

American Journal of
Law
(AJL)

LAW

**Appraisal of the Jurisdictional Issues Confronting
Prosecutors of Tax Related Disputes and Constitutional
Bottlenecks**

*Prof. John Alewo Musa Agbonika and Prof. Josephine A. A.
Agbonika San*



Appraisal of the Jurisdictional Issues Confronting Prosecutors of Tax Related Disputes and Constitutional Bottlenecks

Prof. John Alewo Musa Agbonika and Prof. Josephine A. A. Agbonika San

¹Professor of Law, Prince Abubakar Audu University, Anyigba, LL.B (ABU), LL.M (ABU), Ph.D (University of London) BL, FCTI, FIPMD, ACLArb, FIMC, KSM, JP, Former Commissioner for Justice and Attorney General, Kogi State, Former Special Adviser on Legal and Chieftaincy Affairs, Kogi State, Adjunct Professor 2016-2021, Salem University, Lokoja and Sabbatical 2021-2022, Salem University, Lokoja.

²Dean, Faculty of Law, Veritas University, Abuja, Professor of Law, L.L.B (ABU), BL, LL.M, (University of London), Ph.D (Uni-Abuja), FCTI, FIPMD, ACIArb, FIMC, LSM, JP; Commissioner, Tax Appeal Tribunal (2010-2016), and also a Senior Advocate of Nigeria, SAN.

Corresponding Author's Email: phinagbonika@yahoo.com

Abstract

Purpose: This paper examines the jurisdictional issues confronting tax enforcements, prosecution and other related issues. Jurisdiction over taxes administered at both the federal and state levels is determined by the legal personality of the taxpayer and place of residence for individuals. The Federal High Court, State High Courts and Tax Appeal Tribunal are vested with jurisdiction to hear and determine tax disputes. The Tax Appeal Tribunal is vested with jurisdiction to hear disputes arising from the operations of the Federal Inland Revenue Service. Tax disputes can be commenced either by the taxpayer or by the relevant tax authority. In practice, administrative channels within the relevant tax authority are usually the first step for resolution of tax disputes. Unresolved disputes proceed to the Tax Appeal Tribunal or Federal High Court, or where the tax is a State tax, to the State high court. The doctrinal research was used in carrying out this research.

Methodology: Both secondary and primary sourced materials such as textbooks, journals, internets, case laws etc. were used.

Finding: Finding reveals that there have been jurisdictional controversies confronting the constitutionality of TAT decision as well as the regular courts causing serious bottleneck for tax prosecutors.

Recommendation: It is recommended that in order to ensure tax compliance, effective resolution of tax disputes and proper administration of tax system, the issue of jurisdiction must be clearly spelt out.

Keyword: *Jurisdiction, tax, dispute, constitution, prosecution, bottleneck.*

INTRODUCTION

The arguments against the establishment of Tax Appeal Tribunal TAT is that Section 59 of the TAT Act, which established the tribunal offends the overriding provisions of Section 251(1) (a), (b) and (c) of the 1999 Constitution which confers exclusive jurisdiction on the Federal High Court in respect of civil causes and matters relating to the revenue of the Government of the Federation. A major concern with the new regime of tax disputes resolution is that by the conferment on the TAT of exclusive jurisdiction to settle all disputes arising from the operation of the Act and all other tax statutes administered by FIRS, the high courts are forthwith ceased of jurisdiction to entertain such matters. Jurisdiction is the power and authority of a court to undertake and conduct proceedings brought before it by the parties. It is the legal right by which Judges exercise their authority. It is the statute which creates the court or tribunal that define its jurisdiction. It exists when a court has cognizance of the class of cases involved, proper parties are present, and the point to be decided is within the powers of the court. The importance of jurisdiction of a Court cannot be overemphasized. The issue of jurisdiction has been underscored in numerous cases as it is the lifeline of all trials. Any trial conducted without or in the absence of jurisdiction will be a complete nullity. Jurisdiction of a Court has been judicially defined as a very fundamental and priceless “commodity” in the judicial process. It is the fulcrum, centre piece, or the main pillar upon which the validity of any decision of any Court stands and around which other issues rotate. It cannot be assumed or implied, it cannot also be conferred by consent or acquiescence of parties.

Taxation is an important source of revenue to the government from time immemorial, owing to its inherent power to impose taxes, the government is assured at all times of its tax revenue, no matter the circumstances. The purpose of prosecution is to serve as deterrence, whereby a few are prosecuted to scare the many into staying honest. Where there is financial crime and a breach, the law will come in especially in cases of corruption, tax fraud and tax evasion. Absence of the fear of prosecution is likely to cause a large number of otherwise ordinary and likable citizens become criminals. Prosecution is usually at the instance of the relevant tax authority who have powers to prosecute any of the offences under the Act, subject to the powers of the Attorney General of the State or of the Federation.¹ Tax payer investigation , being an in depth investigation processed by a tax authority in order to recover tax undercharged or dodged in previous years, was introduced to deal with tax payers unwillingness to comply with the tax provisions or the tax payer scheming to circumvent the provision of the tax laws in order to reduce their liabilities either legally or illegally, therefore, it is a guard against outright tax evasion, specific area of non-compliance, tax malpractices and negligence of tax fraud.²

By Section 272 of the 1999 Constitution of the Federal Republic of Nigeria (as amended), State High Courts have wide jurisdiction over civil and criminal matters. Evidently in line with this provision, it is quite common for disputes pertaining either to taxes regarded as “state taxes” or taxes accruing to the revenue of a state government, to be brought before state high courts for determination. Section 251(1) (b) of the 1999 Constitution gives exclusive jurisdiction to the Federal High Court in civil causes and matters” connected with or pertaining to the taxation of companies and other bodies, establishments or entitles carrying on business in Nigeria and all other persons subject to Federal taxation.” Apparently in line with this provision, section 59, and Item

¹ Rita Dashe Selkur. Prosecution in Criminal Tax Proceeding in Nigeria, Legal Challenges. Available at https://www.nomos-elibrary.de/10.5771/2363-6262-2019-4-523.pdf?download_full_pdf=1

² Ibid

11 of the Fifth Schedule to the Federal Inland Revenue Service (Establishment) Act (FIRSEA) both empower the Tax Appeal Tribunal (TAT) to adjudicate disputes arising from the administration or enforcement of all federal tax statutes (made by the National Assembly), and subjects appeals from the TAT to the jurisdiction of the Federal High Court.

One features of a tax is that it is a compulsory payment for which no direct benefit is received in return by any tax payer. Perhaps the cliché that “no one pays tax with a smile” is based on the assumption that no one willingly pays to any tax authorities on a continuous basis. Tax disputes are as certain as tax payments and the manner of resolution of the disputes is a major factor in the revenue base of any Country (irrespective of the tier of government) and also for purposes of driving investments. The enactment in 2007 of the Federal Inland Revenue Service (Establishment) Act, (“the Act”) did not only usher in a new regime of tax administration in Nigeria, it also revolutionized Nigeria’s tax disputes resolution system. The broad objects of the Act is to create the Federal Inland Revenue Service (FIRS) as an autonomous body and to vest it with the power to control and administer taxes and laws specified under the Act or to be made from time to time by the National Assembly and to account for all taxes collected – this Law forms the basis for any States’ tax laws.

Reforms in dispute resolution systems globally are tilting towards specialization of courts. The argument is that specialization is a way of achieving excellence and thoroughness. Judicial specialization in a specific type of conflict has become necessary to improve performance and reach timely, just rulings and judgments in an environment marked by increasing commercial conflicts and economic diversification. The advantages of specialized tribunals can be seen in terms of the problems they are set up to resolve. Consequently, the creation of a specialized tribunal with exclusive jurisdiction over tax disputes could be seen as solving basic problems that have hindered the efficient disposition of tax disputes by high courts. Previously tax cases before the regular courts could take long to dispose of, and the courts may be without any benefits of specialization as advocated.

Speedy disposition of tax disputes appears to be the overriding consideration in the establishment of the TAT. Tax disputes, now being resolved by the TAT were hitherto been majorly handled by the Federal High Court by virtue of Section 251 of the 1999 Constitution. But it is commonplace that the traditional or conventional law courts are not only over-burdened with cases, which take long to determine, but also some of them lack the requisite skills and competencies to deal with specialized matters like taxation.

Meaning of Taxation

The Blacks’ Law Dictionary³ defines tax as a monetary charge imposed by the government on persons, entities, transactions, or property to yield public revenue. Broadly, the term embraces all governmental impositions on the person, property, privileges, occupations and enjoyment of the people and includes duties, imports & excises. Although a tax is often thought of being pecuniary in nature, it is not necessarily payable in money. The foregoing definition is a broad attempt, capturing the basic features of a tax. But, the view that, tax is not necessarily payable in money would appear not to be the modern trend. In Nigeria all taxes are payable in money, in fact this feature is the basic difference between a tax and a fine or levy.

³ The Blacks Law Dictionary, 8th Ed., Bryan A. Garner, West Publishing Co., 2004, p. 1496

Tax is defined by the Oxford Advanced Learner's Dictionary⁴ as money that you have to pay to the government so that it can pay for public services. People pay tax according to their income businesses and profits. Also, tax is often paid on goods and services⁷. The importance of taxation was stated by Adeoye⁵ as follows; it is generally an established fact that taxation has an important role to play in any given economy. There is hardly any government today that does not rely on taxation measures to provide the much needed revenue for socio-economic development, but also to reduce the inequalities of the wealth distribution of the society.⁶

In order to lend credence to the importance of tax revenue to the economy, the government of President Buhari made non-oil tax revenue a key component of the 2015 budget was the first to be driven by non-oil revenue.⁷ This, to a large extent helped to open up other options for deriving government revenue beyond the unwieldy over dependence on the mono oil economy. Beyond oil, veritable tools for deriving revenue include agriculture, intellectual property, tourism and taxation among others.⁸ Subsequent budgets are driven by tax revenue.

Principles Governing Jurisdiction

The following are the principles guiding jurisdiction:

- (a) That the challenge or objection to jurisdiction may be based on, many factors or grounds, such as competence of parties, subject-matter, territory, etc.
- (b) The objection to jurisdiction should be raised timeously and be determined first by the Court before a consideration of other issues in a case.
- (c) It is never too late at all stages of proceedings of a case, and at all levels of the judicial hierarchy in Nigeria, to raise a genuine issue of the jurisdiction of a trial Court to entertain a case.
- (d) The issue of jurisdiction can be raised by any of the parties or by the Court, *suomotu*.
- (e) No prior leave of Court is necessary or required for a genuine issue of jurisdiction to be raised by a party at all levels of the judicial hierarchy.⁹

In *Madukolu v. Nkemdili*¹⁰, the Court in answering the question as to when court is competent, have these to say that a court is competent when:

- (a) *It is properly constituted as regards numbers and qualifications of the members of the bench, and no member is disqualified for one reason or another; and*
- (b) *the subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the court from exercising its jurisdiction: and*

⁴ The Oxford Learner's Dictionary A.S. Hornby, 6th Ed., Oxford University Press, p. 1226.

⁵ O J Adeoye "The Significance of Taxation in a Nation", Journal of Private & Commercial Law Department, Faculty of Law, University of Ado-Ekiti, Ekiti State, Vol. 1, 2008, p. 1

⁶ Ibid

⁷ Diversification of Nigerian's Economy through Tax Revenue in *Topical Issues on Nigerian Tax Laws and Related Areas*, J.A.A Agbonika PhD (Ed) (2015); also available at <https://papers.ssrn.com> (Abstract Id 2886256); Ndubuisi Francis, Omololu Ogunmade and Muhammad Bello "FG Presents Budget Slashes 2015 GDP Growth to 5.5%". Available at <http://www.thisdaylive.com/articles/fg-presents-budget-slashes-2015-gdp-growth-to-5-5-/197055/> accessed on 9 February 2015.

⁸ Agboniika J.A.A; Taxation, Economics Diversification and Sustainable Development in Nigeria. Book of Proceedings, 3rd National Conference on management Technology and Sustainable Development in Nigeria. 23rd -25th April, 2018. College of Management and Social Sciences. Salem University, Lokoja, Kogi State. Nigeria.pp.267-293.

⁹ Bronik Motors Limited v. Wema Bank Limited (1983) 1 SCNLR (131) 1172

¹⁰ (1962) SCNLR 341

(c) *the case comes before the court initiated by due process of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction.*”

In *NDIC V. Davies*¹¹, the court held that issue pertaining or relating to the jurisdiction of a Court can be raised at any stage of the proceeding and in the Appellate Courts. This is because if it turns out that the lower Court lacks jurisdiction to adjudicate on a matter an Appellate court will lack the jurisdiction to determine the merit of the appeal therefrom....

In determining whether a court has jurisdiction, particularly in relation to the second and third factors enumerated above, certain guidelines have been laid down by the authorities. In *PDP V. Timipre Sylva & Ors*¹² the court held that jurisdiction of a Court to entertain a Suit is resolved by scrupulous examination of the Writ of Summons, the Statement of Claim and the reliefs claimed. No other document should be examined. Where the originating process is an Originating Summons, the affidavit filed in support of the Originating Summons serves as the Plaintiff's pleadings (Statement of Claim). Jurisdiction would be resolved by examining only the Originating Summons, the reliefs contained therein and the affidavit filed in Support.

Tax Enforcement

Enforcement is defined as compelling the observance or obedience to a law.¹³ Business Dictionary defines enforcement as “application of a law or regulation, or carrying out of an executive or judicial order”. Hence, tax enforcement can be defined as enforcement of the tax laws. It is discernible from the foregoing that enforcement is coercive and contrary to voluntarily compliance. The Self-Assessment¹⁴ regime introduced in 1992 connotes voluntary compliance with the tax laws.

The National Tax Policy¹⁵ prescribes the reduction in taxes. Hence, taxes should be few in number, broad-based and high revenue-yielding. The administration of the taxes should also be simplified for ease of enforcement and compliance. It is established that taxes are charged in accordance with the provisions of the Law. Hence, all citizens and companies have an obligation under the Nigerian constitution to pay their taxes as at when due.¹⁶ If a taxpayer fails to pay a tax due within the legally stipulated period of time, the tax authorities would have no choice but to enforce the tax laws in order to recover the tax owed. The Federal Inland Revenue (Establishment) Act, 2007 has given prominence to enforcement. The Act empowers the FIRS to co-opt the services and assistance of any of the law enforcement agencies in the discharge of its duties under the Act. These law enforcement officers shall aid and assist authorized officers in the execution of any warrant of distraint¹⁷ and the levying of the distraint.¹⁸ The revised National Tax Policy¹⁹ reiterates that tax authorities are to ensure the enforcement of civil and criminal sanctions as provided under the

¹¹ (2014) LPELR-23768

¹² (2012) 13 NWLR (Pt. 1316) 85 at 127

¹³ www.thefreedictionary.com/enforcement, last accessed on 22 December, 2021.

¹⁴ Income Tax (Self-Assessment) Regulations 2018.

¹⁵ National Tax Policy 2018 Para. 2.26 at 5.

¹⁶ Section 24(f) of the 1999 Constitution of the Federal Republic of Nigeria

¹⁷ Section 33 of the Federal Inland Revenue Service (Establishment) Act, 2007.

¹⁸ See Section 36 (1) and (2) of the Federal Inland Revenue Service (Establishment) Act, 2007

¹⁹ National Tax Policy, 2017 at 9.

various tax laws. Tax Enforcement has been said to be a very veritable tool for improving voluntary tax compliance and this is one of the main focus of the Forum on Tax Administration.²⁰

Key Elements of Enforcement

The key components of enforcement are:

- i. Taxpayer education
- ii. Robust compliance enforcement strategy

Taxpayer Education

It is the role of the relevant tax authority to educate/ sensitize taxpayers on what is expected of them and the time limit within which to provide what is required of them. Examples include when to file tax returns; where to file the returns; where and how to pay the tax; why tax must be paid (evidence of tax usage); and the consequences (i.e. enforcement exercise) for failure or refusal to pay at the right time or not paying at all. This greatly enhances the taxpayers' ability to voluntary tax compliance.

Enforcement Strategy

It is noteworthy that taxpayers exhibit different responses to the demand for tax arrears/debt. Hence, it is necessary to identify and understand specific taxpayer groups, understand their idiosyncrasies, and design an enforcement strategy that speaks to each group. Tax Audit, Investigation, Litigation, Surveillance, Compliance Research, Search & Seizure, Distrain and Substitution are part of the enforcement machinery. Compliance enforcement also thrives when the following are in place:

- i. A good tax system, with the qualities of simplicity, certainty, economy in operation, equality, convenience, neutrality and enforceability;²¹
- ii. Tax laws that are simple to understand, with sufficient powers for just and equitable administration.
- iii. Knowledge of the taxpayers aided by proper taxpayer segmentation and a robust taxpayer data base.
- iv. Good dispute resolution mechanism.
- v. A judiciary that is supportive of the tax system

Role of Tax Authority in offering Sensitizing/Educating Taxpayers

Taxpayer service as a function in a tax system is essential for an effective and efficient tax administration. The strategic position of Taxpayer Service requires that there must be a balance in its educational and assistance role if taxpayers' voluntary compliance is to be achieved.

Key Responsibilities of Tax Authority include but not limited to:

²⁰ Elleman A & Frank Obaro "Ensuring Compliance through Investigation and Enforcement", Gauge, aquarterly publication of the FIRS, April-June, 2011, p. 3

²¹ Adam Smith, Wealth of Nations

- i. Develop policies, oversee and evaluate the provision of taxpayer service in the field offices.
- ii. Develop and monitor implementation of taxpayer charter.
- iii. Identify taxpayer service needs and develop strategies to ensure that the needs are met.²²
- iv. Ensure effective engagement with stakeholders such as trade associations/taxpayer groups/professional groups for purpose of gathering feedback and widening the tax base.
- v. Develop taxpayer education programmes for implementation.
- vi. Develop the contents of taxpayers' guides on tax matters for use by taxpayers thereby proactively filling the gaps in tax information.
- vii. Accumulate and disseminate frequently asked questions and answers.
- viii. Facilitate training of taxpayer service personnel in the field offices.
- ix. Set and monitor effective implementation of standards in taxpayer service and ensure that remedial measures are put in place with regards to observed gaps and deviations from standard set.
- x. Obtain and evaluate taxpayer feedback on a regular basis, say quarterly, half yearly, etc.
- xi. Issuance of TIN and relevant educational and informational materials.
- xii. Ensure the prompt issuance of Tax Clearance Certificate.
- xiii. Provide guidance/explanatory notes for the completion of tax forms
- xiv. Familiarize the taxpayer with his/her rights and respond to their questions on the tax law and other administrative procedures;
- xv. Operate a nationwide telephone answering system for taxpayers' questions (call centre). FIRS has launched a taxpayer Call Center. The Call Center is accessible to all taxpayers in four languages English, Yoruba, Hausa, Ibo and Nupe²³
- xvi. Operate a robust web site where taxpayers may obtain information on various topics and download tax forms, instructions, and other explanatory publications. FIRS has a robust and updated web site²⁴ and strong presence on social media platforms such as facebook, instagram
- xvii. Increase the range of electronic services offered. In June 2021 FIRS launched the Tax Pro Max an online end to end tax administration tool kit for e-registration, e-filing, e-payment, e-withholding tax credit note receipts, issuance of tax clearance certificate, tax audit and enforcement.
- xviii. Consult widely with taxpayers and/ or their representatives prior to the implementation of changes; and
- xix. Design products more from the taxpayers' perspective.

It is worthy to note that taxes are charged in accordance with the provisions of the Law. Thus, all taxpaying public have an obligation to pay their taxes as at when due. If a taxpayer fails to pay a tax due within the legally stipulated period of time, the tax authorities would then serve the tax defaulter with a Notice of Assessment. Once a valid assessment is duly served, the tax authority would issue a first Reminder Notice to pay and then serve on the taxpayer after 30 days of the

²²For example, Section 8(1) (q) of the Federal Inland Revenue Service (Establishment) Act, 2007 enables FIRS in collaboration with other States Board of Internal Revenue Service register taxpayers and issuance of Taxpayer Identification Number (TIN)

²³ National Symposium on Taxation and Challenges of External Shocks: Lessons and Policy Options for Nigeria and the Launching of the FIRS Contact Centre. Held at Transcorp Hotels Abuja on 6th December, 2021.

²⁴ Ibid

service of the assessment. The First Reminder Notice is usually written in a civil but firm tone asking for payment within 14 days. The First Reminder Notice should contain the following information:

- (a) What is wrong.
- (b) What is needed to be put right.
- (c) The timeframe to put things right.
- (d) What will happen if the notice is not complied with.
- (e) If there is a right to appeal, it includes a brief explanation of the method of appeal.

If the taxpayer does not respond to the First Reminder Notice the relevant tax authority should contact the taxpayer who is then issued with a Final Reminder Notice to Pay after the payment date of the First Reminder Notice expires. It is firmer and asks the taxpayer to respond within 7 days. Where default continues the taxpayer is served with a Demand Note warning of FIRS's intention to enforce collection. This also asks the taxpayer to pay within 30 days of service of the demand note.

The content of the Demand Note should include: relevant information i.e. reference to earlier correspondence, the actual debt with current interest and penalty, reference to what Sections 27 & 32 of the FIRS Establishment Act says. After the Demand Note is issued and the one month waiting period has elapsed without success, cases may be identified for which administrative enforcement actions become necessary. In other words, the tax authority can force the defaulters to pay up. Thus enforcement proceedings could be described as steps taken under the statutes to enforce payment of tax. In the proceedings against the taxpayer, the administrator cannot be likened to an ordinary creditor suing an ordinary debtor²⁵. The Tax Administrator is clothed with a privileged position under the law in regards to collecting and recovering tax from defaulters as the Courts. The tax authority in carrying out an enforcement proceedings must ensure that all the steps prescribed by the law is followed strictly. The method of enforcement chosen by the tax authority may vary in accordance with the relevant tax laws. The tax authority in carrying out an enforcement proceedings must ensure that all the steps prescribed by the law is followed strictly. The method of enforcement chosen by the tax authority may vary in accordance with the relevant tax laws to which the courts will usually give a strict interpretation.

The Tax Authority must take utmost care to ensure that the person sought to be taxed is not one who is exempted from paying tax, although it is left to the taxpayer to claim applicable deductions and reliefs. In *Gulf Oil Company Nigeria Ltd v. FBIR*²⁶ the question that arose was whether certain commissions/charges the company incurred due to its compliance with the Federal Government's directives on its tax were deductible under section 10 (1) of the Petroleum Tax Act. The Court of Appeal held that the charges qualified for deductions.

²⁵ Kudirat J., in a paper titled "Assessing a Case file for Enforcement Proceedings" delivered at an intensive training on Tax for Legal Officers of the FIRS at Bolingo Hotel, Abuja 13-15th June 2007, at 5.

²⁶ (1997) 7 NWLR, Part 514

The Person against whom enforcement is being made: There is need to first ascertain the person against whom proceedings are to be taken against and to ensure that it is the proper person under the law. *Section 47 of CITA* states that a company shall be chargeable to tax:

- (a) in its own name; or
- (b) in the name of any of its principal officers, attorney, agent or representative thereof in Nigeria, in like manner and to like amount as such company would have been chargeable; or
- (c) in the name of the receiver or liquidator, or of any attorney, agent or representative thereof in Nigeria, in like manner and to like amount as such company would have been chargeable if no receiver or liquidator has been appointed or receivership may be chargeable to and can be sued for outstanding tax in the name of its appointed Liquidator or Receiver Manager.

In other words, a company is chargeable to and can be sued in its own name, or name of any of its agents, representatives in line with the old principle of principal and agent in law. Also, a company under liquidation can be sued in the name of the Receiver Manager. In a like manner, Personal Income Tax Act²²² provides for the class of persons that can be charged to pay personal income taxes follows:

- (i) Persons employed in the Nigerian Army, Navy, Air force, the Nigerian Police Force 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

As such the foregoing persons, their agents or representatives are those that enforcement of personal income tax can be brought against, including their agents representatives and in the case of liquidation and receivership of a tax payer company, the appointed Liquidator or Receiver Manager in like manner and to like amount as such company would have been chargeable. Administrative Enforcement pursuant to the provisions of the Income Tax (Self-Assessment) Regulations, 2018 must have a basis and be scientific. It could be raised from third party information such as banking data and information gathered from the taxpayer's premises such as receipts and other documents.

MODES OF ENFORCEMENT

Enforcement by Distraint under Section 33 of FIRSEA and Section 86(1) of the Companies Income Tax Act.²⁷ Taxpayers' goods, chattels, bonds or securities, land or premises may be distrained for tax Debt Recovery under Section 33 of the FIRS Act. Section 86(1) of Companies Income Tax Act (CITA) provides that without prejudice to any other power conferred on the Board for the enforcement of payment of tax due from a company, where an assessment has become final and conclusive and a Demand Note has, in accordance with the provisions of this Part of this Act been served upon the Company or upon the person in whose name the company is chargeable, then if payment is not made within the time limited by the Demand Note, the Board may in the prescribed form, for the purpose of enforcing payment of the tax due-

²⁷ C21 Laws of the Federation of Nigeria 2004 as amended

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

The prescribed Form for the Authority to distraint is contained in the Fourth Schedule of this Act and such authority shall suffice to levy by distraint the amount of tax due. The Form in the Fourth Schedule should contain the following details: the name of the officer authorized to execute the warrant, name and address of the company on whose goods, chattel etc as to be distrained, amount of outstanding tax against the company, particulars of arrears of tax to be levied by distress, years of assessment and the signature of the Chairman, FIRS. The proceed of sale shall be used to pay for the cost or charges incidental to the sale, the amount due in respect of the tax, and the balance if any payable to the taxpayer upon demand.²⁸ This would happen where there is need to pay for a search, stamp duties, legal fees etc.

The following steps are taken to ensure an effective enforcement through distraint:

- i. Ensure Assessment Notice has become final & Conclusive 30 days after its Service.
- ii. Ensure Demand Notice has been served on the defaulter within 14 days after Assessment as become final & Conclusive
- iii. If default continues identify taxpayer's property(s) that may be distraint from FIRS Records i.e. Tax Returns, Financial Statements, TIN Registration details or other Public Records. The collaborations of agencies like Corporate Affairs Commission, Banks, Land Offices among others can be sought under S.8 FIRS Act.
- iv. The Team embarks on Distraint/Seizure- in the following manner
 - a. Upon arrival at the defaulter's company/premises, demand for the taxpayer or the person in charge.
 - b. Team Identify themselves by a show of Staff ID Card and tender the Distraint Form/Notice of Seizure (3 copies) one for the Taxpayer, 2 kept in case file.
 - c. Make demand for full payment and if prove of full payment is offered discontinue with the distraint.
 - d. Take detailed Inventory of the seized property when complete ensure the Team Leader signs and taxpayer also signs as acknowledgment to indicate its completeness.
- v. Ensure proper protection of the seized moveable properties locked up in a secured location while immovable property should be sealed with Distraint seal and shall not be removed without authorization of the Executive Chairman of FIRS.
- vi. Sale of Property must be done in accordance with laid down rules and laws, (**Section 86 CITA and Section 33 of FIRSEA**) it must be conducted in a transparent manner and duly publicized in National Newspapers. Notice of Public Auction or Notice of Sealed Bid Sale duly signed by the Chairman FIRS. At least 2 members of the Distraint Committee will attend the sale. The sale can be conducted by FIRS staff, or a professional auction company can be hired.
- vii. Distrainted properties is kept for 14 days at the cost of taxpayer and then sold

²⁸ Section 86(5) of CITA

- viii. After the Sale and upon payment into an FIRS dedicated bank account by the successful bidder, the Chairman of the Distraint Committee would issue 3 copies of Certificate of Sale (one for successful bidder, kept in case files) to the highest bidder, separate certificates in cases of immovable and moveable properties.
- ix. Prepare three (3) copies of the Notice of Sold Property one for the taxpayer and one in the case file and 1 to be included in the Report of Seizure and Sale of Property.
- x. Report of Seizure and Sale of Property which accounts for how the seizure was concluded, e.g., by selling the property, or returning it to its owner.

SEARCH AND SEIZURE OF PROPERTY

This is guided by the provisions of sections 29, 30,36 and Third Schedule of FIRS Act 2007. The tax collector in the course of carrying out enforcement of tax is empowered to enter any premises, search, seize or take possession of any book, document or other article used or suspected to have been used for the commission of an offence, provided the tax officer is armed with the warrant issued by a Judicial Officer and accompanied by a number of law enforcement officers as may be determined by the Executive Chairman.²⁹

The FIRS Act empowers a tax official duly authorized by the tax authority to search any person who is in the premises upon which a search is carried out. But, nobody can be bodily searched except by the person of the same gender.³⁰ CITA empowers an officer of the Board (now Service) to enter if necessary by force the premises, registered office, any other office or place of management or the residence of the principal officer, agent, at any time from the date of authorization by the Board to conduct a search, where the Board reasonably suspects that an offence in relation to non-disclosure of information or any irregularity in respect of tax.³¹

Power of Substitution

Section 31 of the FIRS (Establishment) Act 2007 empowers the FIRS by notice in writing to appoint any person to be agent of a taxable person. The agent appointed may be required to pay any tax payable by the taxable person from any money which may be held by the agent of the taxable person. Where the agent defaults the tax shall be recovered from him, subject to the right of appeal. This provision is similar to garnishee proceedings under the civil proceedings of the Court. The very positive response received from some of the banks has become an eye opener and an indication that the substitution provision can be a veritable compliance enforcement tool.

Prosecutorial Powers of Tax Authorities

FIRS is empowered to prosecute tax defaulters employ its own legal officers who shall have powers to prosecute any of the offences under this Act subject to powers of the Attorney-General of the Federation.³² Prosecution is usually the final resort for debt recovery. Prosecution entails the following:

- Filing an Appeal before the Tax Appeal Tribunal Pursuant to Section 59 of FIRSEA. Tax Appeal Proceedings Order, 2021.

²⁹ Section 36(3)(a) of the FIRS Act, 2007

³⁰ Sections 36(3) (b)& 36(4) of the FIRS Act, 2007

³¹ Section 64 (a) of CITA

³² Section 47 of the Federal Inland Revenue Service (Establishment) Act, 2007

- Charge Defaulter to Federal High Court pursuant to Section 251 of the Constitution
- Appointment Order- Appoint a third party as an Agent, if this person is holding the taxpayer's money after approval has been granted. Section 31 of FIRS Act.
- Demand Additional Information from a appointed Agent (where necessary) such as a under bank Section 28 of FIRS Act by applying Substitution
- Release of Appointment Order where payment of debt is fully made or agreement of installmental payment has been reached.

Distinction between Civil and Criminal Tax Recovery: A distinction must be made between instituting civil and criminal proceedings for tax recovery.

Instituting Civil Suit for Tax Recovery

A civil action for tax recovery is commenced at the Federal High Courts and State High Courts vide a Writ of Summons or Originating Summons.³³ By virtue of the various Rules of Court a Writ should be accompanied by the following documents:

- Statement of Claim;
- List of Witness to be called at the trial;
- Written Statement of Oath of the Witness; and
- Copies of every document to be relied on at the trial.²²⁶

Under the Nigerian Tax Statutes, civil sanctions i.e. penalties and interests are imposed as additional tax in certain circumstances for wrongs committed by tax payers. These sanctions are imposed by the relevant tax administrator and in certain circumstances require the assistance of the Courts for its enforcement.³⁴

The mere production of a certificate signed by any person duly authorized by the Chairman of the Service giving the name and address of the defaulting tax payer and the income tax due shall be sufficient evidence of the amount so due and sufficient authority for a Court of competent jurisdiction such as the Federal High Court to give judgment of the said amount.³⁵

The following characteristics are typical of civil sanctions under tax laws:

- (a) It is impossible by the Board of Inland Revenue(now FIRS) or Internal Revenue³⁶
- (b) It may be secured by an endorsement of the Courts.³⁷
- (c) Outstanding tax liabilities can be recovered from the estate of deceased person.³⁸
- (d) An action for the recovery of tax due would be statute-barred where brought at the expiration of six years except there was under-assessment due to fraud, willful default or neglect.³⁹

³³ S. Imhanobe *The Lawyer's Desk book*, Rehoboth Publishing, 2008, p. 32.

³⁴ Section 46(3), PITA

³⁵ (1972), SC., at p.57

³⁶ Section 3(3), PITA; Section 2(3) CITA

³⁷ Section 23, PITA, Section 35 CITA

³⁸ Section 31, PITA, Section 47 CITA

³⁹ Section 46, PITA, Section 62 CITA

(e) Tax liabilities could be sued for and recovered as a debt due to the government.⁴⁰In other words this is a special type of debt being that which occasions loss of revenue due to the government.

Where there is the presence of criminal element such as tax evasion, those cases were erroneously instituted as civil actions and decided as such. In *FBIR v. Blue Pelicon Casino Co. Ltd.*⁴¹ the Court held that no statement of account was produced at the trial by the defendant and this was evident. The Court then decided that since the defendant had not filed the statutorily required statement of account the plaintiff were justified to have assessed the defendant to tax based on its Best of Judgment. The foregoing is a tax evasion matter for which criminal prosecution ought to have been instituted rather than a civil suit. There is no record of any criminal prosecution of tax evasion in Nigeria till date.

Instituting Criminal Action for Tax Recovery

Under the various Nigerian Tax Laws, criminal sanctions unlike civil sanctions are specific penalties of fine and imprisonment enforceable by prosecution of the tax offender. Criminal Sanctions in Nigeria like most of the other jurisdictions namely United Kingdom, United States, India and Australia can be classified into two distinct classes namely: those specifically provided for in the tax statutes and those not provided for in the tax laws such as Penal Code and Criminal Code. It is pertinent to note that, in the Nigerian Tax Statutes words such as willful, knowingly, and unlawfully are used to qualify the conduct forbidden by law. These words mean that the prosecution must prove guilty knowledge i.e. in establishing the fact that a tax payer knowingly falsified his tax income.

As earlier discussed, a company is chargeable to tax in its own name⁴² and in the name of any of its principal officers, attorney, agent or representative thereof in Nigeria.⁴³ The problem that arises here is criminal liability of a company. Although it is widely acknowledged that a company can be made criminally liable by the express provision of a tax statute. The above listed persons act from time to time for the Company since the company does not have its own brain and limbs. The fundamental question here is that do criminal acts committed for the company remain those of the company or those of its agents since the company itself cannot be sent to prison although it can be sentenced to the payment of a fine? Or do the Offences and Penalties provided for in the Companies Income Act only serve to lift the corporate veil of tax offenders who hide under the company veil to commit fraud.

In the old common law corporate criminal liability was impossible. The court in the case of *R v. Anglo-Nigerian Tins Mines Ltd.*, held that a company could not be brought to Court and if necessary placed in the dock. However, in the case of *Unipetrol Nig. Plc V. Edo State Board Of Internal Revenue*⁴⁴ the Supreme Court unanimously dismissing the appeal held that SBIR can institute criminal proceedings in its corporate name as such the action in the present case is competent, and so is the charge framed. The power to prosecute is thus not limited to the Attorney-General; he may delegate his power to prosecute under Section 174(1) (b) & (c) of the 1999 Constitution. The Burden of Proof in a criminal case that border on tax i.e. tax evasion is beyond

⁴⁰ Section 46, PITA, Section 62 CITA

⁴¹ (Unreported) Suit No. FRC/PH/2/76

⁴² Section 47 (a) CITA

⁴³ Section 47 (b) CITA

⁴⁴ (2006) 4 CLRN P. 28

reasonable doubt like other criminal offences. Thus the onus to discharge this proof is on the tax authority.

It is discernible from the foregoing that tax enforcement is a veritable tool in the hands of the tax authority to enforce compliance. However, the tax authority must have done all within its powers to enlighten the taxpayers and provide them with ease of tax administration for example e-services to engender voluntarily tax compliance. Tax compliance enforcement is essential in order to deter non-compliance and fraudulent conduct by taxpayers and a mode of tax recovery.

The Federal High Court

The Federal High Court Section 251 of the Constitution provides for the exclusive jurisdiction of the Federal High Court to the exclusion of any court, on matters relating to revenue of the nation. The Federal Revenue Court was renamed the “Federal High Court” by Section 228 (1) and 230 (2) of the Constitution of the Federal Republic of Nigeria, 1979.⁴⁵ Although the need was noted during the Constitutional Conference leading to Independence , to establish a High Court for the determination of causes and matters within the Exclusive Legislative list, as is customary in countries with the Federal System of Government , no step was taken in that regard until the promulgation of the Federal Revenue Court Decree in 1973. This Decree created the Federal Revenue Court. The Federal Revenue Court began its operation with a President (as the head of the court was then called) and four judges. From its inception, controversies over its jurisdiction followed every step of the Court’s jurisdiction.

However, such controversies were finally settled with the enactment of Section 230(1) of the Constitution of the Federal Republic of Nigeria 1999. Section 230(1) of the 1979 Constitution was replicated in the Federal High Court Decree (Amendment) 1991 cap (60) which amended Section 7 of the Federal High Court Act (1973); and conferred exclusive jurisdiction on the court in relation to the subject matters covered by section 7 of that Act, as amended. Section 7 of the Federal High Court (Amendment) Act 1991 has now been reenacted as section 251(1) (a) to (s) and of the Constitution of the Federal Republic of Nigeria 1999 as amended. Its jurisdiction in criminal matters are as provided in Section 251 (2) and (3) of the Constitution and in such criminal matters as the National Assembly may by Act, confer jurisdiction on it. The Federal High Court has concurrent jurisdiction with the High Court of the Federal Capital Territory FCT and State High Courts in respect of Fundamental Rights matters by virtue of Section 46(1) of the Constitution of the Federal Republic of Nigeria, 1999. It is expressly provided for under Section 251 (1) (a) & (b) that, the Federal High Court shall have jurisdiction on matters; (a) Relating to the revenue of the Government of the Federation in which the said Government or any organ thereof of a person suing or being sued on behalf of the said Government is a party. (b) Connected with or pertaining to the taxation of companies and other bodies established or carrying on business in Nigeria and all other persons’ subject to Federal taxation.

Thus while the FIRS Act by section 59 mandates the Tax Appeal Tribunal to deal with all tax disputes, S. 251 (1) of the Constitution also gives that power to the Federal High Court. In relation

⁴⁵ The sections were reenacted by the 1999 Constitution (as Amended) as S. 251(1)(2) and (3)

to this provision of Constitution⁴⁶ all issues pertaining to the revenue of the Federal Government and taxation of Companies are vested exclusively on the Federal High Court.

The Tax Appeal Tribunal (TAT)

The Tax Appeal Tribunal (TAT) is a very important and critical administrative body in the enforcement of tax in Nigeria. In discussing TAT, regards would be heard to its establishment composition, its jurisdiction and its sustainability in the face of threatening Constitutional provisions and challenges. The Tax Appeal Tribunal is a son of necessity born out of the desire to fill up the gaps opened by the nullification of the defunct VAT Tribunal via judicial declaration,⁴⁷ as well as to provide an umbrella body to take care of all tax related disputes. The Tribunal was established by section 59 of the Federal Inland Revenue Service (FIRS) Act, 2007 which provides in subsection (1) that: A Tax Appeal Tribunal shall have power to settle disputes arising from the operation of this Act and under the first schedule. The Tax Appeal Tribunal therefore has jurisdiction over disputes arising from the Companies Income Tax, Petroleum Profit Taxes, Personal Income Tax, Capital Gains Tax, Value Added Tax, Stamp Duties, Taxes and Levies.⁴⁸ It was established in 2010 in eight different locations namely Bauchi, Kaduna, Jos, Ibadan, Enugu, Benin, Lagos and Abuja⁴⁹, and vested with powers to settle dispute arising from the operations of the FIRS Act and other tax laws as spelt out in the First schedule to the Act.

Its scope also covers any other law for the assessment, collection and enforcement of revenue accruable to the Government of the Federation as made by the National assembly from time to time or regulations incidental to those laws. It confers any power, duty and obligation on the Service. Other laws include laws imposing taxes and levies within the Federal Capital Territory; laws imposing collection of taxes, fees and levies collected by government agencies and companies. These includes signature bonuses, pipeline fees, penalty for gas flared, depot levies and licence fees for Oil Exploration Licence (OEL) Oil Mining Lease (OML) production Licence, royalties, rents (productive and non – productive). It also includes fees for license to operate drilling rigs, fees for oil pipeline licenses, haulage fees and all other fees prevalent in the oil and gas industry. While inaugurating the Tribunal, the former Minister of Finance, Mansur Muhtar said that the Federal Government's commitment to make the country a haven for investors informed the setting up of tax tribunal. According to him, this government is committed to making Nigeria a preferred destination for both local and foreign investors by making the economy more investment friendly.

The responsibility being entrusted to you is indeed enormous, but I have no doubt in my mind that given your qualifications and experiences in both the public and private sectors of the economy you will discharge this responsibility creditably.⁵⁰ Commenting on the significance of the tribunal, the then Chairman of the FIRS, Mrs. Ifueko Omogui-Okaru said at the inauguration that it would help to engender public confidence in the tax system. A person aggrieved by an assessment of the Service or one aggrieved by the non-compliance with tax laws, may appeal to the Tribunal, by

⁴⁶ In Nigeria the constitution of the Federal Republic of Nigeria is the grund norm and takes precedence over every other legislation like the FIRS Act setting up the Tax Appeal Tribunal.

⁴⁷ Stabilinivisioni's case supra

⁴⁸ First Schedule to the FIRS Act 2007.

⁴⁹ Tax Appeal Tribunal Establishment order 2009, Supplement to Gazette No. 77.

⁵⁰ <http://tat.gov.ng/content/tax-appeal-tribunal-move-engender-confidence-nigeria>, 23th March 2014

virtue of Para 14 of the 5th Schedule to the FIRS Act. It is worthy of note to observe that the provisions of any statute of limitation shall not apply to appeals brought before the Tribunal.

Composition of the TAT

The fifth schedule empowers the Minister of Finance to specify the number of zones within which the Tax Appeal Tribunal is to exercise jurisdiction. Accordingly, the Minister of Finance vide Section 1 of the Tax Appeal Tribunals (Establishment) Order of 2009 created 8 zones of the Tax Appeal Tribunal. The division was to attend to each of the geopolitical zones as well as Lagos and Abuja.⁵¹ Each TAT division is composed of five tax appeal commissioners headed by a chairman who must be a lawyer with not less than fifteen years cognate experience in tax matters while the other commissioners must be knowledgeable about tax laws, regulations, norms, practices and operations of taxation in Nigeria.⁵² Such a person must have shown capacity in the management of trade or business or been a retired public servant in tax administration. The chairman is to preside over the sittings of the tribunal, though in his absence another commissioner may be nominated to preside.

The quorum of the tribunal is three. The zoning of the Tax Appeal Tribunal is a welcome development since it has made it easily accessible to would be disputants. The emphasis on the qualification of the commissioners is also commendable as this would guarantee that highly experienced professionals capable of delivering quality and well considered verdicts are appointed as commissioners. A tribunal shall by virtue of Paragraph 2 (1) & (2) consist of five members called 'Tax Appeal Commissioners' to be appointed by the Minister of Finance. A Tax Appeal Commissioner shall hold office for a term of three years renewable for another term of three years only Appeal from the Decisions of The Service before the Tax Appeal Tribunal shall be held in public.⁵³ Once the judgment is registered in the Federal High Court, with the Chief Registrar; it is as effective as the judgment of the Federal High Court when it is on issues of facts.⁵⁴ Appeals from the decisions of the Tribunal shall lie to the Federal High Court on issues of law and then to the Court of Appeal while those on issues of facts shall lie to the Court of Appeal.⁵⁵

Powers of The Tribunal The tribunal shall have powers to:⁵⁶

- i. Summon and enforce the attendance of the person and examine him on oath
- ii. Require the discovery and production of documents.
- iii. Receive evidence on affidavits
- iv. Call for the examination of witnesses or documents.
- v. Review its decisions
- vi. Dismiss an application for default or deciding matters exparte;

⁵¹ In Nigeria the 6 geopolitical zones are the South South, South West, South East, North Central, North West and North East.

⁵² Paragraph 2(3) *ibid*

⁵³ Para 15 (5)

⁵⁴ Para 16 (2)

⁵⁵ Para 17(1) & (3) Fifth Schedule

⁵⁶ Para 2 (1) *Ibid*

vii. Set aside any order or dismissal of any application for default or any order passed by it exparte; and

viii. Do anything which in the opinion of the Tribunal is incidental or ancillary to its functions.

Controversy of Jurisdiction Between the Tax Appeal Tribunal and the Federal High Court

The inauguration of the Tax Appeal Tribunal has not presented problems as to the powers of the executive arm in providing a mechanism for the administration of tax in Nigeria but, the seeming similarities with the jurisdiction of the Federal High Court as provided for under Section 251 of the Constitution of the Federal Republic of Nigeria has provided the highlights of controversies between the Tax Appeal Tribunal and the Federal High Court. Tax practitioners are quite apprehensive as to whether the Nigerian Tax Appeal Tribunal (“TAT”) would suffer a similar fate as the extinct Value Added Tax (VAT) Tribunal, which suffered premature extinction post the 1999 Constitution of Nigeria.

In *Stabilini Visioni Ltd v FBIR*,⁵⁷ the Court of Appeal held that the VAT Tribunal was not an administrative tribunal, since appeals from there did not lie to the Federal High Court (FHC) but to the Court of Appeal, and further, that Section 20 of the VAT Act that had set up the VAT Tribunal was inconsistent with Section 251 of the Constitution of the Federal Republic of Nigeria that had solely conferred jurisdiction of the federal revenue exclusively on the FHC. Similarly, in *Cadbury (Nig.) Plc v FBIR*,⁵⁸ the FBIR had directed Cadbury to render VAT returns based on Cadbury’s payment to its Parent Company in Britain. Upon Cadbury’s refusal, FBIR instituted tax recovery proceedings before the VAT Tribunal. With FBIRs success, at the VAT Tribunal, Cadbury appealed against VAT Tribunals’ jurisdiction to the Court of Appeal. The Court of Appeal sustained Cadbury’s objection, and held that the VAT Tribunal had no jurisdiction to entertain VAT issues since such tax issues touched on the exclusive jurisdiction of federal revenue, conferred solely upon the FHC. Omokri JCA echoing the principle in the case of *N.P.A v. Enyamba*⁵⁹ held that:

By virtue of the provisions of section 251(1) (a) of the 1999 Constitution, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil cases and matters relating to the revenue of the Federal Government of the Federation or any organ therefore of a person giving being used on behalf of the said Government as a party or the administration and control of the Federal Government or any of its agencies of the Federal Government.

Per Ogunbiyi JCA held thus: Also in the case of *Faskin Foods (Nig) Ltd V Shosanya*⁶⁰ the Apex court made the following pronouncements and said: the Constitution is supreme, it is the organic or fundamental law and it is the grund norm of Nigeria. The court has therefore the jurisdiction to declare any other law or act inconsistent, invalid and therefore null and void. This is because the Constitution has also been described as the *fons et erigo*.....Any Act which infringes or runs contrary to those organic principles or systems or provision must be declared to be inconsistent. In relation to the jurisdiction of the Federal High Court the court held further that, Whatever proceeds, revenue, etc accruing to the Government Agency or is being paid to others by the agency

⁵⁷ (2009) 13NWLR (Pt 115) 200

⁵⁸ (2010) 13 NWLR (Pt 117) 561

⁵⁹ Para 4

⁶⁰ (2006) ALL FWLR(pt320)Pg 1059@ 1076

must be regarded to be addition to or reduction from the Federal Government and it relates in essence to the Federal Government” In the latter part of 2013, two separate and conflicting decisions of the Federal High Court were issued that put the jurisdiction and constitutional validity of the TAT in issue. First, on October 30, 2013, Justice Adeniyi Ademola of the Abuja FHC in *TSKJ II Construces Internationals Sociadade LDA v FIRS*,⁶¹ struck down the composition of the TAT, on the ground that, the Federal Inland Revenue Establishment Act No. 13 of 2007 (“FIRSEA”) and the Tax Appeal Tribunals (Establishment) Order of November 25th, 2009 (TAT Order) under which the TAT was established conflicted with the exclusive jurisdiction of the FHC conferred by section 251 of the 1999 Constitution. This case involves a company named TSKJ II Construces Internationals Sociadade LDA (“TSKJ”),⁶² a non resident company who secured a contract for the construction of a gas plant in Nigeria and used TSKJ Nigeria to provide support services in the course of executing the contract.

In filing its return on deemed profit basis, TSKJ II deducted the recharges paid as cost to its subsidiary. The FIRS disallowed the deduction on the basis that recharges were not deductible costs under the deemed profit basis of assessment. The FIRS issued additional assessment of about US\$12million on the company. TSKJ II appealed to the TAT sitting in Abuja but the Tax Appeal Tribunal (TAT) decided in favour of the FIRS, that the taxation of non-resident companies on the deemed profit basis is a rule of thumb derived from Section 26 of the Companies Income Tax Act (CITA) which gives the FIRS discretion in certain circumstances, to determine the “fair and reasonable percentage of the turnover” of the company to be assessed to tax. It was noted that in practice, the FIRS deems a profit rate of 20% on turnover derived from Nigeria (implying a cost ratio of 80%). The estimated profit rate of 20% is taxed at 30 % which result in an effective tax rate of 6% of turnover. Thereafter, the non-resident company sued FIRS claiming for determination of the following from the Federal High Court (FHC):

1. Whether on the state of the law, the Tribunal had the jurisdiction to entertain the matter. TSKJ argued that the FHC had the exclusive jurisdiction to entertain matters relating to federal revenue and taxation of companies to the exclusion of any other Court.
2. Whether the Tax Appeal Tribunal properly interpreted the provisions of CITA especially Section 26(1) in arriving at the deductions. TSKJ II’s argument was that the TAT erred in not following the decision of the FHC in the case of *Halliburton West Africa LTD V FIRS*⁴ and that the TAT misinterpreted Section 26 of CITA. According to TSKJ II, Section 26 refers to “that part of the turnover” of a foreign company where it executes a contract with its fixed base and not contracts with a third party.
3. Whether the TAT was right in refusing to follow the previous decision of the FHC in the case of *Halliburton West Africa Limited V FBIR*.⁶³ TSKJ II⁶⁴ contended that the TAT was duty bound to follow the decision of the FHC since the facts of the case were similar to the of the Halliburton’s case. The FIRS on the other hand, argued that the jurisdiction of the TAT did not conflict with the exclusive jurisdiction of the FHC since the TAT is merely an administrative panel created by the FIRS (Establishment) Act and not a court with competing jurisdiction as contemplated by Section

⁶¹ Suit No. FHC/ABJ/TA/11/12

⁶² www.pwc.com.pwcnigeria.ttypepad.com/november-2013-tax-jurisdiction. 26th March, 2014

⁶³ Supra

⁶⁴ Supra

251(1) of the Constitution. To buttress this position, the FIRS stated that appeals lie directly to the FHC and not to the Court of Appeal as was the case with the defunct VAT Tribunal. On the issues of jurisdiction, the FHC dismissed the FIRS' argument that the TAT was a mere administrative panel on the basis that the decisions of the TAT affect the civil rights and obligation of companies in relation to taxation in Nigeria.

It held that certain sections of the FIRS Establishment Act relating to the powers of the TAT to determine disputes on companies' taxation and federal revenue are inconsistent with the provisions of section 251(1) of the Constitution and therefore void to the extent of such inconsistency. On the other issues raised by TSKJ II, the FHC ruled that based on the principle of 'stare decisis', the TAT is bound by the decision of the FHC in the Halliburton's case and should have decided this case in the same way. The implication of the decision may be considered retrogressive by many taxpayers who consider the TAT as the fastest way to resolve pending dispute with tax authorities. It could also give some taxpayers who have been aggrieved by decisions of the TAT a basis to request that such be set aside. However a more recent authority gave the TAT a lease of life, while awaiting the decision of the Court of Appeal in TSKJ II.⁶⁵

In *Nigerian National Petroleum Corporation (NNPC) V Tax Appeal Tribunal (TAT) (Lagos zone)*,⁶⁶ NNPC urged the Federal High Court in Lagos to review a ruling by the Tax Appeal Tribunal (TAT), Lagos Zone, on a dispute over an oil mining lease (OML) 118 Production Sharing Contract (PSC). The issue related to the NNPC being the agent of the Federal Government in collecting Petroleum Profits tax assessed against the contractors in OML 133, as well as the exact Education Tax liability for the OML for the 2010 year. NNPC sought a declaration that TAT, Lagos Zone (the first respondent) lacks the jurisdiction to adjudicate over rights and obligations conferred on parties to the Bonga petroleum Sharing Contract PSC. It said the TAT cannot determine contractual disputes arising from the interpretation of the contract and that the Tribunal wrongly assumed jurisdiction on the matter. At the Tax Appeal Tribunal, Shell, Esso, Agip and Total had sought declaratory reliefs over the determination of tax incidence of parties to the PSC involving NNPC, and the Tribunal, in its July 3 ruling, assumed jurisdiction in the case. It held: that the tax assessment challenged in this appeal is within the remit of the Tax Appeal Tribunal.

NNPC therefore urged the Federal High Court to declare the Tribunal's decision "ultra vires, illegal, wrong, null and void and of no effect whatsoever. It also sought an order of certiorari urging the Federal High court to take over the Tribunal's proceedings, quash the ruling and also make an order prohibiting the TAT from further hearing and making any decision in the matter. NNPC argued that, the tribunal erred when it assumed the powers conferred by Section 251 of the 1999 Constitution on the Federal High Court to entertain and determine matters relating to government revenue. It claimed that, by the provisions of the PSC, the 3rd, 4th, 5th and 6th respondents are not tax payers known to the FIRS and as such are unable to successfully maintain an action before the TAT against FIRS. NNPC added that the reliefs before the TAT are such that when determined, will have direct impact on the Federal Government's revenue and the contractual relationship in the Bonga contract. NNPC, the concession owner and holder of Oil Prospecting License (OPL) 212, executed the Bonga PSC dated April 19, 1993, with Shell as contractor to the operations of OPL 212. Shell, Esso, Agip and Total constitute the "contractor" through a joint venture in the

⁶⁵ Supra

⁶⁶ Supra

Bonga contract. By the PSC's provisions, NNPC files Petroleum Profit Tax (PPT) returns for itself and the contractor. According to NNPC, the contractor was to prepare accurate PPT returns and submit to NNPC while NNPC in turn files the returns to FIRS.

The applicant said in 2010, the contractors prepared "incorrect" PPT returns for the 2009 assessment in respect of the Bonga license and forwarded same to the NNPC. NNPC alleged that the returns it received from the contractor were "inaccurate, incorrect and non-compliant with contractual terms of the PSC," It claimed it was compelled to file accurate tax returns with the FIRS, which resulted in a disagreement with the contractor. The oil firms then instituted an appeal at the tribunal. Seeking "a declaration that although chargeable tax for the year is USD 2,042,706,851, however, by virtue of the overpayment of PPT in previous years of assessment, the PPT for the Bonga Contract Area in the 2010 year of assessment is nil."⁶⁷ Consequently, the Federal High Court held that: The Tax Appeal Tribunal's Jurisdiction did not interfere with the exclusive jurisdiction of the Federal High Court but was only an administrative body set up to determine preliminary matters before proceeding to the Federal High Court. Justice Buba held that the FIRSEA that established the TAT was fundamentally different from the VAT Tribunal Act that purportedly set up the defunct VAT Tribunal. In defining the jurisdiction of the TAT and whether the FIRSEA violated the exclusive jurisdiction of the FHC under Section 251 of the Constitution, Justice Buba started by examining Section 251 (1) which provides thus: Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters..... He then explained that the tenor of the first portion of Section 251 is to the effect that the National Assembly may make laws from time to time, so as to confer additional powers and jurisdiction on the FHC, and that the intent of this provision is to enable the Legislation expand the jurisdiction of the FHC, and in no way can this provision be construed as empowering the National Assembly to remove, or restrict the original jurisdiction of the FHC. Justice Buba also compared the two statutes that set up the VAT Tribunal and TAT with each other.

Para 24(1) of the 2nd Schedule to the VAT Act provided for an appeal from the VAT Tribunal to the Court of Appeal. In contrast, the TAT was created as an administrative framework by which taxpayers could resolve their tax disputes with the FBIR (now FIRS) before resorting to the FHC by invoking the FHC's appellate jurisdiction. Justice Buba, therefore held that the administrative framework did not derogate from the FHC's original jurisdiction but rather "serves as a condition precedent to bringing an action before the Federal High Court". Relying on previous decisions relating to the Body of Appeal Commissioners (predecessors to TAT), which allowed appeals from them to the FHC, Justice Buba held that decisions such as *Eguamwense v Amaghizemwen*,⁶⁸ and *Ocean & Oil Ltd. v FBIR*,⁶⁹ confirmed that TAT was validly created and that its jurisdiction does not conflict with the FHC. Further, relying on Section 41 of the Petroleum Profits Tax Act and Paras 13(1) & 17(1) of the 5th Schedule to the FIRSEA (2007), Justice Buba noted that neither of those statutes provided for a direct appeal to the Court of Appeal, unlike the VAT Tribunal which proposed to usurp, and sidestep section 251's exclusive jurisdiction to FHC.

⁶⁷ Suit No.FHL/L/CS/630/2013

⁶⁸ (1993) 9 NWLR (Pt 315)

⁶⁹ 2011 4 TLRN 135

Finally, he held that the Legislature was right to have added an appellate jurisdiction to the FHC, in accordance with Section 28 of the Federal High Court Act which provides that: The Court shall have appellate jurisdiction to hear and determine appeals from- (a) the decision of Appeal Commissioners established under the Companies Income Tax Act and the Personal Income Tax Act in so far as applicable as Federal law. He further held that, since the TAT did not attempt to usurp the original jurisdiction of the FHC, its constitutionality was affirmed. Justice Buba's opinion in *NNPC v TAT*⁷⁰ attempts to cure the lacuna, and has the effect of preserving the status of the TAT. The exclusive jurisdiction of the Federal High Court from provisions of the Constitution and the supremacy of the Constitution over every other enactment also supports the view held in the above referred case as was determined in the popular case of *Stabilini Visioni Ltd v FBIR*.⁷¹ The argument from other quarters refer to the Tax Appeal Tribunal as a quasi-judicial tribunal and a fact finding tribunal which is not likened to a court of competent jurisdiction. The fact that the Tax Appeal Tribunal does not have criminal jurisdiction confirms the assertion that it is not a court but a fact finding tribunal set up to aid the speedy resolution of complaints against tax assessment and remove completely the delays which are the reoccurring experiences with litigation in our Court. However, it is undeniable that the Tax Appeal Tribunal has overlapping jurisdiction with the Federal High Court in the sense that matters are of revenue nature.

THE SUSTAINABILITY OF TAT

In TSKJ II's case⁷² the court held that: whilst not denying the desirability and efficacy of Tax Appeal Tribunals (TAT) in Nigeria's Tax Regime there is need for constitutional provisions to be enacted as in USA, India, Australia, China etc. to give them the legitimacy they lack from a subsidiary legislation. In the absence of a constitutional provision empowering the Tax Appeal Tribunals, one cannot help but notice the conflict of its jurisdiction with that reserved for the Federal High Court by virtue of section 251 (1) (a) and (b) of the Constitution of the Federal Republic of Nigeria. The establishment of the Tax Appeal Tribunal was necessitated by the demise of the VAT tribunal which was declared unconstitutional by the court of appeal in the case of *Stabilini*.⁷³ A close look at the conditions that led to the demise of VAT tribunal and a comparison between such conditions and legal foundation upon which the TAT operates gives one a serious cause of concern as to whether the TAT, as we know it today, can stand the test of time. The VAT tribunal, like TAT, was a statutory creation. Section 20 of the VAT Act provides that "Any tax, penalty or interest which remains unpaid after the period specified for payment may be recovered by the Board through proceeding in the value added tax tribunals". Consequent upon the above provision the VAT tribunal swung into action and was used as a platform for settling assessment related disputes arising from VAT administration until its jurisdiction was challenged in the case of *Stabilini Visioni Ltd vs FBIR*.⁷⁴

In that case, the learned counsel to the appellant whose client was dragged to the VAT tribunal for VAT arrears, among other things argued that the tribunal lacked the jurisdiction to entertain the matter, it being an issue that has to do with the revenue of the Federal Government, an exclusive preserve of the High Court. In support of the argument, counsel for the Appellant cited, among

⁷⁰ Supra

⁷¹ (2009) 13 NWLR Pt 1157 Pg @ 226

⁷² Supra

⁷³ Supra

⁷⁴ supra

other authorities, section 251 of the 1999 Constitution which, prescribes issues of revenue of the federal government to be in the exclusive jurisdiction of the Federal High Court. In her response, counsel to the respondent argued, among other things, that the VAT tribunal did not usurp the powers of the Federal High Court as enshrined in the Constitution since it was just an administrative body whose decisions were subject to review by the Federal High Court. The Court of Appeal relied on the supremacy clause of the Constitution as provided by section 1(1) and 1(3) of the 1999 Constitution and buttressed same with the case of *Orhiunu v. F.R.N*⁷⁵ where it was held that where the constitution has given a jurisdiction, it cannot be lightly divested. Where it is intended to be divested it must be done by clear, express and unambiguous words and by a competent amendment of the constitution Based on the above and other relevant authorities, the court went ahead to hold that, the only way the VAT tribunal could have had jurisdiction to entertain the action was, through a process of competent amendment of the Constitution. In the absence of such amendment, the court held that “no authority, Act or person can without due amendment alter, curtail or seek to restrict the jurisdiction of the Federal High Court”.⁷⁶

Distinction between Tax Appeal Tribunal and Value Added Tax Tribunal

The distinctions are: (a) Value Added Tribunal handled only issues relating to Value Added Tax while Tax Appeal Tribunal (TAT) has universal application i.e the Tribunal has the power to adjudicate on matters of all taxes listed in the First Schedule to the FIRS Act.

(b) Another remarkable distinction is that an appeal from Value Added Tax Tribunal lies to the Court Appeal while appeals From Tax Appeal Tribunal on issues of law lie to the Federal High Court. Note that appeals on points of fact lie to the Court of Appeal.

(c) Tax Appeal Tribunal has rules of procedure while Value Tax Tribunal has no rules of procedure.

(d) Body of Appeal Commissioners (BAC) had only one office in Nigeria and this was in Abuja. Value Added Tribunal had only three offices in Nigeria (i.e. Kaduna, Enugu and Ibadan had one office each) while Tax Appeal Tribunal has a wider spread with one office in each of the 6 geopolitical zones in Nigeria as well as Lagos and Abuja.

The Case for and against TAT

First, it must be stated that the legal foundation of the defunct VAT tribunal share striking resemblance with that of the TAT. For instance, both are creations of legislation other than the Constitution. The respective legislation give the two bodies power to deal with revenue accruable to the Federal Government. Both tribunals, by their nature are quasi-judicial and both have their decisions subject to review by the Federal High Court and then on appeal to Court of Appeal and to Supreme Court. Despite all the above, it has been argued in the favour of the TAT that it is mere administrative tribunal whose decisions are to facilitate speedy resolution of tax disputes, and are still subject to appeal to the Federal High Court. The decisions of the Tribunal must first be registered at the Federal High Court before enforcement.⁷⁷

⁷⁵ (2005) INWLR (Pt 906) 39 at 57

⁷⁶ *Orhiunu v. F.R.N* (2005) INWLR (Pt 906) 39 at 57

⁷⁷ Para. 16 (2) of the 5th Schedule to FIRS A

It is also argued that the TAT being a Tribunal, instead of a court, would not come under the operation of section 251 of the Constitution which excluded every other court. While the operators argue that the tribunal is mere administrative body, some have argued that the instrument establishing it has stated clearly that it's proceeding shall be deemed as a judicial proceeding and that the Tribunal shall be deemed to be a civil court. Same goes to the issue of the tribunal having its award subject to a review by the Federal High Court. This is because, such appeal according to the law, must be on point of law only. One may still argue that the proceedings of the TAT is deemed to be a judicial proceeding like a civil court because the TAT is not a court. A court is a court and would not need any deeming provision to be so recognized. Furthermore its judgment would have its own force and would not need to be registered in any other court to be given the force of law. In any case, the Tribunal's award is to be registered and enforced as the judgment of the Federal High Court and not as judgment of the Tribunal. The fact that issues of fact determined by the Tribunal do not go to the FHC may clearly qualify as "alteration, detraction or restriction" of the jurisdiction of the Federal High Court, an act forbidden by the authority of *N.P.A v. Eyamba*,⁷⁸ cited with approval in Stabilini's case.

It is also instructive that the alteration, detraction, or restriction as mentioned above is forbidden irrespective of current position as shown in the case of *NNPC v TAT*⁷⁹ that there is no conflict of jurisdiction. It has been submitted in favour of TAT that civil disputes, as seen in arbitration matters, that parties who willingly submit to a panel, person or authority for adjudication have chosen their own tribunal and therefore are estopped from reneging from carrying out the decision of such authority, person or panel. Therefore, parties who submit to TAT are bound by the award and cannot pull out on ground of competency. This argument finds support in the case of *Chinon Nanhai Oil Joint Service Cpnvs Gee Tai Holdings Co. Ltd*,⁸⁰ where a party who submitted to an arbitral tribunal different from the one prescribed in the arbitration agreement was estopped from challenging the award on that ground having knowingly submitted to the jurisdiction of the tribunal. In the Nigerian legal system, and perhaps the whole world, the issue of jurisdiction is sacrosanct and can be raised at any stage of the proceedings therefore even if both parties had submitted to jurisdiction they can raise issues of jurisdiction when they notice it. While arbitration and voluntary submission of matter to arbitral panels always arise out of mutual agreement between the parties, referral of disputes to the TAT is a legal obligation with little or no room for an option on the side of the parties. It follows therefore that the doctrine of estoppel cannot operate to estope a party that never had an option in determining a forum upon which to bring his matter.

Although there are conflicts of opinion as to whether the express provisions of Section 251 of the Constitution of the Federal Republic of Nigeria is inconsistent with the jurisdiction of the Tax Appeal Tribunal as provided for under Section 59 of F I R S (Establishment) Act, 2007, the current position as shown in the case of *NNPC v TAT (Lagos zone)*⁸¹ is that there is no conflict of jurisdiction. This conclusion can be gleaned from the following:

1. That the Appeals against the decision of the TAT on points of law lie to the Federal High Court while on facts they lie to the Court of Appeal. Permit me to say that on points of facts the exclusive

⁷⁸ (2006) All FWLR (PT 320) 1022

⁷⁹ Supra

⁸⁰ (1995) xxyBk P. 88

⁸¹ Supra

jurisdiction of the Federal High Court is thereby usurped since the FHC will have no opportunity of hearing such a matter at all. From the Tribunal the matter, goes straight to the Court of Appeal.

2. The argument of some quarters is that it is a tribunal and not a court so constituted. The case of *Cadbury Nigeria Plc v. Federal Board of Internal Revenue*⁸² has argued to the contrary that, a fact finding tribunal can only recommend and not venture into giving judgment or decision? It could however be argued that since such decision or judgment is still subject to the overriding acceptance of the parties who may appeal to the Federal High Court if they are dissatisfied, it could operate as a recommendation. The case of *NNPC V TAT*⁸³ is authority that the jurisdiction of the TAT does not conflict with that of the FHC since is an internal dispute resolution body of the FIRS set up by the government. The fact that the TAT was not conferred with Criminal Jurisdiction is an indication that it was never the intention of Minister of Finance to make the TAT of concurrent jurisdiction with the Federal High Court. The fact that its decision can only be enforced after registration with the Chief Registrar of the Federal High Court⁸⁴ also goes to show that on its own, it does not carry the force of law as it is with a court judgment. The proceeding before the Tribunal is deemed to be a judicial proceeding because it is neither a judicial proceeding nor a civil court.⁸⁵ The decisions of a tribunal set up as a court will not need to be deemed to be a judicial proceeding because it would be a judicial proceeding for all intents and purposes. In order to achieve the whole essence of the establishment of the TAT which is amongst other things, the fastest way to resolve pending disputes with the tax authorities and to restore confidence in the taxing authorities, the Federal Government must as a matter of urgency refer a bill to the National Assembly to address salient issues raised above and incorporate the Tax Appeal Tribunal in the Constitution. It must be shown to derive its authority with regards to specific functions from the Constitution. This way, its powers as a first instance dispute resolution center which are not inconsistent with the jurisdiction of the Federal High Court will be reflected in the Constitution. This was done recently done with the establishment of the National Industrial Court of Nigeria under the 1999 Constitution (as amended) as well as the Investment and Securities Tribunal. Until this is done, it is feared that what happened to VAT Tribunal may still happen to the TAT. Urgent steps should therefore be taken to address the issues raised above. Creation of a tax Tribunal backed up by a constitutional amendment would be the most appropriate decision. The constitution can then make TAT resolution a condition precedent to gaining access to a regular court.

Jurisdiction of State High Courts:

Another area of dispute is as to whether the wide jurisdiction conferred on State High Courts by section 272 of the Constitution to deal with civil and criminal matters extends to taxation. In line with this provisions, it is common for disputes pertaining to State taxes or taxes accruing to the revenue of a State government to be taken to State High Court for determination, irrespective of the provision of section 251 which gives exclusive jurisdiction to the Federal High Court over matters of taxation and section 59 FIRSEA which empowers the TAT to adjudicate on all Federal taxes. Perhaps one needs to look at the destination of the fiscal revenue which through accruing to the State derives from the administration of a federal legislation.

⁸² (1960-2010) 2 N. T.R Pg 737 @ Pg 753

⁸³ Supra

⁸⁴ Para 16 (2) of 5th Schedule to FIRSA

⁸⁵ Para 20 (3) of 5th Schedule to FIRSA

Fiscal Authority of States Over Funds Collected: By virtue of section 4(2) of the Constitution of the Federal Republic of Nigeria, 1999, the National Assembly shall have power to make Laws for the peace, order and good government of the Federation and any part thereof with respect to any matter included in the Exclusive Legislative List set out in Part 1 of the second schedule to this Constitution. Item 59 of the second schedule of part 1 Lists taxation of incomes, profits and capital gains as one of the matters on the Exclusive Legislative List. Item D7 specifically brings the collection of taxes under the Concurrent Legislative List. The implication of this is that, even though PITA is an Act of National Assembly, its operation is for the benefit of States within the federation. The collection of personal income tax mentioned in Item D7 of the Concurrent Legislative List is therefore a constitutional responsibility of the State government. In **Lagos Board of Internal Revenue v. Motorola Nigeria Ltd & Anor**, the Court of Appeal held that the Law is unequivocal that, it is the relevant State that enforce the payment of personal income tax.

Fiscal federalism refers to the allocation of taxing powers and expenditure responsibilities between the different levels of governance within one country.⁸⁶ By virtue of section 2(1), 3(i) and 3(6) of the Constitution of the FRN, this consists of the Federal government, 36 States, the Federal Capital Territory and 774 local governments. Revenue rights and jurisdiction can therefore be cumbersome and confusing. The Taxes and Levies Approved List for Collection 1998, amended in 2016 also supplements this by providing a concise List of what is collectable by each tier. In relation to ownership funds so collected we must look at where monies so collected are deposited. By virtue of section 162 CFRN, all proceeds from all federal taxes are paid into the Federation Account. The Federation Account is a special account which all revenues collected by the Government of the Federation are paid into, except the proceeds from the Personal Income Tax collected by the Federal Inland Revenue Service. The funds collected by State governments through the State Boards of Internal Revenue under the Personal Income Tax Regime. The Personal Income Tax Act being a federal legislation delegates collection to States. There are opinions as to where the monies collected by the State government goes to and if state government can spend the monies without the authorization of their principal (i.e Federal government). To resolve the controversy, there need to consider the clear provisions of the Constitution and the Personal Income Tax Act as provided under section 80(1) of the 1999 Constitution which is in respect to the federal government⁸⁷ and section 120(1) of the Constitution applies to revenue made by the State government.⁸⁸ It can be seen from the two provisions above that the Constitution creates two special accounts for money or funds made and earned by the federal and state governments. The State Joint Local Government Account is a special account which all allocations to the Account

⁸⁶ Tanz Vito, Fiscal Federalism and Decentralization. A review of some Efficiency and Macroeconomics Aspects. In Bruno M and Pleskovic B (ed) Annual World Bank Conference of Development Economic World Bank 1996, pp 52, 317-322

⁸⁷ “All revenues or other monies raised received by the Federation (not being revenues or other monies payable under this Constitution or any Act of the National Assembly into any other public fund of the Federation established for a specific purpose) shall be paid into and form one Consolidated Revenue Fund of the Federation”.

⁸⁸ All Revenues or other monies raised or received by a State (not being revenues or other money payable under this Constitution or any law of a House of Assembly into any other public fund of the State established for a specific purpose) shall be paid into and form one Consolidated Revenue Fund of the State.

and from the Government of the States are paid into (i.e. excluding the proceeds or revenue internally generated by the State).

Whereas funds in the Consolidated Revenue Fund of the Federation exclusively belongs to the Federation and is administered by the National Assembly to meet the administrative and other needs of the Federal Government and its agencies as they deem fit⁸⁹, funds in consolidated revenue Fund of the States belong to the State and is similarly utilized by the State, under the exclusive appropriation of the State House of Assembly, to meet its needs.⁹⁰

However, for taxes collected from personnel of the Armed Forces, Nigeria Police, Ministry or Department of Government charged with foreign affairs and the residents of FCT which by operation of sections 80 and 162 of the Constitution go into Consolidated Revenue Fund of the States belong to the State and by implication belongs to the Federal Government, the rest enter the 'Federation Account' en route to its final destination which is the Consolidated Revenue Fund of the States. It can be seen that the federal government is not a beneficiary of the personal income tax collected by the State Government. This is due to the combined provisions of sections 80(1), 120(1) and 163 of the 1999 Constitution which direct that the personal income tax collected by the State government be paid into the Consolidated Revenue Fund of the State and used for the benefit of the State.⁹¹

A combined and objective perusal of sections 251(1)(b) and 272 of the 1999 Constitution (supra) of the first part, Sections 58 and 60 of PITA of the second part, and section 59 and item 11 of the FIRSEA of the third part, would reveal that nothing in any of these laws ousts or partially negatives the jurisdiction of state high courts to adjudicate tax issues not related to the federal fiscal revenue, especially PIT. Indeed, his legal reasoning aligns with the decisions of the Court of Appeal in *Access Bank Limited v Edo State Board of Internal Revenue*, where the court ruled that the Federal High Court does not have the constitutional or statutory jurisdiction to hear any matter pertaining to or connected with the revenue of a state.

It is submitted that PIT which accrues to the government of a state (as against those accruing to the government of the federation such as personal income taxes paid by persons employed by the Nigerian Armed Forces (Army, Navy and Air Force), the Nigerian Police Force, officers of the Nigeria Foreign Service and persons resident outside Nigeria who derive profit or income from Nigeria) would form part of the "revenue of a state" in determining the jurisdiction of the Court. This submission is predicated on the fact that the clause "revenue of the Government of the Federation:" appears better determined, not by recourse to the tier of government that enacts an enabling law, but by the tier of government that specifically administers and receives the revenue in its coffers. Certainly, the fact that PITA is a federal enactment does not automatically mean that all PIT revenues would accrue to the Federal Government. Indeed, only PIT paid by persons

⁸⁹ Section 80-87 of the Constitution

⁹⁰ Section 120-127 of the Constitution.

⁹¹ Section 120(2) which provides that "No money shall be withdrawn from the Consolidated Revenue Fund of the State except to meet expenditure that is charged upon the Fund by the Constitution or where the issue of those moneys have been authorized by an Appropriate Law, Supplementary Appropriation Law or Law passed in pursuance of section 121 of this Constitution.

employed by the Nigeria Armed Forces(Army, Navy and Air force), the Nigerian Police Force, officers of the Nigerian Foreign Service and persons resident outside Nigeria who derive profit or income from Nigeria, accrues to the Federal Government; any other PIT revenue accrue to the coffers of the state government.

The above submission is further buttressed by the authority of *NPA V. Eyamba*, where the court held that the exclusive constitutional jurisdiction of the FHC contained in section 251(1) (a) of the Government of the Federation” in describing the meaning and scope of Federal Government revenue, the court further explained that it is clear that the payment of rents as claimed by the respondents will obviously be a deduction from thepursue of the appellant who admittedly is an agent of the Federal Government. Therefore, the claims of the respondents relate (*sic*) in essence to the revenue of the Federal Government.

The court in **F.H.A.V. John Shoy International LTD.**⁹² held that:

Whatever proceeds, revenue or whatever name one would call it, accruing to the appellant, or is being paid to others by the appellant, must, be regarded to be addition to or deduction from the pursue of the Federal Government. It relates in essence, to the revenue of the Federal Government. From the excerpt, it is abundantly glaring that the determination of the meaning of revenue accruing to the government of the federation (especially in the determination of the jurisdiction of the FHC) would not necessarily depend on the tier of government to which the fiscal revenue (tax) in question would lawfully accrue.

CONCLUSION

As seemingly inferable as the jurisdiction of the State High Courts to determine disputes pertaining to or connected to the fiscal revenue of State government is, there is an urgent need to clearly settle any controversy by conferring original jurisdiction to the TAT (whose appeal goes to the FHC), thereby expressly removing the high court of a State from the scheme of things. However, the very fact that Constitution confers wide/general jurisdiction to hear civil and criminal matters on the State high courts make the controversy unabated. Until any form of legislative review is undertaken, it is advisable for individuals and corporate to consistently seek the professional advice of both tax legal practitioners and competent dispute resolution advisors. The subject of jurisdiction as it pertains to PIT has clearly become the task of actors from both the fields of taxation and dispute resolution.

RECOMMENDATION

Constitutional amendment is recommended to make the TAT a condition precedent to litigation at the Federal or State High Court. TAT should be strengthened for effective tax dispute resolution. TAT is a product of the failure of the regular court to resolve tax disputes speedily. Its objectives include helping reduce the incidence of tax evasion, ensuring fairness and transparency of the tax system, minimizing the delays and bottlenecks in the adjudication of tax matters and improving the taxpayers’ confidence in our tax system. There is need to providing an opportunity for expertise in tax dispute resolution, providing an avenue for effective involvement of parties, focusing on facts rather than legal technicalities and promoting early and speedy determination of matters without compromising the principle of fairness and equity. Nigeria needs an efficient tax system

⁹² (2005) 1 NWLR(pt .908) AT 650

to shore up its pantry revenues and achieve fiscal stability. Today, Nigeria is neck-deep in debt partly due to wastefulness and corruption.

Enforcement in administration of taxes is recommended because, it plays very crucial role in enhancing tax compliance. Enforcement task involves the use of myriad of tools in ensuring tax compliance. The essence of enforcement is to ensure strict adherence to various tax compliance ranging from timely filing, accurate filing, to payment of tax liability as at when due. Tax education is recommended to further enlighten people about the need to fulfill tax obligations. Staff training especially in the area of new technology is very important. Tax officials, including prosecutors should be trained in both criminal and civil procedures.

REFERENCES

1. Rita DasheSelkur. Prosecution in Criminal Tax Proceeding in Nigeria, Legal Challenges. Available at https://www.nomos-elibrary.de/10.5771/2363-6262-2019-4-3.pdf?download_full_pdf=1
 2. The Blacks Law Dictionary, 8th Ed., Bryan A. Garner, West Publishing Co., 2004, p. 1496
 3. The Oxford Learner's Dictionary A.S. Hornby, 6th Ed., Oxford University Press, p. 1226.
 4. O. J. Adeoye "The Significance of Taxation in a Nation", Journal of Private & Commercial Law Department, Faculty of Law, University of Ado-Ekiti, Ekiti State, Vol. 1, 2008, p. 1
 5. J.A.A. Agbonika Diversification of Nigerian's Economy through Tax Revenue in Topical Issues on Nigerian Tax Laws and Related Areas (2015); also available at <https://papers.ssrn.com> (Abstract Id 2886256);
 6. Ndubuisi Francis, Omololu Ogunmade and Muhammad Bello "FG Presents Budget Slashes 2015 GDP Growth to 5.5%". Available at <http://www.thisdaylive.com/articles/fg-presents-budget-slashes-2015-gdp-growth-to-5-5-/197055/> accessed on 9 February 2015.
 7. Agboniika J.A.A; Taxation, Economics Diversification and Sustainable Development in Nigeria. Book of Proceedings, 3rd National Conference on management Technology and Sustainable Development in Nigeria. 23rd -25th April, 2018. College of Management and Social Sciences. Salem University, Lokoja, Kogi State. Nigeria.pp.267-293.
 8. Elleman A & Frank Obaro "Ensuring Compliance through Investigation and Enforcement", Gauge, aquarterly publication of the FIRS, April-June, 2011, p. 3
 9. Kudirat J., in a paper titled "Assessing a Case file for Enforcement Proceedings" delivered at anintensive training on Tax for Legal Officers of the FIRS at Bolingo Hotel, Abuja 13-15th June 2007, at 5.
 10. S. Imhanobe The Lawyer's Desk book, Rehoboth Publishing, 2008, p. 32.
 11. Tanz Vito, Fiscal Federalism and Decentralization. A review of some Efficiency and Macroeconomics Aspects. In Bruno M and Pleskovic B (ed) Annual World Bank Conference of Development Economic World Bank 1996, pp 52, 317-322
-