

A CRITICAL EXAMINATION OF TAX OFFENCES, ENFORCEMENT MECHANISMS, AND PROSECUTION UNDER NIGERIA'S EMERGING TAX REGULATORY FRAMEWORK*

Abstract

Tax crimes and their prosecution are an endemic challenge of contemporary fiscal governance in Nigeria. This paper is addressed to the legal academy, policymakers, tax administrators and financial regulators and stakeholders generally, for the purpose of assessing how developments in tax laws in recent years redirect the topography of compliance, enforcement, and accountability. The aim is to establish the extent of the new offences, the procedural protections in prosecution, and the sufficiency of penalties as a deterrent to evasion and fraud. The research uses the doctrinal legal research style, analyzing the statute, judicial interpretation and conflicting ideas to bring out the legal consequences of the developmental stage of Nigerian Tax system. The core argument of the paper is that while new tax laws expanded the ambit of offences and different procedural aspects of prosecution, there remain structural vacuum in enforcement with judicial delays diluting deterrence. The paper recommends that the adoption of a moderating policy between enforcement and procedural fairness is critical to ensuring a sustainable tax compliance culture in the country's tax system.

Keywords: Taxation, Offences, Prosecution, Compliance, Enforcement

1. Introduction

The idea of tax offenses forms the core of any revenue administration system as it identifies the conduct that the law considers illegal in the tax process. By defining such offences, the Act establishes not just penalties but also the contours of acceptable conduct under the revenue regime. This study therefore looks at what the statutes, books, case law and academia say about what constitutes tax offences in Nigeria.

2. Tax Offences and Related Wrongs

Tax offences can be loosely defined as acts or omissions that violate statutory provisions related to taxes. In the Nigerian system, the Federal Inland Revenue Service (Establishment) Act 2007, Companies Income Tax Act and latterly, the Finance Acts (2019–2023) specifically proscribe acts such as the failure to file returns, record falsification and tax evasion¹. These laws serve a twofold function: to provide punishment and to prevent future crime. Academic opinion emphasises that such definitions are essential in order to safeguard the fiscal independence of the state and to ensure equitable treatment of taxpayers². Tax offences therefore represent a specific type of financial crimes that are directly connected to the fiscal needs of the state. Central in this respect is tax evasion (ie, deliberate and fraudulent attempts to lower or eliminate tax liability). Since evading tax is a malfeasance under Nigerian law which is intentional deceit, fraud or hiding out income or forgery of accounts³. The principle, as evolved by the courts, is that evasion is separate from avoidance in that it carries in its trail a fraudulent mind, as opposed to the latter that might merely take advantage of a loop hole in a taxing statute⁴. It is apt, according to the scholars, for evasion to be criminalized for the purpose of deterring deliberate non-payment as well as maintaining the trust of the public in the tax system⁵. Thus, the gravest of all offences under the Nigerian tax laws is tax evasion.

The other relevant term is the *failure to file returns*, which is an act that confers both a civil liability and a criminal liability under Nigerian laws. S.41 of the Companies Income Tax Act specifies that all chargeable companies should file annual returns within six months from the end of the accounting period and failure to do so may lead to penalties and imprisonments⁶. The Finance Act 2020 has strengthened this responsibility in order to include small and medium companies, to help the prevention of revenue loss⁷. According to legal scholars, failure to respond to filing mandates disrupts administrative "orderliness and practically makes it impossible to reportedly audit"⁸. So, the offence is bedrock of crime to the soundness of Nigeria's tax administration system.

False statements and falsification of records are closely related offenses that are classified as criminal under the Personal Income Tax Act and Value Added Tax Act stipulates that any individual who fabricates records or makes a false statement with the intention of minimizing liability is guilty of an offense⁹. This falsification is considered fraud by judicial precedent when the taxpayer knowingly acts with the intention of deceiving the tax authority. Scholars argue that falsification undermines the integrity of the tax system and is consequently punished more severely than mere negligence¹⁰. Therefore, falsification is a deliberate violation of fiscal trust.

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¹ Finance Act 2020, Abuja: Federal Government Printer, 2020, s. 28, p. 44.

² A Sanni, *Introduction to Nigerian Tax Law*, p. 45.

³ Companies Income Tax Act, Abuja: Federal Government Printer, 2004 (as amended), s. 55, p. 83.

⁴ See: *FIRS v. Halliburton West Africa Ltd.*, Suit No. FHC/L/CS/517/2009.

⁵ O Adegbite, 'Legal Framework for Tax Enforcement in Nigeria,' *Journal of African Law* 64.1, (Cambridge: Cambridge University Press, 2020), p. 82.

⁶ CITA, s. 41

⁷ Finance Act 2020, s. 10

⁸ J K Naiyeju, *Nigerian Taxation: Growth, Practice and Impact*, (Ibadan: Spectrum Books, 2015), p. 201.

⁹ Personal Income Tax Act, Abuja: Federal Government Printer, 2011 (as amended), s. 94, p. 122.

¹⁰ C Brooksbank, 'Tax Enforcement and Public Trust,' *International Tax Review* 13.4, (London: Euromoney Institutional Investor, 2021), p. 61.

The offence of obstruction of tax officers is also considered to be a serious tax crime; such offence is explicitly concerned with the integrity of the enforcement mechanism. It is an offence under s 26 of the Federal Inland Revenue Service (Establishment) Act 2007 for any individual to assault, resist, or prevent officers from carrying out their duties¹¹. This article acknowledges that enforcement will not work if tax officers cannot do their work without being threatened or harassed. Judicial dicta in *FIRS v. Intercontinental Bank Plc* (Suit No. FHC/L/CS/330/2008), affirmed that obstruction not only delays assessment but also weakens public confidence in tax authorities¹². Academicians have maintained that this is a subversion of institutional power that should be strongly reproofed¹³.

Another common charge is assessment and collection evasion that applies most directly to employers and withholding agents, for failure to withhold and remit the tax. By virtue of Section 40 of Companies Income Tax Act, every employer is required to deduct tax from resource and remit it to the appropriate authority; a failure to do that is a criminal offence¹⁴. Nigerian courts have always found that the position of a withholding agent is a fiduciary one and the individual would be held personally accountable for his failure to remit¹⁵. Scholars maintain that this offence is essential for ensuring steady revenue inflow, especially since withholding tax is one of the government's most reliable tools for collection¹⁶. This offence bridges administrative efficiency and criminal deterrence.

The general classification of tax crimes also includes *aiding and abetting unlawful conduct*. This involves complicity to and incitement concerning the tax offences. Parties who aid and abet this offence are also culpable notwithstanding that they may have not been the actual taxpayer. This provision is criminal in nature and thus imposes criminal liability beyond the immediate tax payer¹⁷. Jurisprudential wisdom has always maintained that tax evasion schemes are usually populated by professional enablers, among whom are accountants and lawyers that can't be insulated from accountability¹⁸. This has led scholars to posit that this provision ideally places Nigeria on the same page with international best practices (including the OECD aspiration to combat professional facilitation of tax crimes¹⁹). In going after enablers, the law shuts down invincible gaps in enforcement.

In theory, under Nigerian tax law, there is a distinction between civil liability and criminal liability in respect of tax offences. Civil sanctions generally involve fines to encourage compliance, whereas criminal liability can result in a prison sentence and conviction²⁰. The Courts have emphasized the need for procedural safeguards in criminal trials to enhance fairness in criminal prosecution as was the case involving *FIRS v. Prime Plasticchem Nigeria Ltd*²¹. This balance is an important one: the 'double aspect' to criminal law is necessary in ensuring prevention and fairness, where over-criminalisation might hinder investment²². Accordingly, the statutory scheme includes remedial and punitive devices for controlling the conduct of taxpayers.

3. The New Tax Laws and Their Innovations on Offences

The most recent reforms in Nigeria's tax system came into being by the Finance Act 2023 as assented on 28 May, 2023 and became effective on 1 May 2023 with a new robust mechanism to tackle persistent problems compromising tax compliance and enforcement²³. Prior to these amendments, the Federal Government consequently suffered substantial revenue leakages from obsolete sanctions, small deterrence values and a limited range of statutory offences to enable non-compliance to flourish. To this end, the Act amended the Petroleum Profits Tax Act, the Value Added Tax Act, and the Capital Gains Tax Act, the Tertiary Education Trust Fund Act, the Stamp Duties/EMTL framework and the Personal Income Tax Act. The context is the policy of the annual fiscal update, introduced in 2019, and the political requirement to modernize tax laws to current economic conditions. The Finance Act, 2023 is the boldest biddings to expand offenses, enhance penalties, and fine-tune mechanisms for expeditious identification, and recovery of tax arrears. Of more interest is the redefinition of an "offence" under the PPTA, where under FA 2023, sections 18 and 19 amended sections 51 through 53 of the PPTA. For the new section 51, every failure to comply with the provisions of this Act to which no penalty is expressly attached the sum of ₦10, 000,000 on the first day of such failure,

¹¹ FIRS Act, s. 26

¹² *FIRS v. Intercontinental Bank Plc* (Suit No. FHC/L/CS/330/2008). In *FIRS v. Intercontinental Bank Plc* (Suit No. FHC/L/CS/330/2008), the Federal Inland Revenue Service instituted proceedings against the bank for failing to comply with statutory tax obligations, particularly in relation to providing information and cooperating with assessments. The dispute arose because the bank's refusal to cooperate created a serious delay in the lawful exercise of FIRS's powers to assess and collect taxes. The court held that such obstruction undermines not only the efficiency of tax assessment but also weakens public confidence in the ability of tax authorities to enforce compliance. In its judicial dicta, the court emphasized that the integrity of the tax system depends on the cooperation of financial institutions as critical partners in enforcement. Consequently, the court affirmed FIRS's statutory authority and warned that continued obstruction by banks or similar entities would be met with strict judicial sanction to preserve the effectiveness of the tax regime.

¹³ M T Abdulrazaq, *Revenue Law and Practice in Nigeria*, p. 217.

¹⁴ Companies Income Tax Act, Abuja: Federal Government Printer, 2004 (as amended), s. 40

¹⁵ See *UAC Nigeria Plc v. FIRS*, Suit No. FHC/L/CS/321/2011.

¹⁶ B Aturu, *Law and Practice of Taxation in Nigeria*, (Lagos: Mosuro Publishers, 2018), p. 144.

¹⁷ Federal Inland Revenue Service (Establishment) Act, Abuja: Federal Government Printer, 2007, s. 27, p. 57

¹⁸ See *(FIRS v. Access Bank Plc)*, Suit No. FHC/L/CS/743/2012.

¹⁹ OECD, *Revenue Statistics in Africa 2022*, Paris: OECD Publishing, 2022, p. 56.

²⁰ Finance Act 2021, s. 30,

²¹ Suit No. FHC/L/CS/1482/2015.

²² P Cane and M Tushnet, *The Oxford Handbook of Legal Studies*, (Oxford: Oxford University Press, 2003), p. 98.

²³ Finance Act 2023, Preamble and commencement provision; Petroleum Profits Tax Act (PPTA) ss.51–53 (as amended by FA 2023, ss.18–19).

and ₦2,000,000 for each day that failure continues²⁴. This represents a paradigm shift from the previous practice of nominal fines which did not inhibit willful noncompliance. The statute also provides that these administrative penalties must be paid independent of prosecution imparting the separation of sanction from time-consuming criminal trials. The ingenuity lies in fact that all procedural defaults are raised to the status of so many heinous revenue offences and the punishment felt immediately and most sorely. The revised section 52 of the PPTA is aimed at false, misleading or amended accounts, returns or statements provided to the revenue authority. It now stipulates that such infractions would attract the greater fine of ₦15,000,000 or 1% of the tax shortfall as a penalty²⁵. This supplants the outdated penalty calculation that levied insignificant amounts and oftentimes less than a taxpayer's advantage gained by underreporting. In contrast, the new penalty varies based on tax loss to reflect the stated goals of proportionality and deterrence. It is consciously designed to make the penalty for distortion far higher than any benefit to be gained from evasion.

The Finance Act 2023 enhances enforcement by substituting section 53 of PPTA that relates to false or misleading statements and fraudulent modification of returns. This includes the newly introduced administrative penalty at the higher of ₦15,000,000 or 1% of the tax undercharged in cases of such practices and the potential criminal downside on conviction. Conviction could result in a fine of ₦20,000,000 or such higher amount as may be prescribed by the Minister of Finance, and/or imprisonment for a term not exceeding 6 months²⁶. This two-track approach is an intentional departure because it gives the Federal Inland Revenue Service (FIRS) immediate administrative power but leaves criminal sanctions for extreme or fraudulent conduct. That result is an expanded range of violations smoothly transitioning between legitimate civil penalties and criminal retribution in relation to the seriousness of the default.

The Value Added Tax (VAT) Act was also subjected to crucial procedural amendments that made delays and false arrangements act as substantive offences. By virtue of Section 14(3) of the VAT Act as amended by the Finance Act 2023, an appointed taxable person collecting or deducting tax is now to make payment by the 14th of the next month, where previously the deadline was the 21st of such month. Rejection to perform in this shortened period is a default liable to penalties and interest pursuant to the Act. Curiously, section 16 of the VAT Act currently confers on the FIRS the power to effect necessary adjustments to any such transactions, which are artificial or fictitious; and this again stretches the offence perimeter to capture structuring exercises²⁷. These procreative reforms would, in essence, transform administrative lapses into punishable offences, by holding taxpayers and the collectors responsible, with a penalising effect. The application of VAT to the tax base was also explained, and the definition of "building" was refined by the new Act. The Finance Act 2023 excludes masts, lines, pipes and mobile structures from buildings cuts the list of exempt supplies and broadens the range of taxable supplies²⁸. The act of not charging or paying VAT according to its new definition will be considered as an offence under the Act. The obligations are also placed on nonresident digital service providers, who have been appointed by the FIRS to charge and collect VAT, thereby making defaults unlawful under the Nigerian law²⁹. By updating the tax liability with the digital and infrastructure realities, ambiguities were removed in the provisions of offences section and the coverage was widened.

Another substantial amendment exists in the Stamp Duties Electronic Money Transfer Levy (EMTL) guidelines, where the Finance Act 2023 repackaged EMTL proceeds to increase subnational compliance incentives. The new allocation scheme reserves 15% for the Federation, 50% for States and 35% for Local Governments so that all the three tiers of government exercise powers of checks and balances³⁰. Banks and deposit takers must file detailed returns to support this distribution, and where they fail to file returns or pay levy proceeds it constitutes an offence. In essence, financial institutions have been trapped in the compliance net, and breaches of reporting can now be sanctioned a crime of their own. This re-engineering ensures that administrative defaults by institutions with custody of tax revenue cannot escape sanction under the broadened offence structure.

The Finance Act 2023 also introduced reforms under the Capital Gains Tax Act and the Tertiary Education Trust Fund Act, both of which indirectly expand offence definitions by creating new compliance duties. Under the CGTA, digital assets such as cryptocurrency are expressly included as chargeable assets, meaning that failure to report disposals or gains now attracts penalties under the Act. At the same time, the Act amended the TETFA to increase the tertiary education tax rate from 2.5% to 3% of assessable profits, requiring corporate taxpayers to adjust their computations accordingly³¹. Failure to pay at the new rate or to claim deductions improperly now constitutes a reportable offence subject to penalty. These changes highlight how even policy-driven rate adjustments and definitional amendments carry offence consequences in Nigeria's modern tax framework.

²⁴ Finance Act 2023, s.18; PPTA s.51 (as amended).

²⁵ Finance Act 2023, s.19; PPTA s.52 (as amended). The Finance Act 2023, under this section 19, amended provisions of the Petroleum Profits Tax Act (PPTA) with respect to penalties for failure to file returns, thereby strengthening compliance requirements for companies engaged in petroleum operations. Specifically, it restructured section 52 of the PPTA to impose stricter fines and clarified that penalties apply not only to late filing but also to incomplete or misleading tax returns submitted by petroleum companies. Under this amendment, companies that default in filing within the stipulated statutory period are liable to significant monetary penalties, which have been increased to reflect the economic realities of inflation and to deter evasion. It also empowers the Federal Inland Revenue Service (FIRS) to enforce compliance more effectively by providing clearer procedural guidelines on assessment and collection. The overall intent is to promote transparency in petroleum revenue reporting and to safeguard government revenue against deliberate underreporting or concealment by oil companies.

²⁶ Finance Act 2023, s.19; PPTA s.53 (as amended).

²⁷ Finance Act 2023, s.21; VAT Act ss. 14(3), 16 (as amended).

²⁸ Finance Act 2023, s.22

²⁹ VAT Act definition of 'building' (as amended); VAT Act s.10 on nonresident suppliers (as amended).

³⁰ Finance Act 2023, s.30; Stamp Duties Act/EMTL provisions (as amended).

³¹ Finance Act 2023, ss.3–5 (CGTA amendments on digital assets and loss relief); s.7 (TETFA rate amendment).

To sum up, the Finance Act of 2023 re-organised the offence and penalty architecture of Nigerian tax law. The Act has made defaults more expensive and less attractive by raising the penalty thresholds, tying fines to uncharged tax and in certain cases reducing the compliance period. The law also expanded the range of punishable offenses to false statements, incorrect submissions, willful delays, artificial transactions and e-tax evasions³². The approach currently ensures that enforcement should feature a partly punitive model where civil sanctions ensure immediate deterrence and criminal sanctions are still open for serious breaches. These developments form part of a decisive paradigm shift in Nigeria's tax system, which now presents offences not as deviant behaviour but as the inevitable consequences of non-compliance in different statutory areas.

4. Prosecution and Enforcement Mechanisms

One of the most important parts of tax administration in Nigeria is the ability of tax authorities to prosecute. The Federal Inland Revenue Service (FIRS) and the State Boards of Internal Revenue have the power to investigate and prosecute tax offenders directly or through the Attorney-General of the Federation. These powers, while grounded in statutory provisions like the Federal Inland Revenue Service (Establishment) Act 2007, are not absolute; they are implemented alongside constitutional protections that ensure a fair hearing and due process³³. The Federal High Court submitted again in *FIRS v. Intercontinental Bank Plc*³⁴ that blocking tax investigations makes people less trustful of tax enforcement and slows down the process of figuring out how much tax is owed³⁵. In *Abiola v. Federal Republic of Nigeria*, the court also stressed that businesses have to follow tax authorities' orders. These cases collectively illustrate that courts uphold the statutory mandate of tax authorities while insisting on adherence to procedural fairness.

The courts play a very important role in the prosecution of tax crimes because their decisions not only support the actions of the prosecution but also set limits on the power of the state. The Federal High Court in Nigeria, under Section 251(1)(a) of the 1999 Constitution (as amended), has exclusive jurisdiction over tax-related disputes³⁶. This makes it a clear place for enforcement and decision-making. In the case of *Shell Petroleum Development Company v. Federal Board of Inland Revenue*³⁷, the court made it clear that it was its job to balance the tax authority's claim of underpayment with the taxpayer's right to a fair assessment³⁸. Courts have further stressed that the criminalization of tax offenses must be linked to legislative intent rather than arbitrary enforcement, upholding both legal certainty and constitutional protections. This judicial position fortifies the integrity of tax law by incorporating accountability into enforcement processes.

An ongoing difficulty in tax cases, as well, is the onus placed on the tax collectors in relation to evidence, particularly where complex corporate structures or digital transactions are involved. Nigerian Evidence Act obliges prosecution to prove its case beyond reasonable doubt that often does not sit well with the technicalities of accounting books and flows of cross border financial transactions. Such a situation arose in *FRN v. Ibore*³⁹ where there was a huge quantity of financial documents before the Federal High Court that made it difficult to prove the guilt of tax avoidance beyond reasonable doubt. Similarly, in *Oando Plc v FIRS*⁴⁰ prolonged evidentiary controversies stagnated trial and eroded the deterrent capacity of prosecution. These challenges underscore the importance of forensic specialists and contemporary investigative instruments in pursuit of tax enforcement.

Another dimension is the trade-off between deterrence and the rights of the taxpayers, and the need to preserve public confidence in the administration of taxes. Although strict punishments and imprisonment are generally effective in deterring non-compliance, disproportionate prosecution may result in an oppressive atmosphere that corrodes voluntary compliance⁴¹. The court in *FIRS v. Cadbury Nigeria Plc*⁴² warned against onerous penalties that could scare away corporate investment and receptivity. The courts have therefore emphasised that penalising crimes of taxation should be rational, fair and also justify its authority from statute and not from a fiat of administration. This fine balance ensures effectiveness of deterrence without violation of the heart and core of fundamental rights enshrined by the Constitution.

The enforcement procedures are also fraught by institutional rivalry, with the overlapping jurisdiction of the EFCC and the FIRS in the prosecution of tax-related offences. These overlaps can result in duplicate or inconsistent enforcement, which undermines the effectiveness of enforcement⁴³. For example, in *EFCC v. NNPC Staff Cooperative*⁴⁴, the court dismissed charges for procedural non-compliance attributable to deficiency in prosecuting authority. This emphasizes the necessity for

³² Finance Act 2023, consolidated amendments to PPTA ss.51–53, VAT Act ss.14(3), 16, CGTA digital asset provisions, TETFA s.7, and EMTL allocation provisions.

³³ C M Tabi, *Nigerian Tax Law and Practice*, (Ibadan: Spectrum Books, 2019), p. 214.

³⁴ Suit No. FHC/L/CS/330/2008

³⁵ Suit No. FHC/L/CS/2/2009.

³⁶ J O Orojo, *Company Law in Nigeria*, (Lagos: Mbeyi & Associates, 2020), p. 162.

³⁷ *Shell Petroleum Development Company v. Federal Board of Inland Revenue*, Suit No. FHC/L/CS/178/2001

³⁸ M O Ogbodo, *Law of Evidence in Nigeria*, (Enugu: Snaap Press, 2018), p. 243

³⁹ Suit No. FHC/ASB/IC/09/2007.

⁴⁰ Suit No: FHC/L/CS/345/2010

⁴¹ S A Asein, *Introduction to Nigerian Legal System*, (Lagos: Ababa Press, 2017), p. 188.

⁴² Suit No. FHC/L/CS/1234/2009

⁴³ O Adekunle, *Law and Taxation in Nigeria*, (Abuja: Zeal Publishers, 2021), p. 276.

⁴⁴ Suit No. FHC/ABJ/CR/45/2011

harmonisation between law enforcement agencies to avoid abuse process. The onerous and cumbersome institutional and legal templates must be reformed in order to ensure efficiency, uniformity and legitimacy in the process of prosecution

Finally, if prosecution is to remain a durable mode of enforcement, its deterrent value must be built on compliance incentives rather than intimidation. Cross-national analysis indicates compliance levels above punishment can be observed in jurisdictions with transparent tax procedures and enforcement which follows known rules made by authorities⁴⁵. This fact is not lost on the Nigerian courts, which in the case of *FBIR v. Halliburton Energy Services*⁴⁶ the court held that legitimacy is enhanced when enforcement is perceived as fair. One measure of successful enforcement is not the number of convictions but the compliance culture achieved through enforcement that is reasonable, fair and transparent. For this reason, enforcement of tax in Nigeria must adopt a regime which is based on compliance and respect for the rights of the taxpayers and, at the same time, maintaining a regime of accountability.

5. Duties and Rights of Taxpayers

Duties: The tax payer has the following duties i) Obligation to file a return of income⁴⁷; ii) Obligation to keep books of account⁴⁸; iii) Obligation to pay tax on time⁴⁹; iv) Duty to comply with notices from tax authorities⁵⁰

Rights: Right to be served notice of assessment⁵¹ i) Right to objection⁵²; ii) Right to appeal⁵³; iii) Right to confidentiality and secrecy⁵⁴; iv) Right to privacy⁵⁵; v) Right to challenge utilization of tax proceeds⁵⁶

The above are the rights and the duties of the tax payer under the Nigerian tax regime.

Tools of Enforcement of tax payment under the New Nigeria Tax Regime in the hands of the taxing authorities

The National Assembly recently passed into law, four new tax laws. They are i) Nigeria Revenue Service Establishment Act⁵⁷; ii) Nigeria Tax Administration Act⁵⁸; iii) Joint Revenue Board of Nigeria (Establishment) Act⁵⁹; iv) Nigeria Tax Act.⁶⁰ The Nigeria Tax Administration Act provides for the following powers to enable relevant taxing authority perform its duties:⁶¹ power to call for returns, books, documents and information⁶²; power to access lands, buildings, books and documents⁶³; power to remove books and documents⁶⁴; power substitution⁶⁵; power to distrain⁶⁶; powers of tax enforcement⁶⁷; revocation of petroleum or mining licence or lease⁶⁸; powers of tax investigation⁶⁹; penalty and interest for non-payment of tax⁷⁰; power and duty to remit the penalty⁷¹; power to recover tax⁷²; power to assign tax debts⁷³; and power to pay rewards for assistance in tax administration⁷⁴. It is instructive to note that the Joint Revenue Board of Nigeria (Establishment) Act⁷⁵ established the Tax Appeal Tribunal⁷⁶ and the office of the Tax Ombud⁷⁷ the Tax Appeal Tribunal was set up to while resolve tax dispute fairly and

⁴⁵ F O Akande, *Contemporary Issues in Nigerian Tax Administration*, (Ibadan: Evans Brothers, 2020), p. 311.

⁴⁶ Suit No. FHC/L/CS/567/2012

⁴⁷ Section 41(1) PITA, Section 55(1) CITA

⁴⁸ Section 63(1) CITA, Section 47(1)(c) Section 52 PITA

⁴⁹ SECTION 24 CFRN, 1999

⁵⁰ *FBIR v WAPCO LTD* 1 ALL NTC, 457

⁵¹ Section 57 PITA and Section 68 CITA *Alhaji Yahaya Mohammadu v Ofurkpo Local Administration* 1 ALL NTC, 371; *Fashogbon v Layade* (1999) 11 NWLR (Pt 628) P. 543@551, *Okupe v FBIR* 1 ALL NTC 469

⁵² *FIRS v Maiduguri International Hotels* 9 ALL NTC 59@62

⁵³ Section 13(1), Fifth Schedule, FIRS (Est) Act, 2007

⁵⁴ Section 48 PITA

⁵⁵ Section 38 CFRN 1999

⁵⁶ *Fawehimi v President of the Federal Republic of Nigeria* (1922-2015) 11 ALL NTC, 291

⁵⁷ No 4, 2025

⁵⁸ No 5, 2025

⁵⁹ No 6, 2025

⁶⁰ No 7, 2025

⁶¹ *Ibid*

⁶² Section 57, Nigeria Tax Administration Act

⁶³ Section 58 *Ibid*

⁶⁴ Section 59 *op.cit*

⁶⁵ Section 60 *op.cit*

⁶⁶ Section 61 *op.cit*

⁶⁷ Section 62 *op.cit*

⁶⁸ Section 63 *op.cit*

⁶⁹ Section 64 *op.cit*

⁷⁰ Section 65 *op.cit*

⁷¹ Section 66 *op.cit*

⁷² Section 67 *op.cit*

⁷³ Section 68 *op.cit*

⁷⁴ Section 69 *op.cit*

⁷⁵ Act No 6 of 2025

⁷⁶ Section 23 *Ibid*

⁷⁷ Section 36 *Ibid*

efficiently,⁷⁸ the tax Ombud was set up to review and resolve complaints relating to taxes, levies, duties or similar regulatory charges.

6. Judicial Interpretation and Comparative Insights

Nigerian Courts have adopted the tradition that tax offences must strictly be based on statutory provisions as exemplified in *Seven-Up Bottling Co. Plc v. Lagos State Internal Revenue Board*, (2000) 3 NWLR (Pt. 650) 565, 591–92 (CA). In that case, the Court of Appeal clarified that, when a charging provision in tax legislation is ambiguous, the ambiguity is to be resolved in favour of the taxpayer⁷⁹. This view has the effect of bolstering the argument of defendants in tax-offence cases who cannot be held liable by implication or decree. This is especially the case in PAYE remittances where employers are no more than collecting agents and are considered to be fiduciaries, and only if it is clear that a duty to remit is imposed is non-remittance able to be that offence⁸⁰. The case continues to be the leading authority on the proposition that in taxation, penalty can be imposed only for surplussage and not for income alone or where statutory duties are not broken without any doubt.

Another significant Nigerian precedent is *Independent Television/Radio v. Edo State Board of Internal Revenue*⁸¹, where the Court of Appeal also approved of distraint after statutory conditions precedent had been fulfilled. But in *Guaranty Trust Bank Plc v. Attorney-General, Ekiti State*⁸², the court held that enforcement was invalid for the lack of appropriate statutory notices. These decisions illustrate the court's endeavour to weigh the tax power's interest in collecting revenue promptly against the taxpayers' entitlement to due process. As a result, the possibility of prosecution for tax defaults such as obstruction or non-production of records is subject to the principle that it should not be possible to rely upon an assessment or notice unless properly issued. Nigerian revenue authorities are therefore subjected to a process and substantive discipline by the judiciary.

On a comparative lens, we find that in South Africa, the case involving *Metcash Trading Ltd v. Commissioner, South African Revenue Service & Another*⁸³, serves as a valuable comparative framework. In that case, the court upheld the controversial "pay now, argue later" rule, which lets tax authorities collect disputed amounts before appeals are resolved. This is very different from Nigeria, where courts say that notices, assessments, and demand letters must come before distraint or prosecution. The Nigerian approach may offer better due-process protection, but it does so at the cost of quick enforcement. On the other hand, South Africa puts fiscal efficiency first, even if it means putting taxpayers' rights at risk for a short time⁸⁴. This difference shows two different ways of thinking about the law: Nigeria prefers strict legality, while South Africa prefers pragmatic enforcement.

The English case involving *R v. Allen*⁸⁵ is equally informative for comparison. The Court of Appeal made it clear what level of dishonesty is needed to convict someone of tax evasion: the prosecution must show that the person intentionally lied by not reporting taxable income⁸⁶. Nigerian courts, on the other hand, don't always make mens rea requirements clear. Instead, they often treat failing to file or remit as strict-liability crimes. This protects the collection of taxes, but it could make negligent or technical defaults illegal⁸⁷. Adopting the Allen standard could enhance Nigerian jurisprudence by delineating clearer distinctions between intentional fraud and mere non-compliance. One last comparative example is the Indian Supreme Court opinion in *Vodafone International Holdings BV v. Union of India*⁸⁸. It struck down retroactive efforts to tax cross-border transactions, based on a due-process rationale that legal certainty is an element of the Constitution. Regard must be had to the logic of Nigerian jurisprudence as in *Seven-Up* and *Asr* where it is content to concentrate on the principles of strict statutory interpretation, already held to be worthy of emphasis; India's Vodafone decision argues a second plane of reference: court's refusal to multiply retrospectively tax liability in a manner that would result in penal consequences. Collectively, the two systems exemplify a common judicial aversion to arbitrary tax criminalisation, albeit Nigeria has yet to confront retroactive legislation in this way⁸⁹. Adopting Vodafone's certainty principle can in turn, immunize the Nigerian court system against arbitrary legislative overreach in the definition of tax offences.

⁷⁸ CNOOC Exploration and Production (Nig) Ltd & Anor v NNPC & Anor (2017) LPELR-43800(A)

⁷⁹ *Seven-Up Bottling Co. Plc v. Lagos State Internal Revenue Board*, (2000) 3 NWLR (Pt. 650) 565, 591–92 (CA).

⁸⁰ See 'Salient Points About Tax Assessments in Nigeria,' SSRN Paper, pp. 3–4. This reiterates that courts treat criminal tax enforcement as a matter of strict statutory construction, never of administrative convenience.

⁸¹ Appeal No. CA/B/20/2013; (2014) LPELR-23215 (CA)

⁸² Appeal No. CA/AE/16/2010; (2018) LPELR-46307 (CA), at pp. 18–21. This shows how any lapse in procedure, no matter how minor, undermines the foundation of a successful prosecution for tax offences

⁸³ 2001 (1) SA 1109 (CC)

⁸⁴ See *J Hattingh, Taxpayer Rights and the 'Pay Now, Argue Later' Principle in South Africa*, *South African Law Journal* 118 (2001): 174–76. It is evident that Nigeria could learn enforcement efficiency from South Africa, while South Africa could temper its approach with Nigerian-style safeguards for taxpayers.

⁸⁵ (2001) EWCA Crim 2247, (19)–(23)

⁸⁶ *R v. Allen* (2001) EWCA Crim 2247, (19)–(23).

⁸⁷ See D O, Smith and Hogan's *Criminal Law*, 13th ed., Oxford University Press, 2011, pp. 926–27. Nigerian tax enforcement would be more balanced if courts imported the English dishonesty test to separate true evasion from administrative failure.

⁸⁸ (2012) 6 SCC 613, 620–22

⁸⁹ See S Roy, 'The Vodafone Tax Case: Judicial Assertiveness in the Face of Retrospective Amendments,' *Indian Journal of Constitutional Law* 5 (2013): 88–90. The Nigerian judiciary should adopt similar reasoning to prevent retroactivity from creeping into its tax-offence framework.

7. Conclusion and Recommendations

The observation on the evolving tax regulatory environment in Nigeria shows the fine line thread between strict regulatory punishments imposed on tax defaulters and the due process that safeguards the rights of tax payers. Although in the matter of increasing offences and penalties, a clear policy intent is demonstrated with the obvious objective of accomplishing higher deterrence, yet the gaps in enforcement and the consent of judicial lethargy cast a shadow on the effectiveness of the system. It confirms the obvious point that deterrence is weakened by delayed justice, thereby encouraging wrongdoers rather than preventing them. No less significant is the recognition that an over-reliance on punishment without a commensurate emphasis on procedural fairness runs the risk of undermining public confidence in the tax system. Therefore, the Nigerian tax system is confronted by double-edged predicaments: giving room for accountability and maintaining fairness in prosecution of justice.

That noted, the paper recommends that: First and foremost, enforcement must be strengthened through the establishment of specialized tax courts or tribunals with strict timelines to minimize. Secondly, FIRS and other tax agencies must make it a priority to employ electronic surveillance and forensic technology to detect and bring to book offenders more accurately. Thirdly, sanctions should be re-scaled to deter and reward compliance, in a way that the taxpayers see the system as correction rather than pure sanction. Fourthly, training of prosecutors, judges, and tax officials must be institutionalized, to ensure that enforcement mirrors global best practice. In summary, the tax justice terrain in Nigeria will only blossom, if enforcement is effective and equitable, bringing together deterrence and a sense of due process to evolve a sustainable culture of compliance.