In the absence of such definition, one can say that since an itinerant worker is taxed by the state in which he is found, the necessary intendment here is that the word “place” is synonymous with “territory”. The interpretation is underlined by the fact that proof of residence or deemed residence is not a prerequisite for personal income tax liability in respect to an itinerant worker²⁰.

xii. Partnership

Where a trade, business, profession or vocation is carried on by a partnership, the partners are each treated separately for tax purposes so that profits and losses are apportioned amongst the partners and no assessment is made on the partnership as a whole²¹. The expression body of persons does not apply to partnership taxation.

From the provisions of the PITA in section 8(1) it could be deduced that the income of a partner shall be the sum of any remuneration, interest on capital, or the cost of passages to or from Nigeria wholly or mainly undertaken for the purpose of leave or recreation, which is charged in the partnership accounts in respect of that partner according to his agreed share of the profit. A partner’s share in the partnership income will be included in his income after deductions of the charges mentioned above has been made from the income of the partnership as a whole.

Where the partnership accounts show a loss, a partner’s share in the loss is deducted from his gains or profit, remuneration, interest on capital or cost of passage for leave or recreation. Where his share in a loss exceeds his income from these sources, he will be deemed to have incurred a loss under section 8(2) PITA²².

¹⁵ Section 2 (3) PITA

¹⁶ Section 2(3) Proviso 1, PITA

¹⁷ *Ibid*

¹⁸ Ayua I. A., **The Nigerian Tax Law**, Spectrum Law Publishing Ibadan, 1999, 65

¹⁹ Section 108 of the PITA

²⁰ Ayua I. A. *Op. cit*

²¹ **Mba V C.I.R.** NTC p. 106; Abdulrazaq M.T., **Nigerian Revenue Law** Malthouse Press Ltd, Lagos 2005,108

²² Abdulrazaq M.T., **Nigerian Revenue Law** Malthouse Press Ltd, Lagos 2005,108

The commencement and cessation provisions of the Personal Income Tax Act, will apply to partners individually as will the provisions relating to relief for losses, capital allowances, will be granted in computing partnership profits, while personal allowances will be calculated in the normal way in respect of each individual partner's share of the net profit²³.

Under section 29 of the PITA, 2004 and upon dissolution of a partnership, a partner will not be treated as ceasing his trade, business, profession or vocation. He will not therefore, normally be able to take advantage of the commencement provisions more than once - i.e. when he first starts his business –unless he is able to form a limited company to carry on the business.

The following are worthy of note about taxation of a partnership firm.

- a. The income of a partnership concern is not taxed. It is the individual partners that are taxed based on the amount that finally comes into their pockets.
- b. It is the tax authority of the place of residence of the individual partners that taxes the individual partners and not the tax authority at the place where the business is carried on.

xiii. Trustees, Executors and Settlements

In the case of income arising to a trustee of any settlement or trust, or to an executor of any estate of a deceased person, it is the state authority where the administration of the trust takes place or where the deceased was last resident, as the case may be, that may impose tax on such income²⁴.

As for trustees and executors, there is no problem since they are taxable persons under the PITA. The problems only arise in relation to settlements, settlors and beneficiaries. The expression “settlement” is defined under the Second Schedule to the PITA to include “any disposition, trust, covenant, agreement, arrangement or transfer of asset²⁵.”

Thus, individual taxpayers who transfer properties to their infant children under a family arrangement will come under this definition. The PITA therefore, deems the income arising from such an arrangement to be income of the settlor or transferor for income tax purposes. If this provision were adopted by the states, it would have gone a long way to minimize tax evasion and tax avoidance. But this has not been done by the states, with the result that the income of a settlor escapes tax in the states of the Federation.

Compulsory Payment of Illegal Taxes

The practice in most states of the Federation is for the Governments to insist that evidence of payment of 3 years Personal Income Tax should be produced by tax payers before that individual can derive any benefit, patronage or approval from government. This rule is applied to residents and non-residents of the state. The most common one is where someone lives in state A and pays his taxes to state A, but purchased a landed property in state B and desires that state B issues him with a certificate of occupancy to the said property. The usual practice is that state B will demand (even after the production of evidence of payment of 5 years tax in the state A), that the person should pay 3 years personal income tax to state B before that certificate of occupancy can be granted.

²³ Abdulrazaq M.T. *Ibid*, 108

²⁴ Section 2(6) PITA

²⁵ Schedule 2, para 8 PITA

This practice is draconian, obnoxious, wrong, illegal and even unconstitutional. The implication is that; the states are insisting that people should pay the same tax twice. This is double taxation.

Item 59 of the Exclusive Legislative List of the 1999 Constitution²⁶ is the basis upon which the National Assembly legislate upon Personal Income Tax amongst other taxes. It is on that basis that the PITA was enacted. Also item D, paragraph 8 of the Concurrent Legislative List of the 1999 Constitution²⁷ states:

Where an Act of the National Assembly provides for the collection of tax or duty on capital gains, incomes or profit or the administration of any law by an authority of a state in accordance with paragraph 7 hereof, it shall regulate the liability of persons to such tax or duty in such manner as to ensure that such tax or duty is not levied on the same person by more than one state.

Further, section 2 of PITA makes it clear that only those resident in the state are liable to taxes of that state except for members of the Armed Forces, Policemen, those living in Federal capital territory and those in Foreign Service who pay tax to the Federal Government through the Federal Inland Revenue Service. Sequel to the foregoing those states that have been collecting such illegal tax from people are perpetrating illegality, breaching the Constitution and ought to return them. Persons who are aggrieved and affected by such assessments and taxations can object and challenge such assessments through the normal channel of objections, challenges and appeals.²⁸ In fact what a non-resident of a State owes a State in which he has a landed property is his tenement rate, if the property is built-up; his annual ground rent (normally stated in the certificate of occupancy) or any other legitimate charge or levy but not personal income tax.

Residence of a Company

In the case of a Nigerian company, the issue may be quite easy, since section 13 (1) of the Companies Income Tax Act (CITA) settles the issue. The section states that:

The profits of a Nigerian company shall be deemed to accrue in Nigeria wherever they have arisen and whether or not they have been “brought into” or “received in” Nigeria.

The import of this phrase is that the expression “brought into” and “received in” which are found in section 9 of CITA are superfluous when the issue has to do with taxation of Nigerian companies. With respect to companies that are not Nigerian companies, sections 13(2) of CITA deals with the issue squarely. Section 13 (2) states:

(2) The profits of a company other than a Nigerian company from any trade or business shall be deemed to be derived from Nigeria-

- a) if that company has a fixed base of business in Nigeria to the extent that the profits is attributable to the fixed base;

²⁶ CFRN, CAP C23 LFN, 2004

²⁷ CFRN, CAP C23 LFN, 2004

²⁸ M.N. Umenweke, “Company Tax Assessment, objections, Protests and Appeals in Nigeria. “2004 **MPJFIL** Vol. 8 Nos 3-4,617

- b) if it does not have such a fixed base in Nigeria but habitually operates a trade or business through a person in Nigeria authorized to conduct on its behalf or on behalf of some others, a controlling interest in it; or habitually maintains a stock of goods or merchandise in Nigeria from which deliveries are regularly made by a person on behalf of the company to the extent that the profit is attributable to the business or trade or activities carried out through that person;
 - c) if that trade or business or activities involves a single contract for surveys deliveries, installations or construction, the profit from that contract; and
 - d) where the trade or business or activities is between the company and another person controlled by it or which has a controlling interest in it and conditions are made or imposed between the company and such person in their commercial or financial relations which in the opinion of the Board is deemed to be artificial or fictitious, so much of the profit adjusted by the Board to reflect arms length transaction.
3. For the purpose of subsection (2)(a) of this section, a fixed base shall not include facilities used solely for the –
- (a) storage or display of goods or merchandise;
 - (b) collection of information.

The present position as contained in section 13 (2) & (3) above, are more detailed and improved than what was contained in the old law under the former section 11(3) which merely stated that:

The profits of a company other than a Nigerian company from any trade or business shall be deemed to be derived from Nigeria to the extent to which such profits are not attributable to any part of the operations of the company carried on outside Nigeria.²⁹

At the risk of repetition, it is pertinent to restate that the expressions “receive in” and “brought into” are merely idle with respect to Nigerian companies when you consider the provisions of section 13(1) of CITA³⁰.

With regards to Non-Nigerian companies, section 13(2)(a) places non-Nigerian companies on the same platform with Nigerian companies if the said Non-Nigerian Company has a fixed base in Nigeria. S. 13 (2)(b) of CITA is meant to capture companies who do not have fixed bases in Nigeria, but “habitually” operate a trade or business through persons authorized to conduct business on their behalf and even maintain a stock of goods or merchandise in Nigeria, from where deliveries are made.

In Offshore International S.A. V. F.B.I.R³¹, the plaintiff was a company incorporated in Panama and having its principal office in Houston. It entered into several contracts to carry out oil drilling operations for different oil companies. Each of the contracts contained a clause to

²⁹ A similar provision is contained in section 6 of the Personal Income Tax Act, Cap P8, Laws of the Federation of Nigeria.

³⁰ This expression does not exist in the Section 3 of PITA, 2004. Section 3 of PITA is the charging provision in the PITA and applies to individuals and unincorporated bodies.

³¹ (Unreported) Suit No. FRC/L/36/75 decided on June 7, 1976 by the Federal Revenue Court, Lagos; See also **Thomas V. Moyse** (1980) 39 T.C. 291.

the effect that the drilling operations would be sub-contracted to International Drilling Company (Nig) Ltd, a wholly owned subsidiary of the plaintiffs, incorporated in Nigeria. The plaintiffs hired out rigs and other equipments to this subsidiary. All the contracts between the plaintiffs and their Nigerian subsidiary were executed outside Nigeria. The plaintiffs sought a declaration that they were not liable to pay tax in Nigeria. The declaration was refused on several grounds, the main one being they entered into contracts to render service in Nigeria. As Omo Eboh J said:

The fact that the plaintiffs chose to perform the oil drilling operations in Nigeria through another company simply shows the mode or means by which the plaintiff adopted to honour their obligations under their contract agreements and does not affect the fact that the plaintiffs are carrying on trade or business in Nigeria as evidenced by the contracts entered into by the plaintiffs to dig oil wells in Nigeria.

The court held that the plaintiffs were under legal obligation to prepare their returns of income as requested by the defendant, Tax board³².

Section 13(2)(c) of CITA seeks to capture the companies who came directly into Nigeria, most of the time, on the invitation of Government to perform sensitive and specialized contracts. These companies by this sub-section are assessable and chargeable to tax. Section 13(2)(d) is a check on non-Nigerian companies that are involved in tax evasion and avoidance by way of arranging artificial transactions between them and closely related companies, persons or cronies.

The artificial transactions are in essence a sham or façade that are meant to cover the original intentions of operators. In this situation, the Board may overlook such artificial or fictitious transactions and dispositions and impose taxes on a fair and reasonable percentage of turn over under section 13 (2)(d) and section 30 of CITA³³. In **Akinshete Syndicate V. Senior Inspector of Taxes (Akure)**³⁴, the appellant had formed a syndicate of four members, including his son, for the purpose of a certain business venture into which he wanted to enter. He assigned his rights in the venture by deed to the syndicate, but at the same time obtained an irrevocable power of attorney from the syndicate for the purpose of the venture. It was held that the profits of the venture were in reality his own profits and he could be personally taxed on them.³⁵

This power can be likened to that existing in section 65(1), (2) and (3) of CITA and section 54 PITA, which gives the relevant tax authority, power to assess on a best of judgment basis in certain circumstances. The Court of Appeal in **Nigeria Breweries PLC V. Lagos State Internal Revenue Board**³⁶, held that even though the Revenue officer can legally make a best of judgment assessment, but that the best of judgment assessment should not be dishonest, vindictive; or capricious. He is expected to make what he honestly believes to be a fair estimate of proper figure of assessment³⁷.

³² M.N. Umenweke, "Understanding Taxation of Companies in Nigeria" July, Oct 2004, **MPJFIL** Vol. 8, Nos 3-4, P. 627; see also **Thomas V. Moyse** (1980) 39 TC. 291

³³ A similar provision is contained in section 7 of the PITA

³⁴ Unreported judgment of the Supreme Court SC/164/67

³⁵ See **Mobil Oil Nig Ltd V FBIR** (1977) 3 SC 53 where the Supreme Court re-emphasized the right of the Board of Inland Revenue (now Federal Inland Revenue Services) to assess where appropriate a fair and reasonable percentage of turnover.

³⁶ (2001) FWLR (Pt 72), 1974

³⁷ M. N. Umenweke, "Checking the incidence of Tax Avoidance and Tax Evasion: A Legal view point" Jan/April 2004 **MPJFIL** Vol. 8 Nos 1-2,308

Basis of Taxes Liability in Nigeria

Section 3 of the Personal Income Tax Act, 2004 creates a liability for individuals and unincorporated bodies to pay taxes in Nigeria. Section 9 of the Companies Income Tax Act, 2004 creates liability for incorporated companies to pay taxes in Nigeria.

Section 3 of the PITA reads as follows:

(1) Subject to the provisions of this Act, tax shall be payable for each year of assessment in the aggregate amounts each of which is the income of every taxable person, for the year, from a source inside or outside Nigeria including, without restricting the generality of the foregoing:-

- (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 gain or profit from employment including gratuities, compensations, bonuses, premiums, benefits other perquisites allowed, given or granted by any person to an employee other than:
 - (i) so much of any sums as may be admitted by the relevant tax authority to represent reimbursement to the employee or, expenses incurred by him in the performance of his duties, and from which it is not intended that, the employee should make any profit or gain;
 - (ii) medical or dental expense incurred by the employee
 - (iii) the cost of any passage to or from Nigeria incurred by the employee.
 - (iv) any sum paid in respect of the maintenance or education of a child if any provision of this Act provides that any sum received by the employee during a year of assessment shall be deducted from the personal reliefs to be granted to him for the next following year;
 - (v) so much of any amount of rent the employee is treated as being in receipt equal to the annual amount deemed to be incurred by the employer under section 4 of this Act;
 - (vi) so much of any amount of rent the employee is treated as having received under the provision of section 5 of this Act;
 - (vii) so much of the amount of rent subsidy or rent allowance paid by ‘the employer, to or on account, for the employee not exceeding ₦100,000.00 Per annum;
 - (viii) the amount not exceeding ₦15,000 per annum paid to an employee as transport allowance.
 - (ix) meal subsidy or meal allowance, subject to a maximum of ₦5,000 per annum;
 - (x) utility allowance of ₦10,000 per annum;
 - (xi) entertainment allowance of ₦6,000 per annum
 - (xii) leave grant, subject to a maximum of ten percent of annual basic salary;
- (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 pension charge or annuity;
- (f) Any profit, gain or other payment not falling within paragraphs (a) to (e) inclusive of this subsection.

(2) For the purpose of this section:

- (a) “**allowance**” includes any sum paid or payable in respect of expenses and any sum put by an employer at the disposal of an employee and paid away by the employee.
- (b) “**income**” includes any’ amount deemed to be income under this Act.

- (c) the gains or profits arising from a right granted to any other person for the use or occupation of property under any lease or assignment thereto being rent paid or expressed to be paid in advance, shall be deemed to accrue to the recipient from day to day over the period for which such rent has been paid. Provided that where the period exceeds five years, the whole of the rent so paid or expenses to be 'paid in advance shall be treated as accruing evenly from day to day over the five years commencing on the first day of that said period.
- (d) "employment" includes, any service, rendered by any person in return for any gains or profits.
- (e) dividend means - . . .
 - (i) in relation to a company not being in the process of being wound up, or liquidated, any profits distributed, whether such profits are of a capital nature or not, including an amount equal to the nominal value of bonus shares, debentures or securities awarded to the shareholder; and
 - (ii) in relation to a company that is being wound up or liquidated any profits distributed, whether in money or money's worth or otherwise other than those of a capital nature earned before or during the winding up or liquidation.

The Companies Income Tax Act (CITA), which was enacted to guide and regulate the taxation of incorporated bodies in Nigeria, in its section 9 states as follows:

Subject to the provisions of this Act, the tax shall for each year of assessment, be payable at the rate specified in subsection (1) of section 40 upon the profits of any company accrued in, derived from, brought into, or received in Nigeria in respect of:

- (a) any trade or business for whatsoever period of time such trade or business may have been carried on;
- (b) rent or any premium arising from a right granted to any other person for the use or occupation of any property, and where any payment on account of such a rent as is mentioned in this paragraph is made before the expiration of the period to which it relates and is included for the purposes of this paragraph in the profits of a company then, so much of the payment as relates to any period beginning with the date on which the payment is made shall be treated for these purposes as accruing to the company proportionately from day to day over the last mentioned period or over the five years, beginning with that date, whichever is the shorter;
- (c) dividends, interests, royalties, discounts, charges or annuities;
- (d) any source of annual profits or gains not falling within the preceding categories;
- (e) any amount deemed to be income or profit under a provision of this decree or, with respect to any benefit arising from a pension or provident fund of the Personal Income Tax Act;
- (f) fees, dues and allowances (whatever paid) for services rendered;
- (g) any amount of profits or gains arising from acquisition and disposal of short-term money instruments like Federal Government Securities, treasury bills, treasury or savings certificates, debenture certificates or treasury bills, treasury or savings certificates, debenture 'certificates or treasury bonds.

Section 3 of the Personal Income Tax Act, 2004 and section 9 of the Companies Income Tax Act, 2004 cited and reproduced above are the charging provisions that exist in the two major tax laws we have in Nigeria. Charging provisions are provisions which create liability to pay taxes upon the tax payers. Section 3 of the Personal Income Tax Act creates the liability upon

the individuals and unincorporated bodies etc to pay taxes to the State Government where they reside or carry on a business as the case may be. Section 9 of the Companies Income Tax Act imposes a liability upon companies incorporated in Nigeria and outside Nigeria to pay taxes upon profits “accruing in” “derived from”, “brought into”, or “received in”, Nigeria...”

It is pertinent to understand that a taxpayer is liable to pay tax to the government only when he is in receipt of an income chargeable. It must be an Income and at the same time be one that is not exempted from taxes by any tax statute. 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. Lord Mac Naughten in **L.C.C. V. Attorney General**³⁸ drew the dividing line between income receipts and other types of receipt when he said “that income tax I may be pardoned for saying so is a tax on income. It is not meant to be a tax on anything else”.

The Law before the Federal Inland Revenue Service (Establishment) Act, No.13 of 2007

Section 1 of the Companies Income Tax Act,³⁹ re- established the Federal Board of Inland Revenue, whose operational arm was to be called and known as the Federal Inland Revenue Service⁴⁰.

Section 3(1) & (3) of CITA which deals with the powers and duties of the Federal Board of Inland Revenue, had this to say:-

- (1) The due administration of this Act and the tax shall be under the care and Management of the Board who may do all such things as may be deemed necessary and expedient for the assessment and collection of the tax and shall account for all amounts so collected in a manner to be prescribed by the minister.
- (2) The Board may sue and be sued in it’s official name...

Section 87 of Personal Income Tax Act,⁴¹ established in each state of the Federation, a State Board of Internal Revenue, whose operational arm was to be known as the State Internal Revenue Service. The State Board of Internal Revenue, among other functions, was to be responsible for ensuring the effectiveness and optimum collection of all taxes and penalties due to the state government under the relevant laws⁴²

Furthermore, section 2 of the Personal Income Tax Act, sets out those liable to pay personal income taxes to the State Board of Internal Revenue. In the case of the personal income taxes of individuals, section 2 (1) & (2) breaks individuals into 2 categories; those that were to pay State Government through the State Board of Internal Revenue, and those that were to pay taxes to the Federal Government through the then Federal Board of Inland Revenue. For a better understanding of the issue, section 2(2) of PITA is hereby re-produced here under:

- (2) In the case of an individual other than an itinerant worker and persons covered under paragraph (b) of subsection (1) of this section, tax for any year of assessment may be imposed only by the state in which the individual is deemed to be resident for that year under the provisions of the first schedule to

³⁸ (1901) 4 T.C 265. These days capital gains are taxed

³⁹ CAP C21 Laws of the Federation, 2004

⁴⁰ As at then, the Federal Inland Revenue Service was merely an arm or even branch of the Federal Board of Inland Revenue

⁴¹ CAP P.8, Laws of the Federation of Nigeria, 2004

⁴² Section 88 of PITA

this Act and in the case of persons referred to in subsection (1) (b) of this section, tax shall be imposed by the Federal Board of Inland Revenue.

From the above, except for those persons listed in section 2(1)(b) of PITA, all other persons pay taxes to the State Governments, where they are resident. Section 2 (1)(b) of the PITA lists the following persons as those who were liable to pay taxes to the Federal Government through the then Federal Board of Inland Revenue:

- i) persons employed in the Nigeria Army, the Nigerian Navy, the Nigerian Airforce, the Nigerian Police other than in a civilian capacity;
- ii) officers of the Nigerian Foreign Service;
- iii) every resident of the Federal Capital Territory, Abuja; and
- iv) a person resident outside Nigeria who derives income or profit from Nigeria.

Aside from individuals, the State Boards of Internal Revenue, was then empowered to collect taxes from itinerant workers, communities, families and trustees.⁴³

Under section 91 of the PITA, the Revenue Committee of the Local Government which had been created by section 90 of the PITA was then empowered to assess and collect all taxes, fines and rates under its jurisdiction and was to account for all amounts so collected in a manner to be prescribed by the Chairman of the Local Government

Aside from the provisions of the PITA, the provisions of section 1(1) of the Taxes and Levies, (Approved List for Collection) Act of 1998⁴⁴ specifically broke down all taxes collectable by the three tiers of Government in Nigeria. Section 1(1) referred to the Schedule to the Act, where this break-down is contained. The said Schedule has three parts. Part 1 contains taxes to be collected by the Federal Government, part II of the Schedule contains taxes to be collected by the State Government and part III of the Schedule contains taxes to be collected by the Local Government. For ease of reference, the 3 parts of the Schedule are hereunder reproduced in extensor:

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 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 Nigeria Police Force.
 - c. Residents of the Federal Capital Territory, Abuja; and
 - d. Staff of the Ministry of Foreign Affairs and non-resident individuals.

⁴³ Section 2(3), (4)(5)&(6) of PITA

⁴⁴ Cap T2, Laws of the Federation of Nigeria, 2004 (hereinafter called the "Taxes and Levies Act")

PART II

Taxes and levies to be collected by the state Governments:

1. Personal Income Tax in respect of-
 - 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 fee in respect of-
 - a. Urban areas as defined by each state, maximum of –
 - i. ₦10,000 for registration; and
 - ii. ₦5,000 per annum for renewal of registration; and
 - b. Rural areas
 - i. ₦2000 for registration; and
 - ii. ₦1,000 per annum for renewal of registration.
8. Development levy (individuals only) not more than ₦100 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.

PART III

Taxes and levies to be collected by the Local Governments:

1. Shops and Kiosks rates,
2. Tenement rates,
3. On and off liquor licence fees,
4. Slaughter slab fees,
5. Marriage, birth and death registration fees,
6. Naming of street registration fee, excluding any street in the state capital,
7. Right of occupancy fees on lands in rural areas, excluding those collectable by the Federal and State Governments,
8. Market taxes and levies excluding any market where state finance is involved,
9. Motor park levies,
10. Domestic animal licence fees,
11. Bicycle, truck, canoe, wheel barrow 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 licenses fees (other than radio and television transmitter.
15. Vehicle radio licenses fees (to be imposed by the local government of the state in which the car is registered),
16. Wrong parking charges,
17. Public conveniences, sewage and refuse disposal fees,
18. Customary burial ground permit fees,
19. Religious places establishment permit fees,
20. Signboard and advertisement permit fees.

Under the Federal Inland Revenue Service (Establishment) Act No 13 of 2007

Section 1(1) of the FIRS Act established the body now known as the Federal Inland Revenue Service. The body by that law was empowered to be a body corporate, with powers to sue and be sued, with perpetual succession and a common seal. It may also acquire, hold or dispose of any property, moveable or immovable for the purposes of carrying out any of its functions under this Act⁴⁵.

The Service shall have such powers and duties as are conferred on it by the FIRS Act or by any other enactment or law on such matters on which the National Assembly has power to make law⁴⁶.

The problematic provision in the FIRS Act is the provision as contained in section 2 of the FIRS Act. The provisions of section 2 of the FIRS Act are reproduced hereunder:

The object of the service shall be to control and administer the taxes and laws specified in the first schedule or other laws made or to be made from time to time, by the National Assembly or other regulations made thereto by the Government of the Federation and to account for all taxes collected.

For a comprehensive appraisal of the issue and problems arising therefrom, it is necessary to reproduce the provisions of the First Schedule of the FIRS Act:

Legislations Administered by the Service

1. Companies Income Tax Act, Cap 60 LFN, 1990
2. Petroleum Profits Tax Act, Cap 354 LFN, 1990
3. Personal Income Tax Act No. 104, 1993
4. Capital Gains Tax Act, Cap C1, LFN 2004
5. Value Added Tax Act, Cap VI, LFN 2004
6. Stamp Duty Act Cap.58 LFN
7. Taxes and Levies (Approved List of Collection) Act 1998, No.2
8. All regulations, proclamations, Government notices or rules issued in terms of this legislation
9. Any other law for the assessment, collection and accounting of revenue accruable to the Government of the Federation as may be made by the National Assembly from time to time or regulation incidental to those laws, conferring any power, duty and obligation on the service.
10. Enactment or laws imposing Taxes and Levies within the Federal Capital Territory.
11. Enactment or laws imposing collection of taxes, fees and levies collected by other Government agencies and companies including signature bonuses, pipeline fees, penalty for gas flared, depot levies and licenses, fees for Oil Exploration License (OEL), Oil Mining License (OML), Oil Production License (OPC), royalties, rents (productive and non-productive), fees for licenses to operate drilling rigs, fee for oil pipeline licenses, haulage fees and all such fees prevalent in the oil industry but not limited to the above listed.

Section 25 of the FIRS Act reiterates the position of the Act in section 2 but now comes with the proviso that:

⁴⁵ Section 1(2)(a)(b) &(c) of the FIRS Act, 2007

⁴⁶ Section 1 (3) of the FIRS Act, 2007

The service may with the approval of the minister by instrument published in the Federal Gazette, appoint any Government agency to collect revenue⁴⁷.

The Impact of the FIRS Act on the Nigerian Tax Regime

The first issue here is to ascertain the effect of section 2 and 25 of the FIRS Act on the one hand and the afore-mentioned provisions of the Personal Income Tax Act and the Taxes and Levies Act on the other hand, which are obviously in conflict with each other. They are in conflict because the said section 2 and 88 and 91 of PITA empower the various State Boards of Internal Revenue and Revenue Committee of the Local Government⁴⁸ to collect taxes that are within their domain. Again, section 1 (1) of the Taxes and Levies Act specifically breaks down those taxes, collectable by the three tiers of Government in Nigeria. The obvious implications of section 2 and 25 of the FIRS Act is that assessment and collection of these taxes now lies within the exclusive purview of the Federal Inland Revenue Service. Section 68 of the FIRS Act apparently clarified the issue beyond any doubts when it stated in its subsection 2 that;

- (2) If the provisions of any 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 provisions of that other law shall to the extent of the inconsistency be void⁴⁹.

By virtue of section 68 of the FIRS Act therefore, the provisions of sections 2,88 and 91 of the PITA are void. The Taxes and Levies Act, along with the Schedule to the Act are also void⁵⁰.

The Legality of the State Boards of Internal Revenue and Local Government Revenue Committee's Continued Collection of the Taxes as Contained in the PITA and the Taxes and Levies Act.

In **Knight, Frank & Rutley V.A.G. (Kano State)**⁵¹ the issue was whether State Governments had concurrent competence with Local Government Council to embark on property assessments designed eventually to lead to rate collections?

The Supreme Court per Wali JSC said:⁵²

The power to assess rates on privately owned houses or tenements for the purpose of levying such rate is within the exclusive statutory power of each Local Government as

⁴⁷ Section 25 (2) FIRS ACT, 2007

⁴⁸ S. 7 (5) and the Fourth Schedule, CFRN 1999, even makes collection of Revenue by Local Government a Constitutional matter and therefore ultra vires the FIRS Act.

⁴⁹ Section 68 (2) FIRS Act **Lakanmi V AG(West) & Others** (1971) IUILR,201, **AG Ogun State V AG Federation** (1982) 3 NCLR **Peenok Investment Ltd V Hotel Presidential Ltd** (1982) 12 SC,1

⁵⁰ The provision which is saved from this nullity effect is part 1 of the schedule which provides for the collection of certain taxes by the Federal Inland Revenue service. This is not in conflict with the FIRS Act of 2007. **NPASF V FASEL Service Ltd** (2002) FWLR (Pt. 97) 719 at 736, paras A-B, **Abacha V. Fawehinmi** (2000) FWLR(pt 4)533 at 600: Even though section 68 of the FIRS Act did not expressly repeal sections 2, 88,91 of the PITA, there is a repeal of those sections by implication. In **Chairman Moro LG V Lawal** (2008) All FWLR (pt 440)684 at 727 para C-E) the court said: "generally, a statute is definite as to what it repeals by its enactment; and a schedule may recite the existing law repealed. The courts in the performance of their functions as interpreters of the law usually lean against implying the repeal of law by implication. However, where the provisions of the two Acts are so plainly repugnant, one to the other provision, and demand inconsistent conclusion that effect cannot be given to both at the same time, a repeal of the earlier provision of the law by implication is inevitable". This is the situation in this case

⁵¹ (1998) 7 NWLR (Pt 556) 1-37

⁵² *ibid* at 209

conferred on it by section 7(5) of 1979 Constitution and paragraphs 1(b) and (j) of the Fourth Schedule ...⁵³

In Knight, Frank case, Uwais CJN also said that: “only Local Government Councils have the power to assess and impose on privately owned property”.⁵⁴

In this case, the government of Kano state signed a contract with two firms of accountants. The agreement was to take retrospective effect from 1980 and required these accountants to provide consultancy and training services for the evaluation of specified tenements in and around Kano metropolis for the purpose of fixing of rates thereon. Part of the consultancy fees was paid upfront but after the consultants had done part of the work, Kano state terminated the agreement.

The reasoning of the State Government was that the assessment /evaluation of tenements for property rating was a matter exclusively within the jurisdiction of the relevant Local Government Council. The termination of the contract took place after the 1979 Constitution had been subverted in Nigeria and replaced on 1st January, 1984 with Military rule.

The trial judge, Saka Yusuf, concluded that by virtue of section 7(5) and the Fourth Schedule of the 1979 Constitution along with the provision of the 1977 Local Government Edict of Kano State⁵⁵ that it was only the Local Government authorities that could execute the sort of contract the State Government had in this case entered.⁵⁶

The Court of Appeal unanimously affirmed the decision and by a majority of four to one, the Supreme Court upheld the views of the two lower courts. It held that the functions assigned by the 1979 Constitution to the Local Government Councils under the Fourth Schedule were functions only they could exercise. The Court thus, held that since rating and assessment of private houses or tenements for the purpose of levying of rates was one of the said Local Government Councils’ functions both in the Constitution and under Kano State Legislation, that the present agreement by which the state Government contracted the services of the two accounting firms to execute that responsibility was an exercise *ultra vires* their powers. Consequently, it was held unconstitutional, null, void and of no effect. The Court was not moved by the fact that the contract had been part performed by both sides. The Court was less impressed by the fact that section 7 (5) of the 1979 Constitution had long since been suspended with effect from 1st January 1984, that is, nearly four years before Kano State unilaterally determined the contract on 9th December, 1987.⁵⁷

By the **Knight, Frank & Rutley** decision therefore, the Supreme Court had legally established the proposition that there was competence in the Local Government Council to impose and collect tax under the 1979 (and thus impliedly also, under the 1999 Nigerian Constitution) and that no other tier of Government could interfere with this power and function of the Local

⁵³ Section 7(5)1999 Constitution and paragraph 1 (b)and (i) of the Fourth Schedule, 1979 Constitution are identical with the same section and paragraph of the 1999 Constitution.

⁵⁴ *ibid*; at 19 B

⁵⁵ Edict No. 5 of 1977

⁵⁶ R.A.C.E. Achara, “Can Nigeria Local Government Councils Autonomously Impose Rates?” **Journal of African Law**, Vol.47 No.2,2003,221 at 225

⁵⁷ R.A.C.E Achara *Ibid* 225

Government Council found in section 7(5) of the 1999 Constitution and paragraph 1(b) and (j) to the Fourth Schedule to 1999 Consitution.⁵⁸

It is further submitted that any of the tiers of Government that makes a tax assessment for a tax it does not have power to collect, contrary to the relevant provisions of 1999 Constitution that tier of Government makes the tax assessment without jurisdiction and that assessment is null, void, and of no effect and the tax payer is entitled to have the assessment quashed.⁵⁹

At first glance one might be led to say that as the FIRS Act comes after the Constitution in tax matters, the import of this decision is that the present taxes being collected by the State and Local Government councils contrary to the FIRS Act is illegal and is done without jurisdiction. That it is in fact an act of illegality because as at today the FIRS Act is the number one Tax Law in the country and any other tax law inconsistent with it is null and void.

If that is the position then the issue of residence therefore becomes no more relevant under this FIRS Act when the issue is the assessment and collection of personal income tax. On the issue of company taxes, the FIRS have always been in charge of collecting it, so considering the state of residence of the company is not material. Residence is relevant for personal income tax and company when the issue is the determination of whether the taxpayer is liable to pay taxes to the tax authority in Nigeria, or to the Government of another country.

Accordingly, it may be argued that all the taxes presently being collected by the State Governments and the Local Government Councils pursuant to the Taxes and Levies (Approved List for collection) Act and the Personal Income Tax Act, are illegal and offends the aforesaid relevant sections of the FIRS Act, since the Federal Inland Revenue Service has not delegated the collection of such taxes and published the said delegations in the Federal Government Gazette.

However, the FIRS Act is not the grundnorm of the Federation of Nigeria and therefore it has not the final word on the matter. Accordingly, it may be necessary to examine the constitutionality or otherwise of certain provisions of the FIRS Act. Accordingly, in as much as it purports to abrogate the functions expressly granted the Local Government Council under Section 7(5) and the Fourth Schedule of the Constitution⁶⁰ the FIRS Act is null, void and of no effect. Secondly given the facts that:

- (i) the FIRS Act did not expressly repeal the PITA and Taxes and Levies (Approved List for Collection), Act;
- (ii) Nigeria is a federation of states and any legislation that purports to negate that fact is defective and suspect;

⁵⁸ Achara RACE *ibid.* 227; Similarly, in **Bamidele V Commissioner for Local Government and Community Dev. (Lagos State) anor** (1994) 2NWLR (Pt.328) 568, Lagos State imposed market stallage fees. The Court held this imposition to be a usurpation of allegedly exclusive Local Government functions. But in **Shell Petroleum V Burutu LGC** (2000) 1NRLR 1, esp. at 24, the Court of Appeal, decided, having regard to item D9 of the Concurrent Legislative List, that the LGC's rating power was not for imposition but merely for collection of rates.

⁵⁹ See **FBIR V Rezcallah** (1962) 1 ALL NLR. 1 (SC); **Okupe V FBIR** (1974) 1 All NLR 314 (SC) . In the Okupe case, both certiorari and prohibition were granted in the case of an assessment made without jurisdiction

⁶⁰ 1 CFRN, 1999

- (iii) the quasi-democratic regime which birthed the FIRS Act is reputed to be a garrison and totalitarian one, very averse to the golden principles of rule of law and federalism.
- (iv) the onerous nature of the task of collection of personal Income Tax in Nigeria coupled with paucity of personal and machinery for that purpose both at the National and State level, making it obvious that FIRS cannot shoulder the responsibility of the collection of all taxes for all tiers of government in Nigeria.
- (v) tax evasion and avoidance is the norm rather than the exception in Nigeria.⁶¹
- (vi) the FIRS Act did not provide for the mode of sharing of the revenue from personal income tax and other taxes as it ought to have done if states and the local Government Councils are no longer meant to collect the respective taxes allotted to them under the law.⁶²

It is therefore our considered view that the FIRS Act was not meant to touch or effect the operation of the PITA and the Taxes and levies (Approved List for Collection) Act. The FIRS Act only serves the purposes of giving birth to the FIRS and to streamline its function and that of its Management Board with regard to Federal Revenue and nothing more.⁶³

Accordingly, the issue of residence is still relevant in Nigeria taxation. These legislations the FIRS Act, PITA and Taxes and Levies (Approved list for collection) Act are, in our view, to operate concurrently under the constitution of the Federal Republic of Nigeria. Anything to the contrary from either the FIRS or its operators or the Federal Government may bring up the issue of the constitutionality or otherwise of FIRS. This is because any of the two tiers - the State or the Local Government Council may go to court to seek declaration as to the constitutionality or otherwise of the FIRS Act.

Therefore, it is our view that the FIRS Act should be strictly interpreted to mean that the operation or administration of PITA and Taxes and Levies (Approved List for Collection) Act by the FIRS shall only be with regard to revenues accruable to the Government of the Federation and for matters related thereto. It is our further view that for the avoidance of doubts, this should be clearly provided for in any future amendment to the FIRS Act.

Conclusion and Recommendations

There was the urgent need to have a streamlined mode of tax collection in Nigeria. That need was addressed by the Taxes and Levies (Approved List for Collection) Act, which apportioned to each tier of Government, the taxes collectable by it. The aim of that Act has been defeated by the express provisions of the FIRS Act. The letters of the FIRS Act now grants the Federal Inland Revenue Service the onerous task of collecting all taxes in Nigeria. The task is rather too unwieldy, cumbersome and would naturally come with problems of tax assessment and

⁶¹ An average Nigerian believes he doesn't have to pay tax unless he is compelled by circumstances to do so. In fact the only group that pay tax regularly in Nigeria are those operating PAYE, who pay more or less by compulsion. The government aid this state of affairs by provision of very weak collecting and enforcement institution

⁶² . Section 40, Value Added Tax Act CAP VI LFN, 2004, expressly made such provision with regard to VAT showing that the FIRS is the only authority meant to collect VAT in Nigeria

⁶³ This is buttressed by the provision of the long title to the FIRS Act, to wit: An Act to provide for the establishment of the Federal Inland Revenue Service charged with the powers of assessment, collection of, and accounting for revenues accruable to the Government of the Federation and for matters related thereto.

collections. In fact, it will not be far from the truth to say that the FIRS cannot as presently constituted shoulder that responsibility and there have not even been any attempt by the FIRS to commence collection or stop the states from collecting the said taxes throughout the Federation since 2007.

There is therefore the urgent need to have a second look at the FIRS Act.

It is strongly recommended that the relevant aforementioned sections that have apparently empowered the Federal Inland Revenue Service to collect all those taxes formerly being collected by the States Boards and Local Government Revenue Committees should be repealed. These sections give too much power to Federal Inland Revenue Service and can be seriously abused. If they are not repealed, the powers that be, that have influence and are in control of the Federal Inland Revenue Service may decide to starve a State Government or Local Government councils of taxes if the state or Local Government is at crossroads with them.

The centralization of the tax collection offends the principles of Federalism. The decentralization of payment of personal income tax will make the concept of residence more relevant within our tax regime.

Thirdly, abrogation of the powers apparently or impliedly granted the State or Local Government by the constitution of the Federation through an Act of the National Assembly as the FIRS Act has done is a serious matter that could lead to serious constitutional and legal imbroglio and war between the tiers of government and ought to be avoided by all means and by a review of the FIRS Act as is appropriate. Finally, if the real intendment of the Act is that the FIRS should now collect all taxes in the Federation, in as much as such policy is bad and averse to be principles of Federalism, then the FIRS Act should be amended to provide sharing formula for the proceeds from all the taxes to be collected by the FIRS as was done with the Value Added Tax, until that is done the FIRS cannot validly usurp the functions of the State or even that of the Local Government Council vis-à-viz assessment and collection of taxes in Nigeria.