

TAX OFFENCES: CLOGS IN THE WHEEL OF PROGRESS AND DEVELOPMENT OF NIGERIA AS A NATION*

Abstract

The jurisprudence of this paper is on the examination of criminality in tax offences and the effects of same on Nigerian as a nation. In doing this, the paper examines what constitute an offence, categories as well as penalty attached there to under the Nigerian Tax Law. The paper also discusses the synergy between tax compliance and economic development of a Nation. In the final analysis, the paper argues that non-compliance to the payment of tax is an act of sabotage; outlines some of the negative effects of such act and proffers some workable solutions in form of recommendations.

Keywords: *Appraisal, Nature and Effects, Nigeria, Nation*

1. Introduction

Tax offence is a dangerous phenomenon that has constituted itself into a global monster against the developmental efforts of most developing nations of the world, Nigeria inclusive. Vast percentage of useful revenue is constantly lost to tax criminality on daily basis. In Nigeria today, despite the availability of an array of weapons at the disposal of the tax authorities begging to be used to check tax offences, many tax offences and criminality are still being committed daily through series of evasive strategies.

Tax offences comprises of both civil and criminal vices. Under the Nigeria tax laws, while some of the tax offences are serious and attracts severe punishment, others are mild and less severe and thus, they attract only fines in monetary terms. It is worthy of note however, that, the Nigerian tax law empowers tax authority to use both civil as well as criminal sanctions to ensure and enforce tax compliance. Unfortunately, adequate use of these powers by the tax authorities is rarely made in Nigeria to secure tax compliance.¹The reason for non-disposition of tax authorities to the use of the so call ‘weapons of compliance’ may be because the tax authority are more interested in revenue than ensuring punishment, thus, the tax authorities are ready to compound any tax offences since same is allowed under the Nigerian tax law². The negative effect of this act however is the increase in the number of tax criminality and offences which now serves clogs in the developmental effort of the Nigerian government.

Structured into six sections, the next section discusses the definition, categories and constituents of offences in taxation. In section three, the paper focuses on the synergy between tax compliance and economic development, while in section four, the paper examines some severe offences and penalties

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¹ M. T. Abdulrazaq, *Nigerian Tax Offences and Penalties* (Batay Law Publications Ltd, Ilorin,1993),p.37

² See Section 48(1) FIIRS Act 2007, see also Sec 94(2) CITA Cap LFN 2004

under the Nigerian tax laws. The effects of non-compliance in taxation are outline in section five, while the paper ends in the sixth section with conclusion and recommendations.

2. Definition, Categories and Constituents of Offences in Taxation

2.1 What is An Offence?

Generally, an offence is the violation of any law, regulation or legislation. Anyone who is a party to doing any act which amounts to or results in, or forms part of a series of facts which together amount to or will result in something which is unlawful, is guilty of an offence. An offence according to Hornby³ is ‘an illegal act.’ What Sheila⁴ said of offence is that, an ‘an offence is synonymous to crime’ and a crime is ‘an act, default or conduct prejudice to the community, the commission of which by law renders the person responsible liable to punishment by fine or imprisonment in special proceedings normally instituted by officers in the service of the crown’⁵ An offence may be minor or major in nature. A serious offence attracts severe punishment. The severity of an offence will certainly influence the granting of bail to such an offender. Unlike the Nigerian tax Act that empowers the tax authority to compound any tax offence, under the tax Act,⁶ in the Nigerian criminal justice system, any criminal offence that attract more than three years imprisonment cannot be compounded and such offences are not ordinarily bailable. Even though, the issue of bail is purely a discretionary power of the court, ‘a person accused of an offence punishable with imprisonment for a term exceeding three years shall not ordinarily be release on bail....’⁷ However, to secure bail for an accused person in such instance, the Criminal Procedure Code⁸ stipulates special requirements that the accused person must satisfy.⁹ The tax authority’s power to compound any tax offence therefore could be seen as a clear departure from the standard requirement and treatment of criminal offence under the Nigerian law. The definition of offence given in the Black’s Law Dictionary¹⁰ looks more apt in relation to taxation. An offence according to the reference book is ‘a violation of law; a crime, often minor one.’

From all these definitions, an offence can therefore be said to be an act forbidden by the state and which if committed will attract punishment. Tax offence therefore is an offence committed in relation to taxation. Such an offence may be in the area of tax compliance, tax administrative vices or negligence on the part of tax enforcement by the tax authority. Both taxpayers as well as tax authority can commit tax offence. In short, tax offence is simply tax criminality that the law will sanction.

Severe tax criminality is an offence against the state which could attract prosecution by the state judicial machineries and which could lead to imprisonment if found guilty. A mild tax criminality on the other hand is a civil aspect of tax offences that attracts only payment of fines in term of monetary payment. In Nigeria, tax authorities are empowered to deal with both mild and severe tax offences. In nut shell,

³ A. S. Hornby, *Oxford Advanced Learner’s Dictionary of Current English, International Student Edition* (7th edn, Oxford University Press, 2005), p.1011

⁴ S. Borne (ed.) *Osborn’s Concise Law Dictionary* (19th edn. Sweet and Maxwell, 2001),p. 271

⁵ Ibid, p. 116

⁶ See Section 48(1) FIRS Act, 2007. Similar provision is in section 94(2) Companies Income Tax Act CAP C21 LFN 2004(as amended)

⁷ Section 341 (2) Criminal Procedure Code

⁸ ibid

⁹ What the accused person must satisfy to be granted bail in respect of a non-bailable offence upon application which must be supported with sworn affidavit as stated in section 341(2) are: a) that by any reason of the granting of bail the proper investigation of the offence would not be prejudiced; and b) that no serious risk of the accused escaping from justice be occasioned; and c) that no grounds exist for believing that the accused, if released would commit an offence.

¹⁰ B. D. Garner (ed), *Black’s Law Dictionary* (7th edn. West Group, St. Paul, Minn 1999), p.1108

the Nigerian tax law empowers tax authority to use both civil as well as criminal sanctions to ensure and enforce tax compliance. In fact, a tax authority can prosecute tax offences even in its name¹¹.

2.2 Categories of Tax Offences

As earlier said, the severity of an offence will determine the class or classes it belong. A pure criminal offence attracts state sanction in form of jail term as well as money payment while a mild offence attract civil or administrative sanction in form of money payment and a time reprimand. Interestingly, we have all these categories of offences under the Nigerian tax system. It is however important to note that under the Nigeria judicial system, an administrative body lack jurisdiction to try criminal offence.¹² Similarly, a criminal offence can only be punished and treated as such if it is declared as such under any written law in Nigeria.¹³ Serious tax offences are the offences that when an err taxpayer or tax authority commits attracts both jail term as well as payment of fine after conviction. Mild or minor tax offences are the tax offences that when committed, the erring taxpayer only gets light punishment such as payment of fine or a time reprimand. Such offences do not attract jail term.

2.3 Constituents of Tax Offences

Most, if not all these offences under the Nigerian Tax Law is one form of tax evasion or another. Evasion according to Oxford Advanced Learner's Dictionary¹⁴ is 'The Act of avoiding somebody or of avoiding something that you are supposed to do'. Abdulrazaq¹⁵ defines tax evasion as, 'a contravention of the tax laws whereby a taxable individual or company neglects to pay the tax due, or reduces the tax liability by making fraudulent or untrue claims on the income tax form'. Tax evasion according to Ayua¹⁶ is the failure to pay one's tax or the reduction of one's tax liability though illegal or fraudulent returns or failure to make a return or even failure to pay tax on time. In the words of Nlerum¹⁷ tax evasion can be describe as the failure to pay one's tax or the reduction of one's tax liability through illegal or fraudulent returns. In Nigeria, the incidences of tax evasion are manifested by the glaring fraudulent concealment of income through false entries and failure to keep records of accounts. Tax is evaded through different methods, amongst which according to Lekan *et al*¹⁸ are:

- i. Refusing to register with the relevant tax authority.
- ii. Failure to furnish a return, statement or information or keep records required.
- iii. Making an incorrect return by omitting or understanding any income liable to tax refusing or neglecting to pay tax.
- iv. Over standing of expenses so as to reduce taxable profit or income which will also lead to payment of less tax than otherwise have been paid.
- v. A tax payer hides away totally without without any tax returns at all.

¹¹ See, *Unipetrol Nigeria Plc v. Edo State Board of Inland Revenue* (2006) 8 NWLR (pt. 983) 624

¹²This was the decision in the case of *Garba v. University of Maiduguri* (1986) 1 NWLR (pt 18) 550. Similar position was held in *Federal Civil Service v. Laoye* (1989) 2 NWLR (pt 106) 652.

¹³ See section 36(12) Constitution of the Federal Republic of Nigeria, 2011. See the same position was affirmed in the cases of *Aoko v. Fagbemi* (1961)1 ALL NLR 400, *Ekwuasi v. DPP Lagos State & Ors* (1999) 3 NWLR (pt 593) 31 and *Udokwu v. Onugha* (1963)7 E.N.L.R 1

¹⁴ Oxford Advanced Learner's Dictionary, International Student's Edition- 7th Edition

¹⁵ M. T. Abulrazaq, *Nigerian Tax Offences and Penalties* (Batay Law Publications Ltd. Ilorin Nigeria, 1993), p. 2.

¹⁶ I. A. Ayua, *The Nigerian Tax Law* (Lagos, Spectrum Law Series, 1996) p. 43

¹⁷ F. E. Nlerum, 'Taxation in Nigeria: Matter arising' in Ikenna O (eds) Apogee Journal of Business, Property & Constitutional Law, Vol. 1, No 4 (Lagos, Apogee Publishments Ltd, 2010), p.22

¹⁸ S. Lekan & O. Sunday, *Taxation: Principles and Practice in Nigeria* (Ibadan Silicon Publishing Company, 2006) p.42

In a nutshell tax evasion is perpetuated if the tax payer fails to make return for income tax or capital gain tax or if he fails to make return for cooperative tax, and if he makes incorrect return or accounts. And the various acts must be done with fraud, willful default or neglect and knowingly for them to constitute the offence of tax evasion as contained in companies income tax act (CITA) and Personal Income Tax Act (PITA). Other forms of tax evasion according to Abdulrazaq¹⁹ are:

- i. Failure to furnish a return statement or information or to keep record required as contained in P.I.T.A 1961, s.54, CITA 1979, s.66, I.T.M.A 1961, s.30.
- ii. Making an incorrect return by omitting or understating any income liable to tax as contained in P.I.T.A 1961, s.55, CITA 1979, s.67.
- iii. Giving any incorrect information in relation to any matter or thing affecting the liability to tax as written in P.I.T.A 1961, s.55, CITA 1979, s.67.
- iv. Refusing or neglecting to pay as written in P.I.T.A 1961, s.56, CITA 1979, s.68.

Tax evasion and other categories of tax offences is becoming worrisome issue in Nigeria, and despite series of effort to curb and or eliminate the problems, it is disheartening to note that the problems still persist. Most Nigerian taxpayers are not willing to pay their tax voluntarily. Cases of both legal and illegal means of escaping the payment of tax are still on the high side in Nigeria. Both corporate and private individual are culprit when it comes to the issue of nonpayment of tax²⁰.

3. Synergy between Tax Compliance and Economic Development

Tax as a paraphernalia of Nation-building is slow and complex but is now increasingly recognized as the necessary mechanism for engineering an effective socio-economic development. An effective state requires a social contract between a ruling elite and its population, based on a political settlement that allows the elite to collect taxes without excessive coercion in return for delivering basic security and essential public goods. The state-building approach to taxation, therefore, recognizes tax as one of the few core capabilities that any state needs in order to function effectively²¹. Globally, the world is now focusing on employing taxation not only as modifier in an inflation-ridden economy but also a measure of access and control of informal businesses that dominate developing economies of the world²². The fact is that these informal activities collectively have a large share of gross national product sprayed in piece-meal manner in the streets, market places and some times, even in our houses. The more effective and functional the tax system is, the stronger the capability, prosperity and legitimacy of such tax. This insight according to Usman²³ *et al* is not new: Aristotle and Confucius both noted that a prosperous and politically stable society required a political leadership and administration funded through fair and effective tax systems.

The ‘fiscal social contract is a key factor in delivering both political legitimacy and sustainable economic growth a stable, transparent, even-handed tax system is perceived by investors as a sign of

¹⁹ Abdulrazaq, *Principles and Practice of Nigerian Tax Planning and Management* (Ilorin, Batay Law Publishing Limited, 1993), p.3

²⁰ See ‘Tax Evasion and Avoidance in Nigeria’ <https://nialsng.wordpress.com/2015/05/13/tax-evasion-and-avoidance-in-nigeria/>

²¹ Usman Sani Kofar Wambai, Bilyaminu Yusuf Hanga, and Modibbo Adama ‘Taxation and Societal Development in Nigeria: Tackling Kano’s Hidden Economy’ *International Journal of Academic Research in Business and Social Sciences* March 2013, Vol. 3, No. 3, p.113. See also, S.M. Olokooba, A. Muritala, and H.I Adebowale, ‘Peace Security and other Developmental Problems: Taxation as the Light at the end of the Tunnel’, *KIU Journal of Humanities*, Uganda, Vol. 2(1)2017, p.54

²² *ibid*

²³ *ibid*

established 'rule of law'. In other words, tax is a key indicator of an institutionalized framework of political stability and fairness²⁴. Governments should concentrate on establishing simple, predictable, neutral tax systems as analyzed by Adam Smith.

Though, Nigeria's enormous endowments of natural and human resources are never being doubted but the challenges confronting her economy due to tax criminality are diverse and enormous. Majority of companies as well as individuals are not willing to pay their taxes. Issue of tax evasion is as serious as other societal ill facing Nigeria as a country today. Due to tax criminality, Nigeria just like other developing countries has a very low tax to GDP ratio. Unfortunately, the oil revenue which accounts for about 80 percent of government revenue in the past has also drastically decrees due to the precarious world oil market situation. Thus, the large size of Nigeria's tax gap suggests that increasing the country's tax effort in an equitable and efficient way requires reforms of both tax policy, law and tax administration.

Historically, since the discovery of oil, Nigerian economy relied heavily on the revenue derived from petroleum products, as it provide 70% of government revenue and about 95% of foreign exchange earnings.²⁵ The magnitude of problems associated with overreliance on crude oil economy is unimaginable because, it breeds corruption, tribalism, nepotism and series of economically-induced conflicts, *coup d'etat*, malnutrition, starvation, economic upheaval and decline in moral decadence²⁶. Apart from the fact that taxes provide the money that makes it possible for government to function, it also has some other economic significances to wit, the provision of employment, satisfactory rates of economic growth, and stability of money supply in any economy²⁷. The economic goals of taxation are achieved by raising or lowering tax rates. The fewer taxes people pay, the more they have for their personal use. Conversely, the more taxes they pay, the less money they have available for themselves. All these have a direct impact on economy of a Nation²⁸. Furthermore, tax can serve as a regulatory mechanism to control and regulate various forms of business activities. For instance, alcoholic beverages and tobacco may be taxed heavily on the grounds that their use is hazardous to the health of individuals. Such revenue, often called a 'sin tax', is in fact a penalty paid by the users of the substance. Similarly, Government can control private consumption, especially of imported goods, by increasing customs tariffs but where there is an increase in taxation on personal income, it may result in a decrease in private savings without affecting the level of consumption²⁹.

Tax can also be used for redistribution of wealth. The purpose of income redistribution is to lessen the inequalities of wealth in society. This is done through what is called a system of transfer payments. The effect of the system is to transfer money from those who have a good deal of it to those who have very little. Governments require revenue to augment the spending needs to maintain an adequate level of public investment and social services. Taxes are the main source of raising revenue in both developed and developing countries.³⁰ However, to achieve this, tax compliance is of essence. It is only when

²⁴ *ibid*

²⁵ J. O. Onyemaechi, 'Economics Implications of Petroleum Policies In Nigeria: An Overview', *American International of Contemporary Research*, (2012)2(5), p.61

²⁶ S. M. Olokooba and R. Suliat, 'Managing Conflicts and Other Challenges of Nationhood in Nigeria: Experimenting with Good Taxing System as a Paraphernalia', *AlHikmah Law Journal* 1(1) 2015, p.224.

²⁷ Olokooba et al, *op. cit.*, (n. 21) p.55

²⁸ *ibid*

²⁹ *ibid*

³⁰ J. Aizenman and Y. Jinjarak, 'The Collection Efficiency of the Value Added Tax: Theory and International Evidence'. *The Journal of International Trade & Economic Development*, (2008)17(3), 391-410. See also A.

taxpayer paid their taxes as at when due that such fund will be used to provide both social, economic and infrastructure needs of a Nation. Failure to pay tax is an offence.

4. Overview of Severe Offences and Penalties under the Nigerian Tax Laws

Failure to Deduct or Remit Tax

It is an offence under the Act for any person who is obliged to deduct any tax under the Act or the laws listed in the First Schedule to the Act,³¹ to fail to deduct, or having deducted to fail to remit to the Service within 30 days.³² That person upon conviction, shall be liable to pay the tax withheld or not remitted in addition to a penalty of 10 percent of the tax withheld or not remitted per annum, and interest at the prevailing Central Bank of Nigeria minimum rediscount rate and imprisonment for a period of not more than three years.³³ The Minimum Rediscount Rate (MRRR) is the official interest rate of CBN, which anchors all other interest rate in the money market and the economy. The current policy rate in Nigeria is 12 percent. It is important to note that the penalties under Section 40 of the Act are not optional, but run concurrently. However, even though we have all these laws in writing, the question is how many Nigerians have been visited with the full weight of these laws. In the case of *Seven Up Bottling Co. Plc v Lagos State Board of Internal Revenue*,³⁴ the court inter alia stated the law when there is failure to remit or deduct tax. In June, 2012, the FIRS arrested the Managing Director of Air Nigeria, Mr. Kife Kahssaye, for alleged failure to remit taxes amounting to N4,868, 496,152.00 billion. The tax enforcement drive led by an Assistant Director in charge of Debt Enforcement and Special

Saeed & S. A. Sheikh, 'Tax Reforms in Pakistan'. *International Journal of Business and Social Science*, (2011)2(20), 2011, 187-194.

³¹ Laws or Legislation Administered by the Service listed in the First Schedule to the Act are: Companies Income Tax Act Cap. C21, LFN, 2004; Petroleum Profits Tax Act Cap P13 LFN, 2004; Personal Income Tax Act Cap. P8, LFN, 2004; Capital Gains Tax Act Cap C1, LFN, 2004; Value Added Tax Act, Cap V1, LFN, 2004; Stamp Duty Act Cap. 58, LFN, 2008; Taxes and Levies Approved List for collection Act, Cap T2, LFN, 2004; All regulations, proclamation, government notices or rules issued in terms of these regulations; 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; Enactment or laws imposing Taxes and Levies within the Federal Capital Territory; Enactment or laws imposing collection of taxes, fees and levies collected by other government agencies and companies including signature bonus, pipeline fees, penalty for gas flared, depot levies and licenses fees for Oil Exploration License (OEL), Oil Mining License (OML), Oil Production License (OPL), royalties, rents, productive and non-productive, fees for licenses to operate drilling rigs, fees for oil pipeline licenses, haulage fees and all such fees prevalent in the oil industry but not limited to the above listed.

³² 30 days from the date the amount was deducted or the time the duty to deduct arose.

³³ Section 40 FIRSEA, 2007

³⁴ (1998) 7 NWLR Pt. 556, AT 37. By letter dated 1 December 2000, the Lagos State Government informed Nigerian Bottling Company Plc of the reintroduction of sales tax in Lagos State adding that 'the tax rate shall be 5% flat on Goods/Services produced in or brought into the State', and advised NBC to obtain sales tax forms for registration as a collector of sales tax. As a result of the alleged failure or refusal of NBC to obtain the tax forms, LSBIR purportedly under section 6 of the Sales Tax Law, made an estimate of the sum due from NBC as sales tax for the period between and including December 2000 and January – May 2001 to be in the sum of N231, 500.00 plus a 5% penalty of N11,575,000 assessed on the estimated sum. LSBIR thereafter raised a notice of assessment dated 12 July 2001 in the sum of N243,075,000 being the estimated sales tax and interest and served it on NBC on 31 December 2001. On receipt of the said notice of assessment, NBC did not pay the stated sum but filed a notice of objection dated 30 July 2001 on the ground that the legality of the Sales Tax Law was the subject of litigation. On 12 September 2001, LSBIR purportedly served a demand notice dated 11 September 2001 on NBC for the said sum. Thereafter, LSBIR instituted an action at the Lagos High Court claiming the sum of N210, 000,000 as sales tax arrears and penalty as well as interest on the said sum at the rate of 21% from June 2001 until judgment and thereafter at the rate of 6% per annum until liquidation. The Court of Appeal held that failure to remit tax deducted from salaries or emoluments of employees was a debt to the Lagos State Board of Internal Revenue which is enforceable and recoverable in the Court of Law. The Court was also emphatic that refusal to deduct withholding tax from contractors for the supply of spare parts, goods, services etc was unlawful, presumably tax evasion and all the non-deductions, under-deductions and non-remittances are recoverable.

Prosecution Unit (DESPU) of the Service³⁵ was aimed at recovering arrears of taxes accruing to government from Withholding Tax (WHT) and Value Added Tax (VAT). Consequently, the FIRS filed charges against Air Nigeria of evading five years tax payment and forgery of Tax Clearance Certificate (TCC).

The enforcement is part of a bigger move to recover the N170.1 billion (N170.132, 089,411.46) outstanding taxes owed to government by public and private organizations, as well as ensure that all taxpayers are captured in the tax net. The Service had earlier served series of notices on Air Nigeria to pay its outstanding tax liabilities and to comply with its tax obligations as specified by Nigerian tax laws or face punitive action.³⁶ Specifically, Section 31 of the Value Added Tax (VAT) Act No. 12 of 2007, provides that ‘A taxable person who fails to submit returns to the Board is liable to a fine of N5, 000 for every month in which the failure continues. The FIRS made similar arrests earlier in the year 2012, of Chief Executive Officers of Seven Companies in Lagos for alleged failure to remit taxes totaling N2.17 billion.³⁷ The arrest is a form of warning to other organizations and individuals in the country on the need to ensure deductions and remittance of their tax obligation as provided by Part VI, Section 40 of the FIRS Establishment Act 2007. Going by the definition of a criminal offence together with the use of the word ‘upon conviction’ and the penalties attached to failure to deduct or remit tax which are fines and imprisonment for not more than three years, refusal to deduct and remit taxes amount to criminal offences.

Obstruction

It is an offence under the Act for any person to obstruct, hinder, molest or assault any person or authorised officer in the performance of any function or the exercise of any power under the Act. Any person who does any action which impedes or is intended to impede the carrying out of any search, seizure, removal or distraint, is guilty of the offence of obstruction. Also any person who rescues, damages or destroys anything so liable to seizure, removal or distress or does anything intended to prevent the procuring or giving of evidence in connection with anything that is liable to seizure, removal or distraint is equally guilty of this offence.³⁸ Similarly, anybody who prevents the arrest of any person by a person duly engaged or acting, or who rescues anybody so arrested, commits an offence and shall be liable on conviction to a fine not exceeding N200, 000 or imprisonment for a term not exceeding 3 years or both.³⁹ The offence of obstructing an authorised officer falls under criminal offence, thus the penalty of a fine of three years imprisonment, or fine or both.

False Declaration

It is equally an offence for any person to make, sign or deliver or cause to be made, signed or delivered to the Service or any officer of the Service, any document which is false or untrue,⁴⁰ or to make any statement in answer to any question or inquiry put to him by an officer which he is required to answer by or under the Act or any other enactment or law, being a document or statement produced or made

³⁵ Mr. James Binang

³⁶ ‘MD of Jimoh Ibrahim’s Air Nigeria Arrested for Tax Evasion’ <www.sharpedgenews.com> Mon, 18, June 2012. <www.sharpedgenews.com> accessed 5th July, 2012.

³⁷ The Companies involved in that enforcement drive and the amounts are: Pivot Engineering Ltd, N609,911,992.36; Reliance Telecommunications Ltd, N592,756,627.00; HITV Ltd, N309,500,065.55; UTC Nigeria PLC. N277,589,163.74; Sweet Sensation Confectionary Ltd, N155,483,013.00; Entertainment Highway Ltd, N197,444,964.55 and John Holt Nig. Ltd. N33,073,487.52

³⁸ Sec. 41 (a)(b) & (c) FIRSEA, 2007

³⁹ Sec. 41(d)

⁴⁰ Sec. 42 (1) (a)

for any purpose of tax, which is untrue in any material particular.⁴¹ Where the full amount of any tax payable is not paid or any overpayment is made in respect of any repayment of tax, as a result of any false declaration, the unpaid tax or the overpayment shall constitute a debt due to the Service.⁴² Anybody who commits an offence under section 42 of the Act⁴³ (that is involved in false declaration) is liable on conviction to a fine not exceeding N200,000 in addition to payment of the amount of tax unpaid or overpayment made in respect of any repayment or to imprisonment for a term not exceeding 3 years or to both fine and imprisonment. False declaration can therefore be classified as a criminal offence going by the sanction attached to it.

Counterfeiting Documents

Counterfeiting or falsification of any document which is required by or for the transaction of any business under the Act or any law listed in the First Schedule to the Act is an Offence under Section 43(a) of the Act. Anybody who therefore knowingly accepts, receives or uses any document so counterfeited or falsified commits an offence⁴⁴. Anybody who alters any such document after it is officially issued,⁴⁵ or counterfeits any seal, signature, initial or other mark of or used by any officer for the verification of such a purpose relating to tax, also commits an offence.⁴⁶ Likewise, an employee of the Service who conspires, connives or participates in the commission of any of the offences under this section,⁴⁷ commits an offence. All offenders under Section 43 (a – d) of the FIRSEA, 2007 are liable on conviction to a fine not exceeding N200,000 or to imprisonment for a term not exceeding 3 years or to both the fine and imprisonment. This offence can also be categorized as a criminal offence.

Offences by Authorized and Unauthorised Persons

Section 44 of the Act deals with the above category of offences. It provides that any person who is appointed for the due administration of the Act or employed in connection with the assessment and collection of a tax who;

- (a) demands from any company an amount in excess of the authorized assessment of the tax;
- (b) withholds for his own use or otherwise any portion of the amount of tax collected;
- (c) renders a false return, whether orally or in writing, of the amount of tax collected or received by him;
- (d) defrauds any person, embezzles any money or otherwise uses his position to deal wrongfully with the Service;
- (e) steals or misuses the documents of the Service, and
- (f) compromises on the assessment or collection of any tax.

Commits an offence and is liable on conviction to a fine equivalent to 200 per cent of the sum in question or to imprisonment for a term not exceeding 3 years or to both fine and imprisonment.⁴⁸ Each of the above stated offences is a criminal offence and so attaches fine or imprisonment or both.

⁴¹ Sec 42 (1) (b)

⁴² Sec. 42 (2)

⁴³ Sec. 43 (3)

⁴⁴ Sec. 43(b)

⁴⁵ Sec. 43 (c)

⁴⁶ Sec. 43(d)

⁴⁷ Sec. 43 (a-d)

⁴⁸ Sec. 44 a-f FIRSEA, 2007 Ibid

Where Offenders are armed

Any person who, in the commission of an offence under the Act, is armed with any offensive weapon commits an offence and is liable on conviction to imprisonment for a term not exceeding 5 years.⁴⁹

When a person who is armed with an offensive weapon, causes injury to any officer or authorized officer of the Service in the performance of any function or duty under the Act, he commits an offence and shall be liable on conviction to imprisonment for a term not exceeding 10 years.⁵⁰ Where the motive or intention of causing injury to an officer is to deprive the officer of going away with vital documents, money or objects, such acts will amount to voluntarily causing hurt or grievous hurt to deter public servant from carrying out his duty. This offence is also provided for under section 252 (1)(2) of the Penal Code, and attracts punishment of imprisonment for a term which may extend to ten years and fine. This is a criminal offence and a serious one at that, thus the attraction of 10 years imprisonment with no option of fine. It is unclear on what will amount to an offensive weapon and to what use it was meant. Will a pen knife be regarded as an offensive weapon if the weapon is meant to protect the individual? Or if the individual is licensed to carry such weapon, will he be guilty of the offence?

Unlawful Assumption of Character of an Authorized Officer

Any person who is not an authorized officer of the Service but who assumes the name, designation or impersonates the character of an authorized officer, for the purpose of gaining admission to any building or other place or in order to do any act which he is not entitled to do, commits an offence and shall be liable on conviction to a fine not exceeding N200, 000 or to imprisonment for a term not exceeding 3 years. Impersonation of the character of an authorized officer is a crime.

Failure to File Tax Returns by Banks in Nigeria

Banks are required to file their tax returns like any other company. Where there is a failure to do so, the administrative penalties imposed under Sections 41 (3) and (5) of CITA, 2004 are applicable.⁵¹ Any officer of the company who gives his consent for, or encourages the non-filing of the tax returns is liable on conviction to a fine of N100, 000 or two years imprisonment or to both fine and imprisonment.

Unauthorized Disclosure

Any unauthorized disclosure by any employee or former employee of the Board or the Service, or any person appointed by the Service as its agent or representative is an offence under Section 39 (2) of FIRSEA.⁵² This offence on conviction attracts a fine of N200, 000 or a term of imprisonment for three years or both fine and imprisonment. All the above mentioned (that is employee, former employee or any person appointed by the Service as its agent or representative) are required to keep as secret and confidential any information or document that comes into their possession in the performance of their duties.⁵³ A person in possession of or control, of any document, information, return of assessment list or copy of such list relating to the income or profits or losses of any person, who at any time communicates or attempts to communicate such information or anything contained in such document, list or copy to any person, other than a person to whom he is authorized by the Service to communicate

⁴⁹ Sec. 45 (1) Ibid

⁵⁰ Sec. 45 (2) Ibid

⁵¹ That is, N25,000 in the first month in which the failure occurs and additional N5,000 for each subsequent month in which the failure continues.

⁵² 2007

⁵³ S.50 (1) FIRSEA, 2007

it, commits an offence under the Act.⁵⁴ Likewise if he communicates or attempts to communicate such information other than for the purpose of the Act or of any enactment in Nigeria imposing tax on the income of persons also commits an offence under the Act⁵⁵. This offence falls under General Penalty and attracts a fine of N50,000 or a term of imprisonment not exceeding six months⁵⁶.

Section 50(3) of the Act however gave an exception to this general rule. It states that an officer can only divulge information at his disposal only when it is necessary in order to institute a prosecution, or in the course of a prosecution for any offence committed in relation to any tax in Nigeria. He may also communicate information that comes into his possession in the performance of his duties, where under any law in force in respect of any double taxation treaty with any country; provision is made for the allowance of relief from income tax in respect of the payment of income tax in Nigeria. The obligation as to secrecy imposed by this section⁵⁷ shall not prevent the disclosure to the authorized officer of the Government in that country of such facts as may be necessary. This is to enable the proper relief to be given in cases where relief is claimed from the tax in Nigeria or from income tax in that country.⁵⁸ Likewise subsection (5) of the same Section provides that the Officer is allowed to disclose information, where any agreement or arrangement with any other country with respect to relief for double taxation of income or profits includes provisions for the exchange of information with that country for the purpose of implementing that relief or preventing avoidance of tax. The obligation of secrecy imposed by this section will not prevent the disclosure of such information to the authorized officers of the Government of such country. The immunity that an officer of the Service enjoys from action does not cover the offence of unauthorized disclosure. The immunity covers an officer of the Service in the performance of his duties under the tax laws as an agent of the Service, so that in any action which arises as a result of such performance, it is the Service and not the officer⁵⁹ that should be proceeded against.⁶⁰

5. Effects of Tax Offences on a Nation

Non-compliance in taxation is an offence. In fact it is an act that is as serious as a felony against the state. Considering the above discussed significance and usefulness of taxation couple with the discussed synergy between compliance and economic development of any Nation, non-compliance will certainly have high rate of negative effects. Notably among the effects that non-compliance in taxation can have on Nigeria as a nation are that;

- a. Such act can debar the government from generating enough revenue to provide social, economic and infrastructural facilities to the governed. In short the delivery of electoral promises may be impossible;
- b. Such act will eventually put unnecessary pressure on government to rely more on external borrowing to execute capital projects. When country borrows to execute capital project, the tendency for such country to go into recession as we are currently witnessing in Nigeria is higher. This is because most external borrowing is with some strict conditions out of which devaluation of currency is always one; when currency is devalued, inflation and recession are likely to set in;

⁵⁴ Sec. 50(2) (a) FIRSEA, 2007

⁵⁵ Sec. 50(2) (b) FIRSEA, 2007

⁵⁶ See Section 49(1) of the Act.

⁵⁷ S. 50 FIRSEA, 2007 titled 'Official Secrecy and Confidentiality'

⁵⁸ S. 50 (4) FIRSEA, 2007

⁵⁹ S. 55(1) & (2) Ibid & S. 38(1) Personal Income Tax (Amendment) Act, 2011

⁶⁰ Officer includes, The Executive Chairman, Board Members, or any Officer or employee of the Service.

- c. High rate of insecurity may occur. The remote cause and nexus here is that non availability of enough fund may hinder the provision of security by the government sine non availability of fund may be a clog in providing enough arms and ammunition to equip the security personnel;
- d. Failure to pay tax indirectly takes away the right of the governed to ask for adequate government services, and,
- e. It may slow down government developmental efforts frustrate and sabotage the achievement of 100% budget performance. Since yearly budget are built on expectation of fund, failure of such fund to flow in will certainly affect the successful execution of such budget.

6. Conclusion and Recommendations

From the foregoing, it is a deductible fact that, tax offence is a serious act of sabotage. Unfortunately the resultant effect of same will generally be felt by both the state as well as individual. On the part of the state, the provision and fulfillment of electoral promises may be impossible and on the part of individual, absence of socio-economic facilities may vicariously affect the living standard of the people which may further degenerate to chaos and insecurity. To curb this serious and dangerous clog in the wheel of accelerated progress and development of Nigeria as a Nation, the following are recommended. There should be removal of blank power by Tax Authority to compound 'any offence' in taxation. Removal of blank power to compound 'any offence' in taxation will facilitate and ensure taking of tax matters to court for litigation and conviction when necessary, this will serve as a deterrent to severe tax offenders and ensure tax compliance. For this, this paper recommends for the amendment of Section 48(1) of the Act⁶¹ which permits the Service to 'compound any offence under the Act by accepting a sum of money not exceeding the maximum fine specified for the offence in lieu of jail sentencing'. Government should engage in beneficial programme. Government should engage in programme that will be beneficial to citizens, strive to boost the economy and reduce the level of poverty. This is necessary because where the majority of the people are poor, tax evasion becomes inevitable. There should be adequate prosecution of tax offences. Encouragement of prosecuting tax offences will minimize tax criminality. The decision of the Supreme Court in the case of *Unipetrol Nigeria Plc v. Edo State Board of Inland Revenue*,⁶² that a tax authority can prosecute tax offences even in its name is a good decision in a good direction.⁶³ There should be transparency in the use of revenue generated through Tax. Tax rates should reflect economic realities, citizen should not be made to cough out money where there are none and there should be transparency in the use of any revenue generated.

⁶¹ FIRSEA, 2007

⁶² (2006) 8 NWLR (pt. 983) 624; (2006) CLR.28

⁶³ In that case, the Supreme Court held that the Edo State Board of Inland Revenue could Institute a criminal action in its name by virtue of Section 4(2) of the erstwhile Income Tax Law, Laws of Bendel State, 1976, Cap.71. vol 111, applicable in Edo State, which vested the Board with power to sue and be sued.